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, August 16, 2022, 9:00 a.m.
Benton County Courthouse, Prosser, WA

9:00 AM **Call to Order**

Pledge of Allegiance

Approval of Minutes
- **August 9, 2022**

Review Agenda

Consent Agenda

Auditor
a. Agreement w/State of WA for Jail Voter Outreach Grant

Human Services
b. Contract w/ARC of Tri-Cities for Staffing for Outreach Services for Spanish Speaking Families

IT
c. Purchase of Two Fujitsu Scanners From Strictly Technology for the Sheriff's Office

Juvenile
d. Contract w/Kathleen Moreno for Attorney Representation of Persons in BECCA Dockets

Office of Public Defense
e. District Court Public Defense Agreement w/Heather Villani
f. Superior Court Public Defense Agreement w/Dennis Hanson for UGA Cases

Public Safety
g. Line Item Transfer, Fund No. 1480, Dept. 106
Public Works
h. Contract w/Terra Firma Testing for On-Call Materials Testing
i. Agreement w/Nomad Trail Runners of Eastern WA for Temporary Use of County Right-of-Way
Purchasing
j. First Contract Amendment w/White Bluffs Consulting for Permitting of Capital Projects
k. Purchase of Eight Rifles From Bravo Company USA for the Sheriff's Office
l. Purchase of Easy Dump From Par-Kan Company for Facilities Department
m. Contract w/Goodman & Melenbacher ENT for Shooting Range Expansion Project
Sheriff
n. Line Item Transfer, Fund No. 0000-101, Dept. 121
o. Agreement w/City of Kennewick & City of Richland for 2022 Byrne Justice Assistance Grant
Superior Court
p. Line Item Transfer, Fund No. 0010, Dept. 123

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

Public Hearing

Company Seventy-Nine, Franchise Agreement Renewal ~ C Woods

Scheduled Business

Subscription Agreement w/PowerDMS, Inc. ~ Lt. Jason Erickson

Request to Add Floating Holiday in Superior Court for Juneteenth ~ L Wingfield

Other Business

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

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

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; Lexi Wingfield, HR Manager; Tiffany Deaton, Superior Court Administrator; Clerk Josie Delvin; DPA Ryan Brown; Treasurer Ken Spencer; Interim Chief Robert Guerrero; Finance Manager Linda Ivey; Superior Court Judge Joe Burrowes; Shyanne Palmus, Communications Coordinator; DPA Stephen Hallstrom; Tiffany Runge, Superior Court Administrator.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of August 2, 2022 were approved.

Agenda Review

- Add executive sessions to discuss performance of public employees.

Consent Agenda

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

Clerk

a. Amendment 1 to Interagency Reimbursement Agreement w/WA State Administrative Office of the Courts Regarding the Blake Decision

Commissioners

b. Appointing Members to the Benton County Law & Justice Council; Rescinding Resolution 2015-370
c. Surplus (to Prosser School District & Mabton Police Dept) & Disposition of Personal Property
d. Line Item Transfer, Fund No. 0010, Dept. 115 for the Event Center Operations @ the Fairgrounds
e. Reappointing Dorri Liikala to the Benton County Facilities District, Position #1
f. Reappointing Ernie Kuhn to the Benton County Public Facilities District, Position #2
g. Reappointing Howard Rickard to the Benton County Public Facilities District, Position #3
h. Reappointing Valjean Meadows to the Benton County Public Facilities District, Position #4
i. Reappointing Douglas Akers to the Benton County Public Facilities District, Position #5

Human Services

j. Contract w/the ARC of Tri-Cities for Special Olympics Staffing and Supplies

Juvenile

k. Amendment No. 1 w/Washington State Patrol for Criminal History Record Information; Amending Resolution No. 2019-615

Office of Public Defense

l. Superior Court Public Defense Agreement w/Hayden Sebald for UGA Cases
m. Termination Notice of District Court Public Defense Agreement w/Douglas McKinley
n. Termination Notice of District Court Public Defense Agreement w/Anastasia McKinley
o. Termination Notice of District Court Public Defense Agreement w/Jared Hanson

Purchasing

p. Purchase of Machmini Microfilm Scanner From Crowley Company for the Clerk's Office

Sustainable Development

q. Amended & Restated Disbursement Agreement w/City of Richland for Center Parkway Extension Project
r. Amended & Restated Disbursement Agreement w/City of Prosser for the "Interstate 82 Utility Crossing – Phase Two" Project

Public Comment

None.

Amended Contract w/Aramark Correctional Services, LLC for Jail Food Services

Chief Guerrero presented the amended contract with Aramark, as they were requesting a cost increase of 10.79% this year and 4% next year due to current inflation costs as follows:

- (1/1/22 – 7/31/22) – $88,848 per month-$621,936
- (8/1/22 – 12/31/22) –$98,435 per month-$492,173
- (1/1/23 – 12/31/22) –$102,372.05/month-$1,228,464
- According to the numbers for 2023, the amount based on 400 prisoners would be approximately $703,371 over the current 2021-2022 budgeted amount.

He said this was based on 400 people, and as long as they stayed under 500 for 30 calendar days, it would not affect the contract. This did not include any possible increase request for 2024. He said they would work with the Commissioners' Office to identify the funding for the increase to this service.

He added that the maintenance costs on kitchen equipment had improved significantly by removing inmates from the kitchen and using this service.

MOTION: Commissioner McKay moved to approve the attached First Contract Amendment between Benton County and Aramark Correctional Services, LLC as presented. Commissioner Delvin seconded and upon vote, the motion carried.

Line Item Transfer in Clerk's Office for Accounting Assistant Trainee

Clerk Josie Delvin presented a line item transfer so they could train an employee in the new position before the outdoing employee moved to their other position within the Clerk's office. She said due to attrition, she had the money available in her budget.

MOTION: Commissioner McKay moved to approve resolution for the line item transfer as presented by the Clerk to create a training line item. Commissioner Delvin seconded and upon vote, the motion carried.

Superior Court Staffing

Superior Court Judge Burrowes, Linda Ivey & Lexi Wingfield presented the staff requests as follows:

- Line Item Transfer for Staffing Due to Blake Decision
    - For Judges – to be reimbursed by State funds - $124,216
    - Part-Time Court Commissioner, only in Benton County to be reimbursed by State funds - $24,500 – position will end when funding ends. Linda reminded the Board they received the grant a year ago and at that time approved a part-time commissioner, however, had not been applying that funding. They used the judges and wanted to charge part of their wages to the Blake funding and back bill that to February, 2021.
- Line Item Transfer for Staffing Using ARPA Grant
    - Superior Court Commissioners (2) – to increase speed of case resolution due to backlog created by COVID-19 – utilize the two court commissioners for that and utilize the judges for trials – positions end December 31, 2024 - $119,670

MOTION: Commissioner McKay moved to approve the line item transfer in Current Expense Department 123 Superior Court to appropriate budget for the Blake Decision from a Court Commissioner line item to a Superior Court Judges line-item as presented. Commissioner Delvin seconded and upon vote, the motion carried.

MOTION: Commissioner McKay moved to approve the line item transfer in Current Expense Department 123 Superior Court to Department 138 and create a Part-time Superior Court Commissioner position as presented. Commissioner Delvin seconded and upon vote, the motion carried.

MOTION: Commissioner Delvin moved to approve the line item transfer in Current Expense Department 139 for Superior Court Commissioner positions as presented. Commissioner McKay seconded and upon vote, the motion carried.

Continued Public Safety Tax Discussion

Shyanne Palmus presented the tentative schedule and RFP documents for the new RFP process for the public safety tax. She said any proposals received in the original RFP process would automatically be included for funding consideration in this round. All approved funding would be for the 2023-2024 budget.

The proposed schedule for this RFP was as follows:

- RFP Open: August 9, 2022
- RFP Closed: August 31, 2022 by 5 PM
- Presentations: TBD (new requests only – date/time will depend on number of requests)

The Board agreed to moved forward as presented.

Other Business

EFSEC – Wautoma Project

Commissioner McKay said he attended the hearing and there was quite a bit of public comment, and it was a good presentation by the Planning Department.

Hanford Communities ECA

Commissioner Delvin said he attended the Hanford Communities ECA in Salt Lake City and they did a presentation for the Tri-Cities Clean Energy and were ready when the Department of Energy Secretary came out later this month.

Other

Commissioner Delvin expressed his displeasure with the current Biden administration and said Benton County Sheriff's office should review how it dealt with the FBI. Commissioner McKay agreed, and also expressed frustration that the County was not in charge of the County, but instead the State, so it was not really local government.

The Board briefly recessed, reconvening at 9:28 a.m.

Executive Session – County's Position on Labor Strategy

The Board went into executive session at 9:28 a.m. for up to 30 minutes with DPA Stephen Hallstrom and Lexi Wingfield. Also present were Jerrod MacPherson, Matt Rasmussen, Linda Ivey, and Cami McKenzie.

The Board came out at 9:58 a.m. No decisions were made in executive session.

Executive Session – Review Performance of Public Employee

The Board went into executive session at 9:58 a.m. for up to 20 minutes to review the performance of a public employee. Also present were Jerrod MacPherson, Matt Rasmussen, Lexi Wingfield, and Cami McKenzie. The Board came out at 10:17 a.m. and went back in for up to 20 additional minutes. The Board came out at 10:33 a.m. No decisions were made in executive session.

Tort Claims

CC 2022-19: Received from Progressive Insurance on 08/03/2022
CC 2022-20: Received from Wendy Goodnight on 08/08/2022
CC 2022-21: Received from Kenneth Ashley on 08/08/2022

Resolutions

2022-534: Amendment 1 to Interagency Reimbursement Agreement w/WA State Administrative Office of the Courts Regarding the Blake Decision
2022-535: Appointing Members to the Benton County Law & Justice Council
2022-536: Surplus (to Prosser School District & Mabton Police Dept) & Disposition of Personal Property
2022-537: Line Item Transfer, Fund No. 0010, Dept. 115 for the Event Center Operations @ the Fairgrounds
2022-538: Reappointing Dorri Liikala to the Benton County Facilities District, #1
2022-539: Reappointing Ernie Kuhn to the Benton County Public Facilities District, #2
2022-540: Reappointing Howard Rickard to the Benton County Public Facilities District, #3
2022-541: Reappointing Valjean Meadows - Benton County Public Facilities District, #4
2022-542: Reappointing Douglas Akers to the Benton County Public Facilities District, #5
2022-543: Contract w/the ARC of Tri-Cities for Special Olympics Staffing and Supplies
2022-544: Amendment No. 1 w/Washington State Patrol for Criminal History Record Information
2022-545: Superior Court Public Defense Agreement w/Hayden Sebald for UGA Cases
2022-546: Termination Notice of District Court OPD Agreement w/Douglas McKinley
2022-547: Termination Notice of District Court OPD Agreement w/Anastasia McKinley
2022-548: Termination Notice of District Court OPD Agreement w/Jared Hanson
2022-549: Purchase of Machmini Microfilm Scanner From Crowley Company for the Clerk's Office
2022-550: Amended & Restated Disbursement Agreement w/City of Richland for Center Parkway Extension Project

2022-551: Amended & Restated Disbursement Agreement w/City of Prosser for the "Interstate 82 Utility Crossing – Phase Two" Project
2022-552: First Contract Amendment Between Benton County and Aramark Correctional Services LLC For Corrections Food Services Located at the Benton County Jail
2022-553: Transfer of Funds Within Current Expense Fund Number 0010 - Dept. 106 Accounting Assistant Trainee - $9,524
2022-554: Transfer of Funds Within Current Expense 0010 - Dept. 123
2022-555: Transfer of Funds Within Current Expense 0010 - Dept. 123 To Dept. 138

There being no further business before the Board, the meeting adjourned at approximately 10:33 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022
Subject:	Jail Voter Outreach Grant
Presenter:	
Prepared By:	L. Roe
Reviewed By:	B. Chilton

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

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

Summary / Background Information

The Elections Division of the Auditor's Office will be receiving a grant from the Washington State Secretary of State to "develop and implement a plan to increase voting amongst the jail population, create voting materials specific to the jail population, purchase supplies and equipment for voting in jails, and provide direct staffing in jails to support voting activities"

Fiscal Impact

This is a reimbursable grant.

Recommendation

The Chairman of the Board execute the Agreement for use of grant funds for a jail voting program.

Suggested Motion

Approve as part of consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A GRANT AGREEMENT BETWEEN THE STATE OF WASHINGTON, OFFICE OF THE SECRETARY OF STATE, AND BENTON COUNTY

WHEREAS, grant funding is available to counties for implementation of a provision in Section 20 of Engrossed Senate Bill 5693 Chapter 297, Laws of 2022. This funding is to develop and implement a plan to increase voting amongst the jail population, create voting materials specific to the jail population, purchase supplies and equipment for voting in jails, and provide direct staffing in jails to support voting activities; and

WHEREAS, the Benton County Auditor intends to apply for available funds to enhance the existing jail voting program in Benton County; and

WHEREAS, it is necessary to enter into a Grant Agreement with the Office of the Secretary of State; NOW, THEREFORE,

BE IT RESOLVED, the Chairman of the Board is authorized to sign the Grant Agreement between the State of Washington, Office of the Secretary of State and Benton County, for the term commencing on the date of the execution of the agreement through June 30, 2023, unless terminated sooner or extended as provided therein; and

BE IT FURTHER RESOLVED that the Auditor is authorized to sign any statements of work, grant funding requests, addendums, or modifications necessary to secure funding under the Grant Agreement.

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: L. Roe, B. Chilton

L. Roe

DocuSign Envelope ID: 6264AEAA-D942-4E3A-B647-8FADA8095F17

OSOS NO. G-7504

GRANT AGREEMENT BETWEEN THE OFFICE OF THE SECRETARY OF STATE AND BENTON COUNTY AUDITOR'S OFFICE

This Grant Agreement (this "Agreement") is entered into by the Washington State Office of the Secretary of State ("OSOS") and the Benton County Auditor's Office ("Grantee").

1. PURPOSE

Funding for implementation of a provision in Section 20 of Engrossed Senate Bill 5693 Chapter 297, Laws of 2022. This funding is to develop and implement a plan to increase voting amongst the jail population, create voting materials specific to the jail population, purchase supplies and equipment for voting in jails, and provide direct staffing in jails to support voting activities.

This Agreement identifies the parties' arrangements regarding Jail Outreach expenses as part of Engrossed Senate Bill 5693.

2. PERIOD OF PERFORMANCE

The period of performance under this Agreement will be from the date of execution through June 30, 2023, unless terminated sooner or extended as provided herein.

3. DUTIES

A. GRANTEE will:

1. Complete and submit a Scope of Work document in the form of Exhibit A attached hereto and incorporated herein by this reference for approval to OSOS;
2. Procure equipment and materials necessary to support voter registration and voting within county jails;
3. Staff the outreach program with qualified election personnel; and
4. Submit a postelection report to OSOS by February 1, 2023 that:
   - (i) Details the use of the grant funding;
   - (ii) Evaluates the overall effectiveness of the grant in achieving its objective to increase voter registration and voting of the jailed population; and
   - (iii) Provides recommendations regarding best practices and for law changes, if needed

B. OSOS will:

1. Review the Scope of Work document submitted by Grantee;
2. Reimburse Grantee the approved costs related to Scope of Work document; and
3. Compile the postelection report received from Grantee with the postelection reports of other counties into a single report that:
   - (i) Includes an analysis of the county grant projects;
   - (ii) Includes recommended policies and procedures for county jails regarding inmate voting; and
   - (iii) Is delivered to the Governor and Legislature by June 30, 2023

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4. MANAGEMENT

The following individuals are responsible for the management of this Agreement:

A. OSOS: Christopher Donald
Office of the Secretary of State
PO Box 40229
Olympia, Washington 98504
christopher.donald@sos.wa.gov
(360) 902-4175

B. GRANTEE: Brenda Chilton
Benton County
620 Market St
Prosser, Washington 99350
brenda.chilton@co.benton.wa.us
(509) 736-3085 and 509-736-2707

5. WAIVER

Waiver of any default may only be in writing and shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the parties to this Agreement, and attached to the original Agreement.

6. SEVERABILITY

If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions 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.

7. RESPONSIBILITIES OF THE PARTIES

Each party shall be responsible for acts and/or omissions of its own employees, officers, or agents in conjunction with the work performed under this Agreement. Neither party shall be considered an agent of the other, and neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, corporation, or other third party not named in this Agreement.

8. ENTIRE AGREEMENT

This Agreement including any referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed a part hereof.

9. ORDER OF PRECEDENCE

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

A. Applicable state and federal statutes, and local laws, rules and regulations;
B. Duties identified in section 3 of this Agreement; and
C. All other provisions of this Agreement.

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10. DISPUTES

If a dispute arises under this Agreement, it will be adjudicated by a dispute board. Each party to this Agreement will appoint a member to the dispute board. The members appointed will jointly appoint an additional (third) member to the dispute board. The dispute board will then evaluate the facts, Agreement terms, and applicable statutes and rules, to make a determination on the dispute. This dispute process will precede any judicial action.

11. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

12. TERMINATION

Either party may terminate this Agreement upon 30 calendar days' written notice to the other party. The terminating party will be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. If funding from the State or other sources is withdrawn or limited in any way after execution of the Agreement, OSOS may immediately terminate or renegotiate the Agreement.

13. APPROVAL; AMENDMENTS

This Agreement shall be subject to the written approval of OSOS' authorized representative and shall not be binding until so approved. This Agreement may be altered, amended, or waived only by written amendment executed by both parties.

THIS AGREEMENT is executed by the persons signing below who warrant that they have the authority to execute this Agreement.

BENTON COUNTY

Shon Small Date
Chair, Board of Commissioners

BENTON COUNTY AUDITOR'S OFFICE

Brenda Chilton 8/4/2022
GRANTEE SIGNATURE Date

Brenda Chilton
Print Name

Print Title _____

OFFICE OF THE SECRETARY OF STATE

TROVA O'HEFFERNAN Date
Assistant Secretary of State

APPROVED AS TO FORM:
Benton County Prosecutor

Approving email attached.

REID HAY, Deputy Date

DS PR

DocuSign Envelope ID: 6264AEAA-D942-4E3A-B647-8FADA8095F17

EXHIBIT A

WASHINGTON
Secretary of State

Voting in Jail SFY23 Proviso Grant

Purpose

Grant funds support voter registration and voting within county jails for the August 2022 Primary Election and the November 2022 General Election

Eligible uses

- Develop and implement a plan to increase voting in the jail population
- Create voting materials specific to the jail population
- Purchase supplies and equipment for voting in jails
- Provide direct staffing to support voting activities in jails

Eligible applicants: Washington county governments

Available funds: $2,534,000 in one-time proviso monies

Allowable costs*

- **Personnel**
  - Reimbursements for jail staff necessary for project supervision (extra post or overtime)
  - Fees associated with criminal history background checks or badge issuance
  - Election staff on payroll may be charged to this grant if time and effort is documented with direct time entry (actual time worked, exclusive of earned leave but including benefits)
  - Subcontracted services for direct staffing, volunteer coordination, or interpretive services
- **Equipment**
  - Ballot box
  - Voting equipment (AVU)
  - On-demand interpreter (on screen)
  - Phones
  - Computers
  - Tables or chairs
- **Supplies**
  - Paper
  - Pens, pencils
  - Branded t-shirts or hats
  - Uniform apparel for election representatives
- **Voting Materials**
  - Materials created or printed specifically for project use, including translation of existing materials.

***** *Purchased supplies, equipment, and voting materials may be used for ongoing election activity for the general population at the conclusion of this grant.*

Unallowable costs

- Activities in state or federal facilities.
- Equipment, supplies, voting materials or staff in community correction programs, alternative jail settings, diversion programs, or municipal jails or contract jails outside of a county's boundaries.
- Equipment, supplies, or staffing for jail operations not related to the Jail Voting Project.

Budget Period: July 1, 2022 through June 30, 2023

Report due: February 1, 2023

Any costs incurred on or after March 31st (when the budget was signed by the Governor) are allowable for reimbursement following Scope of Work approval.

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EXHIBIT A

Application (Use second page if additional space is needed)

County	
Auditor name	
Auditor signature	
email	
phone	

What jail facilities will be impacted by your project?

Name of facility	Location of facility	Number of beds

Describe your project's scope of work and objectives

Include phases, design, and scope of the project

Describe how you will evaluate the success of your project.

Please provide a timeline for the project, deliverables and milestones that are quantifiable and measurable

Project Budget and Justification

Item	Quantity	Unit Cost	Total Cost	Justification

DS
PR

Lorene Roe

From: Reid Hay
Sent: Monday, August 8, 2022 2:10 PM
To: Lorene Roe
Cc: Brenda Chilton
Subject: Approval as to form

Lorene,

I have reviewed the proposed agreement with the Washington Secretary of State's Office for a Jail Voter Outreach grant, 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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16th, 2022
Subject:	Execute Agreement #PSC-22/23-ARC-SP2P-00 with Arc of Tri-Cities
Presenter:	
Prepared By:	Anthony Contreras, Program Specialist
Reviewed By:	Kyle Sullivan, DHS Manager

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

Type of Agenda Item:

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

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

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

Summary / Background Information

Benton County Department of Human Services would like to enter into Personal Services Contract #PSC-22/23-ARC-SP2P-DD-00 to provide fiscal support for a staff member to reach out to Spanish speaking families in our community to connect families to available services for individuals with developmental disabilities.

Fiscal Impact

Amount: $24,000.00

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

Recommendation

- Sign the Resolution to accept the Personal Services Contract
- Approve the proposed Personal Services Contract #PSC-22/23-ARC-SP2P-DD-00 by signing all the copies where indicated

Suggested Motion

Consent Agenda

RESOLUTION

Benton County Resolution No _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING PERSONAL SERVICES CONTRACT #PSC-22/23-ARC-SP2P-DD-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND THE ARC OF TRI-CITIES

WHEREAS, Benton County Department of Human Services currently contracts with the Arc of Tri-Cities to provide staff to reach out to Spanish speaking families in our community to connect families to available services for individuals with intellectual/developmental disabilities; and

WHEREAS, Benton County Department of Human Services would like to re-contract with Arc of Tri-Cities for a term commencing on July 1, 2022 and expiring on June 30, 2023; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed Personal Services Contract; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign on behalf of Benton County, Personal Services Contract #PSC-22/23-ARC-SP2P-DD-00 with Arc of Tri-Cities to provide outreach to Spanish speaking families to connect them to services for individuals with developmental disabilities for a consideration amount of twenty four thousand dollars and no cents ($24,000.00); and

BE IT FURTHER RESOLVED, the term of the attached Agreement commences on July 1, 2022 and shall expire 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

cc: Human Services; Benton County Commissioners A. Contreras

BENTON COUNTY
PERSONAL SERVICES CONTRACT
#PSC-22/23-ARC-SP2P-DD-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 **ARC OF TRI-CITIES**, a Not-For-Profit corporation organized under the laws of the State of Washington with its principal offices at 1455 Fowler Street, Richland, WA 99352 (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 Work;

2. DURATION OF CONTRACT

The term of this Contract shall begin on July 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 staff for the Spanish Parent to Parent position. The Spanish Parent to Parent position will educate Spanish speaking parents to access services for family members, assist families in making connections with other agencies in the community for support, provide Spanish workshops, pave meetings, and other social gatherings for families on behalf of Benton County, direct families on how to connect with Developmental Disabilities Administration, provide guidance on referrals to Children's hospital or other facilities for therapies, translate resource directory in Spanish, turn in monthly billing sheets to the County by the

10th of the month following the end of the service month, track all connections and outreach efforts for the month, submitting them to the County by the 10th of the month following the end of the service month, and other services families may need. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Scope 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 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:	Cindy O'Neill
Address:	1455 Fowler Street Richland, WA 99352
Phone:	509.783.1131
Email:	cindyo@arcoftricities.com

b. For COUNTY:

Name:	Kyle Sullivan
Address:	7102 W. Okanogan Place, Ste. 201 Kennewick, WA 99301
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 twenty four thousand dollars and no cents ($ 24,000.00).

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 shall, submit invoices to the COUNTY 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.

d. The CONTRACTOR shall submit county issued invoice and supporting documentation to the COUNTY by the tenth (10^{th}) of the following month, services were provided.

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.

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); 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).

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: 8/3/2022

FOR: ARC OF TRI-CITIES

Signature

Title: Director
Exec Director

Print Name
Cindy O'Neill

Approved as to Content:

Human Services Manager

Exhibit "A"

The Spanish Parent to Parent position will provide the following to families in Benton & Franklin Counties:

- Educate Spanish speaking parents to access services for family members
- Assist families in making connections with other agencies in the community for support
- Provide Spanish workshops, Pave meetings, and other social gatherings for families on behalf of Benton County
- Direct families on how to connect with Developmental Disabilities Administration
- Provide guidance on referrals to Children's hospital or other facilities for therapies
- Translate Resource Directory in Spanish
- Turn in monthly billing sheets to County by the 10th of the month following the end of the service month
- Track all connections and outreach efforts for the month, submitting to the County by the 10th of the month following the end of the service month
- Other services families need

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022
Subject:	Approving the purchase of two Fujitsu Fi-7160 Scanners for the Sheriff's Office from Strictly Technology LLC.
Presenter:	
Prepared By:	Alex Garcia
Reviewed By:	Procurement 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

Sheriff's Office has requested to purchase 2 new scanners for their department. Resolution 2019-753 requires that all non-budgeted devices purchased over $500 be coded to the department's 3508 expenditure code and be approved by the Board of Benton County Commissioners.

Fiscal Impact

Amount: **$1,898.00 excluding WSST.**

Fund: **Approved Sheriff 2021-2022 budgeted funds.**

Recommendation

Information Technology recommends that the Board approves the purchase of two Fujitsu Fi-7160 scanners from Strictly Technology LLC in an amount not to exceed $1,898.00 excluding WSST. All equipment purchased will be added to Central Services Replacement Fund (0132101).

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF TWO FUJITSU FI-7160 SCANNERS FOR THE SHERIFF'S OFFICE FROM STRICTLY TECHNOLOGY LLC.

WHEREAS, the Sheriff's Office has made a request to purchase two scanners for their department; and

WHEREAS, Information Technology reviewed three quotes from three vendors in Southern Computer Warehouse, Strictly Technology LLC, and Computer Discount Warehouse - Government; and

Southern Computer Warehouse	Fujitsu Fi-7160 Scanner	$2,007.88
Strictly Technology LLC	**Fujitsu Fi-7160 Scanner**	**$1,898.00**
Computer Discount Warehouse –Government	Fujitsu Fi-7160 Scanner	$2,064.08

WHEREAS, Information Technology recommends purchasing two Fujitsu Fi-7160 scanners from Strictly Technology LLC.; and

WHEREAS, the Purchasing Department has reviewed this purchase and found it complies with Procurements, Leasing, and Contracting Policy; and

WHEREAS, per Resolution 2019-753 of the Computer Replacement Policy requires all new computer equipment over $500 receive approval by the Board of Benton County Commissioners before purchasing; **NOW THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and approves the purchase of two Fujitsu Fi-7160 scanners for the Sheriff's Office in an amount not to exceed $1,898.00 excluding Washington State Sales Tax, to be paid for using approved 2021-2022 Sheriff's Office funds; and

BE IT FURTHER RESOLVED, newly purchased scanners will be enrolled into Central Services Replacement Fund (0132101).

Dated this 16 day of August , 2022

Chairman of the Board

Member

Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Information Technology
cc: Auditor, Facilities

Prepared by: R. Heard

StrictlyTech
we make IT happen

2300 NW 55th Court, Suite 110,
Fort Lauderdale, FL 33309
Phone: 954-541-8559 Fax: 954-606-5441

Quotation

Number: **12251**

Date: **07/15/2022**

Quote prepared for: **Robert Heard**

Bill To:
Benton County WA (1530)
Robert Heard
PO Box 608
Prosser, WA 99350
Phone: (509)786-5710
Email: emcleod@strictlytech.com

Ship To:
Benton County WA (1530)
Robert Heard
PO Box 608
Prosser, WA 99350

Item #	Mfr. Part	Product Image	Description	Price	Qty.	Extended
1	PA03670-B085		Fujitsu fi-7160 Color Duplex Professional Document Scanner - 60ppm - 600 dpi optical - USB 3.0 **Mfr: FUJITSU** **UNSPSC : 43211711**	$ 949.00	2	**$ 1,898.00**
2	PA03750-B005		Fujitsu fi-7030 Color Duplex Professional Document Scanner - 600 dpi - 27 ppm - USB - TAA Compliance-ENERGY STAR; EPEAT Silver; RoHS Compliance **Mfr: FUJITSU** **UNSPSC : 43211711**	$ 494.00	2	**$ 988.00**
			2 item(s)		**Sub-Total**	**$ 2,886.00**
					Tax @ 8.7%	**$ 251.08**
					Freight	**$ 0.00**
					Total	**$ 3,137.08**

Quote Valid Until: 08/14/2022

Payment Details

Pay by: Company PO
Payment Term: Net 30

Shipping and Delivery Details

Shipping via: FEDEX Ground
(DropShip)

Terms and Conditions

Prices exclude applicable taxes, insurance, shipping and special handling charges unless stated. All prices are subject to change without notice. Supply subject to availability. Due to pricing fluctuations from OEM manufacturers as well as supply chain constraints, pricing is valid for a period of 7 days from the submission of this quote. Please check pricing, availability and/or delivery estimates with your Client Executive prior to placing orders.

