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 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, November 29, 2022, 9:00 a.m.
Benton County Courthouse, Prosser, WA

9:00 AM **Call to Order**

Pledge of Allegiance

Approval of Minutes
- ❖ **November 15, 2022**

Review Agenda

Consent Agenda

Board of Equalization
a. Notice of Approval to Hear Property Tax Appeals

District Court
b. Interagency Agreement w/WA Administrative Office of the Courts for Interpreter Costs Reimbursement

Human Resources
c. Establishing Holidays & Hours for Transaction of Business for 2023

Human Services
d. First Contract Amendment w/Jennifer Dorsett to Cover Additional Supply Costs

Information Technology
e. Agreement w/United Training Commercial for Online Training
f. Purchase of Software & Hardware Support Extension From Thornburg Computer Services

Juvenile

g. Contract Amendment No. 5 w/NCIC Inmate Communications for Inmate Telecommunications Srvcs
h. Contract w/Career Path Services for Education Employment & Training Program
i. Agreement w/State of WA, Administrative Office of the Courts for Improvements to Court Interpreter Services

Office of Public Defense

j. Juvenile Court Public Defense Services Agreement w/Jared Hanson
k. Juvenile Court Public Defense Services Agreement w/Hayden Sebald
l. Juvenile Court Public Defense Services Agreement w/Karyn Oldfield
m. Amended Juvenile Court Public Defense Services Agreement w/Branden Landon
n. Second Amended Agreement w/WA State Office of Public Defense for Grant Funding
o. Superior Court Public Defense Services Agreement w/Nicholas Blount
p. Superior Court Public Defense Services Agreement w/Karla Kane
q. Superior Court Public Defense Services Agreement w/Brian Hultgrenn
r. Superior Court Public Defense Services Agreement w/Ian Sinclair
s. Superior Court Public Defense Services Agreement w/Alan Tindell
t. Superior Court Public Defense Services Agreement w/Catherine Harkins
u. Superior Court Public Defense Services Agreement w/Judy Chang
v. Superior Court Public Defense Services Agreement w/Deric Orr
w. Amended District & Superior Court Public Defense Services Agreement w/Michelle Alexander
x. District Court Public Defense Services Agreement w/Dawn Hickman

Planning

y. Contract w/Susan Drummond for Hearings Examiner Services

Public Works

z. Approving the 2023 Annual Road Program & Major Equipment Purchases

Purchasing

aa. Contract Amendment #2 w/C.H. Johnson Consulting for Fairgrounds Feasibility Study & Master Plan
bb. Purchase of Floor Scrubber From W.W. Grainger for Fairgrounds Event Center
cc. Purchase of Chairs From Affordable Interior Systems for the Fairgrounds Event Center
dd. Purchase of Tables From P.R.E. Sales for Fairgrounds Event Center
ee. Purchase of Grader Blade Edges From DMC Wear Parts for Public Works
ff. Purchase of Inmate & Detention Supplies, Solutions & Services From Bob Barker Co. for All Depts.
gg. Accepting Work Performed by Banlin Construction for the Administration Building Project
hh. Third Contract Amendment w/Moon Security Services for Fire & Security Monitoring Services

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

Public Hearing

Approval of Final Benton County Biennium Budgets for 2023-2024 ~ L Ivey

- Certifying Current Expense Levy for 2023 Collection
- Certifying County Road Levy for 2023 Collection
- Certifying Budgeted Taxes for Collection in 2023
- Adoption of Final 2023-2024 Benton County Budgets

Scheduled Business

Interlocal Agreements for District Court Services ~ J MacPherson

- City of Kennewick
- City of Prosser
- City of Richland
- City of West Richland

2023 Historic Preservation Grant Overview & Committee Funding Recommendations ~ S Palmus

Transfer of Funds in Juvenile Center Fund, Dept. 171 to Cover Program Detention Officer Salary ~ D Wheeler & C Nave

Recognizing Eric Lipp for His Service to Benton-Franklin Counties Juvenile Justice Center ~ D Wheeler