Prepared by: **Ethan Mcleod** Email: **emcleod@strictlytech.com** Phone: **954-541-8559**

QUOTE CONFIRMATION

DEAR ALEX GARCIA,

Thank you for considering CDW•G LLC for your computing needs. The details of your quote are below.
Click here to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
MWTB180	8/1/2022	MWTB180	12775051	$3,299.52

QUOTE DETAILS

ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
Fujitsu fi-7160 - document scanner - desktop - USB 3.0 Mfg. Part#: PA03670-B085 UNSPSC: 43211711 Contract: National IPA Technology Solutions (2018011-01)	2	5046017	$1,032.04	$2,064.08
Fujitsu fi-7030 - document scanner - desktop - USB 2.0 Mfg. Part#: PA03750-B005 UNSPSC: 43211711 Contract: National IPA Technology Solutions (2018011-01)	2	4245465	$485.68	$971.36

PURCHASER BILLING INFO		
Billing Address: BENTON COUNTY INFORMATION TECH ACCOUNTS PAYABLE PO BOX 608 PROSSER, WA 99350-0608 **Phone:** (509) 786-5603 **Payment Terms:** VISA	**SUBTOTAL**	$3,035.44
	SHIPPING	$0.00
	SALES TAX	$264.08
	GRAND TOTAL	**$3,299.52**
DELIVER TO	**Please remit payments to:**	
Shipping Address: BENTON COUNTY INFORMATION TECH TERI HOLMES 620 MARKET ST PROSSER, WA 99350-1300 **Shipping Method:** UPS Ground	CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	

Need Assistance? CDW•G LLC SALES CONTACT INFORMATION

Von Alanguilan | (877) 679-0888 | vonalan@cdwg.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at
http://www.cdwg.com/content/terms-conditions/product-sales.aspx
For more information, contact a CDW account manager

© 2022 CDW•G LLC 200 N. Milwaukee Avenue, Vernon Hills, IL 60061 | 800.808.4239

Southern Computer Warehouse
1395 S. Marietta Parkway
Building 300
Marietta, Georgia 30067
United States
http://www.scw.com
(P) 877-GOTOSCW
(F) 770.579.8937

Quote (Open)

Date
Jul 15, 2022 09:12 AM EDT

Modified Date
Jul 15, 2022 09:34 AM EDT

Quote #
1733413 - rev 1 of 1

Description
Fujitsu Scanner quotes

SalesRep
Ortiz, Andres
(P) 877-GOTOSCW ext. 320

Customer Contact
Garcia, Alex
Alex.Garcia@co.benton.wa.us

Customer
Benton County WA (A11627)
Garcia, Alex
620 Market Street
Prosser, WA 99350
United States
(P) 509-786-5603

Bill To
Benton County WA
Services, Central
620 Market Street
Prosser, WA 99350
United States
(P) 509-786-5603
teri.holmes@co.benton.wa.us

Ship To
Benton County WA
REF#, ATTN
620 Market Street
Prosser, WA 99350
United States

Customer PO:	**Terms:**	**Ship Via:**
	Undefined	GROUND
Special Instructions:		**Carrier Account #:**

#	Image	Description	Part #	Tax	Qty	Unit Price	Total
1		Fujitsu - Fujitsu fi-7160 Document scanner - Dual CCD - Duplex - 8.5 in x 14 in - 600 dpi x 600 dpi - up to 60 ppm (mono) / up to 60 ppm (color) - ADF (80 sheets) - up to 4000 scans per day - USB 3.0	PA03670-B085	Yes	2	$1,003.94	$2,007.88
		Note: None in stock. 1-3 weeks estimated delivery lead time. Being discontinued. fi-81710 is the direct replacement.					
		Contract Open Market - Open Market					
2		Fujitsu - Fujitsu fi-7030 Document scanner - Dual CIS - Duplex - 8.5 in x 14 in - 600 dpi x 600 dpi - up to 27 ppm (mono) / up to 27 ppm (color) - ADF (50 sheets) - up to 2500 scans per day - USB 2.0	PA03750-B005	Yes	2	$474.80	$949.60
		Note: 1622 in stock					
		Contract Open Market - Open Market					
3		Fujitsu - Fujitsu fi-8170 Document scanner - Dual CIS - Duplex - 8.5 in x 14 in - 600 dpi x 600 dpi - up to 70 ppm (mono) / up to 70 ppm (color) - ADF (100 sheets) - up to 10000 scans per day - Gigabit LAN, USB 3.2 Gen 1x1	PA03810-B055	Yes	2	$960.67	$1,921.34
		Note: 5006 in stock. Direct replacement for fi-7160					
		Contract Open Market - Open Market					

Quote valid for 30 days unless formal bid provides different term. Promotional pricing is valid only during term of promotion and while supplies last.

All returns must be authorized and clearly marked with a valid RMA number. RMA's are subject to restock fees when applicable.

These prices may not include applicable taxes, insurance, shipping, delivery,

Subtotal:	**$4,878.82**
Tax (8.7000%):	$424.46
Shipping:	$0.00
Total:	**$5,303.28**

setup fees, or any cables or cabling services or material unless specifically listed above.

Please note that expedited shipping charges are estimated, and could decrease or increase when invoiced.

All prices are subject to change without notice. Supply subject to availability.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 08/02/22 BC 08/16/22
Subject:	Personal Services Contract with Kathleen L. Moreno
Presenter:	N/A
Prepared By:	Rosa Garcia
Reviewed By:	David Wheeler

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

Kathleen L. Moreno wishes to renew her contract with the Benton-Franklin Counties Juvenile Justice Center to provide legal services for Attorney representation of persons in all BECCA dockets.

The attached Personal Services Contract commences on October 1, 2022, and expires on September 30, 2023.

Fiscal Impact

These are state funds whereby we are reimbursed for services which are incorporated in the Juvenile Court's budget. Amount not to exceed $31,000.00 to be paid out of Fee For Services Dept. 173. No Supplemental required.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Personal Services Contract between Kathleen L. Moreno and the Benton-Franklin Counties Juvenile Justice Center for services.

Suggested Motion

Approve as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING KATHLEEN L. MORENO A PERSONAL SERVICES CONTRACT FOR ATTORNEY REPRESENTATION OF PERSONS IN ALL BECCA DOCKETS

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

WHEREAS, Benton-Franklin Counties Juvenile Justice Center would like to enter into a Personal Services Contract with Kathleen L. Moreno for Attorney Representation of persons in all BECCA dockets; and

WHEREAS, the Interim Juvenile Administrator recommends entering into a Personal Services Contract; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners, Benton County, Washington; and the Board of Franklin County Commissioners, Franklin County, Washington, concurs with the Interim Juvenile Administrator's recommendation and hereby awards the Personal Services Contract to Kathleen L. Moreno in an amount not to exceed $31,000.00; and

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

BE IT FURTHER RESOLVED, the term of the attached contract commences on October 1, 2022, and expires on September 30, 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-Moreno, 1-Juvenile

R. Garcia

BENTON-FRANKLIN COUNTIES
PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between Benton County, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision of the State of Washington, 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 **Kathleen L. Moreno**, attorney at law, Washington State Bar Association #15725 with her principal office at 1030 North Center Parkway, Kennewick, WA 99336 (hereinafter "CONTRACTOR").

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

1. DURATION OF CONTRACT

The term of this Contract shall begin on October 1, 2022 and shall expire on September 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.

2. SERVICES PROVIDED

a. The CONTRACTOR shall provide legal services for Attorney representation of persons in all Youth At Risk/Child In Need of Services (CHINS) petitions.

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

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

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

e. The CONTRACTOR shall confer with the COUNTIES from time to time during the progress of the work. The CONTRACTOR shall

prepare and present status reports and other information that may be pertinent and necessary, or as requested by the COUNTIES.

3. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	**Kathleen Moreno**
Address:	**1030 N. Center Parkway**
	Kennewick, WA 99336
Phone:	**(509) 528-8464**
Email:	**klmoreno@charter.net**

b. For COUNTIES:

Name:	**David Wheeler, Interim Administrator**
Address:	**5606 W. Canal Place, Suite 106**
	Kennewick, WA 99336
Phone:	**(509) 737-2745**
Email:	**David.Wheeler@co.benton.wa.us**

4. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid as professional service attorney fees, the sum of $200.00 per case upon appointment for Attorney's representation of persons in all Youth At Risk/CHINS petitions under this contract.

1. Contractor agrees to provide own coverage at own expense for any scheduled Youth At Risk/CHINS petition Contractor is not able to attend.

b. In the event that BECCA funding for Youth At Risk/CHINS petitions is lost or reduced the parties will renegotiate in good faith adjustment compensations.

c. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this CONTRACT shall not exceed $31,000.00.

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

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

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

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

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

5. AMENDMENTS AND CHANGES IN WORK

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

the COUNTIES.

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

6. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTIES and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, 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.

b. In any and all claims against the COUNTIES and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 6 shall survive termination and expiration of this Contract.**

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

7. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

b. **Workers Compensation:** Contractor acknowledges and represents that Contractor currently does not have any employees and, therefore, does not maintain workers compensation insurance. To the extent Contractor hires any employees; however, Contractor shall comply with all State of Washington workers compensation statutes and regulations. 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.

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

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

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

The CONTRACTOR must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 6. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

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

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

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

e. **Other Insurance Provisions**:

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

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

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

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

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

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section 7(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 and Franklin Counties 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, shall specifically include the COUNTIES and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTIES. Any insurance or self-insurance maintained by the COUNTIES and its elected or appointed officials, employees, and agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTIES' Contract Representative referenced in Section 3(b).

3. All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES' Contract Representative referenced in Section 3(b).

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

8. 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. Either party may terminate this Contract upon giving ten (10) days written notice by certified mail to the other party. 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 the Compensation Section of this Contract.

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

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

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

9. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

10. NON-WAIVER OF RIGHTS

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

11. INDEPENDENT CONTRACTOR

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

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 4 of this Contract, and neither the CONTRACTOR, nor its employees are entitled to any COUNTIES benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTIES employees.

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

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

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

12. COMPLIANCE WITH LAWS

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

13. OTHER PROVISIONS

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

a. Background Check/Criminal History

1. Contractor shall authorize Counties to conduct a background check of the Contractor. The background check may include, but is not limited to, a review of records on file with the Washington State Patrol, the FBI National Criminal Information Computer (NCIC) and Interstate Identification Index (III), local law enforcement agencies, the Department of Licensing, courts of law, and other agencies, and also may, depending upon assignment of Contractor, involve fingerprinting.

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

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

b. Sexual Misconduct

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

2. The Contractor shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 West Canal Place, Suite 106, Kennewick WA 99336.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the COUNTIES upon request, all records relating to the performance of

this Contract for six (6) years after Contract termination or expiration.

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

b. An electronic copy of all word processing documents shall be submitted to the COUNTIES upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTIES.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

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

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

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

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions (Sections 6 and 17); extended reporting period requirements for professional liability insurance (Section 7(a)); inspection and keeping of records and books (Section 14); litigation hold notice (Section 26); Public Records Act (Section 27); and confidentiality (Section 19).

26. LITIGATION HOLD NOTICE

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

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

27. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTIES is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTIES may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTIES that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTIES' release of records covered under the Public Records Act. The COUNTIES agree 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 October 1, 2022.

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

Kathleen L. Moreno	**Benton-Franklin Counties Juvenile Justice Center**
Kathleen Moreno 7-18-22 **Kathleen Moreno** Date **Attorney**	7/20/2022 **David Wheeler** Date **Interim Juvenile Court Administrator**
BENTON COUNTY APPROVAL Approved as to Form: 07/2022 Stephen Hallstrom, Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: _____ Date: _____ Attest: Clerk of the Board: _____	**FRANKLIN COUNTY APPROVAL** Approved as to Form: _____ Civil Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: _____ Date: _____ Attest: Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	8/16/22
Subject:	Award of professional services agreement to Heather Villani
Presenter:	N/A
Prepared By:	Denise Gerry
Reviewed By:	Michael Vander Sys

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

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

Summary / Background Information

Benton County is legally obligated to provide public defense services in Benton County District Court for adult criminal cases ("Services").

Because of an attorney departure, OPD is needing to award one or more additional contracts to provide Services.

Heather Villani ("Attorney") is qualified to provide Services and interested in contracting with Benton County to do so. The proposed professional services agreement and resolution effectuate an agreement with Attorney for the provision of such Services on the terms contained therein, for the period from 08/04/22 to 12/31/24 at the rate of $200 per case (payable as a monthly flat fee).

Fiscal Impact

None beyond budgeted.

Recommendation

Execute professional services agreement with attorney Heather Villani for public defense services in Benton County District Court. Approve associated resolution as presented.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY HEATHER VILLANI TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT FOR ADULT CRIMINAL CASES

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

WHEREAS, because of an attorney departure, it is necessary for County to award a professional services agreement at this time to provide Services; and

WHEREAS, attorney Heather Villani is qualified to provide Services and interested in entering into agreement with County for such Services; and

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

BE IT RESOLVED that the proposed public defense contract with attorney Heather Villani, to provide public defense services in Benton County District Court for adult criminal cases, for the time period from 08/04/22 to 12/31/24, and compensation of $200 per case (payable as a monthly flat fee), plus other allowable expenses, premiums, and fees as detailed, is hereby approved and executed on behalf of Benton County.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Heather Villani
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY DISTRICT COURT CONTRACT # BCDC2224HRV001

CONTRACT SUMMARY			
Contract Type	**Full Caseload Monthly**		
Contract Number	**BCDC2224HRV001**	**Contract Holder**	**Heather Renee Villani**
WSBA #	**44973**	**Effective Dates**	**August 4, 2022 – December 31, 2024**
Caseload Cap	**390**	**Compensation**	**$6,500/mo (2022)**
Assigned Court	**District Court**	**Compensation Structure**	☐ **By the case** ☐ **Monthly** ☐ **Hourly** ☒ **By the case but paid monthly**
Compensation Payable To:	**Law Office of Heather Villani**		
Contract Slot Identifier: DCF-1			

THIS AGREEMENT is entered into by and between **Heather Renee Villani,** attorney at law, Washington State Bar Association # **44973** ("Attorney"), dba Law Office of Heather Villani and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County District Court.

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

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

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal

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defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **August 4, 2022** and shall continue thereafter through and including **December 31, 2024**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **1030 N Center Parkway, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **(509) 737-0053** and **(509) 222-2223** respectively; and Attorney's current office/work e-mail address is Heather.Villani@hotmail.com.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal

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counsel to indigent persons subject to proceedings in the Benton County District Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of misdemeanor crimes in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters (or will be part of an intensive and closely supervised mentorship program sponsored by the County's Office of Public Defense); otherwise meets applicable requirements of the Washington Standards for Indigent Defense ("SID") applicable to misdemeanor and gross misdemeanor cases; has not been subject to a termination proceeding involving a previous personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County in writing within three (3) business days if any event specified in paragraph 3.a.(i) above occurs or if any bar association complaint is filed against Attorney. Failure to do so shall

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constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of County, to immediate termination.

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

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

Specific training regarding legal financial obligation ("LFO") issues. At least once every 24 months (or more frequently as required in writing by the County due to changes in applicable law) Attorney shall attend training approved and presented/sponsored by County on the subject matter of LFO issues in public defense cases. Attendance may be live or by video replay and Attorney shall provide proof of attendance to County by any means reasonably required by County. If Attorney is a new contract public defender, then County will provide Attorney with basic LFO training material in the first week following the date when Attorney starts with County's public defender training program or first becomes eligible for case appointments, whichever is earlier, and Attorney shall provide proof of viewing of LFO training material to County as a specific condition of this contract within the week by any means reasonably required by County.

In addition to specific training regarding LFO issues, from time to time, County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely

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optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train Attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorney's contract, or opportunity to continue to contract in the future, in any way whatsoever.

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

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

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

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards

and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 17.b. below.

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

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered into separate and independent professional services agreements with other licensed attorneys, and also employs in-house staff attorneys to primarily provide criminal defense services to persons accused of misdemeanor crimes in Benton County District Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County District Court, the District Court Administrator and the PDM to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney and said other attorneys (collectively the "Benton County District Court Criminal Defense Panel"). The District Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process. Attorney shall accept all case assignments made by the District Court or PDM even if the case does not originate from the docket to which attorney is assigned.

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

- Any misdemeanor matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law including the municipal codes of the cities located within Benton County, in the Benton County District Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any material witness matter relating to a case or matter filed in Benton County District Court.

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- Any case or matter returned to the Benton County District Court from any higher court.

- Any other type of Benton County District Court case or matter in which another Benton County District Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County District Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any post conviction matters where court appointed counsel is mandated by law including, but not limited to: furlough orders, motions to withdraw pleas, and sentence reviews. These post conviction matters do not include appeals to Superior Court pursuant to RALJ, since these are separately addressed herein.

- Any appeals to Superior Court pursuant to the Rules of Appeal for Courts of Limited Jurisdiction ("RALJ")

  a) **Assignment to specific docket:** County intends to assign Attorney to a specific criminal docket, representing cases primarily filed by either County (further divided into law enforcement agency that made the arrest: Washington State Patrol or Benton County Sheriff's Office), or by one of the Cities ("Assigned Docket"). As such, the vast majority of Attorney's responsibilities will be to cases filed on Attorney's Assigned Docket. However, from time to time, whether because of conflict of interest of other public defense attorneys or because of caseload overflow reasons, Attorney may be assigned cases from dockets other than Assigned Docket and Attorney's acceptance of such cases (with allowance for Attorney's bona fide conflicts of interest) are a specific condition of this Agreement even though such cases may require Attorney to attend multiple dockets or even attend court multiple days a week for short periods of time.

  b) **Changes to court schedule:** The parties acknowledge that i) the criminal Docket days are set by Benton County District Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County District Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; (the preceding 5b.i) – ii) shall collectively be referred to as "Docket Scheduling Irregularities").

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As to the Docket Scheduling Irregularities described in the preceding paragraph, the parties agree that:

- Docket Scheduling Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;

- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

c) ***In-Custody Team*** **assignment**: Upon written direction from the PDM, Attorney shall be assigned to the *In-Custody Team* provided that the PDM, to the extent possible and practicable, should not make such an assignment against an attorney's expressed desires, and shall only do so if necessary to maintain adequate representation or continuation of representation. This written notification shall be made on or before the commencement of this Agreement term if the Agreement is intended to be for *In-Custody Team* assignment, and may be made at any time after commencement of the Agreement if the assignment to the *In-Custody Team* occurs after commencement. Attorneys assigned to the *In-Custody Team* shall not receive any newly filed misdemeanor matters, material witness matters, matters returned to Benton County District Court from any higher court, any matters transferred from the Juvenile Court through declination or other court proceedings, any conflict cases or any civil contempt cases, any post conviction cases, and will not be expected to handle RALJ appeals (unless they request to be assigned such cases). Instead, *In-Custody Team* attorneys shall be responsible, as a team, for providing representation for the following:

- In-custody initial appearances in Benton County District Court. Such representation shall be provisional only and shall not continue beyond the initial appearance hearing. The purpose of such in-custody representation shall be to resolve compliance or failure to pay fine cases as possible, to make release decision arguments on new criminal charges, and, when possible (usually when plea agreements may be reached with prosecutors) to resolve new criminal charges.

- Providing representation to defendants during all regularly scheduled District Court probation, compliance, or sentence violation dockets and failure to pay fine dockets (if held) except the compliance dockets associated with District Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

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d) Arraignment Counsel assignment: On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide provisional representation to defendants on arraignment dockets. At assigned arraignment dockets, Attorney shall be responsible for remaining available during the entire docket for provisional consultation by any defendant who wishes to have the benefit of legal advice before or during otherwise *pro se* negotiations with prosecuting authorities for the resolution of their case(s) at time of arraignment. During arraignment docket assignments, Attorney shall not be responsible for providing any advice to defendants who are not seeking to resolve their case(s) at time of arraignment, even in the case of defendants whose cases are assigned to them by the Court. If Attorney is not available for an assigned arraignment docket, then Attorney is personally responsible for arranging for coverage by any other attorney who has a current contract with County. In any case where another contract attorney provides coverage, then that attorney, instead of assigned attorney, shall be entitled to the compensation for the assignment.

e) On-call cell phone assignment. On a rotating basis with the schedule established and maintained by the PDM, Attorney shall provide 24-hour "on-call" limited and provisional representation to defendants who are in custody. This assignment will be made for a week (7 consecutive days) at a time during which time Attorney shall carry and answer a cell phone provided to Attorney for such purpose by the PDM (or appropriately forward calls from the provided cell phone to another phone as long as they are answered by Attorney). The PDM shall reasonably ensure that the phone calls being made to the on-call Attorney are only being made by arrestees who wish to speak with an attorney prior to being questioned, providing a breath test sample, or for some other appropriate pre-arraignment purpose. Attorney is specifically permitted to accept people with whom they speak during this assignment as paying private clients and is permitted, to the extent otherwise lawful and not in violation of the Rules of Professional Conduct, to discuss the prospect or terms of such private retainer during the telephone conversation. *From time to time, at the request of an attorney holding a District Court public defense agreement, County may assign the on-call cell phone to such an attorney exclusively for an agreed-upon time (or indefinitely). Such temporary exclusive assignment to an attorney does not negate the provisions of this section 5e) when and if the time comes when the exclusive assignment arrangements terminates and it becomes necessary to assign the on-call cell phone to other attorneys, including Attorney, once again.*

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney

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shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be as stated in Section 17 Termination.

7. **NUMBER OF APPOINTMENTS.**

During each calendar year of the term of this Agreement, Attorney may be appointed any number of case appointments up to **Three Hundred Ninety (390)** total cases equivalents as calculated pursuant to Article 8 herein per calendar year (proratable for any partial calendar year). The maximum number of appointments stated above shall be calculated exclusive of appointments to RALJ appeals and exclusive of cases handled by Attorney while assigned to the compliance unit. Provided, however, that if Attorney is assigned, during any full calendar year to the compliance unit for less than that full calendar year, then for purposes of calculating case equivalent totals for the year, Attorney shall be credited with the greater of thirty-two (32) cases equivalents for each month when Attorney is assigned to the compliance unit.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only and expressly not for purposes of any "weighting system" as allowed by SID, the following provisions shall apply:

- A misdemeanor appointment shall be counted as one (1) case equivalent.

- A probation violation appointment shall be counted as one-third (1/3) case equivalent unless the probation violation appointment requires appearance on the Prosser docket of Benton County District Court or Attorney is assigned to the *compliance unit*. Probation violation appointments requiring appearance on the Prosser docket of Benton County District Court shall be counted as one-half (1/2) case equivalent. During any period of time Attorney is assigned to the *compliance unit*, probation violation appointments shall not count as a case equivalent of any sort.

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- An appointment on a mental or substance-abuse commitment, generally to be appointed only when necessary for conflict reasons, shall count as one (1) case equivalent.

- An appointment on a post-conviction review matter including furloughs shall be counted as one-third (1/3) case equivalent unless the matter requires substantial briefing in which case the matter may qualify for additional credit up to a full case equivalent.

- An appointment to represent a person in a material witness matter in a case pending in Benton County District Court shall count as one half (1/2) of a case equivalent.

- An appointment to a case or matter returned to Benton County District Court from a higher court shall be counted as determined by the PDM following consultation.

- If Attorney is appointed to a case and withdraws prior to the second pre-trial hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate following consultation. If Attorney is appointed to a case and withdraws after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

- Case equivalent value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.

- Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.

- Provisional client contact during *arraignment counsel* assignment, and provisional client contact during *on-call-phone* assignment, shall not count as a case equivalent of any sort.

- RALJ appeals shall count as four (4) case equivalents. If, after a client prevails in Superior Court, the prosecution chooses to appeal to the Court of Appeals and Attorney is required to file an Answer to the appeal, then Attorney shall be entitled to a further one (1) case equivalent.

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b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County District Court and Attorney continues representing the same person in such matter within a 12-month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, however, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Provided, however, the PDM may in his discretion adjust the case equivalent total earned under this paragraph upon written request from, and after review and consultation with, Attorney.

d. In any case where Attorney is appointed contemporaneously on multiple compliance and/or failure to pay fine cases, or any combination thereof, involving the same defendant, all of which are resolved on the same docket during the same court appearance(s), such combination of multiple cases shall be considered one case for purposes of case credits, and shall, collectively, be considered either a one-third (1/3) case equivalent or one-half (1/2) case equivalent as specified in 8(a) above.

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual

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case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

Specific reporting of LFO cases In addition to the other reporting required by this section, if Attorney is appointed by the Benton County District Court to represent clients on LFO matters, then Attorney shall report: 1) the number of LFO failure to pay cases appointed; and 2) the number of LFO failure to appear cases appointed. It is recognized that some cases may involve allegations of both failure to pay and failure to appear and that they therefore should be reported under both categories of cases.

9. **CLIENT ELIGIBILITY.** The Benton County District Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County District Court (or its designee) nevertheless determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County District Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County District Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County District Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate

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contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

(iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other State or Federal Statute

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated as follows:

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i) for the year 2022, $200 per case as a flat fee

ii) for the years 2023 and 2024, once the rate is established, the parties agree to amend the contract

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of $6,500 in the year 2022. Once the rate is established for 2023 and 2024, the parties to agree to amend the contract to reflect the increase. Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

All compensation shall be payable to: Law Office of Heather Villani *since Attorney is a principal with that firm.*

b. **Payment of compensation shall be contingent on Attorney complying with case reporting provisions stated herein, including in Articles 8(e) and 3(f). Failure by attorney to comply with case reporting provisions shall be cause to delay payment of compensation until such failure is remedied.**

c. In addition to the stated monthly compensation, Attorney shall receive $300 per day for each full day of trial and $150 for each partial day of trial, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

d. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2021, the above referenced monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date. By way of further example, if this Agreement is terminated effective November 15, 2021, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments from the County; provided that, Attorney would be entitled to receive on a prorata basis any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date (i.e., 50% of the above-stated monthly payment amount). Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement up to the above-stated annual maximum total case equivalents.

e. Compensation for trial per diems and arraignment docket assignment (12.e) and RALJ appeals (12.f) shall be claimed by Attorney within 60 days of the event giving rise to entitlement to compensation (the completed appeal in the case of RALJ appeals) in writing utilizing such form as may be reasonably required by the PDM. Legal entitlement to compensation shall not accrue until such a claim is properly filed. Failure to file such a claim for compensation within 60 days shall constitute a waiver by the Attorney of the right to compensation and shall further waive Attorney's rights under any common law scheme such as unjust enrichment as to the compensation that was not timely claimed.

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to ex-parte motion and court order (or other court-designated or delegated process) that expressly determines and finds that such expense is necessary and reasonable in accordance with applicable court rules, procedures, and standards. Such court order (or other court-designated or delegated process) shall state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such order may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any court-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

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

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

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

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

c. **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Contract, Attorney shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Attorney from claims for wrongful death, bodily injury, personal injury and

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property damage, which may arise from any actions or inactions under this Contract by Attorney or by anyone directly employed by or contracting with Attorney. The minimum commercial general liability insurance limits shall be as follows:

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

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

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

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

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

d. **Other Insurance Provisions**:

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

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

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

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

5. The Attorney shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

8. Attorney hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Attorney to enter into a pre-loss agreement to waive subrogation without an endorsement, then Attorney agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Attorney enter into such a waiver of subrogation on a pre-loss basis.

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

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

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

1. All insurance to be maintained by the Attorney, other than Professional Liability and Workmen's Compensation, shall specifically include the Counties, its elected and appointed officers, officials, employees and agents as "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days written prior notice to the Counties. Any insurance or self-insurance maintained by the Counties, its elected and appointed officials, employees and agents shall be excess of the Attorney's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the Benton County Office of Public Defense within ten (10) days of execution of this Agreement.

3. All written notices under this Section **[8]** and notice of cancellation or change of required insurance coverages shall be mailed to the Benton County Office of Public Defense.

4. The Attorney or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Office of Public Defense: Attn: Office Manager, Benton County Office of Public Defense, 7122 W Okanogan Pl, Bldg A, Kennewick, WA 99336.

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

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

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

17. **TERMINATION.**

Cause for Termination and Notice

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election ("Early Termination"). Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney's continuing obligation to accept case appointments shall be governed by the provisions of Section 17.f herein.. A ninety (90) day notice of termination given by either party under this paragraph 17.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 30 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this

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Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice with conditions of such Early Termination to be as set out in the next subsection below.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause pursuant to Section 17.c, then:

1) If the Early Termination is initiated by County, then Attorney shall receive compensation for the entirety of the 90 day notice period, shall continue receiving case assignments during the first 30 of the 90 day notice period only, and shall not be responsible for any unresolved cases at the end of the 90 day notice period ("Residual Caseload").

2) If the Early Termination is initiated by Attorney, then the following provisions shall apply:

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall Continue to Accept Cases	Number of Days After Notice Attorney shall Continue to Receive Compensation	Number of Days After Notice Contractor is Responsible for Cases	Financial Responsibility for Reassignment of Residual Caseload	Cap on Attorney's Financial Responsibility for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

3) If, after termination, Attorney is then required to repay any compensation as constituting his/her share of financial responsibility for reassignment of Residual

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Caseload ("Repayment Obligation"), then Attorney may make such repayment in one lump sum or, at his/her election, in the amount of $500 per month with the first payment being due on the first of the month immediately after the effective date of termination, and subsequent payments being due on the first of each subsequent month. Furthermore, County shall be entitled to offset any such Repayment Obligation by withholding any sums that are due and payable to Attorney on or after the effective date of termination.

4) Pursuant to Section 19.d of this Agreement, Attorney may arrange with another attorney ("Substitute Attorney") to assume Attorney's Residual Caseload upon departure to avoid any Repayment Obligation. If Attorney chooses to do so, then any payment arrangements for the services by Substitute Attorney shall be a matter to be arranged between Attorney and Substitute and shall not affect this Agreement or Attorney's obligation hereunder in any way except that Attorney shall not be responsible for any Repayment Obligation as to cases that are handled by Substitute Attorney and therefore not considered to be Residual Caseload cases.

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

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

a. Attorney and any of the other Benton County District Court Criminal Defense Panel members or staff attorneys employed by Benton County may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other

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Benton County District Court Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s). Provided, however, that substitution arrangements made by and between any contracted Defense Panel member and a staff attorney employed by Benton County shall not involve monetary compensation paid either way, and shall only be on a *quid pro quo* or "mutual coverage" basis.

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

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

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 15 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the County and the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an

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appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

(iv) Attorney agrees to continue to be professionally responsible for any sub-contracted work.

Even in the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

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

21. **OTHER APPOINTMENTS.**

Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with

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Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be

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selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

30. **NOTICES.**

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

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

OPDNotices@co.Benton.wa.us

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

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

31. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and

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

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

33. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that Attorney's performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

DocuSigned by:
Michael Vander Sys
3C4D65ED0BC4489...

Michael Vander Sys
Public Defense Manager

ATTORNEY

Date 8/4/2022

DocuSigned by:
93040FF8A9904EE...

Heather Renee Villani, WSBA 44973
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

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

, WSBA

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

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EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

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

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

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

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

Attorney acknowledgment:

DocuSigned by:

_____

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	08/16/22
Subject:	Award of professional services agreement to Dennis Hanson
Presenter:	N/A
Prepared By:	Michael Vander Sys
Reviewed By:	Denise Gerry

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

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

Summary / Background Information

Benton County is legally obligated to provide public defense services in Benton County Superior Court on UGA cases ("Services").

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

Dennis Hanson ("Attorney") is qualified to provide Services and interested in contracting with Benton County to do so. The proposed professional services agreement and resolution effectuate a contract with Attorney for the provision of such Services on the terms contained therein, for the period from 07/25/22 to 12/31/24 at the rate of $175 per hour.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute professional services agreement with attorney Dennis Hanson for public defense services in Benton County Superior Court for UGA cases. Approve associated resolution as presented.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY DENNIS HANSON TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT FOR UGA CASES

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

WHEREAS, because of caseload needs, it is necessary for County to award a professional services agreement at this time to provide Services; and

WHEREAS, attorney Dennis Hanson is qualified to provide Services and interested in entering into an agreement with County for such Services; and

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

BE IT RESOLVED that the proposed professional services agreement with attorney Dennis Hanson, to provide public defense services in Benton County Superior Court for UGA cases, for the time period from 07/25/22 to 12/31/24 for compensation not to exceed $175 per hour, plus other allowable expenses, premiums, and fees as detailed, is hereby approved and executed on behalf of Benton County.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Dennis Hanson M. Vander Sys
Copy – Auditor, S Godinez

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT RESPONDENTS IN PROCEEDINGS UNDER THE UNIFORM GUARDIANSHIP ACT, Chapter 11.130, RCW CONTRACT # BCSC2224DAH001-UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2224DAH001-UGA**	**Contract Holder**	**Dennis Alan Hanson**
WSBA #	**41655**	**Effective Dates**	**07/25/22-12/31/24**
Caseload Cap	**Not applicable**	**Compensation**	**$175**
Assigned Court	**Superior Court**	**Compensation Structure**	**Hourly with individual case cap**
Compensation Payable To:	**Quantum Legal, PLLC**		
Contract Slot:	**UGA-5**		

THIS AGREEMENT is entered into by and between **Dennis Alan Hanson,** attorney at law, Washington State Bar Association # **41655** ("Attorney"), dba Quantum Legal, PLLC and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court (the "Court").

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

A. The County has the legal responsibility to provide legal defense services to indigent persons who are respondents in proceedings brought under the Uniform Guardianship Act ("UGA") Chapter 11.130, RCW and filed in, or pending in, Benton County Superior Court, when the said UGA proceedings involve the custody or guardianship of the indigent respondents' minor child or children ("UGA Cases").

B. Attorney is engaged in the private practice of law, has direct experience in an area of law that has provided him or her with the training and experience necessary to represent respondents in UGA Cases, and desires to contract with the County to provide legal representation to indigent respondents in UGA Cases..

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **07/25/22** and shall continue thereafter through and including **12/31/24**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract to Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law at **7502 W. Deschutes Place, Kennewick, WA 99336.** Attorney's current local office telephone and fax numbers are **509-783-5551** and **(509)736-1151** respectively; and Attorney's current office/work e-mail address is **dennis@qtmlegal.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to certain indigent persons who are respondents in actions brought pursuant to Washington's Uniform Guardianship Act, Chapter 11.130, RCW, in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees

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that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct in an area of law that has provided Attorney with the experience necessary to provide adequate representation in the type of cases contemplated by this Agreement; has not been subject to a termination proceeding involving a previous personal service agreement for indigent defense services; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and, if applicable and/or necessary, further action pursuant to paragraph 17 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

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

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

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

e. Attorney acknowledges and recognizes that while the Washington State Standards for Indigent Defense ("SID") as promulgated by the Washington State Supreme Court does not appear to encompass or control UGA Cases, it is possible that the Superior Court may choose to expand the SID to do so in the future. In the event that SID are expanded to encompass UGA Cases, Attorney agrees to comply with any such standards, including reporting requirements, as stated therein.

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

4. **RESERVED.**

5. **CONTRACT DUTIES.** During the contract term, Attorney will be eligible to receive appointments by the Benton County Superior Court for UGA Cases on the terms and conditions set out herein. For any such appointments, Attorney shall retain the ability to accept or decline, in Attorney's sole discretion, provided that Attorney agrees to respond to notices of proposed appointment in a timely fashion (within 48 business hours unless circumstances warrant a further delay) with notice of acceptance or declination, understanding the time-sensitive nature of UGA Cases.

6. **CONTINUED REPRESENTATION.**

Once Attorney is appointed a UGA Case pursuant to this Agreement, then Attorney's continued representation responsibilities, even beyond the expiration or termination of this Agreement, shall be a matter to be determined in the discretion of the Benton County Superior Court.

Should Benton County Superior Court determine that Attorney's appointment to any case or cases shall continue beyond the expiration or termination of this Agreement, then Attorney shall continue to be eligible for compensation pursuant to the terms of this Agreement notwithstanding such expiration or termination.

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Should Benton County Superior Court determine that Attorney's appointment to cases outstanding at time of expiration or termination of this Agreement is to end contemporaneously with such expiration or termination, then Attorney's eligibility for compensation shall similarly end, and Attorney shall reasonably cooperate with substitute counsel in transferring records, discovery, and client property to substitute counsel, so as to ensure continuity of representation.

7. **NUMBER OF APPOINTMENTS.**

There is no contractual limitation on the number of appointments that Attorney may choose to accept through this Agreement.

8. **RESERVED**

9. **CLIENT ELIGIBILITY.** Attorney may assume that all clients appointed pursuant to this Agreement are eligible for public defense services and Attorney shall have no obligation to make any further inquiry as to eligibility, or to report any indication of ineligibility to either Benton County, Benton County's Office of Public Defense ("OPD"), or the Court.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately arrange for substitute counsel by: a) contacting the Benton County OPD and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County Superior Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

11. **SCOPE OF REPRESENTATION; FILE RETENTION.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation should include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of resolution alternatives, and the preparation for and appearance on behalf of the

client in all stages of proceedings for appointed UGA Cases in Benton County Superior Court.

12. **COMPENSATION.** Attorney shall be compensated at the rate of **$175/hr,** billed in 1/10th hr increments.

All compensation shall be payable to: Quantum Legal, PLLC *since Attorney is a(n) principal with that firm.*

a) For cases that are completed within 60 days of appointment, Attorney should submit an invoice for payment, including a Claim for Compensation form as required by Benton County OPD, upon completion.

b) For cases that extend beyond 60 days, Attorney may make reasonable periodic billings.

c) All billings must be made electronically and submitted for payment to the following email address: **OPDClaims@co.benton.wa.us.**

13. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures provided that, however, Attorney shall not incur any such expense nor shall Attorney be entitled to be reimbursed for any such expense unless such expense has been pre-approved pursuant to Benton County OPD's administrative process for such expense pre-approval, authority for approving and managing such expenses having been delegated by Benton County Superior Court to the Benton County OPD, by local court rule or memorandum.

(ii) In order for Attorney to be reimbursed for any expenses pursuant to this subsection, Attorney shall complete and sign a Claim for

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Compensation in such form as is designated by the Benton County OPD, and attach such supplementary materials as may be required. All Claims for Compensation must be submitted electronically to the email address: OPDClaims@co.benton.wa.us and shall be submitted to OPD within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **INDEMNIFICATIONS AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County and its elected/appointed representatives, officers, employees, and agents; and to hold the County and its elected/appointed representatives, officers, employees, and agents fully harmless; from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

15. **INSURANCE.**

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

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the Attorney's services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the Attorney's services as defined by this Contract. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Contract. Attorney is required to

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maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of 36 months after the completion of work. Attorney shall annually provide Counties with proof of all such insurance.

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

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

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

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

The commercial general liability policy shall contain an endorsement naming the Counties, its elected and appointed officials, employees and agents as an Additional Insured and an endorsement that specifically states

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that Attorney's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the Counties.

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

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

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

d. **Other Insurance Provisions**:

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

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

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

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

5. The Attorney shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

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

7. The Attorney shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form.

8. Attorney hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Attorney to enter into a pre-loss agreement to waive subrogation without an endorsement, then Attorney agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Attorney enter into such a waiver of subrogation on a pre-loss basis.

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

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

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

1. All insurance to be maintained by the Attorney, other than Professional Liability and Workmen's Compensation, shall specifically include the Counties, its elected and appointed officers, officials, employees and

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agents as "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days written prior notice to the Counties. Any insurance or self-insurance maintained by the Counties, its elected and appointed officials, employees and agents shall be excess of the Attorney's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the Benton County Office of Public Defense within ten (10) days of execution of this Agreement.

3. All written notices under this Section **[8]** and notice of cancellation or change of required insurance coverages shall be mailed to the Benton County OPD.

4. The Attorney or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County OPD: Attn: Office Manager, Benton County OPD, 7122 W Okanogan Pl, Bldg A, Kennewick, WA 99336.

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

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

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

17. **TERMINATION.**

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

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

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence (i.e., termination without further notice) if the

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failure(s) is/are not cured within the ten (10) day period. The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election ("Early Termination"). Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney's continuing obligation to accept case appointments shall be governed by the provisions of Section 17.f herein.. A ninety (90) day notice of termination given by either party under this paragraph 17.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 30 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, consistent with the provisions of paragraph 12.e. above and regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, however, Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination (including trial per diems. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. At the sole and exclusive discretion of County, Attorney may terminate this Agreement with less than 90 days notice.

f. The parties agree that in the event of Early Termination of this Agreement with or without cause Attorney shall not be assigned any additional cases pursuant to this Agreement.

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and

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will always be acting and operating as a fully independent contractor. In that regard, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's PDM, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

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

a. Other attorneys in Attorney's law firm shall be permitted to assist Attorney with aspects of representation on individual cases appointed pursuant to this Agreement, including client contact, investigation, discovery review, court appearances, and negotiations with opposing counsel as needed, provided, however, that Attorney shall continue at all times to personally and professionally responsible for all work done on cases, and representation provided to clients on, cases appointed through this Agreement.

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

21. **RESERVED**

22. **RESERVED**

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

24. **CAPTIONS; TIME COMPUTATION.**

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

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

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shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

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

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

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

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

29. **DISPUTE RESOLUTION.**

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

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

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(30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

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

30. **NOTICES.**

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

Public Defense Manager
Benton County OPD
7122 West Okanogan Place, Building A
Kennewick, WA 99336

OPDNotices@co.Benton.wa.us

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

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

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

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

SIGNATURES APPEAR ON FOLLOWING PAGE

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:
Michael Vander Sys
3C4D65ED0BC4489...

Michael Vander Sys
Interim Public Defense Manager

ATTORNEY

Date 8/5/2022

DocuSigned by:
Dennis Hanson
F09CEAAEEEC64B6...

Dennis Hanson, WSBA # 41655

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN PUBLIC SAFETY TAX FUND NUMBER 1480, DEPARTMENT NUMBER 106

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Clerk

Dept Nbr: 106

Fund Name: Public Safety Tax

Fund Nbr: 1480

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5123290	51240	Legal Process Assistant II	$3,000
TOTAL			$3,000

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5123290	51925	Overtime	$3,000
TOTAL			$3,000

Explanation:

Transfer funds to overtime so that line item is not over budget.

Prepared by: Josie Delvin

Date: 03-Aug-2022

Approved ☐

Denied ☐

Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022
Subject:	Execution of on-call Materials Testing contract with Terra Firma Testing of Kennewick Washington
Presenter:	
Prepared By:	D. Hope
Reviewed By:	D. D'Hondt and Procurement

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

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

Summary / Background Information

The Public Works Department anticipates a need for material sampling and testing and wishes to obtain the on-call services of a testing firm. A Request for Qualifications was solicited with two firms responding. Terra Firma Testing of Kennewick, WA was selected, and a contract was negotiated by the County Engineer.

Per RCW 36.32.235, on-call contracts can be executed for a contract term not to exceed one year with the County having the option of extending the contract for one additional year. The contract has been reviewed as to form by the Deputy Prosecuting Attorney and signed by Terra Firma Testing.

Fiscal Impact

Amount: Not to exceed $50,000.00 excluding WSST

Fund: Most likely the entire amount will be expended from the Road Fund (0101-101), however the contract is with Benton County so other departments can use the services.

Recommendation

The County Engineer recommends that the Service Contract be approved and signed by the Board.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF EXECUTING A PERSONAL SERVICES CONTRACT FOR ON-CALL MATERIAL SAMPLING AND TESTING WITH TERRA FIRMA TESTING OF KENNEWICK, WASHINGTON

WHEREAS, the Public Works Department anticipates a need for material sampling and testing and wishes to obtain the on-call services of a testing firm; and

WHEREAS, the Department advertised the need for services, received statements of qualifications, and selected the top firm; and

WHEREAS, the Department has negotiated with Terra Firma Testing of Kennewick, Washington to provide as-needed testing services; and

WHEREAS, a Personal Services Contract has been prepared and reviewed as to form by a Benton County Deputy Prosecuting Attorney; and

WHEREAS, the County Engineer recommends that this Services Contract be approved; **NOW THEREFORE,**

BE IT RESOLVED that the Personal Services Contract with Terra Firma Testing of Kennewick, Washington to provide on-call material sampling and testing services in an amount not to exceed $50,000, including applicable taxes, is hereby approved; and the Board of County Commissioners is hereby authorized to sign said Contract; and

BE IT FURTHER RESOLVED the Agreement will expire August 31, 2023 with the County having the option of renewing the contract for an additional one-year period.

Dated this _____ day of August, 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig: Public Works. D. Hope
cc: Auditor, PA, Terra Firma

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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 **TERRA FIRMA TESTING**, a corporation organized under the laws of the State of Washington with its principal offices at 6001 W. Deschutes Ave., Ste 610, Kennewick, WA 99336 (hereinafter "CONSULTANT").

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 attached Exhibit A.

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on August 31, 2023 with the County having the option of renewing the contract for an additional one-year period. TERRA FIRMA TESTING would have the option of updating the Schedule of Fees at that time. The CONSULTANT 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 CONSULTANT shall provide on-call materials sampling and testing services. Services shall include the sampling and testing of roadway and building construction materials including but not limited to: hot mix asphalt, cement concrete, grout, aggregates, soils, high performance coatings, fire proofing, bolted connections, welded connections, and concrete masonry units.

b. When a specific project is identified, individual task orders are authorized by the Contract Representatives in Section 4 below based upon a “not to exceed” amount using Exhibit A – Schedule of Fees, which is attached hereto and incorporated by reference.

c. The CONSULTANT 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.

d. The CONSULTANT shall perform the work specified in this Contract according to standard industry practice.

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

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

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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 CONSULTANT:

Name:	Norman Martin, Senior Special Inspector
Address:	6001 W. Deschutes Ave., Ste 610 Kennewick, WA 99336
Phone:	509-579-0097
Email:	nmartin@nge-tft.com

b. For COUNTY:

Name:	Douglas D'Hondt, P.E., County Engineer
Address:	P. O. Box 1001 620 Market Street Prosser, WA 99350
Phone:	509-786-5611
Email:	douglas.dhondt@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONSULTANT shall be paid at the rates set forth in Exhibit A, "Schedule of Fees", which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONSULTANT under this Contract shall not exceed Fifty Thousand Dollars ($50,000.00), excluding W.S.S.T.

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

d. The CONSULTANT 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 CONSULTANT performed work for the COUNTY during the billing period. The COUNTY shall pay the CONSULTANT 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 CONSULTANT 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 CONSULTANT has failed to perform any substantial obligation to be performed by the CONSULTANT 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

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to the CONSULTANT, withhold any and all monies due and payable to the CONSULTANT, 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 CONSULTANT 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 CONSULTANT in the performance of any work required under this Contract, the CONSULTANT shall make any and all necessary corrections without additional compensation. All work submitted by the CONSULTANT shall be certified by the CONSULTANT and checked for errors and omissions. The CONSULTANT 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 CONSULTANT shall hold harmless, and indemnify 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 reimbursement of 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, to the extent caused in whole or in part by negligence of the CONSULTANT or its subconsultants in connection with their work under this contract.

b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONSULTANT, any subconsultant, 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 CONSULTANT or subconsultant under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONSULTANT expressly waives any immunity the CONSULTANT might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONSULTANT 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 CONSULTANT makes with any subconsultant or agent performing work hereunder. CONSULTANT'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

c. The CONSULTANT'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 CONSULTANT, or the CONSULTANT'S

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employees, agents, or subconsultants.

8. INSURANCE

The CONSULTANT shall obtain and maintain continuously the following insurance:

a. **Professional Liability Insurance**: Prior to the start of work under this Contract, the CONSULTANT shall secure and maintain at its own expense Professional Liability Insurance appropriate to the CONSULTANT'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 CONSULTANT'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 CONSULTANT'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. CONSULTANT 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 CONSULTANT must purchase “extended reporting” coverage for a minimum of 36 months after the completion of work. The CONSULTANT shall annually provide the COUNTY with proof of all such insurance.

b. **Workers Compensation:** CONSULTANT 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 CONSULTANT and employees of any subconsultant or sub-subconsultant. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONSULTANT 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, CONSULTANT 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 CONSULTANT, subconsultant, or sub-subconsultant 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, CONSULTANT shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONSULTANT or subconsultant employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONSULTANT pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONSULTANT for performance of this Contract.

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

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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 CONSULTANT's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONSULTANT 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. CONSULTANT'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.

CONSULTANT 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 CONSULTANT shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any autos owned by the CONSULTANT (Symbol 1), or if the CONSULTANT 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 CONSULTANT from claims which may arise from the performance of this Contract, whether such operations are by the CONSULTANT or by anyone directly or indirectly employed by the CONSULTANT.

e. **Other Insurance Provisions**:

1. The CONSULTANT'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. CONSULTANT'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 CONSULTANT'S insurance policies.

2. The CONSULTANT'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

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provided to the COUNTY or its officers, officials, employees, or agents.

4. The CONSULTANT'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 CONSULTANT shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants 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 CONSULTANT maintains higher limits than the minimums required in this Contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONSULTANT.**

7. The CONSULTANT 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. CONSULTANT 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. CONSULTANT 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 CONSULTANT to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONSULTANT 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 CONSULTANT enter into such a waiver of subrogation on a pre-loss basis.

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

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 CONSULTANT, other than Professional Liability, Auto Liability, and Workers' Compensation, shall specifically include the COUNTY and its elected

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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 CONSULTANT'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 CONSULTANT or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager to the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

9. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONSULTANT. In that event, the COUNTY shall pay the CONSULTANT for all costs incurred by the CONSULTANT 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 CONSULTANT. After the effective date, no charges incurred under this Contract shall be allowed.

c. If the CONSULTANT 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 CONSULTANT, in which case the COUNTY shall pay the CONSULTANT 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 CONSULTANT 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 CONSULTANT'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. The CONSULTANT shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONSULTANT 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.

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b. The CONSULTANT 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 CONSULTANT, 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 CONSULTANT

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

b. The CONSULTANT acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONSULTANT, 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 CONSULTANT shall have and maintain complete responsibility and control over all of its subconsultants, employees, agents, and representatives. No subconsultant, employee, agent, or representative of the CONSULTANT shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.

d. The CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT relating to the

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performance of this Contract. The CONSULTANT 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 CONSULTANT and its assignees, delegates, and subconsultants 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 CONSULTANT for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONSULTANT harmless therefrom to the extent such use is not agreed to in writing by the CONSULTANT.

b. All design work done by the CONSULTANT 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 CONSULTANT, the record drawings from the CONSULTANT 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 CONSULTANT 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 CONSULTANT or subconsultant infringes any patent or copyright. The CONSULTANT shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Disputes between the CONSULTANT 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 CONSULTANT shall be decided mutually by the COUNTY'S and CONSULTANT'S Contract Representatives or designees. All rulings, orders, instructions, and decisions shall be final and conclusive, subject to CONSULTANT'S right to seek judicial relief.

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19. CONFIDENTIALITY

The CONSULTANT and its employees, subconsultants, and subconsultants' 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 CONSULTANT 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 CONSULTANT 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

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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 CONSULTANT pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice to CONSULTANT of such circumstances and direct the CONSULTANT to "hold" such records. In the event that CONSULTANT receives such written notice, CONSULTANT shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONSULTANT 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 CONSULTANT 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, CONSULTANT 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 CONSULTANT'S possession. This may include records that CONSULTANT regards as confidential or proprietary. To the extent that CONSULTANT provides any records to the COUNTY that it regards as confidential or proprietary, CONSULTANT agrees to conspicuously mark the records as such. The CONSULTANT 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 CONSULTANT in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONSULTANT as confidential or proprietary, so that CONSULTANT may seek a judicial order of protection if necessary.

28. RISK ALLOCATION

In consideration for CONSULTANT's limited Project role, COUNTY agrees CONSULTANT's total aggregate remedy limit to COUNTY and all third parties who may claim through COUNTY, arising from injuries, damages, claims, losses, expenses or claim expenses, including any attorney's fees or litigation expenses arising from any judgment or ruling of any kind, arising out of or relating to this Contract based on any cause or any theory of liability, including, but not limited to negligence, errors or omissions, strict liability, breach of contract, and claims for indemnification or contribution, such that CONSULTANTS's total aggregate remedy limit per Project shall not exceed fifty thousand dollars ($50,000). If COUNTY wishes to

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increase this remedy limit, we may negotiate a higher limit in exchange for an appropriate fee increase to reflect the appropriate risk allocation. It is intended by COUNTY and CONSULTANT that this provision shall apply to the indemnity obligations set forth above. COUNTY and CONSULTANT agree that neither will be liable to the other for any consequential, liquidated, punitive, or incidental damages, except as specifically provided for in this Contract. Notwithstanding any period of limitations that might otherwise apply, the parties agree that no actions, claims, or proceedings of any kind, whether in tort, contract, or equity, arising out of CONSULTANT's services, may be brought against CONSULTANT more than two (2) years after CONSULTANT's last service date in connection with this Contract.

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

Dated: 7-29-22

FOR: TERRA FIRMA TESTING

_____
Signature

Senior Special Inspector
Title:

N. Brent Martin
Print Name

Approved as to Form

DocuSigned by:
Reid Hay
7D2675FA0905430...
Reid Hay, Civil Deputy Prosecuting Attorney

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EXHIBIT A

TERRA FIRMA TESTING

Laboratory Testing Special Inspection Construction Monitoring Services Construction Materials Testing

CONSTRUCTION MATERIAL TESTING AND INSPECTION T&M SERVICE AGREEMENT

PROJECT _____

LOCATION _____

Terra Firma Testing (TFT) Rates for 2022	Frequency:	Unit Rate:
SOIL / AGGREGATE TESTING		
T99-T180/D698-D1557 Moisture Density Determination (Modified Proctor)	Each	$200.00
T27/C136 - Sieve Analysis of Aggregates	Each	$135.00
T176/D2419 - Sand Equivalent	Each	$95.00
T335/D5821 - Fracture Face Count	Each	$95.00
T89 - T90/D4318 - Atterberg Limits	Each	$95.00
Technician to Perform Soil/Aggregate Density Testing	Hourly	$65.00
Technician to Sample Soil/Aggregate	Hourly	$65.00
FIELD CONCRETE TESTING		
T22/C38 - Compressive Strength of Concrete Specimens 4" x 8"	Each	$25.00
T22/C38 - Compressive Strength of Concrete Specimens 6" x 12"	Each	$35.00
Technician to Perform Concrete Testing	Hourly	$65.00
Technician to Pick up, Process, and Transport Cylinders to Lab	Hourly	$65.00
STRUCTURAL MASONRY		
Masonry Grout Sample / Testing (Set of 4 per sample)	Per Set	$100.00
Masonry Mortar Sample / Testing (set of 3 per sample)	Per Set	$75.00
HIGH STRENGTH GROUT TESTING		
High Strength Grout Sample / Testing (set of 3 per sample)	Per Set	$75.00
ASPHALT TESTING		
T209/D2041 - Theoretical Maximum Specific Gravity (Rice)	Each	$125.00
T30 - T308/D5444 - D6307 - Asphalt Content and Mechanical Analysis of HMA	Each	$285.00
T166 - T269/D2726 - D3203 - Bulk Specific Gravity and Air Voids of HMA (Cores)	Each	$55.00
Coring Machine and Associated Equipment	Day	$200.00
Technician to Perform Asphalt Coring	Hourly	$65.00
Technician to Perform Asphalt Density Testing	Hourly	$65.00
Technician to Pick up and Transport HMA Samples to Lab	Hourly	$65.00
SPECIAL INSPECTION		
ICC Certified Inspector - Soils, Reinforced Concrete, Prestressed Concrete, Structural Masonry, and Fire Proofing	Hourly	$80.00
ICC Certified Inspector Bolting, and Welding AWS - CWI (VT, MT, PT, & UT)	Hourly	$95.00
Firestop Inspection	Hourly	$80.00
Floor Flatness Inspection, High Strength Grout, & Post-Installed Rebar/Anchors	Hourly	$80.00
Skidmore-Wilhelm Bolt Verification Testing	Hourly	$115.00

6001 W. Deschutes Ave, #610 Kennewick, WA. Phone: 509-579-0097 Email: bmartin@nge-tft.com

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TERRA FIRMA TESTING

Laboratory Testing Special Inspection Construction Monitoring Services Construction Materials Testing

MISCELLANEOUS CHARGES AND COST		
Floor Flatness Equipment Fee	Day	$650.00
Skidmore-Wilhelm Equipment Fee	Day	$450.00
Milage Fee Will Be Charged for Project Sites Over 30 Miles from TFT's Office	Per Mile	$0.63
Special Inspector & Field Technician Over Time Rates are 1.5 Times of Quoted Price. Before 7am, After 7pm. Sundays & Holidays are Billed at Over Time Rates.	Hourly	X 1.5

- TFT inspectors are ICC-certified individuals who meet the IBC requirements to perform testing and inspection needs for all projects.
- Construction material testing when notified 24-hours in advance by you or your representative.
- All CWI welding inspections require a 4-hour minimum call out in addition to a 48-hour advance notice.
- TFT dispatches both testing technicians and ICC-certified inspectors for all reinforced concrete placements per IBC standards.
- For field testing and special inspections performed Monday through Saturday, straight time rates are in effect between 0700 and 1900.
- All site visits on Sundays and holidays will be billed as overtime, at 1.5 times the quoted rate.
- *Density tests, density and concrete equipment fees, and travel are all included in the hourly rate.*
- *TFT does not charge administration fees or lab tech fees.*

REPORTS WILL BE SENT TO THE FOLLOWING INDIVIDUAL:

Name**:** _____ E-mail: _____

BILL TO:

Company:_____ Contact:_____

Address: _____

City: _____ State: _____ Zip:_____

Phone: _____ Cell: _____ Email: _____

The services we provide include only construction materials testing and special inspection. Our scope of services does not include geotechnical engineering exploration, analysis, design, or any other engineering function. Professional judgment should be applied to all laboratory results. All samples will be discarded one month after testing unless you request otherwise.

Acceptance of rates

X	X	X
Signiture	Printed Name	Date

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16th, 2022
Subject:	Agreement between Benton County and Nomad Trail Runners of Eastern Washington for the temporary use of county right-of-way.
Presenter:	N/A
Prepared By:	Cristina Woods
Reviewed By:	Matt Mahoney

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 Nomad Trail Runners of Eastern Washington are hosting the 7th annual Jump off Joe marathon, half marathon, and 10k on August 20th, 2022, between 6 a.m. and 4 p.m. This event is entirely on gravel roads on and around Jump off Joe Mountain near Kennewick, WA.

The start/finish line will be located just south of the intersection of Owens Road and Highway 397. The marathon route will follow Owens Road to the south, turn left on Beck Road, turn left on Nine Canyon Road, turn right on Kirk Road, with a turnaround located just past the intersection with Mills Road. The route will then return in the same manner until taking a right from Owens Road onto Jump off Joe Road. The last turnaround would be at the top of Jump off Joe where the route would then return to the start/finish line. A shorter option (half marathon) will be included where participants will make the first turnaround past the turnoff to Jump off Joe Road while still on Owens Road and then follow the previous return route. An even shorter option (10k) will have a turnaround point before the turnoff to Jump off Joe Road. A map is included in Exhibit A showing the race location.

The event coordinator is responsible for providing and maintaining traffic control, in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) for the duration of the event.

This race is a fundraiser for the Tri-Cities Pet Over-Population Prevention (POPP). All proceeds from the event will be donated.

Fiscal Impact

There is no fiscal impact for entering into this the agreement. The agreement between the event coordinator and Benton County delineates the responsibilities and any associated costs between the parties.

Recommendation

Staff recommends the Board enter into the attached agreement with Nomad Trail Runners of Eastern Washington for temporary use of county right-of-way

Suggested Motion

Approve as part of consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

ENTERING INTO AN AGREEMENT FOR TEMPORARY USE OF COUNTY RIGHT-OF-WAY BETWEEN BENTON COUNTY AND NOMAD TRAIL RUNNER'S OF EASTERN WASHINGTON

WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120, the legislative body of each county is authorized to enter into contracts on behalf of the county and has the care of county property and management of county funds and business; and

WHEREAS Nomad Trail Runner's of Eastern Washington has requested temporary use of county right-of-way subject to the conditions of the attached agreement; and

WHEREAS, the Board of Benton County Commissioners constitutes the legislative authority of Benton County and desires to enter into the attached agreement for temporary use of county right-of-way, finding it as being in the best interest of Benton County;

NOW, THEREFORE, BE IT RESOLVED that the Board of Benton County Commissioners hereby approves of and enters into the attached agreement for the temporary use of county right-of-way between Benton County and Nomad Trail Runner's of Eastern Washington.

APPROVED this _____ day of _____ , 2022.

_____
Chairman

_____
Chairman Pro-Tern

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Public Works

C. Woods

AN AGREEMENT FOR TEMPORARY USE OF COUNTY RIGHT-OF-WAY BETWEEN BENTON COUNTY AND NOMAD TRAIL RUNNER'S OF EASTERN WASHINGTON

ARTICLE I – DEFINITIONS

Section 1. General Interpretation.

For the purpose of this Agreement, words not otherwise defined shall be given their common and ordinary meaning. When consistent with the context, words used in the singular number include the plural number, words in the plural number include the singular number and words used in the present tense include the future tense.

Section 2. Specific Definitions.

A. **"Agency"** means any governmental agency or quasigovernmental agency other than the County.

B. **"County" or "Benton County"** means the County of Benton, Washington, and its lawful designees.

C. **"County Property"** means any real property owned by the County, whether in fee or other ownership, estate, or interest.

D. **"Effective Date"** means the date identified in Article XIX, Section 4.

E. **"Fee"** means any assessment, license, charge, fee, imposition, tax, or levy lawfully imposed by any governmental body.

F. **"Grantee"** means Nomad Trail Runner's of Eastern Washington, its agents and employees, lawful transferees, successors or assigns.

G. **"Laws"** means any and all judicial decisions and any and all federal, state, and local statutes, constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders, certificates, orders, or other requirements of the County or other Agency having jurisdiction over the parties to this Agreement, in effect at the time of execution of this Agreement and thereafter.

H. **"Month"** means a calendar month.

I. **"Person"** means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association.

J. **"Provision"** means any clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Agreement that defines or otherwise controls, establishes, or limits the performance required or permitted by this Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

K. **"Public Facility"** means any tower, water tower, building, pole, or other structure which the County owns or controls.

L. **"Public Way"** means and includes the surface of and space above and below any real property in the County in which the County has an ownership interest or interest as trustee for the public, including but not limited to, all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, subways or skyways or any other public place or property under control of the County, and any public or utility easements established, dedicated, or devoted for public utility purposes.

M. **"Rights-of-way"** means all County Property and Public Ways, collectively, within unincorporated Benton County.

ARTICLE II – AGREEMENT

Section 1. Grant of Permission for Temporary Use of County Right-of-way

A. Grant of Right-of-way.
Subject to obtaining any permits as might be required under the County's Code or other applicable Laws, the County hereby temporarily permits, on a nonexclusive basis, use within the Rights of Way in unincorporated Benton County by the Grantee for the purposes delineated in Exhibit A. Any actions performed pursuant to the rights granted under this Agreement may, at the County's option, be subject to the prior review and approval of the Benton County Engineer. During the term of this Agreement, the location of use of right-of-way by Grantee or its designee shall be disclosed, in writing, to the County by Grantee within twenty (20) days before its execution. Such disclosures, if in conflict with stated Exhibit A, shall be incorporated in Exhibit A by way of a modification to this Agreement and shall not change except upon submittal of a revised Exhibit A, and a written request for the modification. Revised Exhibit A and request for modification shall be subject to the review and approval of the Benton County Engineer. This Agreement is granted pursuant to the terms and conditions contained herein and applicable law. All provisions of such applicable law, except as may be explicitly set forth in this Agreement, are hereby incorporated by reference.