Other Business

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, November 15, 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 (via/WebEx)
County Administrator Jerrod MacPherson
Clerk of the Board Marilu Flores

Benton County Employees Present During All or a Portion of the Meeting: Robert Heard, IT Manager; Carlee Nave, HR Manager; Greg Wendt, Community Development Director; Michelle Cooke, Planning Manager; Superior Court Judge Joe Burrowes; Chief Deputy Clerk Elaine Osborne; Finance Manager Linda Ivey; Auditor Brenda Chilton; DPA Ryan Brown and Stephen Hallstrom; Treasurer Ken Spencer

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of November 8, 2022 were approved.

Agenda Review

No changes

Consent Agenda

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

Commissioners
a. Line Item Transfer, Fund No. 0010, Dept. 115 to 127 for NeoGov Services

Information Technology
b. Purchase of One Laptop & Dock and Two Monitors From Dell Inc. for OPD

Juvenile

c. Contract w/Lutheran Community Services Northwest for Licensed Mental Health Clinician

Office of Public Defense

d. Agreement w/Eric Scott to Provide Leave Coverage In Superior Court

Public Works

e. Purchase of Culvert Pipe & Accessories From Arrow Construction Supply
f. Contract w/TranTech Engineering for Bridge Load Rating Services on Oak St. CID Bridge

Purchasing

g. First Contract Amendment w/Jiffy Car Wash, Inc. for Sheriff's Office
h. Transferring Ownership of a Conex From Solid Waste Dept. to General Fund for Use by the Corrections Department
i. State & Local Task Force Agreement w/Sheriff's Office & United States Dept of Justice
j. Agreement w/City of Kennewick for the Kennewick Firearms Range Facility

Sustainable Development

k. Support Letter to Port of Benton for Rail Infrastructure & Safety Improvement Program

Public Comment

None.

Public Hearing - Ordinance Amendment Relating to BCC Title 15 – File No. OA 2022-002

Greg Wendt and Michelle Cooke gave the Board an overview of the proposals and options Amending Title 15 pertaining to the Rural Water Supply Program. Mr. Wendt indicated that in 2020, the County passed Resolution 2019-276 & County Ordinance 619 creating the Rural Water Supply Program. The Program required new housing units (associated with building permits), relying on permit exempt wells, located in a certain portion of Water Resource Inventory Area (WRIA) 37, to fully mitigate the impacts of such wells. The County acquired water rights which have been placed into trust with the State of Washington's Department of Ecology. Ms. Cooke outlined the Program's three mitigation packages available to applicants depending on whether an applicant is in or outside an irrigation district requiring applicants to install metering equipment which is required to be installed and approved before a certificate of occupancy is issued for the dwelling unit.

The three different mitigation certificate packages consist of:

Package A authorizes the use of an annual average of two hundred (200) gallons per day of private well water for indoor use only on the parcel, provided, so long as the daily annual average is not exceeded in any twelve (12) month period, the maximum withdrawal on any given day for parcels with a Package A Mitigation Certificate shall be six hundred seventy-five (675) gallons. This certificate is valid only for building permits located within an irrigation district.

Package B authorizes the use of an annual average of three hundred (300) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an area up to 1500 square feet.

As long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package B Mitigation Certificate shall be one thousand (1000) gallons. This certificate is for building permits located within an irrigation district. This certificate is valid only for building permits not located within an irrigation district.

Package C- Authorizes the use of an annual average of four hundred (400) gallons per day, in the aggregate, of private well water for indoor use and outdoor irrigation of an area up to 3000 square feet. As long as the annual daily average is not exceeded in any twelve (12) month period, the maximum daily withdrawal on any given day for parcels with a Package C Mitigation Certificate shall be one thousand three hundred (1300) gallons. This certificate is valid only for building permits not located within an irrigation district.

Ms. Cooke further mentioned that it would be necessary to clarify BCC 15.18.030, reaffirming that the chapter applies to residential uses in unincorporated Benton County.