B. Costs Related to Exercise of Agreement.
Any and all actions expressly permitted to Grantee by the County under this Agreement shall be exercised at Grantee's sole cost and expense, shall be subject to the prior and continuing right of the County to use any and all parts of the Rights-of-way or Public Facilities or property, nonexclusively or concurrently, with any other Person, and further shall be subject to County's police powers and all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title which may affect the Rights-of-way, or Public Facilities now or hereafter existing. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a real property interest in land to or in Grantee, including any fee or leasehold interest or easement rights.

C. No Interference.
Except as expressly permitted by applicable Laws or this Agreement, Grantee shall not interfere in any manner with the existence and operation of any and all private property and Rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial or underground electric and telephone wires, cable television, and other telecommunications, utility, and municipal property within Rights-of-way without the express written approval of the owner or owners of the affected property or properties.

D. Compliance with Laws.
Grantee shall comply with all Laws in the exercise and performance of its rights and obligations under this Agreement. If required by Law, Grantee shall obtain all required approvals from the appropriate governing authorities.

Section 2. Acceptance of Agreement.

Acceptance of Power and Authority of County.
Grantee expressly acknowledges by acceptance of this Agreement that: (1) it has relied upon its own investigation and understanding of the power and authority of the County to grant and enforce the Agreement; (2) it has not been induced to enter into this Agreement arrangement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the County concerning any term or condition of the Agreement that is not specifically included herein; and (3) it has carefully read the terms and conditions contained herein and of the applicable law and that Grantee is willing to and does accept all the obligations of such terms and conditions to the extent not inconsistent with state or federal law and further agrees that it will not set up as against the County any claim that any Provision of this Agreement or the Ordinance is unreasonable, arbitrary, invalid, or void subject to its rights herein.

Section 3. Limitations on Authority.

A. Subject to Other Requirements.
Grantee's permission to operate within County Right-of-way is subject to the terms, conditions, and requirements of this Agreement, the County Code, and all applicable Laws.

B. Privileges Must be Specific.
No privilege or exemption is granted or conferred by this Agreement except as may be specifically prescribed.

ARTICLE III - TERM AND TERMINATION OF AGREEMENT

The term of this Agreement will extend from **August 19th, 2022,** to **August 21st, 2022**. The County may terminate this Agreement in whole or in part whenever the County determines in its sole discretion that such termination is in the best interests of the County. All terms of this Agreement which by their context are clearly intended to survive the termination and/or expiration of this Agreement shall so survive. These terms include, but are not limited to, Article VI (Reimbursement) and Article VIII (Hold Harmless and Indemnification).

ARTICLE IV - FEES AND CONSIDERATION

Benton County will collect no fee or other compensation for the administration, drafting, oversight, and execution of this Agreement, except those costs directly incurred as a result of statutory obligation, including, but not limited to, the posting of notifications, the publication of notifications, and the recording of any documentation, as may be required. Furthermore, should the Grantee request the closure, detour, or other disruption of County Right-of-way, and should the Grantee further request that Benton County provide traffic mitigation for said closure, detour, or other disruption, Benton County will collect reimbursement for the cost of said traffic mitigation, if it is granted.

ARTICLE V - REPAIR AND REPLACEMENT OF DAMAGES

Grantee is responsible for any costs to repair or replace any damage to Public Facility or Right-of-way due to actions of Grantee or that occurred during its use of County Right-of-way. All repair or replacement of such damage shall be completed by the County, and costs incurred shall be forwarded as an invoice to the Grantee.

ARTICLE VI – REIMBURSEMENT

Grantee shall reimburse the County within thirty (30) days after receipt of an invoice for all reasonable amounts paid and costs incurred by the County in relation to this Agreement or the enforcement thereof

ARTICLE VII – INSURANCE

Grantee shall procure and maintain, for the duration of the Agreement, insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights and privileges granted hereunder to Grantee. Grantee shall provide to the County evidence of self-insurance and/or an insurance certificate, that names Benton County, its officers, elected officials, agents, employees, representatives, and volunteers as additional insureds', prior to the commencement of any use of Right-of-way pursuant to this Agreement. All required insurance shall be obtained from companies rated "A-" or better in "A.M. Best's Insurance Guide," or an equivalent rating by similar rating agencies, and shall be from insurers authorized to transact business in the State of Washington. Such self-insurance and/or insurance certificate shall evidence the following minimum coverages.

A. Comprehensive General/excess Liability Insurance including coverage for premises - operations, explosions and collapse hazard, underground hazard and products completed hazard, with limits not less than:

(1) $1,000,000 (one million dollars) per occurrence and in the aggregate for bodily injury or death to each person;

(2) $1,000,000 (one million dollars) for property damage resulting from any one accident; and

B. Commercial Automobile Liability for owned, non-owned and hired vehicles with a limit of $1,000,000 (one million dollars) for each person and $1,000,000 (one million dollars) for each accident;

C. Worker's Compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000 (one million dollars);

D. In addition to Commercial Liability and Automobile Liability, Grantee and its contractors and/or subcontractors shall maintain excess liability insurance coverage of $5,000,000 (five million dollars).

The required liability limits may be met under a primary or an excess policy, or any combination thereof.

Payment of deductibles and self-insured retentions shall be the sole responsibility of the Grantee.

Grantee's insurance shall be primary insurance with respect to the County, its officers, officials, employees, agents, and volunteers. Any insurance maintained by the County, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of Grantee's insurance and shall not contribute with it.

In addition to the coverage requirements set forth in this Section, the certificate of insurance must be submitted to the County and shall provide that:

"The above described policies will not be canceled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation, Grantee shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date.

Grantee acknowledges and agrees, by acceptance of this Agreement, that failure to procure or maintain the required insurance shall constitute a material breach of this Agreement and that the County may immediately suspend uses of County Right-of-way under the Agreement, terminate the Agreement, or, at its discretion, procure or renew such insurance to protect the County's interests and be reimbursed by Grantee for all premiums paid in connection therewith.

Grantee shall furnish proof to the Benton County Engineer that a satisfactory insurance policy and bonds have been obtained. A certificate of insurance shall be filed and maintained with the County.

The certificate(s) of insurance with endorsements and notices shall be mailed to:

Public Works
102206 Wiser Parkway
Kennewick, WA 99338

ARTICLE VIII- HOLD HARMLESS AND INDEMNIFICATION

Section 1. Indemnification.

A. The Grantee 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 this Agreement, or resulting from or alleged to arise out this Agreement, or caused or occasioned in whole or in part by reason of the presence of the Grantee or its volunteers or guests or property upon or in the proximity of the property or Right-of-Way of the County. PROVIDED, that the Grantee'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 Grantee, any contractor, 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 Grantee under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the Grantee expressly waives any immunity the Grantee might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Agreement, the Grantee 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 Grantee makes with any contractor or agent performing work related to this Agreement. Grantee's obligations under this Article VIII shall survive termination or expiration of this Agreement.**

C. The Grantee'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 Grantee, or the Grantee's employees, guests, agents, or contractors.

ARTICLE IX - MISCELLANEOUS

Section 1. Consumption of Alcohol

The Grantee understands that, pursuant to this Agreement, under no circumstances shall alcohol be consumed upon County property, including the Right-of-way.

Section 2. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Agreement is, for any reason, held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof. In such event, the parties mutually agree to make any amendments to this Agreement of other applicable agreements necessary to effectuate the intention of this Agreement. In the event that such amendments are barred by any legal requirements governing any party, the parties shall use their best efforts to otherwise avoid prejudice to the respective parties' interests, and to implement changes to effectuate the intent in entering into this Agreement. Should the County, in its sole discretion, determine that the severed portions substantially alter the Agreement so that the original intent and purpose of this Agreement no longer exists, the County may, in its sole discretion, terminate this Agreement without cost or penalty.

Section 3. Applicable Law.

The Agreement is governed by the Laws of the State of Washington, and venue for any enforcement litigation shall be in Benton County Superior Court. In case of conflict or ambiguity between this Agreement and Grantee's Request or Application, this Agreement shall be controlling.

Section 4. Effective Date.

The Provisions of this Agreement shall be effective upon the written acceptance of this Agreement by the Grantee, signed by its proper officers filed with the Board of Benton County Commissioners within sixty days of its execution by the County and recorded with the Benton County Auditor in accordance with RCW 36.55.080.

Section 5. Limitation.

Nothing in this Agreement shall be construed or interpreted in any manner as limiting, relinquishing, or waiving any rights of ownership enjoyed by the County in any Rights-of-way or any Public Facilities, or in any manner limiting, relinquishing or waiving the County's control over the operation and maintenance of the Rights-of-way or any Public Facilities or in any manner limiting, relinquishing, or waiving governmental rights that the County may possess.

Section 6. Non Waiver.

The waiver of any breach or violation of any Provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other Provision of this Agreement.

Section 7. Integration.

This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether written or oral) between or among the parties relating to the subject matter of this Agreement that are not fully expressed herein. All Exhibits referred to in this Agreement, and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement, are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

Section 8. Agreement Subject to Future Ordinance(s).

Grantee acknowledges that the County may develop additional rules, regulations, and specifications for the use of the Rights-of-way and/or Public Facilities, and Grantee agrees that such rules, regulations, and specifications, when finalized and to the extent not preempted by federal or state law, shall govern Grantee's activities hereunder as if they were in effect at the time this Agreement was executed by the County; provided, however, no subsequently enacted rule, regulation, or specification may retroactively place Grantee in violation thereof.

Section 9. No Warranties.

Grantee shall be responsible for obtaining all approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the County is making no representation, warranty, or covenant whether any of such approvals, authorizations, or agreements are required or have been obtained by Grantee from any Person or entity.

Section 10. Non-Agency.

The Grantee acknowledges that it is not an agent, employee, or servant of the County, and that Grantee shall have and maintain complete responsibility and control over all of its employees, volunteers, agents, representative, and contractors.

Section 11. Authorization.

The undersigned respectively represent and warrant that its signatory is duly authorized and empowered to sign this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the 29 day of July, 2022.

NOMAD TRAIL RUNNER'S OF EASTERN WASHINGTON
GRANTEE

By: _____
JASON Reathaford

Its: President

Dated: 7/29/22

BOARD OF COUNTY COMMISSIONERS
Benton County, Washington

_____
Chairman

_____
Chair Pro Tem

_____
Commissioner

ATTEST BY:

_____
Clerk of the Board

BENTON COUNTY PUBLIC WORKS

By: Matt Mahoney, OPERATIONS MANAGER
For County Engineer

APPROVED AS TO FORM:

By: _____
Deputy Prosecuting Attorney

EXHIBIT A

Jump off Joe Marathon, Half Marathon, and 10k

This running event will be held August 20, 2022 between 6am and approximately 4pm. Set up and marking of the course will occur a few hours before the start and then take down and clean up will occur a few hours after the last person finishes. A port-a-potty will be delivered on August 19 and placed at the start/finish area and will then be picked up on August 21.

The start/finish line will be located just south of the intersection of Owens Road and Highway 397. The marathon route will follow Owens Road to the south, turn left on Beck Road, turn left on Nine Canyon Road, turn right on Kirk Road, with a turnaround located just past the intersection with Mills Road. The route will then return in the same manner until taking a right from Owens Road onto Jump off Joe Road. The last turnaround would be at the top of Jump off Joe where the route would then return to the start/finish line. A shorter option (half marathon) will be included where participants will make the first turnaround past the turnoff to Jump off Joe road while still on Owens Road and then follow the previous return route. An even shorter option (10k) will have a turnaround point before the turnoff to Jump off Joe road.

Aid stations will be located periodically along the course to provide water, food, and minor first aid to participants. Each aid station will include a table, a few chairs, and a 10x10 canopy. The entire event will be held on the roadways previously mentioned, which are understood to be county-owned land.

Course maps showing the route and aid station locations are shown on the following pages.

EXHIBIT A

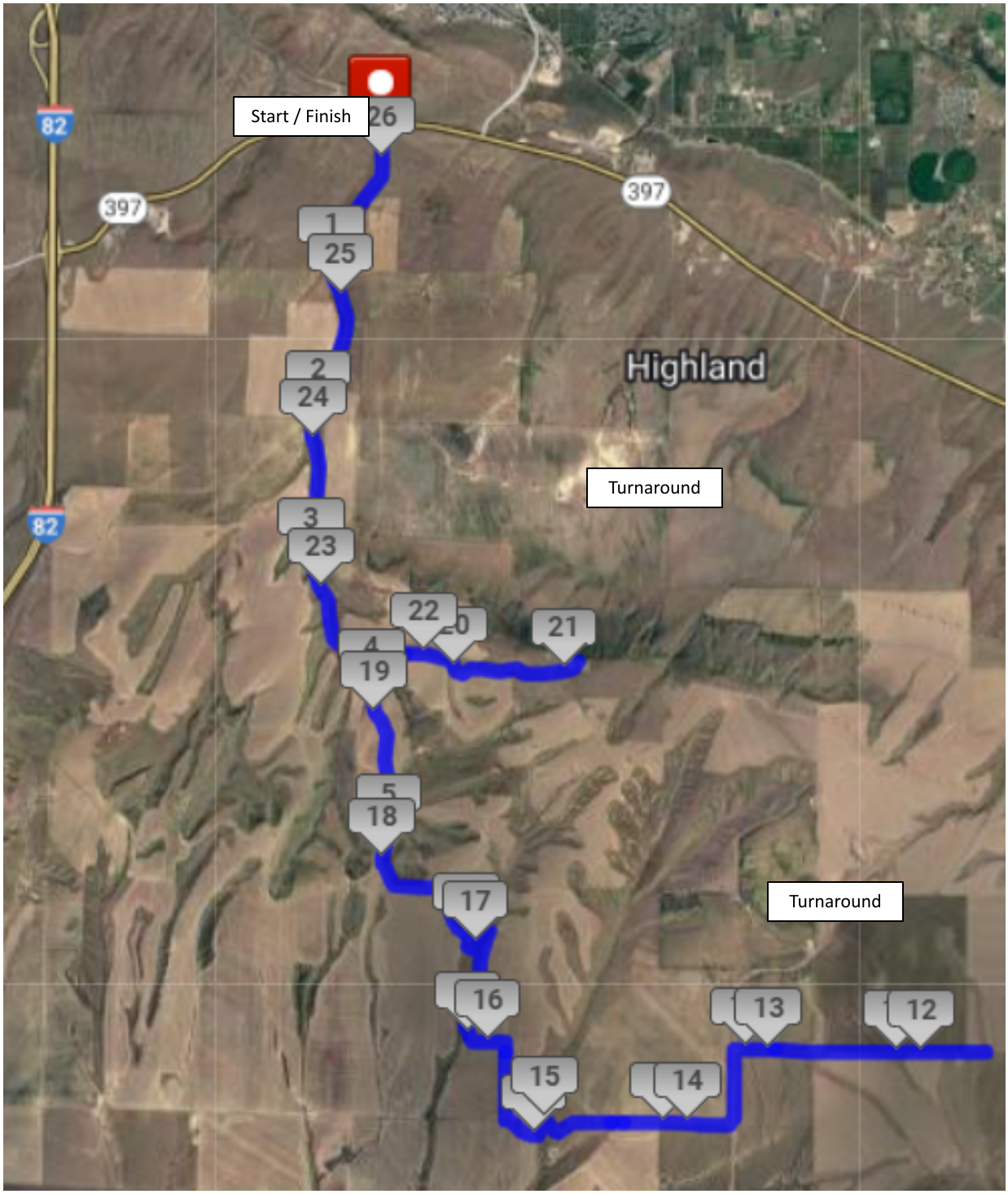
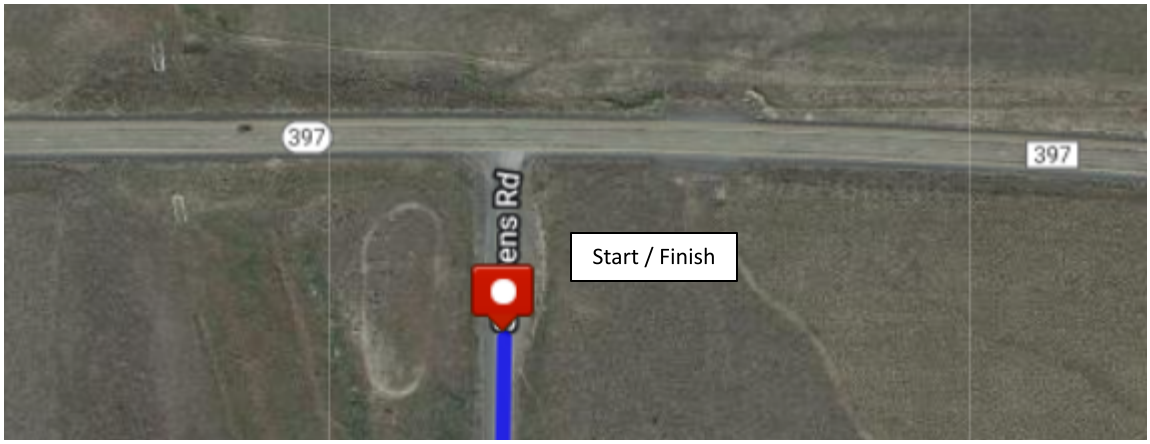

Start / Finish
82
397
397
26
1
25
2
24
Highland
Turnaround
3
82
23
22
21
19
18
17
Turnaround
16
13
12
15
14

EXHIBIT A


397
397
ens Rd
Start / Finish


11
Kirk Rd
12
Kirk Rd
Mills Rd
Kirk Rd
Kirk Rd
Turnaround

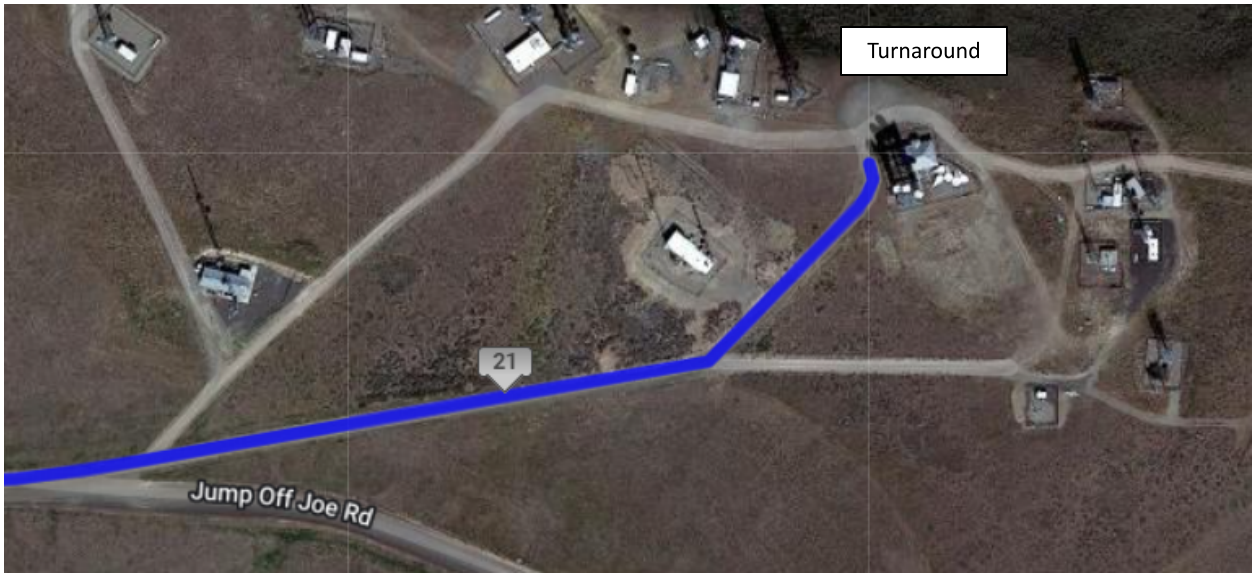

Turnaround
21
Jump Off Joe Rd

EXHIBIT A

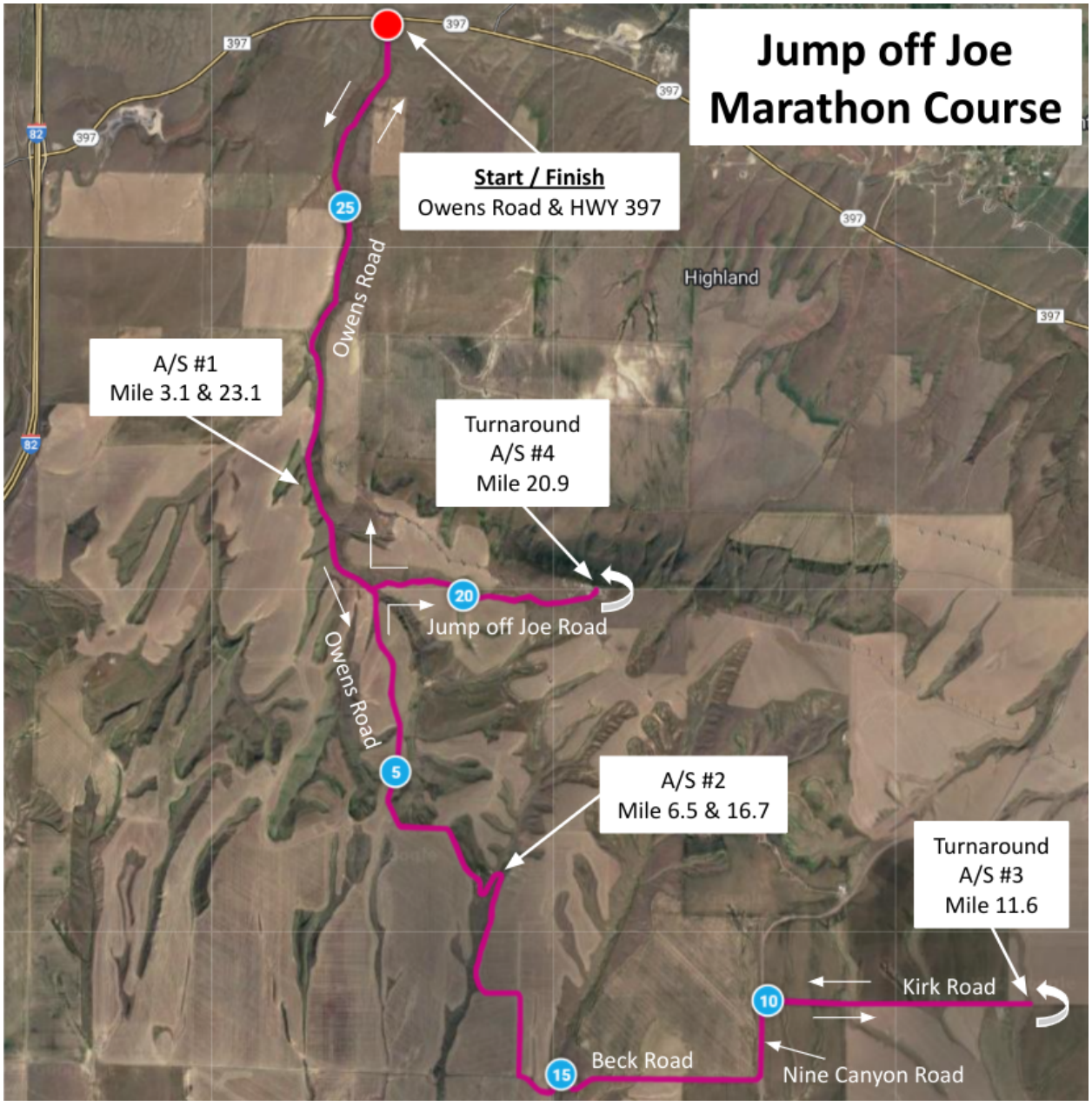
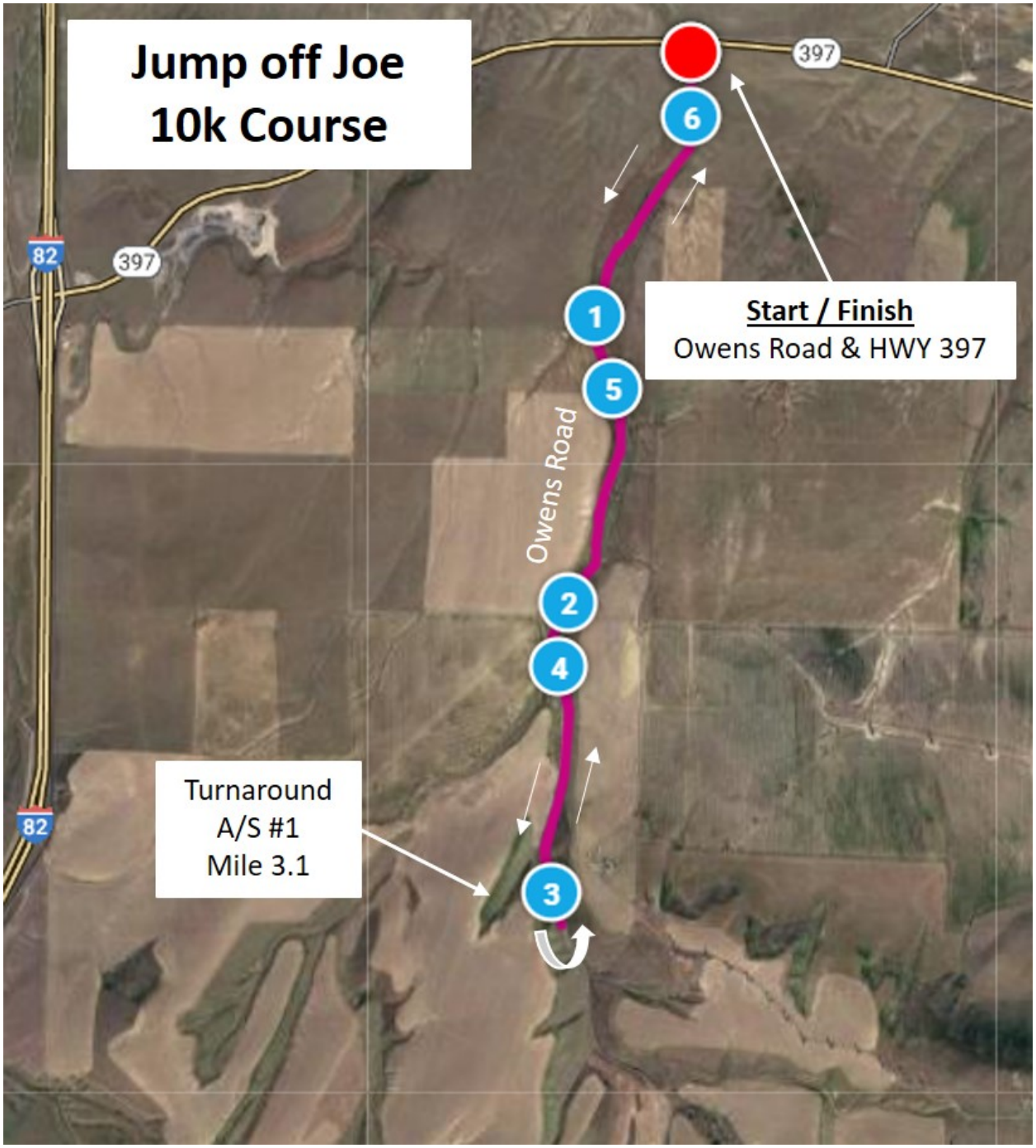

Jump off Joe
Marathon Course
Start / Finish
Owens Road & HWY 397
Owens Road
Highland
A/S #1
Mile 3.1 & 23.1
Turnaround
A/S #4
Mile 20.9
Jump off Joe Road
Owens Road
A/S #2
Mile 6.5 & 16.7
Turnaround
A/S #3
Mile 11.6
Kirk Road
Beck Road
Nine Canyon Road
397
82
25
20
5
10
15

EXHIBIT A


Jump off Joe
Half Marathon Course
397
397
82
397
Start / Finish
Owens Road & HWY 397
12
Owens Road
2
A/S #1
Mile 3.1 & 10.0
82
10
Turnaround
A/S #4
Mile 7.8
Owens Road
8
Jump off Joe Road
6
Turnaround
Mile 5.0

EXHIBIT A


Jump off Joe
10k Course
397
6
82
397
1
Start / Finish
Owens Road & HWY 397
5
Owens Road
2
4
Turnaround
A/S #1
Mile 3.1
82
3

CERTIFICATE OF INSURANCE

PRINT DATE: 8/1/2022

CERTIFICATE NUMBER: 20220801900524

AGENCY:

Edgewood Partners Insurance Center
5909 Peachtree Dunwoody Road, Suite 800
Atlanta, GA 30328
678-324-3300 (Phone), 678-324-3303 (Fax)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

NAMED INSURED:

USA Track & Field, Inc.
130 East Washington Street, Suite 800
Indianapolis IN 46204

Nomad Trail Runners of eastern washington

INSURERS AFFORDING COVERAGE:

INSURER A: Accredited Surety and Casualty Company, Inc. NAIC# 26379
INSURER B: Allied World National Assurance Company NAIC# 19489

EVENT INFORMATION:

Jump off Joe marathon (8/20/2022 - 8/20/2022)

POLICY/COVERAGE INFORMATION:

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS	TYPE OF INSURANCE:	POLICY NUMBER(S):	EFFECTIVE:	EXPIRES:	LIMITS:	
A	GENERAL LIABILITY					
	X Occurrence X Participant Legal Liability	1-TPM-IN-17-01268997	11/1/2021 12:01 AM	11/1/2022 12:01 AM	GENERAL AGGREGATE (Applies Per Event)	$4,000,000
					EACH OCCURRENCE	$2,000,000
					DAMAGE TO RENTED PREMISES (Each Occ.)	$2,000,000
					MEDICAL EXPENSE (Any one person)	EXCLUDED
					PERSONAL & ADV INJURY	$2,000,000
					PRODUCTS-COMP/OP AGG	$2,000,000
A	UMBRELLA/EXCESS LIABILITY					
	X Occurrence	1-TPM-IN-17-01268998	11/1/2021 12:01 AM	11/1/2022 12:01 AM	EACH OCCURRENCE	$3,000,000
					AGGREGATE	$3,000,000
B	OTHER					
	X EXCESS LIABILITY	0313-1301	11/1/2021 12:01 AM	11/1/2022 12:01 AM	EACH OCCURRENCE	$7,000,000
					AGGREGATE	$7,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS:

Coverage applies to USA Track & Field sanctioned events and registered practices, including any directly related activities, such as event set-up and tear-down, participant check-in and award ceremonies.