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

MOTION: Commissioner McKay moved to adopt ordinance amendment OA 2022-02 creating a Supplemental Mitigation Certification option in BCC 15.18.080 and reaffirmed that the Chapter applied to residential uses as shown on the County's adopted Mitigation Maps in Exhibit A of Ordinance 619; Resolution 2022-061. Commissioner Delvin seconded and upon vote, the motion carried.

Public Hearing - Community Development Department Planning Division Fee Schedule

Greg Wendt and Michelle Cooke presented a proposal to update the Planning Division Fee Schedule applying to land use applications. Mr. Wendt indicated that the Planning Division was proposing three changes:

- removing the boundary review board portion
- adding a new fee for the Rural Water Supply Program to include supplemental water certificates
- proposing fee increases to the existing application fees. Mr. Wendt added this was due to addressing rising costs of notifications, staff time, and advertising costs associated with land use applications.

Mr. Wendt mentioned that the requested fee schedule was still less compared to other counties and was recommending approval of the fee schedule as presented.

Commissioners Small and McKay indicated their appreciation at Benton County's effort in keeping the fees to a minimum and below other counties.

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

MOTION: Commissioner McKay moved to adopt a resolution and approve the changes to the Benton County Planning Division Fee Schedule effective November 16, 2022. Commissioner Delvin seconded and upon vote, the motion carried.

Line Item Transfer, Fund No. 0010, Dept. 123 to 138 for Part Time Court Commissioner Medical Insurance & Retirement

Superior Court Judge Joe Burrowes, Finance Manager Linda Ivey and HR Manager Carlee Nave presented a Line Item Transfer requesting benefits to include medical insurance and retirement be included for the part time court commissioner handling Blake matters. Judge Burrowes mentioned that the opening for this position received a limited pool of applicants due to the package not including benefits and limiting their practice in Superior Court. He mentioned that including benefits to this position would attract a bigger pool of applicants. Ms. Nave indicated that this is not a position that offered benefits but agreed that benefits would attract more applicants. Ms. Ivey added that this request was budget neutral and directly linked to Blake matters and when Blake funding went away, so would this position and benefits.

MOTION: Commissioner McKay moved to approve the Line Item Transfer in Fund No. 0010, Dept 123 to Dept 138 for part time commissioner medical and retirement benefits. Commissioner Delvin seconded and upon approval, motion carried.

Other Business

Administrator MacPherson reminded the Board there would not be a meeting next Tuesday, November 22, 2022.

Executive Session – County's Position in Labor Negotiations

The Board went into executive session at 9:19 a.m. for up to 10 minutes with Carlee Nave and Stephen Hallstrom to discuss the County's position in labor negotiations. Also present were Jerrod MacPherson, Linda Ivey and Marilu Flores.

The Board came out at 9:30 a.m. No decisions were made in executive session.

Accounts Payable

Check Date: 11/10/2022
Pcards #284
Total all funds: $524,816.34

Resolutions

2022-827:	Line Item Transfer, Fund No. 0010, Dept. 115 to 127 for NeoGov Services
2022-828:	Purchase of One Laptop & Dock and Two Monitors From Dell Inc. for OPD
2022-829:	Contract w/Lutheran Community Services Northwest for Licensed Mental Health Clinician
2022-830:	Agreement w/Eric Scott to Provide Leave Coverage In Superior Court
2022-831:	Purchase of Culvert Pipe & Accessories From Arrow Construction Supply
2022-832:	Contract w/TranTech Engineering for Bridge Load Rating Services on Oak St. CID Bridge

2022-833: First Contract Amendment w/Jiffy Car Wash, Inc. for Sheriff's Office
2022-834: Transferring Ownership of a Conex From Solid Waste Dept. to General Fund for Use by the Corrections Department
2022-835: State & Local Task Force Agreement w/Sheriff's Office & United States Dept of Justice
2022-836: Agreement w/City of Kennewick for the Kennewick Firearms Range Facility
2022-837: Ordinance Amendment Relating to BCC Title 15 – File No. OA 2022-002
2022-838: Community Development Department Planning Division Fee Schedule
2022-839: Line Item Transfer, Fund No. 0010, Dept. 123 to 138 for Part Time Court Commissioner Medical Insurance & Retirement