Excess policy follows form of underlying General Liability.

Evidence of coverage only

CERTIFICATE HOLDER:

Nomad Trail Runners of eastern washington
PO Box 591
Richland WA 99352

NOTICE OF CANCELLATION:

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

AUTHORIZED REPRESENTATIVE:



COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022,
Subject:	First Contract Amendment with White Bluffs Consulting, LLC
Presenter:	
Prepared By:	P. Schut
Reviewed By:	Purchasing

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:

Per Resolution 2022-272, the Board of Benton County Commissioners entered into a contract with White Bluffs Consulting, LLC to assist the County with permitting a couple of upcoming capital projects.

It was discovered during the initial effort that additional work is needed to be completed to meet the requirements outlined in the Army Corp of Engineers & County Shoreline Master Program permit process.

The First Contract Amendment is needed to increase the total dollar amount from $10,000.00 to $15,000.00, excluding WSST.

Fiscal Impact:

Amount: Additional $5,000.00 excluding W.S.S.T. Total Contract Amount: $15,000.00 excluding W.S.S.T
Fund: Park Development Fund (Fund # 0110-102)

Recommendation:

Approve the first amendment to the personal services contract with White Bluffs Consulting, LLC.

Suggested Motion:

Approve as part of the Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE FIRST AMENDMENT TO THE PERSONAL SERVICES CONTRACT WITH WHITE BLUFFS CONSULTING, LLC TO ASSIST WITH THE PERMITTING PROCESS FOR A COUPLE OF UPCOMING CAPITAL PROJECTS AT TWO RIVERS PARK

WHEREAS, per Resolution 2022-272, the Board of Benton County Commissioners entered into a contract with White Bluffs Consulting, LLC to assist the County with permitting for a couple of upcoming capital projects; and

WHEREAS, it was discovered during the initial effort that additional work is needed to be completed to meet the requirements outlined in the Army Corp of Engineers & County Shoreline Master Program permit process; and

WHEREAS, the First Contract Amendment is needed to increase the total dollar amount from $10,000.00 to $15,000.00, excluding WSST; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby agrees to sign the attached first amendment to the personal services contract with White Bluffs Consulting, LLC to increase the total dollar amount to not exceed from $10,000.00 to $15,000.00 excluding WSST.

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

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

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

Orig.: Purchasing Department P. Schut
cc: Auditors; S. Godinez, White Bluffs Consulting, LLC.

DocuSign Envelope ID: 78B8F76B-B934-4AB0-9127-19CE85292C29

FIRST CONTRACT AMENDMENT
PERSONAL SERVICES CONTRACT

THIS FIRST CONTRACT AMENDMENT (hereinafter "First Amendment") is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **WHITE BLUFFS CONSULTING, LLC**, a corporation organized under the laws of the State of Washington with its principal offices at 189205 E 36th Ave, Kennewick, WA 99337 (hereinafter "CONTRACTOR").

WHEREAS, per Resolution No. 2022-272, the parties entered into a Personal Services Contract (hereinafter the "Contract"), whereby CONTRACTOR agreed to assist the COUNTY in the permitting process for upcoming construction projects at Two Rivers Park; and

WHEREAS, this First Amendment is necessary as the COUNTY would like to add an additional $5,000.00 to the original contract amount; and

NOW THEREFORE, in consideration of the provisions and agreements set forth herein, the parties agree that all provisions of their original Contract shall remain in effect except the following Sections 5.a and 5.b., which are amended and incorporated as follows:

5. **COMPENSATION -** Sections 5.a. and 5.b. are hereby deleted in their entirety and replaced with the following:

a. For the services performed under this Contract, the CONTRACTOR shall be paid a flat fee of Fifteen Thousand Dollars and Zero Cents ($15,000.00), excluding W.S.S.T., in accordance with Exhibit A, "Scope of Work & Fees", which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Fifteen Thousand Dollars and Zero Cents ($15,000.00), excluding W.S.S.T.

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

Dated:_____

FOR: BENTON COUNTY

Chairman

Approved as to Form

DocuSigned by:
Eric Andrews
B4F7073BB8A1486...
Civil Deputy Prosecuting Attorney

Dated: 8/3/2022

FOR: WHITE BLUFFS CONSULTING, LLC

DocuSigned by:
Ben Floyd
DC65DA8AD7AC48C...
Signature

Member
Title:

Ben Floyd
Print Name

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022
Subject:	Awarding the Purchase of Rifles to Bravo Company USA, Inc. for the Benton County Sheriff's Office
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	BCSO; 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) is in the process of implementing a structured replacement plan for the current patrol rifle inventory. It is necessary to phase out unserviceable patrol rifles and associated equipment and issue new patrol rifle platforms to the BCSO patrol.

BCSO solicited vendors from the MRSC listed under the categories of "General Goods" and "Police Supplies" for (8) rifles w/ WARCOMP 556 adapters, (4) Surefire suppressors, (8) Surefire weapon lights, and (3) Aimpoint rifle optics, with Bravo Company USA, Inc. Hartland, WA being the only vendor able to provide pricing for the requested rifles w/ WARCOMP 556 adapters.

The BCSO reviewed the proposal and recommends awarding the purchase of eight (8) rifles w/WARCOMP 556 adapters to Bravo Company USA, Inc. in the amount of $9,592.00 including shipping, plus WSST, as the only responsive bidder.

Fiscal Impact

Cost: $9,592.00 including shipping, plus WSST

Fund: 1410 – Sheriff's Equipment Purchase & Replacement Fund

Recommendation

Approve the attached Resolution awarding the purchase of eight (8) rifles w/WARCOMP 556 adapters to Bravo Company USA, Inc. in the amount of $9,592.00 including shipping, plus WSST, as the only responsive bidder.

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 AWARDING THE PURCHASE OF EIGHT (8) RIFLES TO BRAVO COMPANY USA, INC. FOR THE BENTON COUNTY SHERIFF'S OFFICE

WHEREAS, the Benton County Sheriff's Office (BCSO) is in the process of implementing a structured replacement plan for the current patrol rifle inventory; and

WHEREAS, patrol rifles that are currently issued to deputies have either a very limited service life remaining or have been out of service due to operational issues; and

WHEREAS, it is necessary to phase out unserviceable patrol rifles and associated equipment and issue new patrol rifle platforms to the BCSO patrol; and

WHEREAS, the BCSO solicited vendors from the MRSC listed under the categories of "General Goods" and "Police Supplies" for (8) rifles w/ WARCOMP 556 adapters, (4) Surefire suppressors, (8) Surefire weapon lights, and (3) Aimpoint rifle optics; and

WHEREAS, Bravo Company USA, Inc. Hartland, WA was the only vendor able to provide pricing for the requested rifles w/ WARCOMP 556 adapters; and

WHEREAS, the BCSO reviewed the proposal and recommends awarding the purchase of eight (8) rifles w/WARCOMP 556 adapters to Bravo Company USA, Inc. in the amount of $9,592.00 including shipping, plus WSST, as the only responsive bidder; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with the recommendation and hereby awards the purchase of eight (8) rifles w/WARCOMP 556 adapters to Bravo Company USA, Inc., Hartland, WI in the amount of $9,592.00 including shipping, plus WSST.

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: BCSO
Cc: Auditors, Purchase File, Bravo Company USA, Inc. L. Small

7/18/2022

PO Box 341
Hartland WI, 53029
Fax: 262-367-0989
Web: BravoCompanyMFG.com
BravoCompanyUSA.com

Official Quote for Record
Benton County Sheriff's Office

The below listed quote is valid on the posted date.

Note: This correspondence contains confidential and/or privileged material and is intended only for the use of the recipient(s) named above. Any review, retransmission, conversion to hard copy, copying, reproduction, circulation, publication, dissemination or other use of, or taking of any action, or omission to take action, in reliance upon this information by persons or entities other than the intended recipient is prohibited.

We gladly accept department purchase orders submitted on department letterhead. You may email purchase orders to tsill@bravocompanyusa.com.

Thank you,

Bravo Company USA, Inc.
Email: tsill@bravocompanyusa.com

Product Code	Product Name	Price	Quantity	Total
BCM-Carbine-610-750	BCM® CQB11 MCMR Carbine	$ 1,060.00	8	$ 8,480.00
SF-WARCOMP-556-1-2-28	SureFire® WARCOMP 556 Flash Hider / Suppressor Adapter for M4/ 16 Rifles and Variants **Installed**	$ 129.00	8	$ 1,032.00
				$ -
				$ -
	Shipping Charge	$ 10.00	8	$ 80.00
			Grand Total	$ 9,592.00

The Terms and Conditions of this Quotation apply to any contract between Bravo Company and Purchaser for the sale and purchase of the Goods identified in this Quotation to the exclusion of any other terms or conditions that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1. Acceptance. This Quotation is subject to written confirmation by Bravo Company upon receipt of any order, which shall be binding upon Purchaser.

2. Payment. Payment for the Goods shall be made within thirty (30) days of delivery of the Goods. Failure by the Purchaser to make timely payment shall entitle Bravo Company to suspend delivery of all current and future deliveries or orders until payment is made.

3. Taxes. No applicable taxes included, Purchaser shall be responsible for all applicable taxes.

4. Warranties. Bravo Company warrants that the Goods shall conform to the description stated in this Quotation. The foregoing warranty is Bravo Company's sole warranty with respect to the Goods. All other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose, are hereby disclaimed. Bravo Company's liability for breach of warranty is limited solely to the replacement of defective Goods, which shall be returned to Bravo Company. Failure to give notice of a warranty claim within thirty (30) days from date of delivery shall constitute waiver of all claims in respect to such Goods.

5. Limited Liability. Bravo Company's liability to Purchaser shall not exceed in any case, under any cause of action, the return amount of the purchase price paid by purchaser. Under no circumstance shall Bravo Company be liable for special, indirect or consequential damages. The price stated for the Goods is consideration for limiting Bravo Company's liability. No action, regardless of form, arising out of this Quotation may be brought more than one (1) year following the date of this Quotation. In no event will Bravo Company be responsible or liable to indemnify the Purchaser or any of its employees, directors, offices, agents, affiliates, or successors for costs, damages or expense arising out of or related to the Goods or their use.

6. Goods Use Indemnification. Purchaser shall indemnify and hold harmless Bravo Company and any of its employees, directors, officers, agents, affiliates or successors from any and all fault, liabilities, costs, expenses, claims, demands or lawsuits, whether arising in tort or contract, including attorney's fees, expenses and costs, arising out of use of the Goods.

7. Force Majeure. Any delay or failure of either party to perform its obligations pursuant to this Quotation will be excused if, and to the extent that it is caused by an event or occurrence not reasonably foreseeable and beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), natural disasters, epidemic, wars, civil unrest. sabotage, inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) is given by the affected party to the other party not later than 10 days after the occurrence of such event.

8. Export Control Laws. Purchaser acknowledges that the Goods may be subject to export control laws, including, for example, the International Traffic in Arms Regulations ("ITAR"), and agrees to abide by and follow all applicable export control laws.

9. Governing Law, Venue and Jurisdiction. All issues related to this Quotation shall be governed by the laws of the State of Wisconsin, and any dispute shall be resolved in the State Courts in Waukesha County, Wisconsin, and/or the United States District Court, Eastern District, Milwaukee Division.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022
Subject:	Awarding the Purchase of Easy Dump to Par-Kan Company for the Benton County Facilities Department
Presenter:	
Prepared By:	D. Hope
Reviewed By:	M. McGhan, 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 Facilities Department is responsible for the maintenance of County parks. There is a need for the Facilities Department to more efficiently empty trash receptacles at the County parks.

The Benton County Purchasing Department solicited vendors off the MRSC roster list for the purchase of one Easy Dump with associated accessories with the following results:

- Par-Kan Company, Silver Lake, IN - $30,805.07 excluding WSST

The quote provided to us only includes an estimate of delivery costs from Indiana to Kennewick and actual costs will be billed upon delivery. Also, due to the extreme volatility of the price of steel the quote is based upon that day's prices and the cost may be higher when the material for our order is placed as the Easy Dump is manufactured to order. Therefore, we are asking for a contract amount of not to exceed $40,000.00 to cover actual costs of delivery and potential increase in material costs.

Fiscal Impact

Cost: $40,000.00, excluding WSST

Fund: Park development fund

Recommendation

Approve the attached Resolution awarding the purchase of one Easy Dump with associated accessories to Par-Kan Company in the amount of $40,000.00 excluding WSST.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING THE PURCHASE OF ONE EASY DUMP TO PAR-KAN COMPANY OF SILVER LAKE, IN, FOR THE BENTON COUNTY FACILITIES DEPARTMENT

WHEREAS, Benton County Facilities Department is responsible for maintenance of County parks; and

WHEREAS, there is a need for the Facilities Department to more efficiently empty trash recepticals at County parks; and

WHEREAS, per Resolution 2021-233, the County-wide Procurement, Leasing, and Contracting Policy allows for purchases between $10,000 and $50,000 to be solicited from the MRSC vendor's list; and

WHEREAS, the Benton County Purchasing Department solicited vendors from the MRSC roster list for the purchase of one Easy Dump and associated accessories with the following results:

- Par-Kan Company, Silver Lake, IN - $30,805.07 excluding WSST

WHEREAS, the Purchasing Department has reviewed the proposal for the purchase of the above-mentioned Easy Dump and recommends awarding the purchase to Park-Kan Company, Silver Lake, IN;

WHEREAS, the quote provided to us only includes an estimate of delivery costs from Indiana to Kennewick and actual costs will be billed upon delivery. Also, due to the extreme volatility of the price of steel the quote is based upon that day's prices and the cost may be higher when the material for our order is placed as the Easy Dump is manufactured to order. Therefore, we are asking for a contract amount of not to exceed $40,000.00 to cover actual costs of delivery and potential increase in material costs; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, concurs with the recommendation and hereby awards the purchase to Par-Kan Company, Silver Lake, IN, as the lowest responsive bidder for an amount not to exceed $40,000.00, excluding WSST.

Dated this 16th day of August, 2022.

_____
Chairman of the Board

_____
Member

Attest _____
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington.

Orig: Purchasing Department
cc: Auditor, ERR, Adam Fyall, Jeff Jones, and Procurement

Prepared by: D. Hope

PAR-KAN COMPANY

2915 WEST 900 SOUTH
SILVER LAKE, IN 46982
PH (260) 352-2141
FAX (260) 352-0701

QUOTATION

Quote No.: **RF220601-006**
Date: **06/01/22**
Page: **1**

Quotation For

COUNTY OF BENTON, WASHINGTON
KENNEWICK, WA 99338
(509) 539-4769

CUSTOMER ID	PHONE #	QUOTE TERMS	QUOTE LEADTIME - WEEK(S)
	509-539-4769	TO BE DETERMINED	

SALES REP ID	SHIPPING METHOD	CONTACT NAME	EXPIRATION DATE
		MICHAEL MCGHAN	

PART ID / QUOTE QTY	CUSTOMER PART NO / DESCRIPTION	UNIT PRICE	EXTENDED PRICE
0RD31-06YD-ZAA-	6 YD REFUSE DUMPER, 28 IN BARREL LIFTER, BLACK OPTION Z -BAYNE HYDRAULICS OPTION AA- BARREL LIFTER (440912) POWDER: 011- BLACK		
1		25,441.4000	$25,441.40
361703	TARP, RR SEMI AUTO SPRING LOADED		
1		2,066.0000	$2,066.00
	FREIGHT TO KENNEWICK, WA 99338		
1		3,297.6700	$3,297.67

**** QUOTE SPECIFICATIONS ****

PLEASE NOTE: DUE TO THE EXTREME VOLATILITY OF PURCHASED COMPONENTS AND STEEL PRICING, THIS QUOTE IS BASED ON TODAYS MATERIAL PRICES AND HIGHER PRICING AT THE TIME OF PURCHASE IS AND SHOULD BE EXPECTED. YOUR SALES REPRESENTATIVE WILL CONTACT YOU WITH ANY PRICING ADJUSTMENTS AT THE TIME OF ORDER AND/OR UP UNTIL MATERIAL IS PURCHASED FOR YOUR ORDER.

Total 30,805.07

PAR-KAN™
STRENGTH. QUALITY. SERVICE.

EASY DUMP



THE ORIGINAL *REFUSE COLLECTOR THAT GOES WHERE THE BIG TRUCKS CAN'T*

The Par-Kan ***EASY DUMP*** is designed to be your "flex" refuse collector, and improves your operating efficiency. Haul up to 4,ooo lbs on the back of a basic truck. This convenient and reliable equipment is ***easy*** to install, ***easy*** to maintain, ***easy*** to use, and ***easy*** to remove if you need to use the truck for another application. The ***EASY DUMP*** is built tough with a streamlined design for ***easy*** operation.

VERSATILE

The Par-Kan ***EASY DUMP*** is a low cost solution for rural routes, missed stops, parks, gated communities, and other restricted areas. Save time and money by adding this equipment to your fleet:

- Non-CDL single operator
- Less fuel
- Lower maintenance cost
- Lower emissions

EASY DUMP is not limited to trash – this multi-use body can be used for yard waste, ground cover, food waste, hauling containers, etc. Split model is available for recycling too!

PROFITABLE

Expand your market opportunity by utilizing this refuse collector for specialized services, such as door to curb collection, recycling, rural routes, and much more!

STRONG

The durable Par-Kan ***EASY DUMP*** is designed to last. The body is completely powder coat painted and the heavy duty steel design has wrapped corners for added strength. The self-contained dual cylinder electrical hydraulic system is designed to be waterproof and the streamlined remote feature allows for ***easy*** operation.

Stronger. Greener. Better. POWDER TOUGH COATED™

800-291-5487 | info@Par-Kan.com

www.Par-Kan.com

EASY DUMP

OPTIONAL ROLL-RITE SPRING LOADED TARP

FOLD DOWN SIDE DOORS



HEAVY DUTY RUBBER FLAP

QUICK CONNECT CABLE SYSTEM

STREAMLINED REMOTE SYSTEM

OPTIONAL BAYNE LIFT SYSTEM
Carts / Barrels / Euro



50/50 Split Model

Towable Hydraulic Dumper



AVAILABLE MODELS

- **3** Cubic Yard
- **4** Cubic Yard *(Short Bed Model)*
- **6** Cubic Yard
- **7.5** Cubic Yard *(Split Body for Recycling)*
- **8** Cubic Yard

TRUCK REQUIREMENTS

- 3/4 ton minimum
- 8' long bed
- Towable version available

PAINT COLORS

- White
- Black
- Dark Green
- Custom Colors Available

PAR-KAN™
STRENGTH. QUALITY. SERVICE.

Par-Kan Company, LLC
800-291-5487
info@Par-Kan.com

www.Par-Kan.com

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022
Subject:	Execute contract with Goodman and Melenbacher ENT, Inc. dba GAME, Inc. for CB22-06 Benton County Shooting Range Expansion project
Presenter:	
Prepared By:	D. Hope
Reviewed By:	R. Blain, Procurement

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 2022-501 dated July 26, 2022, an award was made to Goodman and Melenbacher ENT, Inc. dba GAME, Inc. for CB22-06 Benton County Shooting Range Expansion project. As directed, a contract has been prepared, reviewed, and approved as to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division, and has been executed by Goodman and Melenbacher ENT, Inc. dba GAME, Inc.

Fiscal Impact

Amount: $590,190.00

Fund: Capital Projects Fund

Recommendation

It is recommended by the Director of Operations and Capital Programs that the Board approve and sign the contract with Goodman and Melenbacher ENT, Inc. dba GAME, Inc. for the Benton County Shooting Range Expansion 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 EXECUTE THE CONTRACT WITH GOODMAN AND MELENBACHER ENT, INC. DBA GAME, INC. FOR THE CB22-06 – BENTON COUNTY SHOOTING RANGE EXPANSION PROJECT

WHEREAS, by Resolution 2022-501 dated July 26, 2022, an award was made to Goodman and Melenbacher Ent, Inc. dba GAME, Inc., Kennewick, WA for the Benton County Shooting Range Expansion project and as directed, staff has prepared a contract for Board approval; and

WHEREAS, the 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 $590,190.00 excluding Washington State Sales Tax has been executed by Goodman and Melenbacher ENT, Inc. dba GAME Inc.; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby approves the contract awarded July 26, 2022 to Goodman and Melenbacher ENT, Inc. dba GAME, Inc., in the amount of $590,190.00 excluding Washington State Sales Tax; and

BE IT FURTHER RESOLVED, the Director of Operations and Capital Programs is hereby authorized to proceed with the Benton County Shooting Range Expansion project according to the terms of the contract; and

BE IT FURTHER RESOLVED, the project shall begin on the date of the Notice to Proceed and be completed in its entirety within one hundred fifty (150) calendar days as described in the contract documents.

Dated this 16th day of August, 2022.

_____
Chairman.

_____
Chairman Pro-Tem.

_____
Member.

Attest:_____
Clerk of the Board

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

Orig.: Public Works D. Hope
cc: Auditor, PA, GAME Inc.

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)

Robert Blain
Benton County
7122 W. Okanogan Place
Kennewick, WA 99336
509.736.2704

and the Contractor:
(Name, legal status, address and other information)

Marcus Goodman
Goodman & Melenbacher ENT, Inc. dba GAME, Inc
2312 S. Ely St.
Kennewick, WA 99336
Telephone: (509) 308-6891

for the following Project:
(Name, location and detailed description)

Benton County Shooting Range Expansion
93315 N. WA-225
Benton City, WA 99320

The Architect:
(Name, legal status, address and other information)

Gary Fleming
Meier Architecture • Engineering
12 W. Kennewick Avenue
Kennewick, WA 99336
509.735.1589

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.
/

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User Notes: (1466005617)

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), 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:
(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.)

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[X] Not later than one hundred fifty (150) calendar days from the date of commencement of the Work.

[ ] 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 Five hundred ninety thousand one hundred ninety dollars and zero cents ($590,190.00), 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
Additive Alternate Bid	$108,000.00

§ 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.)

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ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment (AIA Document G702) 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.

§ 5.1.2 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 amount certified to the Contractor not later than thirty (30) days after the Architect received the Application for Payment. If an Application for Payment is received by the Architect 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 Architect 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 Architect 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 Architect determines, in the Architect's professional 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 Architect 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 Architect 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.)

Five Percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

.

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§ 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, Architect, 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 Architect.

§ 5.2.2 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:

§ 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 Architect 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 Architect.)

§ 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

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[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, Bldg. E
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)

Marcus Goodman
2312 S. Ely St.
Kennewick, WA 99336
(509) 308-6891
marcus@gameincgc.com

§ 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 A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide Public Works Performance and Payment Bonds on the Owner's furnished forms.

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§ 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

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction

.4

(Paragraphs deleted)

.5 Drawings

Number	Title	Date
Refer to the Drawing List on Project Title Sheet, drawing T101 Shooting Range Expansion (17 Drawings)		

.6 Specifications

Section	Title	Date	Pages
Refer to Table of Contents for the Project Specification Book			

.7 Addenda, if any:

Number	Date	Pages
Addenda #1	6/24/2022	1-3

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 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

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[ ] 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)*	**CONTRACTOR** *(Signature)*
Shon Small, Chairman, Board of County Commissioners *(Printed name and title)*	Marcus Goodman, Vice President *(Printed name and title)*

Approved as to Form:

DocuSigned by:
Eric Andrews
B4F7673BB8A1486...
Eric Andrews, Deputy Prosecuting Attorney

08/04/2022
Date

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PAGE 1

AGREEMENT made as of the day of in the year two thousand and twenty two

...

Robert Blain
Benton County
7122 W. Okanogan Place
Kennewick, WA 99336
509.736.2704

...

Marcus Goodman
Goodman & Melenbacher ENT, Inc. dba GAME, Inc
2312 S. Ely St.
Kennewick, WA 99336
Telephone: (509) 308-6891

...

Benton County Shooting Range Expansion
93315 N. WA-225
Benton City, WA 99320

...

Gary Fleming
Meier Architecture • Engineering
12 W. Kennewick Avenue
Kennewick, WA 99336
509.735.1589

PAGE 2

[X] A date set forth in a notice to proceed issued by the Owner.

PAGE 3

[X] Not later than ~~(—)~~ one hundred fifty (150) calendar days from the date of commencement of the Work.

...

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§ 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 ~~($—),~~ Five hundred ninety thousand one hundred ninety dollars and zero cents ($590,190.00), subject to additions and deductions as provided in the Contract Documents.

...

Additive Alternate Bid	$108,000.00

...

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.

PAGE 4

§ 5.1.1 Based upon Applications for Payment (AIA Document G702) 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.

§ 5.1.2 ~~The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:~~

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 amount certified to the Contractor not later than thirty (30) days after the Architect received the Application for Payment. If an Application for Payment is received by the Architect 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 Architect received the Application for Payment.

§ 5.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)~~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 Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4 ~~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 allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications~~ 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 ~~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.~~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:

~~§ 5.1.6 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:~~

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...

Five Percent (5%)

...

~~(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)~~

.

PAGE 5

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 Security Department.

...

~~%~~ One percent (1%) per month per RCW 39.76.011

PAGE 6

[X] Litigation in a court of competent jurisdiction

...

No termination Fee

...

Robert Blain
7122 W. Okanogan Place, Bldg. E
Kennewick, WA 99336
509.736.2704
robert.blain@co.benton.wa.us

...

Marcus Goodman
2312 S. Ely St.
Kennewick, WA 99336
(509) 308-6891
marcus@gameincgc.com

...

§ 8.5.2 The Contractor shall provide ~~bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents.~~Public Works Performance and Payment Bonds on the Owner's furnished forms.

PAGE 7

The parties shall endeavor to establish necessary protocols governing transmission of Instruments of Service or any other information or documentation in digital form.

...

.2 ~~AIA Document A101™ 2017, Exhibit A, Insurance and Bonds~~

...

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.4 ~~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.)*~~

...

Refer to the Drawing List on Project
Title Sheet, drawing T101
Shooting Range Expansion
(17 Drawings)

...

Refer to Table of Contents for the
Project Specification Book

...

Addenda #1	6/24/2022	1-3

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Shon Small, Chairman,
Board of County Commissioners

Marcus Goodman, Vice President

...

Approved as to Form:

Eric Andrews, Deputy Prosecuting Attorney

Date

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

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_____

(Signed)

_____

(Title)

_____

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Benton County Shooting Range Expansion
93315 N. WA-225,
Benton City, WA 99320

THE OWNER:
(Name, legal status and address)

Benton County
7122 W. Okanogan Place, Bldg. E
Kennewick, WA 99336

THE ARCHITECT:
(Name, legal status and address)

Meier Architecture • Engineering
12 W. Kennewick Avenue
Kennewick, WA 99336

TABLE OF ARTICLES

1 GENERAL PROVISIONS

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3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

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7 CHANGES IN THE WORK

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13 MISCELLANEOUS PROVISIONS

ADDITIONS AND DELETIONS:
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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.
/

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Init.

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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 (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), 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 Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal 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 (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 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.

§ 1.1.5 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.

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§ 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.

§ 1.2.2 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.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 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.

§ 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, Architect, and the Architect's consultants.

§ 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. 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.

§ 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 set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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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.

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 writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 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 notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 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 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 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. 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.

§ 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 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 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.

§ 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 both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, 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 and compensation for the Architect's additional services 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 Architect, 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.

§ 3.1.2 The Contractor shall perform the Work in general accordance with the Contract Documents.

§ 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 Architect in the Architect'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.

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§ 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 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.

§ 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 Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect 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 or Architect 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.

§ 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 give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 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.

§ 3.4 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 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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§ 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.

§ 3.5 Warranty

§ 3.5.1 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 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 Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 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 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for 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.

§ 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, 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.

§ 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 and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect 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 Architect 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 Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party 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 and Architect. 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.

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§ 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 and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect 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.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 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 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.

§ 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 Architect's approval. The Architect'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 Architect 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.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 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, available to the Architect and Owner, and

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delivered to the Architect for submittal 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. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect 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 Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect 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 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.

§ 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 Architect.

§ 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 Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect 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 Architect'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 Architect on previous submittals. In the absence of such notice, the Architect'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 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 and the Architect will

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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 Architect. The Owner and the Architect 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 and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect 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 Architect at the time and in the form specified by the Architect.

§ 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.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect 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 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.

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§ 3.18 Indemnification

§ 3.18.1 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 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.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 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.

§ 4.2 Administration of the Contract

§ 4.2.1 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.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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 the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 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.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§ 4.2.5 Based on the Architect's evaluations 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.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect 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 Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 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. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 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's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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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.

§ 5.2 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 and Architect 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 Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect 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 or Architect 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 or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect 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 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 or Architect 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 and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect 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.

§ 5.4 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.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 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 Architect 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 Architect 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.

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§ 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.

§ 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 Architect 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, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 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 Architect and signed by the Owner, Contractor, and Architect 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.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, 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 Architect 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 case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect 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:

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.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 Architect;
.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 Architect 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 Architect. 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 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect 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 Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect 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 Architect'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 Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect 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.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 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.

§ 8.3 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 or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by 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 Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

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 Architect 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 Architect. This schedule, unless objected to by the Architect, 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 Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 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 Architect 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 or Architect require, 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 Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 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.

§ 9.3.2 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.

§ 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 Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect'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 and Owner of the Architect's 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 by the Architect to the Owner, based on the Architect's evaluation 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 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 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.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 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 9.4.2 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 9.4.1. If the Contractor and 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 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;

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.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 Architect's 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 Architect 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 Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect 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 Architect.

§ 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 Architect 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 Architect and 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. Neither the Owner nor Architect shall 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 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.

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§ 9.7 Failure of Payment

If the Architect 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 Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, 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 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.

§ 9.8.3 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. If the Architect'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 Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect 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.

§ 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 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 Architect 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 or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect 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.

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§ 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 Architect will promptly make such inspection. 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 listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, 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 Architect 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

.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.

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

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.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.

§ 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.

§ 10.2.5 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 Architect or anyone directly or indirectly employed by either of them, 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 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 and Architect.

§ 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 and Architect 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 and Architect 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 and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. 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 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, 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 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, Architect, and Architect's consultants shall be named as additional insureds 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.

§ 11.1.3 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 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

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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 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) 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 the 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 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

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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 and Architect 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 Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and 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.

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 Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect'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 Architect has not specifically requested to examine prior to its being covered, the Architect 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 Architect 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 Architect'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 or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 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 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.

§ 13.2 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, Architect, 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

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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.

§ 13.4.2 If the Architect, 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 Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect 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 Architect'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 Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect 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 shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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 Architect 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.

§ 14.1.3 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 and Architect, 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.

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§ 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 and the Architect, 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.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect 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 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 Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the 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.

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§ 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

§ 15.1.3.1 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 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated 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.

§ 15.1.3.2 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 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 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 Architect 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.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 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.

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§ 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 Architect 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 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 and the Architect, if the Architect is not serving as the Initial Decision Maker, 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.

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§ 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.

§ 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.

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§ 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.