There being no further business before the Board, the meeting adjourned at approximately 9:30 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Notice of Approval to Hear Property Tax Appeals
Presenter:	
Prepared By:	Peggy Brown
Reviewed By:	

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

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

Summary / Background Information

Authorizing the Board of Commissioners to sign a notice of approval so that the Board of Equalization can hold property tax appeal hearings for the 2022 assessment year for taxes payable in 2023.

Fiscal Impact

Recommendation

Suggested Motion

Consent Agenda resolution.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE BOARD OF COMMISSIONERS TO SIGN A NOTICE OF APPROVAL TO HEAR PROPERTY TAX APPEALS

WHEREAS, the county Board of Equalization, with the approval of the county legislative authority, may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater (RCW 84.48.010); and

WHEREAS, the county Board of Equalization has received 69 appeals as of October 26, 2022 and requests the Board of Benton County Commissioners to approve additional property tax appeal hearings as is permitted by RCW 84.48.010; **NOW THEREFORE,**

BE IT RESOLVED that the Benton County Board of Commissioners approves additional property tax appeal hearings and is hereby authorized to sign the attached Notice of Approval to Hear Property Tax Appeals.

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

cc: BOE

P. Brown

NOTICE OF APPROVAL TO HEAR PROPERTY TAX APPEALS
BENTON COUNTY LEGISLATIVE AUTHORITY

The county Board of Equalization, with the approval of the county legislative authority, may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater. (RCW 84.48.010)

Pursuant to RCW 84.48.010, the Benton County Legislative Authority hereby approves the Benton County Board of Equalization's request to convene for the purpose of hearing property tax appeals for the current year. This approval is based on a finding that the requirements for convening under RCW 84.48.010 have been satisfied.

DATED THIS _____day of _____, 20____

_____
Chairman

_____
Member

_____
Member

To ask about the availability of this publication in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users, please call (360) 705-6718. For tax assistance, call (360) 534-1400.

REV 64 0049 (8/20/12)

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Approval of Inter-Agency Agreement IAA23085 for Interpreter Reimbursement
Presenter:	
Prepared By:	Ela Selga
Reviewed By:	

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

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

Summary / Background Information

The Washington State Administrative Offices of the Court (AOC) provides reimbursement for interpreter expenses incurred by Benton County District Court (BCDC). For the fiscal year 2022 which runs July 1, 2022 to June 30, 2023, the maximum reimbursable amount that BCDC can request is $48,180. BCDC is requesting approval of Interagency Agreement #IAA23085.

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Fiscal Impact

None

Recommendation

We recommend the Board of County Commissioners approve and sign interagency agreement IAA23085.

Suggested Motion

Motion to approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REQUEST FOR SIGNATURE FROM THE BOARD OF BENTON COUNTY COMMISSIONERS ON THE INTERAGENCY AGREEMENT #IAA23085 BETWEEN BENTON COUNTY, BENTON COUNTY DISTRICT COURT AND THE WASHINGTON ADMINISTRATIVE OFFICE OF THE COURTS

WHEREAS, the Washington State Administrative Office of the Courts (AOC) will provide reimbursement of interpreter costs up to $48,180 from the dates commencing July 1, 2022 and terminating on June 30, 2023; and

WHEREAS, Rafaela Selga, District Court Administrator, believes it is the best interest of the District Court that the Agreement between the State of Washington Administrative Office of the Courts and Benton County be approved as presented for the term commencing July 1, 2022 and terminating on June 30,2023; **NOW THEREFORE**,

BE IT RESOLVED that the Board of Benton County Commissioners hereby accepts the proposed interpreter reimbursement agreement in the amount of $48,180 for the term commencing July 1, 2022 and terminating June 30, 2023; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of County Commissioners is authorized to sign lnteragency Agreement #IAA23085 between Benton County and the State of Washington Administrative Offices of the Courts.

DATED this _____ day of _____, 2022.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners
Of Benton County, WA

Cc: Auditor
Treasurer

RSelga

INTERAGENCY AGREEMENT IAA23085
BETWEEN
WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS
AND
Benton County District Court

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

1. DEFINITIONS

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

a) "Certified Interpreter" means an interpreter who is certified by the Administrative Office of the Courts, as defined in RCW 2.43.020 (4) or an interpreter certified by the Office of the Deaf and Hard of Hearing (ODHH) pursuant to WAC 388-818-500, *et. seq.* The names and contact information of AOC-certified interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/ The names and contact information of ODHH-certified interpreters are found, and incorporated herein by reference, at: https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx

b) "Registered Interpreter" means an interpreter who is registered by the Administrative Office of the Courts, as defined in RCW 2.43.020 (6). The names and contact information of registered interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/.

c) "Qualified Interpreter" means a spoken language interpreter as defined in RCW 2.43.020 (2), or sign language interpreter as defined in RCW 2.42.110 (2).

d) "Qualifying Event" means a proceeding or event for which an interpreter is appointed by an appointing officer pursuant to RCW 2.42 and/or RCW 2.43.

2. PURPOSE

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

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

- Financial Need – i.e., the gap between the court's available financial resources and the costs to meet its need for certified, registered, and qualified interpreters, and the implementation of the Court's language access plan; and
- Need for Court Interpreters – i.e., the public's right to access the court, and the court's responsibility to provide court certified, registered, and qualified interpreters as required by RCW Chapters 2.42 and 2.43.
- Need for Language Access in General – i.e., translations for websites, translated forms, interpreting equipment, technology enabling remote interpreting, and other

things that are necessary for courts to provide fair and equitable access for people who are LEP, deaf, and hard of hearing.

3. DESCRIPTION OF SERVICES TO BE PROVIDED

a) The Court will ensure that the interpreter funding is used only for language access purposes and for reimbursement of costs paid to certified, registered, and qualified interpreters for Qualifying Events pursuant to **Exhibit A**, which is incorporated herein by reference.

b) The Court agrees to track and provide interpreter cost and usage data using a form provided by the AOC Interpreter Reimbursement Program, reflecting information about the Court's interpreter and language access costs and services.

c) The Court agrees to provide the AOC Project Manager with a list of all users who require access to submit data to the Language Access and Interpreter Reimbursement Program web application.

d) The Court agrees to work with the AOC Interpreter Program, the Interpreter Commission, and neighboring courts to identify and implement best and promising practices for providing language access and interpreter services.

e) The Court agrees to encourage its staff overseeing interpreter services at the court to attend trainings (in person and/or online) provided by the AOC Interpreter Commission and Interpreter Program.

f) The Court may elect to pay for interpreter services that are not in accordance with the provisions of **Exhibit A** as set forth; however, such payments will not be reimbursed.

g) The Court is required to have a Language Assistance Plan (LAP) to be a part of the reimbursement program. The Court submitted a LAP in FY 2022 and will exercise reasonable due diligence in maintaining and updating their LAP as required by law.

4. PERIOD OF PERFORMANCE

The beginning date of performance under this Agreement is **July 1, 2022**, regardless of the date of execution and which shall end on **June 30, 2023**.