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Benton County Shooting Range Expansion
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Benton City, WA 99320

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Benton County
7122 W. Okanogan Place, Bldg. E
Kennewick, WA 99336

...

Meier Architecture • Engineering
12 W. Kennewick Avenue
Kennewick, WA 99336

PAGE 13

§ 3.1.2 The Contractor shall perform the Work in general accordance with the Contract Documents.

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_____

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_____

(Title)

_____

(Dated)

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PUBLIC WORKS PERFORMANCE BOND

to BENTON COUNTY, WA

Bond No. 0243719

Benton County, Washington (County) has awarded to Goodman & Mehlenbacher Enterprises, Inc. (Principal), a contract for the construction of the project designated as **BENTON COUNTY SHOOTING RANGE EXPANSION,** in Benton County, Washington (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and Berkley Insurance Company (Surety), a corporation, organized under the laws of the State of DE and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of Five Hundred Ninety Thousand One Hundred Ninety and 00/100 US Dollars ($ 590,190.00) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL Goodman & Mehlenbacher Enterprises, Inc.	SURETY Berkley Insurance Company
8/8/2022	8/4/22
Principal Signature — Date	Surety Signature — Date
MARCUS GOODSMAN	Jennifer Martinez Ibarra
Printed Name	Printed Name
VICE PRESIDENT	Attorney-In-Fact
Title	Title

Name, address, and telephone of local office/agent of Surety Company is:

PayneWest
501 N Riverpoint Blvd Ste 403
Spokane, WA 99202

509-838-3501

PUBLIC WORKS PAYMENT BOND

to BENTON COUNTY, WA

Bond No. 0243719

Benton County, Washington (County) has awarded to Goodman & Mehlenbacher Enterprises, Inc. (Principal), a contract for the construction of the project designated as **BENTON COUNTY SHOOTING RANGE EXPANSION,** in Benton County, Washington (Contract), and said Principal is required, under the terms of that Contract, to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and Berkley Insurance Company (Surety), a corporation, organized under the laws of the State of DE and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of Five Hundred Ninety Thousand One Hundred Ninety and 00/100 US Dollars ($ 590,190.00) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all person who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL Goodman & Mehlenbacher Enterprises, Inc.	SURETY Berkley Insurance Company
8/8/2022	8/4/22
Principal Signature — Date	Surety Signature — Date
MARCUS GOODMAN	Jennifer Martinez Ibarra
Printed Name	Printed Name
VICE PRESIDENT	Attorney-In-Fact
Title	Title

Name, address, and telephone of local office/agent of Surety Company is:

PayneWest
501 N Riverpoint Blvd Ste 403
Spokane, WA 99202

509-838-3501

No. BI-7801m

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: ***James E. Majeskey II; Judith C. Kaiser-Smith; Thomas V. A. Davis; Jaclyn R. Kruse; Melissa Wolf; AiLi Palmer; or Jennifer Martinez Ibarra of PayneWest Insurance, a Marsh & McLennan Agency LLC Company of Spokane, WA*** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.$50,000,000.00),** to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 13th day of June, 2022.

Attest:

(Seal)

By _____
Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By _____
Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 13th day of June, 2022, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDRAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
APRIL 30, 2024

_____
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 4 day of August, 2022.

(Seal)

_____
Vincent P. Forte

WARNING – Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is void unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and **verification instructions** (on reverse) must be in blue ink.

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 121

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Katie Gillies

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Sheriff Patrol Dept Nbr: 121

Fund Name: Current Expense Fund Nbr: 0000101

TRANSFER FROM: **Dept. 12**1 TRANSFER TO: **Dept.** 121

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.210	1459	Detective	$40,000	521.210	1925	Overtime	$130,000
521.210	1456	Deputy	$40,000				
521.210	1451	Detective	$50,000				
TOTAL			$130,000	TOTAL			$130,000

Explanation:

Moving Funds from deputy lines to cover current excess in overtime due to staffing shortages in 2021 and 2022, homicides, SWAT and SIU Investigations.

Prepared by: Katie Gillies Date: 8/3/22

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022
Subject:	2022 Byrne Justice Assistance Grant
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 would like to participate in the 2022 Byrne Justice Assistance Grant (JAG) to fund the purchase of secure storage in marked police vehicles. The total award is $35,501 and the breakdown of funds is as follows:

KPD - $21,301

RPD - $8,875

BCSO - $5,325

Fiscal Impact

This is a reimbursable grant through the City of Kennewick, with no cash match requirement. This grant was included in the 2021/2022 budget process for both revenue and expenditures in Department 121.

Recommendation

Authorize the Chairman of the Board to sign the attached Interlocal Agreement between the City of Kennewick, City of Richland, and Benton County.

Suggested Motion

The Board of Benton County Commissioners hereby approves the 2022 Byrne Justice Assistance Grant (JAG) and authorizes the Chairman to sign the Interlocal Agreement between the City of Kennewick, City of Richland, and County of Benton.

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE CHAIRMAN OF THE BOARD TO SIGN THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KENNEWICK, WA, CITY OF RICHLAND, WA, AND COUNTY OF BENTON, WA FOR THE 2022 BYRNE JUSTICE ASSISTANCE GRANT (JAG).

WHEREAS, the Benton County Sheriff's Office would like to participate in the 2022 Byrne Justice Assistance Grant (JAG) to fund the purchase of secure storage in marked police vehicles; and

WHEREAS, the total amount awarded to the City of Kennewick was $35,870, and will be split between Kennewick, Richland and Benton County; and

WHEREAS, the City of Kennewick agrees to pay Benton County a total of $5,325 of JAG funds; and

WHEREAS, if there is a balance of grant funding remaining after the purchase of secure storage for marked police vehicles, the Board of Commissioners hereby authorizes the Benton County Sheriff's Office to apply it towards other equipment needed after receiving approval from the JAG Grant Committee; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby authorizes the Chairman to sign the Interlocal Agreement for the 2022 Byrne Justice Assistance Grant (JAG); and

BE IT FURTHER RESOLVED, Benton County's portion of the 2022 JAG award is $5,325; and

BE IT FURTHER RESOLVED the term of the attached Interlocal agreement shall commence upon signature of all parties and shall terminate September 30, 2025.

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, City of Kennewick

Prepared by: K. Gillies

THE STATE OF WASHINGTON
COUNTY OF BENTON **KNOW ALL BY THESE PRESENT**

INTERLOCAL AGREEMENT BETWEEN THE CITY OF KENNEWICK, WA THE CITY OF RICHLAND, WA AND COUNTY OF BENTON, WA

2022 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this August, 16, 2022, by and between The County of Benton, acting by and through its governing body, the Benton County Commissioners (hereinafter referred to as COUNTY) and the City of Kennewick, acting by and through its governing body, the Kennewick City Council (hereinafter referred to as KENNEWICK), and Richland, acting by and through its governing body, the Richland City Council (hereinafter referred to as RICHLAND), all three of Benton County, State of Washington, witnesseth:

WHEREAS, this Agreement is made under the authority of RCW 39.34 and,

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and,

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and,

WHEREAS, the total award to KENNEWICK, RICHLAND and COUNTY is $35,501, which will be shared between KENNEWICK, RICHLAND, and COUNTY, as they are certified as disparate, therefore requiring one application and award to be shared between all three jurisdictions; and,

WHEREAS, KENNEWICK, RICHLAND and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, KENNEWICK, RICHLAND and COUNTY agree as follows:

Section 1.

KENNEWICK is the fiscal agent for this grant as only one jurisdiction can make application for the funds. KENNEWICK agrees to pay RICHLAND a total of $8,875 and COUNTY a total of $5,325 of JAG funds from the 2022 award.

Section 2.

COUNTY agrees to use $5,325 for secure storage in marked patrol vehicles.

Section 3.

RICHLAND agrees to use $8,875 for defensive tactics and de-escalation training.

Section 4.

KENNEWICK agrees to use $21,301 to purchase software for tracking officer field training and performance as well as hardware and software for media production to engage the community and enhance transparency.

Section 5.

RICHLAND and COUNTY agree to submit timely quarterly reports to KENNEWICK, the grantee/fiscal agency, by the fifth calendar day at the end of each quarter (January 5, April 5, July 5 and October 5), consistent with, and for the purpose of compliance with the reporting requirements for the JAG program.

Section 6.

Nothing in the performance of this Agreement shall impose any liability on KENNEWICK for claims against COUNTY or RICHLAND, or on COUNTY or RICHLAND for claims against KENNEWICK.

Section 7.

Any party hereto may terminate this Agreement upon one hundred and twenty (120) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the other party's contract representative listed in Section 13 for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Termination of this Agreement by any party shall not affect or diminish authority exercised prior to delivery of required notice of termination.

Section 8.

Each party to this Agreement shall be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 9.

The parties to this Agreement do not intend for any third party to obtain any right by virtue of this Agreement.

Section 10.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

Section 11.

The term of this Agreement shall be from the date of signing through September 30, 2025.

Section 12.

By signing below, the signor certifies that he or she has the authority to sign this Agreement on behalf of the party, and the party agrees to the terms of this Agreement.

Section 13.

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

Benton County:	Sheriff Tom Croskrey
City of Richland:	Chief Brigit Clary
City of Kennewick:	Chief Chris Guerrero

Section 14.

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

City of Kennewick, Washington

_____
BILL MCKAY, Mayor

ATTEST:

_____
TERRI WRIGHT, City Clerk

APPROVED AS TO FORM:
Contract Authorization

_____
LISA BEATON, City Attorney

City of Richland, Washington

_____
JON AMUNDSON, City Manager

ATTEST:

_____
JENNIFER ROGERS, City Clerk

APPROVED AS TO FORM:
Contract Authorization

_____
HEATHER KINTZLEY, City Attorney

County of Benton, Washington

Chairman of Benton County Commission

APPROVED AS TO FORM:



Deputy Prosecuting Attorney

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 0010 DEPARTMENT NUMBER 123

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Tiffany Runge

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Superior Court Dept Nbr: 123

Fund Name: Current Expense Fund Nbr: 0010

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
5122100	51474	Court Reporter	$39,400	5122100	51922	Judge Pro Tem (part-time)	$35,000
5122100	54301	Travel	$3,000	5122100	51925	Overtime	$2,000
5122190	54131	Security	$32,000	5122100	52105	Uniform & Accessories	$2,400
				5122100	54103	Professional Services	$3,000
				5122190	54103	Professional Services	$32,000
TOTAL			$74,400	TOTAL			$74,400

Explanation:

Transfer of funds to adequately cover the costs incurred in my 2021-2022 Budget consistent with the Auditor's coding.

Prepared by: Tiffany Runge Date: 4-Aug-2022

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16th, 2022
Subject:	Company Seventy-Nine, Franchise Agreement Renewal
Presenter:	Cristina Woods, Public Works
Prepared By:	Jackie Mayfield, Administrative Assistant
Reviewed By:	Cristina Woods

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 received an application for a Franchise Order and Agreement for water utility lines and facilities from Company Seventy-Nine.

In accordance with RCW 36.55.040 and RCW 36.55.050, a public hearing must be held to allow public comment to the proposed franchise agreement prior to the final determination of the Board of County Commissioners. Subsequent to the public hearing, the Board may, upon its finding that the franchise agreement is in the best interest of the County, enter into said agreement by resolution. The public hearing was advertised in the newspaper of record on August 3rd and August 10th, 2022, in accordance with RCW 36.55.040, and a public hearing was held on August 16th, 2022, in accordance with RCW 36.55.050.

Fiscal Impact

None

Recommendation

Benton County Public Works recommends the Commissioners approve the Franchise Order and Agreement with Company Seventy-Nine by resolution.

Suggested Motion

Move to approve the Franchise Order and Agreement with Company Seventy-Nine.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FRANCHISES RE: GRANTING A FRANCHISE TO COMPANY SEVENTY-NINE TO PLACE WATER UTILITY LINES AND FACILITIES IN COUNTY ROAD RIGHTS OF WAY

WHEREAS, a public hearing was held August 16th, 2022 to consider the request of Company Seventy-Nine who has applied for a nonexclusive franchise to place water utility lines and facilities in unincorporated Benton County; and

WHEREAS, after hearing the testimony regarding the request for a franchise, the Board finds as follows:

1. The term of the franchise shall be a ten-year (10) period, expiring August 16th, 2032, with an associated cost of $500.00;
2. The Grantee is to carry liability insurance with Benton County named as an insured with a minimum limit of $1,000,000.00. A copy of the proof of insurance is to be provided to Benton County yearly;
3. Placement of facilities within the right of way shall meet all requirements of Benton County as to location and repair of roads and right of way;
4. Should Benton County require utility relocation work because of road construction, maintenance, or any other reason, said work shall be at the Grantee's expense;
5. The franchise is nonexclusive;
6. The Grantee is to sign the Order and Agreement for Nonexclusive Franchise;

WHEREAS, Company Seventy-Nine has agreed to the terms and has signed the Order and Agreement for Nonexclusive Franchise, said Order having been approved as to form by the Prosecuting Attorney's Office; **NOW, THEREFORE**

BE IT RESOLVED that the Nonexclusive Franchise for Company Seventy-Nine for water utility lines and facilities in County road rights of way be approved and that the Board indicates its approval by its signatures on the Order and Agreement for Nonexclusive Franchise.

Dated this 16th day of August, 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Public Works J.Mayfield

Return to:
Benton County Public Works
P. O. Box 1001
Prosser, WA 99350

Grantor: Benton County
Grantee: Company Seventy-Nine

BEFORE THE BOARD OF COUNTY COMMISSIONERS

BENTON COUNTY, STATE OF WASHINGTON

IN THE MATTER OF THE APPLICATION OF COMPANY SEVENTY-NINE FOR A NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN, OPERATE, USE, AND IF NECESSARY, REMOVE WATER UTILITY LINES SYSTEM AND FACILITIES WITHIN THE COUNTY OF BENTON, STATE OF WASHINGTON, UPON, OVER, UNDER, ALONG, AND ACROSS CERTAIN COUNTY ROADS AND PUBLIC HIGHWAYS, OR PARTS THEREOF, NOT WITHIN THE LIMITS OF ANY INCORPORATED CITY OR TOWN.	No._____ ORDER AND AGREEMENT FOR NONEXCLUSIVE FRANCHISE

FINDINGS

NOW, on this _____ day of _____ the petition and application of Company Seventy-Nine, for the authority and nonexclusive Franchise, for a term of ten (10) years, to install, locate, construct, maintain, operate, use, and, if necessary, remove water utility lines SYSTEM AND FACILITIES under, upon, over, along and across Benton County roads, highways, streets, alleys, bridges, and rights-of-ways, or other County property, hereinafter called County roads or rights-of-ways, described in said application by reference to the sections, townships, and ranges in which said County roads or rights-of-ways are physically located within the County of Benton, State of Washington, and not within the corporate limits of any

incorporated city or town therein, coming on to be heard before this, the Board of County Commissioners of and from said Benton County, Washington, and this Board having heretofore fixed this time and place for the hearing of said petition, and it appearing that the County Engineer has given notice of the time and place of said hearing by posting in three places in the Benton County Courthouse with written or printed notices of the time and place of this hearing in accordance with the laws of the State of Washington, and also by publishing a like notice two (2) times in the Prosser Record Bulletin newspaper of general circulation published in Benton County, Washington, and it appearing that the notices so posted and published stated the name of the applicant and a description by reference to sections, townships and ranges in which the County roads or rights-of-ways to be included in the Franchise for which application is made are physically located, and also state the time and place fixed for said hearing, and after hearing all persons interested in the matter of said petition, and at which hearing the qualifications of the Grantee were heard, the Board deeming it for the public interest to grant the Franchise and authority so applied for.

ORDER

IT IS HEREBY ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

There is hereby granted to Company Seventy-Nine hereafter called the Grantee, subject to all provisions, conditions, covenants and requirements of this order and agreement, the right, privilege and nonexclusive Franchise, to install, locate, construct, maintain, operate, use, and, if necessary, remove water utility lines SYSTEM AND FACILITIES, and all necessary appurtenances thereto, hereinafter called the distribution system, under, upon, over, along, or across those portions of any and all County roads or rights-of-ways, which lie within those legal subdivisions within the County of Benton, State of Washington, set forth and described in "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, from such subdivisions any portion thereof which is within the corporate limits of any incorporated city or town, but including all portions of said subdivisions which are within any unincorporated town or community. Benton County Resolution No. 72-220, regarding Policy on Accommodation of Utilities on County Road Rights-of-Way, shall apply in all respects to this Franchise and the distribution system.

AGREEMENT

I. APPROVAL BY COUNTY ENGINEER

All locations, construction, installation, maintenance, relocation or removal of the distribution system or any portion thereof within County roads or rights-of-ways outside the corporate limits of any incorporated town shall be subject to the approval and pass inspection of the County Engineer.

II. PERMIT REQUIRED – MAP AND SPECIFICATIONS TO BE FILED
APPROVAL BY COUNTY ENGINEER – PERFORMANCE BOND

Prior to commencement of any work on or construction of any portion of the distribution system, Grantee shall file with the County Engineer its application for permit to do such work or construction together with plans and specifications in form and number as approved by the County Engineer showing the position, depth, or height, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, showing their relative position to existing County roads or rights-of-ways, upon plans drawn to scale indicating exact distance hereinafter collectively referred to as the "map of definite location". Grantee is hereby authorized to extend its facilities throughout the area authorized hereunder.

The distribution system shall be constructed in exact conformity with said map of definite location, except in instances in which deviation may be allowed by the prior written consent of the County Engineer pursuant to application by Grantee. The plans and specifications shall specify, as applicable, the class and type of materials and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, and road obstructions, and manner and means by which they affect County roads or rights-of-ways, will be restored to a condition as good as that which existed prior to such work or construction. No such work or construction shall be commenced until the Grantee has first secured a written permit from the County Engineer, which shall include approval by the County Engineer endorsed on one set of plans and specifications to be returned to the Grantee. All such work or construction shall require the inspection and approval of the County Engineer. The Grantee shall pay all reasonable costs and

expenses incurred in the examination, inspection, and approval of such work or construction by the County Engineer as herein provided.

The County Engineer may require a performance bond in a sum sufficient to guarantee to Benton County that any County roads or rights-of-ways, including the surfaces thereof, affected by any work or construction by the Grantee, shall be restored to a condition as good as that which existed prior to such work or construction, the amount of said bond to be fixed by the County Engineer. The County Engineer, upon notice to the Grantee, may at any time order any and all work that he considers necessary to restore to a safe condition any portion of the County roads or rights-of-ways, the condition of which has been rendered dangerous to the safety of persons or property by reason of any work, construction, of facilities of Grantee, and Grantee, upon demand, shall pay to Benton County all costs of such work, done by order of the County Engineer.

III. COUNTY ROADS TO BE RESTORED

In any work which requires breaking of surface of the County roads or rights-of-ways subject to this Franchise for the purpose of locating, constructing, installing, relocating, removing, maintaining and/or repairing the distribution system, and/or making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and strictly conform to the instructions set forth in the permit issued by the County Engineer for such work; and the Grantee, at its own expense and with all reasonable speed, shall complete the work for which the County roads or rights-of-ways, surface has been broken and repair and restore the affected County roads or rights-of-ways, and the surface thereof to a condition as good as that which existing before the work was commenced. Noxious weed control will be required, at the Grantee's expense, and shall meet all requirements of the Benton County Weed Board.

Except in cases of emergency as hereinafter provided, no breaking of surface of any County roads or rights-of-ways, shall be done until Grantee has first obtained a permit therefor issued by the County Engineer as specified in Section II of this Agreement.

PROVIDED, however, that in cases of emergency which occur out of office hours when immediate work may be necessary for the protection or safety of persons or property, the

emergency shall be immediately reported to the Benton County Sheriff and the necessary work may be immediately undertaken upon the express condition that an application for a permit for such work, as hereinabove provided, shall be submitted to the County Engineer on or before noon of the business day next following the commencement of the emergency work.

IV. INTERFERENCE WITH EXISTING FACILITIES

No location, construction, installation, maintenance, repair, removal or relocation of the distribution system or any portion thereof, performed along or under any County roads or rights-of-ways, shall in any way interfere with the grading or improvement of such County roads or rights-of-ways, or with the construction and maintenance of any existing utility, public or private, drain, drainage ditch or structure, or irrigation ditch or structure, located along or under such county roads, right-of-way or property. In the event that it is necessary to relocate any such county road or right-of-way or alter the grade of any such county road or right-of-way, requiring relocation of any utilities, including rights-of-way, preferences as to positioning of such utilities, shall be given in the order of the original location and installation of such utilities, the utility first having been located and installed being given first preference as to positioning and relocation.

V. MINIMUM INTERFERENCE WITH PUBLIC TRAVEL – GRANTEE LIABLE FOR DAMAGE

All work done under this Franchise shall be done in a thorough and workmanlike manner. All construction, installation, maintenance, repair, relocation, or removal of the distribution system, or any portion thereof, shall be conducted in a manner that will interfere as little as possible with public use of and travel upon County roads or rights-of-ways, shall include all due and necessary measures and precautions to prevent danger to persons or property. Specifically, where such construction, installation, maintenance, repair, relocation or removal involves open trenches, ditches, or tunnels which are left open at night, the Grantee shall place sufficient warning lights and barricades about such trenches, ditches or tunnels to give adequate warning of such work. The Grantee shall assume sole liability for any injury to persons or property which occurs by reason of any trenches, ditches, or tunnels dug or maintained by the Grantee.

VI. ALL COUNTY ROAD RIGHTS RESERVED

Benton County expressly reserves any and all rights which it now has or may hereafter acquire with respect to County roads or rights-of-ways, and this Franchise shall not be construed to in any way limit or restrict any authority, power, rights, or privileges which Benton County now has or may hereafter acquire to control and regulate the use of County roads or rights-of-ways covered by this Franchise.

VII. COUNTY MAY CHANGE AND IMPROVE ROADS WITHOUT LIABILITY

If Benton County shall at any time improve or change any County roads or rights-of-ways, subject to this Franchise by grading, regrading, surfacing , or paving the same, or by changing, altering, repairing, or relocating the grade thereof or by construction of drainage facilities, the Grantee shall, upon written notice from the County Engineer, at Grantee's sole expense, with all reasonable speed, change the location or readjust the elevation of its distribution system and other facilities so that the same shall not interfere with such county work and so such lines and facilities shall conform to such new grades as may be established. Benton County shall in no respect be held liable for any damages, costs, or expenses to said Grantee that may occur by reason of any of the County's improvements, changes or work above enumerated, except insofar as such damages, costs or expenses shall be caused by negligence of the County's employees or agents.

All work performed by the Grantee under this section shall be under the direction, approval, and shall pass the inspection of the County Engineer. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such work.

VIII. REFERENCE MONUMENTS AND MARKERS

Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operation under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during

construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee.

IX. VACATION OF COUNTY ROADS – ALTERNATE ROUTE

If at any time Benton County shall vacate any County road, right-of-way, or other County property which is subject to rights granted by this Franchise the Board of County Commissioners for Benton County may, after granting an alternate route with the consultation of Grantee, by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to such County road, right-of-way, or other County property so vacated and said Benton County shall in no respect be liable for any damages, costs, or expenses to the Grantee that may occur by reason of such termination.

X. GRANTEE TO INDEMNIFY COUNTY – LIABILITY INSURANCE

The Grantee covenants, agrees and promises that it shall fully indemnify Benton County from any and all liability, loss, injury, damage, costs, charges or expenses of any nature whatever, occurring to any person, association, corporation or property of any kind by reason of any acts, actions, omissions, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system.

The Grantee further covenants, agrees and promises that, in the event that any claim, suit, or cause of action shall be brought against Benton County by reason of any act, action, omission, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system, it shall, at its own cost and expense, defend any such claim, suit, or cause of action, and shall pay any and all costs, charges, attorneys' fees, and other expenses therein, and any and all judgments that may be incurred by or obtained against Benton County in any such claim, suit, or cause of action.

The Grantee further covenants, agrees and promises that, in order to secure to the County full and complete performance of the covenants and conditions of this Section "X", it shall, at its own cost and expense, obtain and maintain in effect continually during the term of this Franchise, liability insurance in a company or companies to be approved by the County, such insurance to name the Grantee and Benton County as the insured and to have minimum limits of

not less than $1,000,000.00. Written evidence of such insurance in effect shall be furnished to the County Engineer no later than the date that any work or construction under the terms of this Franchise commences. Such additional written evidence of such insurance shall be furnished to the County Engineer from time to time as the County Engineer shall require; in any event, such additional written evidence shall be provided to the County Engineer at least annually during the term of this Franchise. The Grantee's compliance with the provisions of this paragraph relating to liability insurance shall in no way alter, affect, modify or limit any of the other covenants, conditions, and provisions of this paragraph. Acceptance or approval by the County of any work performed by the Grantee shall not constitute a waiver by the County of any of the provisions of this Section "X", and shall not excuse the Grantee from any of the covenants, provisions, or requirements set forth herein.

XI. FRANCHISE NOT EXCLUSIVE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit Benton County from granting other Franchises of a like nature or Franchises for public or private utilities under, along, across, over, and upon any of the County roads or rights-of-ways, subject to this Franchise and shall in no way restrict, prevent, or prohibit Benton County from constructing, altering, maintaining, or using any of said roads or rights-of-way, drainage structures or facilities, irrigation structures or facilities, or any other County property or affect its jurisdiction over them or any part of them with full power to make all necessary construction, alterations, changes, relocations, repairs, or maintenance, which the County may deem necessary.

XII. PROVISIONS HEREOF BIND SUCCESSOR

All provisions, conditions, covenants, and requirements herein contained shall be binding upon any and all successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned herein wherever the Grantee is mentioned, provided, however, that neither this Franchise nor any rights, privileges, or obligations granted in this order and agreement shall be assigned without the prior written approval of the County Engineer, unless such assignments is to a wholly-owned subsidiary of the Grantee or to a parent company owning

more than 50% of the Grantee, and unless Benton County is provided with prior written notice of such assignment giving the name and address of the subsidiary or parent company assignee.

XIII. REVOCATION FOR NON-COMPLIANCE

In the event that the Grantee substantially violates or fails to comply with any of the material provisions of this Franchise, the Grantee shall forfeit all rights conferred hereunder and this Franchise shall be revocable by the Board of Benton County Commissioners at their discretion, provided, however, the Board of County Commissioners shall provide the Grantee with written notice of its intention to revoke the Franchise, specifying the nature of such violation, failure, or neglect, and giving the Grantee thirty (30) days in which to cure such violation, failure, or neglect. The Grantee shall be entitled to a hearing, within such thirty-day period, before the Board of County Commissioners.

In the event such hearing is held, the Grantee shall be given prior written notice of the time and place for such hearing. Subject to applicable federal and state law, in the event the Board of County Commissioners, after such hearing, determines that Grantee is in default of any provision of the Franchise, the Board of County Commissioners may:

a. Foreclose on all or any part of any security provided under this Franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;

b. Commence an action at law for monetary damage or seek other equitable relief;

c. In the case of substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or

d. Seek specific performance of any provision, which reasonably leads itself to such remedy, as an alternative to damages.

XIV. CONFORMITY WITH STATE AND COUNTY

Benton County expressly reserves the right at any time, upon ninety (90) days written notice to the Grantee, to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any state statute, rule or regulation, or county ordinance, rule or regulation, relating to the regulation of highways or the public welfare, health, safety, as may

hereafter be enacted, adopted or promulgated, and the County further expressly reserves the right to terminate this Franchise at any time, in accordance with the procedures stated in Section "XIII" above, in the event that the Grantee's distribution system is not operated or maintained in accordance with such statute, ordinance, rule, or regulation.

XV. FEDERAL REGULATION

Any lawful modification required by amendment of Section 76.31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this Franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one (1) year of adoption or at the time of Franchise renewal, whichever occurs first.

XVI. ACTS OF GOD

The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts that are solely the result of an Act of God or similar circumstance, power outages, or other events reasonably beyond its ability to control.

XVII. SEVERABILITY

If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

XVIII. COMPLAINT PROCEDURES

The Grantee agrees to maintain a local business office which subscribers may telephone during regular business hours without incurring added message or toll charges so that service shall be promptly available. The Grantee agrees to notify each subscriber, at the time of initial subscription to the Grantee's service, of the procedures for reporting and resolving such complaints.

XIX. ACCEPTANCE BY GRANTEE

Written acceptance by the Grantee of the Franchise granted herein and all provisions, conditions, covenants, and requirements contained in this order and agreement shall be indicated by endorsement by the Grantee where indicated herein below, and a copy of this order and agreement so endorsed by the Grantee shall be filed with the Clerk of the Board of County Commissioners of Benton County within thirty (30) days from the date of acceptance by the Board. Such filing of the endorsed order and agreement within the period above specified shall be a condition precedent to this Franchise taking effect, and unless this order and agreement is accepted and filed within such time, it shall be null and void.

XX. TERM

This nonexclusive Franchise agreement shall be in full force and effect upon execution and shall expire August 16, 2032.

XXI. GRANTEE'S ADDRESS

Information for the Grantee is:

Brett Nelson
1232 Columbia Park Trail
Richland, WA 99352

Phone: (509) 736-1133
E-mail : allproinc5@yahoo.com

Any notification required to be given to the Grantee may be given to the address above stated, provided that the Grantee may from time to time notify Benton County in writing of address to which notifications are to be sent.

FOR GRANTEE:

Brett Nelson, Partner

Date 7/5/2022

APPROVED AS TO FORM:

Benton County Deputy Prosecuting Attorney

Date 7/29/22

FOR BENTON COUNTY, WASHINGTON.

Chairman

Chairman Pro-Tem

Member

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

ATTEST:

Clerk of the Board

Date

EXHIBIT A

All unincorporated areas of Benton County

BEFORE THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPLICATION OF
Company Seventy-Nine FOR A
(Please print name of company exactly as it will appear in franchise)
NONEXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, MAINTAIN, OPERATE USE REPAIR, AND IF NECESSARY REPLACE A
Water Utility Lines WITHIN THE COUNTY OF
(Please print exact wording as it will appear in franchise)
BENTON, STATE OF WASHINGTON, UPON, OVER, UNDER, ALONG AND ACROSS CERTAIN COUNTY ROADS AND PUBLIC HIGHWAYS, OR PARTS THEREOF, NOT WITHIN THE LIMITS OF ANY INCORPORATED CITY OR TOWN.

(County use:)

No. _____
APPLICATION FOR FRANCHISE PURSUANT TO RCW 36.55.040.

TO THE HONORABLE BOARD OF COUNTY COMMISSIONERS,
BENTON COUNTY, WASHINGTON:

Company Seventy-Nine, a Partnership, duly authorized to transact business in the State of Washington (Grantee), hereby applies for the authority and a nonexclusive franchise, to be granted to said Grantee to locate, construction, maintain, operate, use, repair, and, if necessary, remove facilities upon, over, under, along and across any and all Benton County roads, highways, streets, alleys and bridges of which all or portions thereof are physically located in the Sections, Townships, and Ranges within the County of Benton, State of Washington, as set forth in the schedule marked "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, any portions thereof which are within the corporate limits of any incorporated city or town, but including all portions which are within any unincorporated town or community.