5. COMPENSATION

a) The Court shall be reimbursed a maximum of $48,180.00 for interpreter and language access services costs incurred during the period of July 1, 2022 to June 30, 2023. No reimbursement shall be made under this Agreement for interpreting services provided after June 30, 2023.

b) The Court shall receive payment for its costs for interpreter and language access services as set forth in **Exhibit A**, and incorporated herein.

c) The Court shall not be reimbursed for interpreter services costs for Qualifying Events or other goods and services set forth in **Exhibit A** until properly-completed A-19 invoices, and corresponding data (*See subsection 3b*), are received and approved by AOC, pursuant to the following schedule:

1) Reflecting Qualifying and non-qualifying Events, and any goods or services purchased, occurring between July 1, 2022 and September 30, 2022, must be received by the AOC no later than December 31, 2022.
2) Reflecting Qualifying and non-qualifying Events, and any goods or services, purchased occurring between October 1, 2022 and December 31, 2022, must be received by the AOC no later than January 31, 2023.
3) Reflecting Qualifying and non-qualifying Events, and any goods or services, occurring between January 1, 2023 and March 31, 2023, must be received by the AOC no later than April 30, 2023.
4) Reflecting Qualifying and non-qualifying Events, and any goods or services, occurring between April 1, 2023 and June 30, 2023, must be received by the AOC no later than July 15, 2023.

d) If this agreement is terminated, the Court shall only receive payment for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.

e) The Court shall submit its A-19 invoices quarterly through the web application. The Data shall be submitted electronically to the AOC as described in Section 3b, above, and in conjunction with the quarterly invoice.

f) Payment to the Court for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of a properly-completed invoice and the completed data report.

g) The Court shall maintain sufficient backup documentation of expenses under this Agreement.

h) The AOC, in its sole discretion and upon advance written notice of 10 days, may initiate revenue sharing and reallocate funding among courts. If it appears the Court may not expend the maximum Agreement amount, this agreement may be amended and the AOC may reduce the maximum Agreement amount. AOC may increase the maximum Agreement amount if additional funds become available through these revenue sharing provisions.

6. TREATMENT OF ASSETS AND PROPERTY

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

7. RIGHTS IN DATA

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

include material not included within the definition of "works for hire," the Court hereby assigns such rights to the AOC as consideration for this Agreement.

Data which is delivered under this Agreement, but which does not originate therefrom, shall be transferred to the AOC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which the Court has a right to grant such a license. The Court shall advise the AOC, at the time of delivery of data furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The AOC shall receive prompt written notice of each notice or claim of copyright infringement received by the Court with respect to any data delivered under this Agreement. The AOC shall have the right to modify or remove any restrictive markings placed upon the data by the Court.

8. INDEPENDENT CAPACITY

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

9. AGREEMENT ALTERATIONS AND AMENDMENTS

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

10. RECORDS, DOCUMENTS, AND REPORTS

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

11. RIGHT OF INSPECTION

The Court shall provide right of access to its facilities to the AOC, or any of its officers, or to any other authorized agent or official of the state of Washington of the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

12. DISPUTES

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

noncompliance or waiver of this section.

13. TERMINATION

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

14. GOVERNANCE

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

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

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

15. ASSIGNMENT

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

16. WAIVER

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

17. SEVERABILITY

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

18. AGREEMENT MANAGEMENT

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

AOC Program Manager	Court Program Manager
Tae Yoon PO Box 41170 Olympia, WA 98504-1170 Interpreterreimbursement@courts.wa.gov 360-704-5590	**Rafaela Selga** Court Administrator 7122 W Okanogan Pl. Ste A110 Kennewick, WA 99336-2359 rafaela.selga@co.benton.wa.us (509) 735-8476

19. ENTIRE AGREEMENT

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

AGREED:

Administrative Office of the Courts

Signature *Date*

Dawn Marie Rubio
Name

Administrator, AOC
Title

Benton County

Commissioner *Date*

Commissioner

Commissioner

Approved as to form: Ryan X Bates
Chief DPA

EXHIBIT A

WASHINGTON STATE LANGUAGE ACCESS INTERPRETER REIMBURSEMENT PROGRM FUNDING

FUNDING CONDITIONS AND PAYMENT STRUCTURE

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

1. GENERAL FUNDING CONDITIONS

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

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

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

2. QUALIFYING INTERPRETING EVENTS

A. Spoken Language Interpreters Qualifying Events

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

a) If there is at least one AOC credentialed interpreter in the language being used then reimbursement will only be provided for using an AOC credentialed interpreter who is credentialed in that language.

b) Compensation for interpreters for languages for which neither a certified interpreter nor registered interpreter is offered will be reimbursed where the interpreter has been qualified on the record pursuant to RCW 2.43.

c) Courts will not be reimbursed for events using non-AOC credentialed interpreters if there is one or more AOC credentialed interpreter listed for the language being used.