Grantee requests that the Board of County Commissioners fix a time and place for hearing this application, and cause the County Engineer of Benton County to give public notice of said hearing at the expense of said applicant, by posting notices of said hearings in three (3) public places in the county seat of said Benton County, at least fifteen days before the day fixed for said hearing, and also cause to be published a like notice, at the expense of said applicant, two (2) times in the official newspaper of the Benton County, the last publication of such notice to be not less than five (5) days before the day fixed for said hearing; which notice shall state the name of the applicant, shall describe the Benton County roads, highways, streets, alleys, bridges or portions thereof within said Benton County to be included in the franchise for which this application is made by reference to the Sections, Townships, and Ranges in which they are physically located, and shall show the time and place fixed for said hearing.

The Franchise Application fee in the amount of $500.00, in the form of Check (cash or check), accompanies this application and is non-refundable. Upon approval, the franchise term will be for a period of ten (10) years.

Dated this 28th day of March, 2022.

Respectfully submitted by:

Brett Nelson
Name of Authorized Agent PLEASE PRINT

509-736-1133
Phone Number of Applicant

Brett Nelson
Signature of Authorized Agent

509-736-1144
FAX Number of Applicant

1232 Columbia Park Trail
Address of Applicant

2nd Name of Authorized Agent PLEASE PRINT (if required)

Richland, WA 99352
City State Zip

2nd Signature of Authorized Agent (if required)

allproinc5@yahoo.com
E-mail address

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	August 16, 2022
Subject:	Subscription Agreement with PowerDMS, Inc
Presenter:	Lt. Jason Erickson
Prepared By:	Lisa Small
Reviewed By:	Eric Andrews; BCSO; 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

PowerDMS, Inc. is the only cloud-based software as a service platform that combines document & training management, accreditation management, and electronically alert users whenever a change may impact compliance.

PowerDMS, Inc. is widely used by many statewide law enforcement agencies, which includes, forty-five (45) police departments, six (6) sheriff's offices, six (6) government agencies with City of Richland and the City of Pasco being two of them, Washington State Patrol, and Washington State Criminal Justice Training Academy.

PowerDMS, Inc. provided a letter confirming that PowerDMS is the exclusive software option for compliance with the accreditation standard for Washington Association of Sheriffs & Police Chiefs (WASPC) Law Enforcement Accreditation Program, making the only application that offers accreditation in the State of Washington.

The service order and subscription agreement has been reviewed by the department's PA and approved as to form that PowerDMS is a sole source vendor based on the specific package of applications.

Fiscal Impact

Amount: $12,740.68 plus any applicable W.S.S.T

Fund: The initial expenditure will be funded by splitting the expense between PST Fund 1480 Dept 121, Dept 122 and the General Fund, Dept 118, Dept 119 and Dept 121. Ongoing annual renewal costs have been submitted through the 2023/2024 IT budget to be paid through the Assessment, if that does not get approved, the Sheriff's Office plans to fund the renewal costs by using funds within current budgeted amounts.

Recommendation

Pass the attached Resolution and subscription agreement with PowerDMS, Inc to help assist the Benton County Sheriff's Office with policy management and accreditation.

Suggested Motion

I move to approve the resolution to authorize the Benton County Sheriff to sign the attached Service Order and Subscription Agreement with PowerDMS, Inc.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY SHERIFF TO SIGN THE SUBSCRIPTION AGREEMENT WITH POWERDMS, INC. AS A SOLE SOURCE VENDOR TO PROVIDE POLICY MANUALS, TRAINING MANAGEMENT, AND WASPC ACCREDITATION COMPLIANCE FOR THE BENTON COUNTY SHERIFF'S OFFICE

WHEREAS, PowerDMS, Inc. is the only cloud-based software as a service platform that combines policies, document & training management, accreditation management, and electronically alert users whenever a change may impact compliance; and

WHEREAS, PowerDMS, Inc. is widely used by many statewide law enforcement agencies, which includes, forty-five (45) police departments, six (6) sheriff's offices, six (6) government agencies with City of Richland and the City of Pasco being two of them, Washington State Patrol, and Washington State Criminal Justice Training Academy; and

WHEREAS, PowerDMS, Inc. provided a letter confirming that PowerDMS is the exclusive software option for compliance with the accreditation standard for Washington Association of Sheriffs & Police Chiefs (WASPC) Law Enforcement Accreditation Program; and

WHEREAS, PowerDMS, Inc. also provided the Benton County Sheriff's Office with a proposal for WASPC Accreditation manual, training management, and workflow tracking based on 100 users for an annual cost of $12,740.68 plus any applicable WSST; and

WHEREAS, the Benton County Sheriff Office reviewed the proposal and recommends the Board approve the attached subscription agreement authorizing the Benton County Sheriff's signature on service order #Q-164820 which includes the subscription agreement; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, concurs with the recommendation and hereby authorizes the Benton County Sheriff to sign service order #Q-164820 with PowerDMS, Inc. to assist the Benton County Sheriff's Office with policies, document & training management, and accreditation compliance for an annual amount of $12,740.68 plus any applicable WSST; and

BE IT FURTHER RESOLVED, the initial expenditure will be funded by splitting the expense between PST Fund 1480 Dept 121, Dept 122 and the General Fund, Dept 118, Dept 119 and Dept 121. Ongoing annual renewal costs have been submitted through the 2023/2024 IT budget to be paid through the Assessment, if that does not get approved, the Sheriff's Office plans to fund the renewal costs by using funds within current budgeted amounts; and

BE IT FURTHER RESOLVED, said subscription agreement shall commence this day and expire August 15, 2023. The term will automatically renew for one (1) year periods, unless the County provides written notice of termination to PowerDMS, Inc. 30 days in advance.

Dated this 16th day of August , 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, PA, PowerDMS

Prepared by: L. Small

PowerDMS
Digital Management Software
A NEOGOV Company

t 800.749.5104 f 407.210.0113
www.powerdms.com
101 S. Garland Ave, Ste 300 Orlando, FL 32801

NEOGOV

Contract Details

Account Number: A-171670
Customer: Benton County Sheriff's Office (WA)
Sales Rep: Jaxson McBride

Order Details

Order #: Q-164820
Order Date: 8/16/22
Valid Until: 8/16/22
Subscription Start Date: Per signature date below
Subscription Term (months): 12

Customer Contact

Billing Contact: Benton County Sheriff's Office (WA)
Jon Law
Address: 7122 W Okanogan Pl Bldg B
Kennewick, WA 99336

Billing Contact Email: jon.law@co.benton.wa.us
Phone: 509-735-6555 ext. 3290
Fax:

Payment Terms

Payment Term: Net 30
PO Number:

Notes:

Subscription Service

YEAR-1

Item	Type	Qty	Total
PowerPolicy Professional Subscription	Recurring	100	$8,479.98
A policy and compliance management platform that lets you create, edit, organize, and distribute content from a secure, cloud-based site. Included are key features such as automatic workflows, signature capture and tracking, side-by-side comparison, Public-Facing Documents, PowerDMS University, and Analytics for advanced reporting.			
PowerTraining	Recurring	100	$1,610.70
A training solution that lets you create, deliver, and track training content online, including videos and PowerPoint presentations. It integrates with PowerPolicy Select and Professional, giving you the ability to attach policies to training courses while ensuring version control.			
WASPC LE Accreditation Manual	Recurring	1	$0.00
View Standards Manual electronically.			
PowerStandards for WASPC LE >50 employees	Recurring	1	$650.00
Attach proofs to show compliance with WASPC standard, assign assessment tasks, track revisions, and status-based grading. > 50 employees			
PowerPolicy Professional Setup (Onboarding)	Services	1	$2,000.00
This package ensures a smooth implementation and successful ongoing use of PowerPolicy. This package includes Implementation Management: Led by a designated Implementation Specialist, guiding administrators through predetermined milestones to lead to a successful product launch, Project Management, Document and User Import and Site Configuration.			
		YEAR-1 TOTAL:	$12,740.68

Subscription Term Total : | $12,740.68

This price does not include any sales tax.

Additional Terms and Conditions

Payment Terms All invoices issued hereunder are **due upon the invoice due date.** The fees labeled "Year 1 Total" shall be invoiced immediately, and if the Subscription Term is for a period longer than one year, the fees for future years shall be invoiced annually in advance of each 12 month period of the Subscription Term, but regardless of the billing cycle, Customer is responsible for the fees for the entire Subscription Term. The fees set forth in this Service Order are exclusive of all applicable taxes, levies, or duties imposed by taxing authorities and Customer shall be responsible for payment of any such applicable taxes, levies, or duties. All payment obligations are non-cancellable, and all fees paid are non-refundable.

Terms & Conditions Unless otherwise agreed in a written agreement between GovernmentJobs.com, Inc. (D/B/A/ NEOGOV), parent company of PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360) (collectively, "**NEOGOV**") and Customer, this Service Order and the services to be furnished pursuant to this Service Order are subject to the terms and conditions set forth here: https://www.neogov.com/service-specifications. The Effective Date (as defined in the terms and conditions) shall be the date set forth below.

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PowerDMS
Digital Management Software
A NEOGOV Company

t 800.749.5104 f 407.210.0113
www.powerdms.com
101 S. Garland Ave, Ste 300 Orlando, FL 32801

NEOGOV

Accepted and Agreed By Authorized Representative of:
Benton County Sheriff's Office (WA)

Signature: _____

Printed Name: Tom Croskrey

Title: Benton County Sheriff

Date _____

THE INFORMATION AND PRICING CONTAINED IN THIS SERVICE ORDER IS STRICTLY CONFIDENTIAL

Approved as to Form:
DocuSigned by:
Eric Andrews
B4F7673BB8A1486...

DocuSign Envelope ID: 71150C7E-C2E1-4F92-9FFD-61D2F9D9A629

NEOED

SERVICES AGREEMENT

V032122

You agree that by placing an order through a NEOED standard ordering document entitled an "Order Form", "Service Order," or "SOW" (each, an "Order Form" for purposes of this Agreement) you agree to follow and be bound by the terms and conditions set forth herein. "Governmentjobs.com", "NEOED", "we", and "our" means Governmentjobs.com, Inc. (D/B/A/ NEOED), for and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360) (collectively, "NEOED" and, where applicable, its other affiliates; "Customer", "you", "your" means the NEOED client, customer, or subscriber identified in the Order Form).

If you are placing an order on behalf of a legal entity, you represent that you have the authority to bind such entity to the terms and conditions of the Order Form and these terms and, in such event, "you" and "your" as used in these agreement terms shall refer to such entity. "Agreement" shall be used to collectively refer to this NEOED Services Agreement (the "Services Agreement" or the "Agreement"), documents incorporated herein including the applicable Order Form, Exhibits, Schedule(s), and Special Conditions (if any). "Special Conditions" means individually negotiated variations, amendments and/or additions to this Service Agreement of which are either drafted, or incorporated by reference, into the Order Form.

1. Provision of Services. Subject to the terms of this Agreement NEOED hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (each defined below) included or ordered by Customer in the applicable Order Form (collectively referred to as the "Services"). Customer hereby acknowledges and agrees that NEOED's provision and performance of, and Customer's access to, the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the date of your signature on an applicable Order Form or use of the Services commences (the "Effective Date"). The Agreement supersedes any prior and contemporaneous discussions, agreements or representations and warranties.

2. SaaS Subscription.

   a) Subscription Grant. "SaaS Applications" means each proprietary NEOED web-based software-as-a-service application that may be set forth on an Order Form and subsequently made available by NEOED to Customer, and associated components as described in any written service specifications made available to Customer by NEOED (the "Service Specifications"). Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, NEOED hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (a) onboard, access and use, and to permit Authorized Users to onboard, access and use, the SaaS Applications specified in the Order Form solely for Customer's internal, non-commercial purposes; (b) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (c) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription"). "Authorized Users" means (i) Customer employees, agents, contractors, consultants ("Personnel") who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Services Agreement and (ii) for whom access to the Services has been purchased hereunder. You may not access the SaaS Applications if you are a direct competitor of NEOED or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes. You shall be responsible for each Authorized User's access to and use of the SaaS Applications and compliance with applicable terms and conditions of this Agreement.

   b) Subscription Term. Unless otherwise specified in an applicable Order Form, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, SaaS Subscriptions may be renewed no less than thirty (30) days prior to the expiration of the then-current term by mutual written agreement between the parties for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term"). The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. The purchase of any Service is separate from any other order for any other Service. Customer may purchase certain Services independently of other Services. Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service.

3. Customer Responsibilities. Customer will not, and will ensure its Authorized Users do not (a) make any of the Services available to anyone other than Authorized Users or use any Services for the benefit of anyone other than Customer and its Authorized Users, unless otherwise agreed in writing by the parties, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any of the Services, or include any of the Services in a service bureau or outsourcing offering, unless otherwise agreed in writing by the parties, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights, publicity rights, copyright rights, or other

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rights of any person or entity, (d) use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, (e) interfere with or disrupt the integrity or performance of the Services (including, without limitation, activities such as security penetration tests, stress tests, and spamming activity), (f) attempt to gain unauthorized access to the Services or its related systems or networks, (g) disassemble, reverse engineer, or decompile the Services, or modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (h) remove the copyright, trademark, or any other proprietary rights or notices included within NEOED Intellectual Property and on and in any documentation or training materials, or (i) use the Services in a manner which violates the terms of this Agreement, any Order Form or any applicable laws.

4. Professional Services. "Professional Services" shall mean consulting, training services purchased by Customer in an applicable Order Form or detailed in a NEOED Scope of Work (SOW) relating to assistance, training, deployment, usage, customizations, accessory data processing, and best practices of and concerning the SaaS Applications. Professional Services may be ordered by Customer pursuant to a SOW and Service Specifications describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by Customer before NEOED shall commence work. If Customer does not execute a separate SOW, the Services shall be provided as stated on the Order Form and this Agreement and documents incorporated herein shall control. All Professional Services purchased by Customer must be utilized within twelve (12) months of the date of the applicable Order Form or SOW.

5. Payment Terms.

   a) Fees. Unless otherwise stated in an Order Form, Customer shall pay all Subscription, Onboarding and Set-Up fees ("Subscription Fees") and Professional Service fees ("Professional Service Fees", collectively the "Fees") within thirty (30) days of Customer's receipt of NEOED's invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Invoices shall be delivered to the stated "Bill To" party on the Order Form. Unless explicitly provided otherwise, once placed the Order Form is non-cancellable and sums paid nonrefundable. Any invoiced amount that is not received by NEOED when due as set forth in an Order Form will be subject to a late payment fee of 1.5% per month or the maximum rate permitted by law, whichever is lower. If any amount owing by Customer is more than 30 days overdue, NEOED may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full. Subscription Fees are based upon the Authorized User count unless otherwise stated in an Order Form and Customer shall owe NEOED supplemental Subscription Fees to the extent Customer exceeds the number of Authorized Users set forth in the Order Form. Except as otherwise specifically stated in the Order Form, NEOED may change the charges for the Services with effect from the start of each Renewal Term by providing Customer with a new Order Form at least thirty (30) day notice prior to commencement of a Renewal Term. The new Order Form shall be deemed to be effective if Customer (a) returns the executed Order Form to NEOED, (b) remits payment to NEOED of the fees set forth in the invoice referencing the Order Form, or (c) the Customer or any of its Authorized Users access or use the Services after the expiration of the previous Term.

   b) Taxes. Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOED's net income or those exempt by applicable state law. Customer shall provide NEOED with a certificate or other evidence of such exemption within ten (10) days of NEOED's request therefor.

   c) Customer Purchase Orders. Except as otherwise specified in an Order Form, Customer will not require any purchase order to pay fees due or otherwise to perform its obligations with respect to any Order Form. Any reference to a purchase order in an Order Form or any associated invoice is solely for Customer's convenience in record keeping, and no such reference or any delivery of services to Customer following receipt of any purchase order shall be deemed an acknowledgement of or an agreement to any terms or conditions referenced or included in any such purchase order. If a purchase order is delivered by Customer in connection with the purchase of Services, none of the terms and conditions contained in such purchase order shall modify or supersede the terms and conditions of this Agreement. NEOED's failure to object to terms contained in any such purchase order shall not be a waiver of the terms set forth in this provision or in this Agreement.

6. Term and Termination.

   a) Term. Unless otherwise specified in an applicable Order Form, this Agreement shall commence on the Effective Date. This Agreement shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services or other services detailed in a SOW, unless it is terminated earlier in accordance with this Agreement.

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b) Termination for Cause; Effect of Termination. Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach. NEOED may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder pose a security risk to the Services, NEOED or any third party, or become illegal or contrary to any applicable law, rule, regulation, or public policy. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOED Intellectual Property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOED under this Agreement. Unless otherwise specified, after expiration or termination of this Agreement NEOED may remove Customer Data from NEOED Services and without Customer consent or notice.

7. Audit Rights. Upon reasonable notice, NEOED or its agent shall have the right to audit Customer's records relating to its compliance with this Agreement. Such audit may include monitoring Customer's use of the Services using automatic means which do not interfere with the use of the Services by Customer. Customer shall cooperate fully with this audit. If any audit conducted under this Section indicates that any amount due to NEOED was underpaid, Customer shall within three (3) business days pay to NEOED the amount due. All expenses associated with any such audit shall be paid by NEOED unless the audit reveals underpayment in excess of five percent (5%), in which case Customer shall pay such expenses as well as any amount due to NEOED.

8. Maintenance; Modifications; Support Services.

a) Maintenance, Updates, Upgrades. NEOED maintains NEOED's hardware and software infrastructure for the Services and is responsible for maintaining the NEOED server operation and NEOED database security. NEOED may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying NEOED software that NEOED makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer. "Upgrade" means any update of the Services or underlying NEOED software such as platform updates, and major product enhancements and/or new features that NEOED makes commercially available. NEOED shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOED shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.

b) Program Documentation; Training Materials. "Program Documentation" shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOED to Customer in connection with the Services. NEOED hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services. Primary training of NEOED Services is conducted by self-review of online materials. NEOED's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.

c) Implementation. For Services requiring implementation, NEOED implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Order Form. NEOED personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and use commercially reasonable efforts to ensure Authorized User Admins grasp the system. The length of the implementation time is dependent on the type of Service and the Customer's responsiveness. NEOED is not responsible or liable for any delay or failure to perform implementation caused in whole or in part by Customer's delay in performing it obligations hereunder and, in the event of any such delay, NEOED may, in its sole discretion, extend all performance dates as NEOED deems reasonably necessary.

d) Support. Phone support for the Services is available to Customer Monday through Friday, excluding NEOED holidays. Customer may submit a request for online support for the Services 24 hours a day, seven days a week, and the NEOED support desk will acknowledge receipt of the request within a reasonable time. The length of time for a resolution of any problem is dependent on the type of case.

e) Limitations. Unless otherwise specified in the Order Form, this Agreement does not obligate NEOED to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.

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9. NEOED Intellectual Property. NEOED shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOED including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOED and all proprietary rights embodied therein (collectively, the "NEOED Intellectual Property"). This Agreement does not convey or transfer title or ownership of the NEOED Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOED. Other than recommendation use or as required by law, all use of NEOED trademarks must be pre-approved by NEOED prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.

10. Data Processing and Privacy.

    a) Customer Data. "Customer Data" shall mean all data that is owned or developed by Customer, whether provided to NEOED by Customer or provided by a third party to NEOED in connection with NEOED's provision of Services to Customer, including Personnel data collected, loaded into, or located in Customer data files maintained by NEOED. NEOED Intellectual Property, including but not limited to the Services and all derivative works thereof, NEOED Confidential Information, and Platform Data do not fall within the meaning of the term "Customer Data". Customer exclusively owns all right, title, and interest in and to all Customer Data. Customer grants NEOED a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. NEOED reserves the right to delete or disable Customer Data stored, transmitted or published by Customer using the Services upon receipt of a bona fide notification that such content infringes upon the Intellectual Property Rights of others, or if NEOED otherwise reasonably believes any such content is in violation of this Agreement.

    b) Platform Data. "Platform Data" shall mean any anonymized data reflecting the access or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data, or other analysis, information, or data based on or derived from any of the foregoing. NEOED shall exclusively own all right, title and interest in and to all Platform Data. Customer acknowledges NEOED may compile Platform Data based on Customer Data input into the Services. Customer agrees that NEOED may use Platform Data to the extent and in the manner permitted under applicable law.

    c) Data Processing Agreement. To the extent Customer uses the Services to target and collect personal information from users located in the European Union, European Economic Area, or Switzerland (the "EU") or the United Kingdom ("UK"), or has Authorized Users accessing the Services from the EU or UK, the following NEOED Data Processing Addendum ("DPA") is incorporated herein by reference: https://www.neoed.com/hubfs/Legal%20Documents/Customer%20Data%20Processing%20Addendum-signed.pdf.

    d) Data Responsibilities.

        i) NEOED will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by NEOED personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by applicable law, or (c) as Customer expressly permits in writing. Customer acknowledges and agrees that it is commercially reasonable for NEOED to rely upon the security processes and measures utilized by NEOED's cloud infrastructure providers.

        ii) Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data. NEOED will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (i) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (ii) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (iii) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any Customer Data. NEOED is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. Unless otherwise mutually agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services.

    e) Breach Notice. NEOED will notify Customer of unauthorized access to, or unauthorized use, loss or disclosure of Customer Data within its custody and control (a "Security Breach") within 72 hours of NEOED's confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably

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cooperate with the other with respect to the investigation and resolution of any Security Breach. If applicable law or Customer's policies require notification of its Authorized Users or others of the Security Breach, Customer shall be responsible for such notification.

f) Data Export, Retention and Destruction. Customer may export or delete Customer Data from the Services at any time during a Subscription Term, using the existing features and functionality of the Services. Customer is solely responsible for its data retention obligations with respect to Customer Data. If and to the extent Customer cannot export or delete Customer Data stored on NEOED's systems using the then existing features and functionality of the Services, NEOED will, upon Customer's written request, make the Customer Data available for export by Customer or destroy the Customer Data. If Customer requires the Customer Data to be exported in a different format than provided by NEOED, such additional services will be subject to a separate agreement on a time and materials basis. Except as otherwise required by applicable law, NEOED will have no obligation to maintain or provide any Customer Data more than ninety (90) days after the expiration or termination of this Agreement.

11. Third Party Services. The Services may permit Customer and its Authorized Users to access services or content provided by third parties through the Services ("Third Party Services"). Customer agrees that NEOED is not the original source and shall not be liable for any inaccuracies contained in any content provided in any of the Third Party Services. NEOED makes no representations, warranties or guarantees with respect to the Third Party Services or any content contained therein. NEOED may discontinue access to any Third Party Services through the Services if the relevant agreement with the applicable third party no longer permits NEOED to provide such access. If loss of access to any Third Party Services (to which Customer has a subscription under this Agreement) occurs during a Subscription Term, NEOED will refund to Customer any prepaid fees for such Third Party Services covering the remainder of the Subscription Term.

12. Nondisclosure.

a) Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes its Customer Data. NEOED Confidential Information includes the NEOED Intellectual Property and the Services. The Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

b) Obligations. The Receiving Party will: (i) use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.

c) Exceptions. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

d) Equitable Relief. The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section 12, that such a breach would irreparably harm the Disclosing Party and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

13. Representations, Warranties, and Disclaimers.

a) Mutual Representations. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument

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or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

b) Service Performance Warranty. NEOED warrants that it provides the Services using a commercially reasonable level of care and skill. THE FOREGOING WARRANTY DOES NOT APPLY, AND NEOED STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD PARTY SERVICES.

c) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOED DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOED DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

d) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOED DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOED SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOED WILL USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOED CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOED DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

14. Indemnification.

a) Customer Indemnity. To the extent permitted by applicable law, Customer will defend and indemnify NEOED from and against claim, demand, suit or proceeding made or brought against NEOED (a) by a third party alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, (b) in connection with Customer's violation of any applicable laws, or (c) any claim or allegation by any third party resulting from or related to Customer's or any of its Authorized User's breach of Section 3 of this Agreement, in each case provided that Customer is promptly notified of any and all such claims, demands, suits or proceedings and given reasonable assistance and the opportunity to assume sole control over defense and settlement.

b) NEOED Indemnity. Subject to subsections 14(b)(i) through 14(b)(iii) of this Section, if a third party makes a claim against Customer that any NEOED intellectual property furnished by NEOED and used by Customer infringes a third party's intellectual property rights, NEOED will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOED, provided that NEOED is promptly notified of any and all such claims, demands, suits or proceedings and given reasonable assistance and the opportunity to assume sole control over defense and settlement.

i) Alternative Resolution. If NEOED believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOED may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOED may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.

ii) No Duty to Indemnify. NEOED will not indemnify Customer if Customer knowingly alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOED will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOED. NEOED will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOED. NEOED will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.

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iii) Exclusive Remedy. This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOED.

15. Limitations of Liability.

a) EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

a) CAP ON MONETARY LIABILITY. EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF NEOED INTELLECTUAL PROPERTY RIGHTS, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOED FROM CUSTOMER IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT INITIALLY GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

16. Text Message Communications. NEOED may offer Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOED may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOED shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOED cannot vouch for the technical capabilities of any third parties to receive such text messages. To the extent you utilize text messaging features, NEOED shall not be responsible for your use of such features, and you shall indemnify NEOED with respect to any damages resulting from your use including but not limited any violations of applicable law. NEOED MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.

17. Publicity. Unless otherwise provided in the applicable Order Form, NEOED may identify Customer as one of its customers and use Customer's logo for such purposes, subject to any trademark usage requirements specified by Customer.

18. Force Majeure. Except for Customer's payment obligations to NEOED, neither party shall be liable for any damages, costs, expenses or other consequences incurred by the other party or by any other person or entity for any act, circumstance, event, impediment or occurrence beyond such party's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, pandemic, military action or usurped power; (h) actions or failures to act on the part of a governmental authority; (i) internet service interruptions or slowdowns, vandalism or cyber-attacks, or (j) any other cause beyond the reasonable control of such party.

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19. Independent Contractor; No Third Party Beneficiary; Fulfillment Partners. The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOED to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not. NEOED may designate any third-party affiliate, or other agent or subcontractor (each a "Fulfillment Partner"), without notice to, or the consent of, Customer, to perform such tasks and functions to complete any Services.

20. Entire Agreement; Amendment. This Services Agreement, the Exhibits hereto and documents incorporated herein, the applicable Order Form, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. Any Customer proposal for additional or different terms, or Customer attempt to vary in any degree any of the terms of this Agreement is hereby objected to and rejected but such proposal shall not operate as a rejection of this Service Agreement and Order Form unless such variances are in the terms of the description, quantity, or price but shall be deemed a material alteration thereof, and this Service Agreement and the applicable Order Form shall be deemed accepted by the Customer without said additional or different terms. It is expressly agreed that the terms of this Agreement and any NEOED Order Form shall supersede the terms in any non-NEOED purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order: 1) Special Conditions (if any), 2) NEOED Order Form, 3) the NEOED Services Agreement, and 4) incorporated documents. This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the parties to be bound.

21. General. This Agreement shall be governed by and construed in accordance with the laws of the state of California, without giving effect to conflict of law rules. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Los Angeles, California. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to, without limitation, accrued rights to payment, acknowledgements and reservations of proprietary rights, confidentiality obligations, warranty disclaimers, and limitations of liability, and others which by their nature are intended to survive. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Order Form and (ii) NEOED at the address specified in the applicable Order Form. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement or an Order Form bearing an original signature by facsimile transmission, by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature. Customer may not assign this Agreement without the express written approval of NEOED and any attempt at assignment in violation of this Section shall be null and void. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

[Signature Page to Follow]

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

Customer	**GovermentJobs.com, Inc. (D/B/A/ NEOED), on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360)**
Entity Name: Benton County Sheriff's Office	
Signature:	Signature:
Print Name: Tom Croskrey Benton County Sheriff	Print Name: Ana Alfaro
Date:	Date: 08/08/2022

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Exhibit A
Government Customer Addendum

If Customer is a Government Customer, the following Government Customer Addendum ("Government Addendum") forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this Addendum and any other provision of the Services Agreement, the terms of this Government Addendum shall control. For purposes hereof, a "Government Customer" means a Customer which is a (a) U.S. Federal agency, (b) state government, agency, department, or political subdivision (including a city, county or municipal corporation), or (c) instrumentality of any of the foregoing (including a municipal hospital or municipal hospital district, police or fire department, public library, park district, state college or university, Indian tribal economic development organization, or port authority).

1. **Applicability**. The provisions of this Addendum shall apply only if Customer is a Government Customer under the Services Agreement.

2. **Termination for Non-Appropriation of Funds**. If Customer is subject to federal, state or local law which makes Customer's financial obligations under this Services Agreement contingent upon sufficient appropriation of funds by the applicable legislature (or other appropriate governmental body), and if such funds are not forthcoming or are insufficient due to failure of such appropriation, then Customer will have the right to terminate the Services Agreement at no additional cost and with no penalty by giving prior written notice documenting the lack of funding. Customer will provide at least thirty (30) days advance written notice of such termination. Customer will use reasonable efforts to ensure appropriated funds are available. If Customer terminates the Services Agreement under this Section 2, Customer agrees not to replace the Services with functionally similar products or services for a period of one year after the termination of the Services Agreement.

3. **Indemnification**. If Customer is prohibited by federal, state or local law from agreeing to hold harmless or indemnify third parties, Section 14(a) of the Services Agreement shall not apply to Customer, to the extent disallowed by applicable law.

4. **Open Records**. If the Customer is subject to federal or state public records laws, including laws styled as open records, freedom of information, or sunshine laws ("Open Records Laws") the confidentiality requirements of Section 12 of the Services Agreement apply only to the extent permitted by Open Records Laws applicable to the Customer. This Section is not intended to be a waiver of any of the provisions of the applicable Open Records Laws, including, without limitation, the requirement for the Customer to provide notice and opportunity for NEOED to assert an exception to disclosure requirements in accordance with the applicable Open Records laws.

5. **Cooperative Purchasing**. If Customer is a Government Customer, but is not a U.S. Federal Agency or subdivision thereof, NEOED agrees to allow any other state agency, department, political subdivision or instrumentality of the state but in all cases located in the same state as the Customer ("Related Agency") to purchase Services under the terms of the Services Agreement, at the Related Agency's discretion with the following requirements, exceptions and limitations: (a) any purchases made by a Related Agency shall be transactions between the Related Agency and NEOED; for clarity, Customer shall not be responsible for any transactions between the Related Agency and NEOED, (b) the terms (including pricing) specified in the Order Forms entered into between NEOED and Customer shall not be incorporated into the transactions between the Related Agency and NEOED, and (c) the Related Agency will confirm in writing it has the authority to use the Services Agreement for the purchase and that the use of the Services Agreement for the purchase is not prohibited by law or procurement regulations or standards applicable to the Related Agency.

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Exhibit B
HRIS Addendum

The following terms govern the use of the HRIS Services (the "HRIS Addendum") as they relate to specific HRIS Services ordered by Customer in an Order Form. "HRIS Services" refers to the following SaaS Applications or any Add-Ons (defined below) or Professional Services related to such SaaS Applications: NEOED Core HR, NEOED Payroll, and NEOED Time and Attendance. If any provision within the HRIS Addendum directly conflicts with any other provision of the Services Agreement, the terms of this Addendum shall control.

Implementation; Add-Ons; and Configuration Limitation. Implementation of HRIS Services as detailed in the standard statement of work ("SOW") and the mutually agreed-upon scope document ("Scope") will proceed in accordance with the estimated implementation schedule provided by NEOED and as further detailed in the SOW and Scope. Implementation services not included in the SOW and Scope may be subject to additional fees. Customer acknowledges that the timeline for the implementation schedule is an estimate only and dependent on a number of variables, including but not limited to Customer's responsiveness to NEOED's requests during the implementation process and Customer's obligation to fill out the "Implementation Workbook" to facilitate the implementation process. In the event that Customer does not order the full suite of HRIS services offered, NEOED may be required to generate custom feeds for Customer for an additional fee. During implementation, Customer may elect optional add-on services that supplement the SaaS Applications (the "Add-Ons"). After completion of implementation, any subsequent changes Customer requests to the configuration of the HRIS Services will be at cost.

NEOED will have no responsibility for nor any duty to review, verify, correct or otherwise perform any investigation as to the completeness, accuracy or sufficiency of any data or information input into the HRIS system by or on behalf of the Customer. Customer is solely responsible for ensuring that all data entered into and stored in the HRIS system is accurate and complete, and for correcting any errors or discrepancies in such data.

CORE HR and Benefits – Additional Terms

The following terms shall apply to the extent that Customer orders the NEOED Core HR, and HRIS Services involving benefits administration (the "Benefits Module"):

1. Benefits Module Representative. Customer shall designate one or more persons who shall serve as NEOED's designated contact for the Benefits Module (the "Benefits Representative"). Customer represents and warrants to NEOED that the Benefits Representative has, and shall at all times have, the requisite authority to transmit information, directions and instructions on behalf of Customer, each "plan administrator" defined in Section 3(16)(A) of the ERISA and Section 414(g) of the Code and, if applicable, each "fiduciary" (as defined in Section 3(21) of ERISA) of each separate employee benefit plan covered by the Benefits Module (each, a "Benefit Plan"). The Benefits Representative also shall be deemed to have authority to issue, execute, grant, or provide any approvals, requests, notices, or other communications required or permitted under the Services Agreement or requested by NEOED in connection with the Benefits Module.

2. Use of the Benefits Module.

   a) HR Users. Customer shall authorize an administrator to input information and access certain information relating to (i) the benefits offered by Customer and (ii) Customer's employees/plan participants and their benefit options and elections as well as view certain personal and company information regarding company employees. The Benefits Module permits Customer's employees/plan participants to make various benefits elections and to view and update certain personal and company information. It is Customer's responsibility to submit instructions and information relating to the Benefits Module and to verify the accuracy and completeness of all such instructions and information submitted by Customer, employees, and plan participants.

   b) NEOED Not Fiduciary Advisor. Customer acknowledges and agrees that, in making the Benefits Module available, NEOED is not acting as an investment advisor, broker-dealer, insurance agent, tax advisor, attorney or intermediary or a financialor benefit planner. NEOED is not providing any benefits, tax advice, or any information related thereto; Customer is responsible for making available all benefits and information related thereto referenced or included in the Benefits Module.

   c) NEOED's Health Care Clearinghouse Status. Customer expressly acknowledges and agrees that NEOED is not a "Health Care Clearinghouse", a "Covered Entity" or a "Business Associate" within the meaning of HIPAA, and Customer shall not request or otherwise require NEOED to act as such. To the extent that NEOED is required to enter into any additional agreement as a result of Customer's use of the Benefits module, Customer shall be

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responsible for any liability incurred by NEOED thereunder.

3. Additional Termination Rights. NEOED may terminate Core HR, the Benefits Module, or this Services Agreement immediately upon written notice to the Customer upon (a) the failure of Customer to maintain its Benefit Plan(s) in compliance with ERISA or other applicable laws or regulations or (b) NEOED's determination that the exercise of any of the rights granted hereunderor the continued performance by NEOED of its obligations under this Services Agreement would cause NEOED to violate any applicable international, federal, state or local law(s) and/or regulation(s).

4. ERISA. The terms of this Section only shall apply to the extent Customer uses services governed, in whole or in part, by the Employee Retirement Income Security Act of 1974, as amended ("ERISA")

   a) NEOED's Non-Fiduciary Status. Customer expressly acknowledges and agrees that NEOED is not an "Administrator", "Plan Sponsor," or a "Plan Administrator" as defined in Section 3(16)(A) of ERISA, and Section 414(g) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively, nor is NEOED a "fiduciary" within themeaning of ERISA Section 3(21), and Customer shall not request or otherwise require NEOED to act as such. NEOED shall not exercise any discretionary authority or control respecting management of any of Customer's benefitor welfare plans ("Plan" or "Plans") or management or disposition of any of Customer's benefit or welfare Plan assets. NEOED shall not render investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of any Plan, nor does NEOED have any authority or responsibility to do so. NEOED has no discretionary authority or discretionary responsibility in the administration of the Plan(s).

   b) Use of NEOED'S Name. Customer or the Plan Administrator must obtain the prior written consent of NEOED to insert any references to NEOED or its affiliates, or to NEOED Services, with respect to any communication or document pertaining to a Plan prepared by Customer, or on behalf of Customer (other than documents prepared by NEOED), unless the reference only identifies NEOED as a service provider or the reference is required in a filing or document required by ERISA or any other applicable law. Without limiting the foregoing, in no event may Customer or the Plan Administrator identify or refer to NEOED as "administrator", "plan administrator", "third-party administrator", "plan sponsor", "fiduciary", "plan fiduciary" or similar title.

5. Direct to Carrier Services. Customer may elect direct to insurance carrier services (each a "Carrier Link") at its option, each for an additional cost. Reconfiguration of existing Carrier Links, establishing new Carrier Links, and additional elections are available for an additional fee and may be completed by NEOED at NEOED's then current rates. Customer may access and use the NEOED HRIS Services to electronically transmit employee data, including employee benefits enrollment data, to Customer's carriers or other third parties authorized by Customer. NEOED's ability to transmit data is subject to the provision of a current functional interface between HRIS Services and the carriers' systems. NEOED will not be obligated to transmit Customer's data to carriers if at any time Customer's carriers fail to provide the proper interface as solely determined by NEOED. If Customer requires development of any special or customized interfaces to transmit such data, all work performed by NEOED to create such interfaces will be at NEOED's then current fees for such services. NEOED makes no warranty that each carrier's specifications will conform with NEOED's current functional interfaces. In the event a carrier provides formats or specifications not supported by the NEOED HRIS Services, Customer will be solely responsible for transmitting the data to such carrier using an alternative system to be determined solely by Customer. Customer shall be responsible for promptly reviewing all records of transmissions to carriers and other reports prepared by NEOED for validity and accuracy according to Customer's records, and Customer will notify NEOED of any discrepancies promptly after receipt thereof.

Payroll Services – Additional Terms

The following terms shall apply to the extent that Customer orders the NEOED Payroll Services module:

1. Payroll Processing and Tax Filing. NEOED will deliver (i) payroll administrative services to Customer through NEOED's payroll software as a service (the "Payroll Module"), (ii) at Customer's election, direct deposit administration to those employees electing such service via ACH processing (collectively referred to as the "Payroll Services"), remit payroll taxes on Customer's behalf to those federal, state, and local taxing jurisdictions designated by Customer, and file related tax returns (such remitting of payroll taxes and filing of related tax returns, the "Tax Services"). At NEOED's then current fees, NEOED may also process calendar year-end W-2 forms for Customer's employees and Forms 1099-MISC. NEOED will, and Customer hereby authorizes NEOED and Fulfillment Partners to, initiate debits or reverse wire transfers prior to each paydate for Customer's payroll ("Paydate") and credit the bank accounts of Customer's employees and others to be paid by Customer by direct deposit payment on Paydate (a "Payee"), all in compliance with the operating rules of the National Automated Clearing House Association and the terms and conditions hereof. For purpose of clarity, the parties understand and agree that NEOED does not print and/or send paychecks for or on behalf of Customer.

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2. Documentation and Required Information.

   a) Authorization Forms; Proof of Name. Customer will be required to complete and submit the following documents in order to use the payroll processing components of Payroll Module: (i) power of attorney forms for each jurisdiction in which Customer will use the HRIS Services (the "POA"), (ii) Authorization to Debit/Credit Bank Account(s)/Obtain Bank Account Information (the "Authorization Form"), (iii) an IRS proof of legal name/FEIN and (iv) any authorization form for Fulfillment Partner authorizing debiting and crediting Customer's bank account.

   b) Proof of Existence. Customer will provide NEOED, and authorize NEOED to provide to Fulfillment Partner, Customer's (i) legal name, and "doing business as" name if applicable, (ii) physical street address (not a PO Box or PMB), (iii) phone number, (iv) Primary Business Activity (Nature of Business), (v) Duns Number (if one exists), (vi) Tax ID Number, (vii) estimated transaction count and dollar volume, (viii) number of employees, and (ix) supporting evidence via (A) either certified Articles of Incorporation, IRS EIN Letter, unexpired government issued business license, trust instrument or other government-issued evidence showing legal existence, and (B) either a voided business check, copy of utility bill, other evidence of legal name, physical address, DBA Name, or Tax ID.

   c) Permitted Disclosure Authorization. Customer hereby authorizes NEOED to (i) provide Customer's data to Fulfillment Partner for the purposes of performing the Payroll and Tax Services, and (ii) take such action as is necessary to performthe Payroll and Tax Services.

   d) Time and Attendance Information. Prior to commencement of Time and Attendance Services, Customer shall provide to NEOED all necessary information and guidance relating to its time and attendance policies and guidelines and coordinate with NEOED to establish standards for NEOED in its execution of the Time and Attendance Services. Customer agrees to promptly comply with NEOED's request for such additional documentation and understands that Payroll or Tax Services may be impaired or delayed if Customer does not comply with such request.

3. Customer Obligations, Representations, and Warranties. Customer acknowledges that NEOED's obligation to perform the HRIS Services is subject to Customer's obligations, representations, and warranties. Customer represents and warrants the following:

   a) Processing Authorization. Customer authorizes NEOED to process payroll entries on behalf of Customer. Customer acknowledges that NEOED is acting solely in the capacity of data processing agent and is not a source of funds for Customer. Customer shall be liable for each payroll related transaction initiated by NEOED on behalf of Customer, whether by electronic entry or wire transfer. NEOED, or its Fulfillment Partners, electronically transmit employee data, including employee payroll data, to designated third parties, and Customer authorizes NEOED and its Fulfillment Partners, to provide such transmission on Customer's behalf. Customer agrees that NEOED maintains specific Fulfillment Partner(s) for NEOED Payroll and Tax Services fulfillment during the term of and in accordance with this Services Agreement and that Customer shall not, directly or indirectly, supplement, substitute, or otherwise modify the provision of such Payroll and Tax Services without terminating this Services Agreement.

   b) Information Accuracy; Reliance; Change Notice. Customer shall input, maintain, and verify the accuracy of any and all information, including payroll and tax information, and Customer shall continually ensure that such information is kept complete, accurate, delivered on time, and up to date at all times. Customer acknowledges that NEOED and NEOED Fulfillment Partners will rely on the accuracy of this information as it performs its requested functions. NEOED shall not be responsible for any delays or inaccuracies in Customer's delivery of data to NEOED. Customer will notify NEOED immediately of any change in the processing information, including the Authorization Form. Customer will also obtain a voluntary written authorization from any Payee prior to the initiation of the first credit to the account of such Payee and shall provide upon demand a copy of such written authorization to NEOED.

   c) Processing Deadlines. Unless otherwise agreed to by the Parties, Customer will: (a) complete and execute all required documentation so that NEOED or Fulfillment Partner may withdraw funds from Customer's account to process direct deposit payrolls, (b) input or report all relevant payroll data for ACH transmissions to NEOED no later than 2:00 p.m. Pacific Standard Time (PST) three (3) banking days prior to each Paydate, (c) input or report all other relevant payroll data to NEOED no later than 2:00 p.m. Pacific Standard Time (PST) two banking days prior to each Paydate, (d) have available in Customer's bank account good, collectable funds in a sufficient amount to cover funding disbursements, checks, direct deposits, tax payments, or recurring payments to third parties no later than the opening of business (i) two banking days prior to each Paydate for debits by electronic entry, and (ii) two banking days prior to each Paydate for funding by wire transfer, and (e) compare all reports on credits or debits initiated by Customer to NEOED's records and promptly notify NEOED of any discrepancies. In the event Customer does not meet the deadlines specified herein, NEOED shall make reasonable efforts to complete processing prior to the Paydate; however, NEOED makes no representation or warranty that payroll will process by the Paydate where Customer fails to provide all required documentation by the deadline. Additional Fees may apply for expedited processing.

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d) Customer Review. Within seven (7) business days after receipt from NEOED, Customer will promptly conduct a detailed review of all payroll and tax registers produced by NEOED or Fulfillment Partners for accuracy, validity and conformity with Customer's records. Customer will promptly notify NEOED of any error or omission discovered by Customer in any payroll registers, disbursement records, payroll or tax reports and documents produced by NEOED or Fulfillment Partners, or any discrepancy between the information provided by NEOED or Fulfillment Partners, and Customer's records. Customer will not rely on any record, report or document containing any discovered error, omission or discrepancy until such error, omission or discrepancy, has been corrected. Customer will be responsible for any consequences resulting from instructions Customer may give to NEOED or Fulfillment Partners with regard to HRIS Services or any payroll registers, disbursement records, reports and documents prepared by NEOED based on information provided by Customer.

e) Document Retention. Customer will retain copies of all information entered into or generated by the HRIS Services and Customer shall be solely responsible for maintaining such data, and all tax records, in accordance with any legal obligations.

f) Special Processing. Customer understands and acknowledges that administering processing dates beyond standard payroll dates, and correcting, amending, or cancelling payroll entries or mistaken reversals (collectively "Special Processing"), are complicated, highly manual, and may result in additional expenses, tax consequences, and penalties. Therefore, Special Processing may be subject to additional NEOED Fees.

g) Recovery Cooperation. Customer agrees to undertake reasonable efforts to cooperate with NEOED and any other parties involved in processing any transactions hereunder to recover funds credited to any employee as a result of an error made by Customer, NEOED, or Fulfillment Partners, or any other loss recovery efforts and in connection with any actions that the relevant party NEOED may be obligated to defend or elects to pursue against any third-party.

h) Compliance with Laws. Customer acknowledges that, in order to put into effect the Payroll Services which include ACH transactions, Customer will be the Originator of the ACH transactions and will follow and be bound by the rules for ACH Originators as adopted from time to time by the NACHA. Customer agrees that it has assumed the responsibilities of an Originator under the ACH Rules and acknowledges that entries may not be initiated in violation of the laws of the United States. Customer agrees to be compliant with laws. Customer will comply with all laws including, but not limited to, the U.S. Patriot Act, the Unlawful Internet Gambling Enforcement Act, the Bank Secrecy Act, and Anti Money Laundering laws.

4. Effect of Failed Funds. If Customer fails to pay the taxes, direct deposits, employee payments or other charges, including fees, then Customer agrees to pay NEOED for all costs of collection, including reasonable attorney fees, which may be associatedwith collection of the amounts due. NEOED also may, at its sole option, terminate this Services Agreement and withhold or suspend any work in progress. This is in addition to any other rights NEOED may have under this contract or under law. NEOEDalso reserves the rights to reverse employee transactions and /or tax payments for which funds have not been received from Customer.

5. Rejection of Entries. NEOED shall reject any file or entry that does not comply with the requirements of this Services Agreement, the NACHA Rules, or uses an improper SEC Code, or if NEOED suspects fraud or illegal or improper activity. NEOEDshall have no liability.

6. Resolution of Error Exceptions. For the purposes of this Section, the term "error exception(s)" shall mean any data requirements within the HRIS Services that, based on Customer's configuration, have been assigned a severity level designation of "error"; such designation shall create a requirement for an operational task to be completed by Customer in order to proceed with Customer's processing, including processing of Customer payroll for the designated period. Failure to resolve an error exception will prevent Customer's payroll from being processed as scheduled. NEOED is not obligated to clear any such error on behalf of Customer.

7. NEOED Errors and Omissions Warranty. NEOED warrants it will use commercially reasonable efforts to properly transmit the appropriate reports, data, or filings based on the information provided in Customer's HRIS Services. In addition, NEOED will use commercially reasonable efforts to rectify any Customer report, data, or filing error, including any deposit, corrected or reversal debit or credit entry, for which NEOED is solely responsible; provided that, in each case Customer advises NEOED no later than ten (10) business days after the occurrence of such errors or omissions. This is Customer's sole remedy in the event of a breach of the foregoing warranty. Notwithstanding the foregoing, Customer will be solely responsible for payment of all tax penalties, interest, and additional NEOED fees if: (i) the penalty is the result of incorrect, inaccurate, or incomplete information Customer provides to NEOED, (ii) Customer has insufficient funds in Customer's designated bank account to process HRIS Services, or (iii) a party other than NEOED, or a NEOED Fulfillment Partner, fails to perform services in a timely manner.

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8. Additional Liability and Warranty Limitations. NEOED, ITS PROVIDERS, AND FULFILLMENT PARTNERS, AND THE OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS OF EACH WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES OR UNDER ANY THEORY OF RECOVERY (WHETHER IN CONTRACT OR TORT OR OTHERWISE) FOR (i) ANY FEES, COSTS, CHARGES, OR ANY DAMAGES CAUSED BY LOST SHIPMENT OR TRANSMISSION OF CHECKS OR ANY FORM OF DISBURSEMENT INCLUDING, BUT NOT LIMITED TO, STOP PAYMENT FEES, REPRINTING OR RETRANSMISSION COSTS, SHIPPING CHARGES, OR CONSEQUENTIAL EXPENSES AND DAMAGE, (ii) ANY CHARGES, FEES, OR EXPENSES INCURRED BY CUSTOMER, CUSTOMER'S AGENTS, OR EMPLOYEES WHICH ARE DUE TO LATE PAYCHECKS, REGARDLESS OF WHETHER SUCH PAYCHECKS ARE TO BE PREPARED AND DELIVERED BY NEOED, FULFILLMENT PARTNERS, OR BY CUSTOMER, (iii) NON-PERFORMANCE OF HRIS SERVICES WHICH HAVE BEEN SUSPENDED DUE TO FAILURE OR DELAY IN PAYMENT OF FEES OWED UNDER THIS SERVICES AGREEMENT, AND (IV) FOR ANY DAMAGES TO CUSTOMER ARISING FROM OR IN CONNECTION WITH A DECISION BY NEOED TO SUBMIT FILES FOR PROCESSING AFTER CUSTOMER HAS FAILED TO CLEAR OUTSTANDING ERROR EXCEPTIONS WITHIN THE SPECIFIED DEADLINE.

9. Additional Termination Rights.

   a) Termination for Default. Customer's breach of the NACHA Rules, violation of any applicable federal or state regulation, or failure to maintain account funding as required by this Services Agreement (and as a result any debit to Customer's account isreturned), shall each constitute a default. Upon default, NEOED may suspend the HRIS Services or terminate this Services Agreement in a manner that permits NEOED to comply with the NACHA Rules. Termination is effective immediately upon written notice of such termination to Customer. The right to suspend the HRIS Services and/or terminate this Services Agreement is in addition to any other rights and remedies provided under this Services Agreement or otherwise under law.

   b) Effect of Termination. No termination of this Services Agreement shall release Customer from any obligation to pay NEOED any amount that has accrued or becomes payable at or prior to the date of termination. No suspension of HRIS Services shall release Customer from any obligation to pay NEOED any amounts due under this Services Agreement. Customer shall not be entitled to any refund of any amounts paid to NEOED as a result of a termination based on Customer's default. Notwithstanding the termination of this Services Agreement, the parties shall continue to comply with the NACHA Rules with respect to transmissions pursuant to this Services Agreement.

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Exhibit C
Integration Terms Addendum

NEOED offers integrations and platform APIs for integrations to third party systems ("Integration Services"). Customer may use only those Integration Services purchased or subscribed to as listed within the NEOED Order Form. The following terms (the "Integration Terms Addendum") shall apply to the extent that Customer utilizes a system integration between the Services and either: (a) an affiliated integrated service, including those found at https://api.neogov.com/connect/marketplace.html and/or https://apidocs.powerdms.com ("Affiliated API") or to the extent that Customer utilizes a system integration between the Services and an unaffiliated third-party service ("Customer Application") integrated using NEOED's open API ("Open API"). Integration Services are not available for HRIS Services and this Exhibit C shall not apply to HRIS Services.

1. Provision of Integrations. Subject to and conditioned on compliance with all terms and conditions set forth in this Agreement, NEOED hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the applicable Term to use and/or access the Affiliated API as described in this Agreement, or the Open API for communication between Customer's human resource related third application(s) that will interoperate with NEOED Services (collectively these uses shall be referred to as the "API" or "Integration"). Customer acknowledges there are no implied licenses granted under this Agreement. NEOED reserves all rights that are not expressly granted. Customer may not use the API for any other purpose without our prior written consent. Customer may not share the API with any third party, must keep the API and all log-in information secure, and must use the API key as Customer sole means of accessing the API.

2. Integration Intellectual Property. All right, title, and interest in the API and any and all information, data, documents, materials, inventions, technologies, know-how, descriptions, requirements, plans, reports, works, intellectual property, software, hardware, systems, methods, processes, and inventions, customizations, enhancements, improvements and other modifications based on or derived from the API are and will remain, as appropriate, with NEOED. All right, title, and interest in and to the third-party materials, includingall intellectual property rights therein, are and will remain with their respective third-party rights holders subject to the terms and conditions of the applicable third-party license agreements. Customer has no right or license with respect to any third-party materials except as expressly licensed under such third-party license agreements.

3. Integration Terms of Use. Except as expressly authorized under this Agreement, you may not remove any proprietary notices from the API; use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property rightor other right of any person, or that violates any applicable law; combine or integrate the API with any software, technology, services, or materials not authorized by NEOED; design or permit Customer Application(s) to disable, override, or otherwise interfere with any NEOED-implemented communications to end users, consent screens, user settings, alerts, warning, or the like; use the API in any of Customer Application(s) to replicate or attempt to replace the user experience of the Services; or attempt to cloak or conceal Customer identity or the identity of Customer Application(s) when requesting authorization to use the API.

4. Customer Integration Responsibilities. Customer, Customer developed web or other software services or applications, and Customer third-party vendors that integrate with the API (collectively the "Customer Applications"), shall comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on https://api.neogov.com/connect/index.html and/or https://apidocs.powerdms.com from time to time. In addition, Customer will not use the API in connection with or to promote any products, services, or materials that constitute, promote, or are used primarily for the purpose of dealing in spyware, adware,or other malicious programs or code, counterfeit goods, items subject to U.S. embargo, unsolicited mass distribution of email ("spam"),multi-level marketing proposals, hate materials, hacking, surveillance, interception, or descrambling equipment, libelous, defamatory, obscene, pornographic, abusive, or otherwise offensive content, stolen products, and items used for theft, hazardous materials, or any illegal activities.

5. Cooperation. If applicable, Customer shall timely provide such cooperation, assistance, and information as NEOED reasonably requests to enable the API. NEOED is not responsible or liable for any late delivery or delay or failure of performance caused in wholeor in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement. NEOED will provide Customer maintenance and support services for API issues arising from the information technology designed, developed, and under then current control of NEOED. NEOED shall have no obligation to provide maintenance or support for issues arising from the inaction or action of Customer or third parties of which are outside NEOED control.

6. Provision of Open API. In the event license fees or other payments are not due in exchange for the right to use and access the Open API, you acknowledge and agree that this arrangement is made in consideration of the mutual covenants set forth in this Agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein. Notwithstanding the foregoing, NEOED reserves the right to change for access with effect from the start of each

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Renewal Term by giving Customer at least ninety (90) day notice prior to commencement of a Renewal Term.

7. API Key. In order to use and access the Open API, you must obtain an Open API key through the registration process. Customer agreesto monitor Customer Applications for any activity that violates applicable laws, rules and regulation, or any terms and conditions of this Agreement, including any fraudulent, inappropriate, or potentially harmful behavior. This Agreement does not entitle Customer to any support for the Open API. You acknowledge that NEOED may update or modify the Open API from time to time and at our sole discretion and may require you to obtain and use the most recent version(s). You are required to make any such changes to Customer Applications that are required for integration as a result of such Update at Customer sole cost and expense. Updates may adversely affect how Customer Applications communicate with the Services.

8. Efficient Processing. You must use efficient programming, which will not cause an overwhelming number of requests to be made in too short a period of time, as-determined solely by NEOED. If this occurs, NEOED reserves the right to throttle your API connections,or suspend or terminate your access to the Open API. NEOED shall use reasonable efforts to provide Customer notice and reasonable time to cure prior to taking such actions.

9. Open API Limitations. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL NEOEDBE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICTLIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE OPEN API; OR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS, EVEN IF NEOED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR NEOED WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM.

10. Open API Termination. Notwithstanding the additional Termination rights herein, NEOED may immediately terminate or suspend Customer access to Open APIs in our sole discretion at any time and for any reason, with or without notice or cause. In addition, your Open API subscription will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	8/16/2022
Subject:	Superior Court Commissioners Compensation and Benefits Update
Presenter:	L. Wingfield
Prepared By:	L. Wingfield
Reviewed By:	S. Hallstrom email approval

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

Joint Resolution, Benton County Resolution 2014-351 and Franklin County Resolution 2014-204, adopted compensation and benefit levels for Superior Court Commissioners. The Resolution entitled them to eleven (11) paid holidays and one (1) floating holiday. With the addition of Juneteenth this year, there was an oversight to add the holiday to this group. During the June payroll, the day was originally keyed as a holiday but the Superior Court Commissioners do not have that holiday and therefore, the day was changed to their floating holiday. It is recommended to make them whole and give them an additional 2022 floating holiday to take at their discretion.

Additionally, we have updated the previous Resolutions adopting the compensation and benefits. The updates are as follows:

- Updated the sick leave provision to follow the current state sick leave law
- The holidays now follow the non-bargaining holiday policy and procedure so no update will be needed in the future for consistency

Fiscal Impact

No supplement required

Recommendation

Recommend the Board of Benton County Commissioners sign the Joint Resolution adding an additional 2022 floating holiday to the Superior Court Commissioners and the Joint Resolution updating Superior Court Commissioners' compensation and benefit levels effective January 1, 2023.

Suggested Motion

I move to approve the joint resolution in the matter of adding an additional floating holiday to the Superior Court Commissioners for the 2022 calendar year.

I move to approve the joint resolution updating the Superior Court Commissioners' compensation and benefit levels effective January 1, 2023.

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 ADDING ONE ADDITIONAL FLOATING HOLIDAY IN 2022 FOR THE SUPERIOR COURT COMMISSIONERS FOR JUNETEENTH.

WHEREAS, Joint Resolution, Benton County Resolution 2014-351 and Franklin County Resolution 2014-204, adopted the compensation and benefit levels for Superior Court Commissioners; and,

WHEREAS, the Resolution outlined eleven (11) holidays and one (1) floating holiday; and,

WHEREAS, there was an oversight to add Juneteenth as a recognized holiday starting in 2022 and therefore the Superior Court Commissioners used their floating holiday on Juneteenth; and,

WHEREAS, to recognize all holidays and make the Superior Court Commissioners whole, they will be entitled to an additional floating holiday in 2022; **NOW, THEREFORE,**

BE IT RESOLVED, that the Benton and Franklin Counties Board of Commissioners add an additional holiday to the Superior Court Commissioners for the 2022 calendar year to be utilized within current policies and procedures.

Dated this ____ day of _____, 2022.

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 _____, 2022.

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, Superior Court, Franklin County

Prepared by: L. Wingfield

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 UPDATING COMPENSATION AND BENEFIT LEVELS FOR ALL FULL AND PART TIME SUPERIOR COURT COMMISSIONERS FOR BENTON AND FRANKLIN COUNTIES AND RESCINDING BENTON COUNTY RESOLUTION 2014-351 AND FRANKLIN COUNTY RESOLUTION 2014-204.

WHEREAS, the Superior Court for the State of Washington in and for Benton and Franklin Counties has, within the Court's current expense budget, established both full and part time Superior Court Commissioner positions; and

WHEREAS, throughout the years, the compensation and benefit levels for those positions have been reflected in various resolutions adopted by the Boards of County Commissioners for Benton and Franklin Counties; and

WHEREAS, it is the intent of both boards to update and clearly state the compensation and benefit levels of these positions; **NOW, THEREFORE,**

BE IT RESOLVED, that the Benton and Franklin Counties Board of Commissioners hereby rescind Benton County Resolution 2014-351 and Franklin County Resolution 2014-204 effective December 31, 2022; and

BE IT FURTHER RESOLVED, the salary and benefit levels for Superior Court Commissioners shall be the following effective January 1, 2023:

- A full-time Superior Court Commissioner shall be compensated at a salary based on ninety percent (90%) of the salary of a Superior Court Judge. A part-time Superior Court Commissioner shall be compensated for actual hours worked each month equivalent to the ninety percent (90%) of the annual salary adjusted to an hourly rate on the basis of two thousand and eighty (2080) hours.
- A full-time Superior Court Commissioner shall be entitled to two hundred and sixteen (216) hours of non-cumulative vacation per year while part-time Superior Court Commissioners shall be entitled to one hundred and eight (108) hours of non-cumulative vacation per year. All vacation time not used within the year of accrual shall be forfeited and forever lost and cannot be cashed out at the time of termination, death, other separation, including resignation or reduction in force.
- A full-time Superior Court Commissioner shall be entitled to ten (10) hours of sick leave per month while part-time Superior Court Commissioners shall be entitled to five (5) hours of sick leave per month. Every January 1st, a maximum of one thousand and forty (1,040) hours of earned sick leave can be carried over to the new year. There shall be no sick leave cashed out at the time of termination, death, other separation, including resignation or reduction in force.
- A full-time and part-time Superior Court Commissioner shall be entitled to the same paid holidays, including floating holidays, as a Bi-County Non-Bargaining employee. Each

holiday equals eight (8) hours for full-time Superior Court Commissioners and four (4) hours for part-time Superior Court Commissioners.

- A full-time Superior Court Commissioner shall follow the Bi-County Non-Bargaining policy and procedure for health insurance benefits and VEBA. A part-time Superior Court Commissioner shall not be entitled to health insurance benefits or VEBA.
- A full-time and part-time Superior Court Commissioner shall be entitled to state retirement consistent with state laws.

Dated this ____ day of _____, 2022.

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 _____, 2022.

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, Superior Court **Prepared by: L. Wingfield**