B. Sign Language Interpreters Qualifying Events

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

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

Certified interpreters are listed under three categories:

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

The most up to date list can be found here:
https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx

C. Staff Interpreters (Salaried Staff)

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

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

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

3. LANGUAGE ACCESS GOODS AND SERVICES

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

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

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

Other examples can be found here:

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

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

4. SCOPE OF REIMBURSEMENT FUNDING

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

5. PAYMENT STRUCTURE

A. Reimbursement Rate

a) **Spoken Language Interpreters**

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

b) **Sign Language Interpreters**

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

c) **Staff Interpreters (Salaried Staff)**

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

d) **Contracted Interpreters**

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

e) **Remote Interpreting**

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

f) **Cancellation Fees**

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

B. Travel Time and Mileage

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

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/29/2022
Subject:	Establish holidays and hours for the transaction of business for 2023
Presenter:	
Prepared By:	C. Nave
Reviewed By:	B. Chilton, L. Roe, and E. Wyant

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

RCW 36.16.100 authorizes the Board of Benton County Commissioners, by resolution, to prescribe the days and hours that all Benton County offices and departments shall be kept open for the transaction of business. The Benton County Personnel Policy requires that this authorization be renewed annually via resolution. The attached resolution establishes the 2023 holidays and hours for transaction of business for Benton County.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the resolution to establish the 2023 holidays and hours for the transaction of business.

Suggested Motion

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ESTABLISHING THE 2023 HOLIDAYS AND HOURS FOR THE TRANSACTION OF BUSINESS

WHEREAS, RCW 36.16.100 authorizes the Board of Benton County Commissioners, by resolution, to prescribe the days and hours that all Benton County offices and departments shall be kept open for the transaction for business; **THEREFORE**, **BE IT RESOLVED,**

1. The following shall be paid scheduled holidays in 2023 for Benton County employees eligible for paid holidays:

New Year's Day	January 2, 2023
Martin Luther King Jr. Day	January 16, 2023
Presidents' Day	February 20, 2023
Memorial Day	May 29, 2023
Juneteenth	June 19, 2023
Independence Day	July 4, 2023
Labor Day	September 4, 2023
Veterans Day	November 10, 2023
Thanksgiving Days	November 23 & 24, 2023
Christmas Days	December 25 & 26, 2023

2. If said employee's holidays are established by bargaining unit contract, the applicable collective bargaining agreement shall be the determining document or if said employee's office or department is directed by law or policy to function on the designated holiday, the Elected Official or the County Administrator shall select an alternate day for the employee. In the event of a conflict between bargaining contract and law, the applicable law shall be the determining document.

3. Except as provided by law or policy, all Benton County offices and departments shall stay closed all day during Saturdays, Sundays, and scheduled holidays for 2023.

4. All Benton County offices and departments shall, unless otherwise provided by law or policy, remain open for the transaction of business with the public at least seven (7) hours each business day. Each Elected Official and the County Administrator shall hereby determine hours of public opening for their respective offices or departments. Such hours shall be filed with the Board of Benton County Commissioners and posted in conspicuous public locations.

Dated this _____ day of _____, 2022.

_____

Chair of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....

Clerk of the Board

cc: Elected Officials/Department Managers

Prepared by: C Nave

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Execute First Amendment #PSA-2022-DORSETT with Jennifer Dorsett
Presenter:	
Prepared By:	Anthony Contreras-Sanchez, Program Specialist
Reviewed By:	Kyle Sullivan, DHS Manager

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

Type of Agenda Item:

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

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

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

Summary / Background Information

The purpose of this First Amendment with Jennifer Dorsett is to amend the budget to re-allocate funds to cover the additional cost of supplies in providing opportunities to youth and adult groups in Benton and Franklin counties to increase bonding and leadership development while building trust and communication skills.

Fiscal Impact

Amount: N/A

Fund: Funding for the services described in this Agreement is provided by Liquor Excise Tax dollars. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget. This amendment re-allocates funds within the budget to cover the additional cost of supplies. This would move $10,000.00 from sessions to cost of training, insurance, and staff supplies.

Recommendation

- Sign the Resolution to accept the proposed First Amendment to PSA-2022-DORSETT
- Approve the proposed First Amendment to PSA-2022-DORSETT 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 EXECUTION OF THE FIRST AMENDMENT TO PERSONAL SERVICES CONTRACT #PSA-2022-DORSETT BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND JENNIFER DORSETT

WHEREAS, this First Amendment to the Personal Services Contract with Jennifer Dorsett amends the **BUDGET** to re-allocate funds to cover the additional cost of supplies in providing opportunities to youth and adult groups in Benton and Franklin counties to increase bonding and leadership development while building trust and communication skills; NOW THEREFORE,

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed First Amendment to Personal Services Contract #PSA-2022-DORSETT Resolution 2022 312 between Benton County Department of Human Services and Jennifer Dorsett; 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, the First Amendment to Personal Services Contract #PSA-2022-DORSETT; and

BE IT FURTHER RESOLVED, that the First Amendment shall be effective March 1, 2022 through December 31, 2022.

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

_____
Chairman

_____
Member

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

Attest: _____
Clerk of the Board

cc: Benton County Commissioners, Human Services Contreras-Sanchez

FIRST CONTRACT AMENDMENT TO PERSONAL SERVICES CONTRACT #PSA-2022-DORSETT

THIS FIRST AMENDMENT TO PERSONAL SERVICES CONTRACT #PSA-2022-DORSETT (hereinafter "First Amendment") is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350, by and for the **BENTON COUNTY DEPARTMENT OF HUMAN SERVICES**, with its principal offices located at 7102 W. Okanogan Avenue, Suite #201, Kennewick, WA 99336 (hereinafter collectively referred to as "COUNTY"), and **JENNIFER DORSETT,** an individual under the laws of the State of Washington with its principal offices at 7609 Pheasant Lane, Pasco, WA 99301 (hereinafter "Contractor").

WHEREAS, per Benton County Resolution No. 2022 312 the parties entered into a Personal Services Contract beginning March 1, 2022 to December 31, 2022 (hereinafter the "CONTRACT"), whereby CONTRACTOR agreed to assist the COUNTY in providing opportunities to youth and adult groups in Benton and Franklin counties to increase bonding and leadership development while building trust and communication skills; and

WHEREAS, this First Amendment is necessary to make agreed-upon, needed amendment to the budget to cover costs associated with starting and running the program;

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

1. **BUDGET**
   The "Budget" of the CONTRACT shall be amended and replaced in its entirety with the following:

   Estimated cost for training, insurance, staff supplies: Not to exceed $30,000.00

   Up to 15 sessions @ $2,000.00 per session: Not to exceed $30,000.00

   Total request for 2022 - $60,000.00

IN WITNESS WHEREOF, the parties have caused this First Amendment to the **PERSONAL SERVICES CONTRACT #PSA-2022-DORSETT** to be signed by their duly constituted legal representatives and it is effective on the last date signed.

FOR BENTON COUNTY:

Chairman Date

Member Date

Member Date

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

FOR THE CONTRACTOR:
Jennifer Dorsett

Signature Date

Name

Title

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

Benton County Deputy Prosecuting Attorney

APPROVED AS TO CONTENT:

Human Services Manager

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Approving the Chairman of the Board to sign an agreement between Benton County and United Training Commercial LLC for online professional training
Presenter:	
Prepared By:	Alex Garcia
Reviewed By:	Eric Andrews

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

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

Summary / Background Information

United Training offers online training solutions and professional development to Information Technology staff. The range of courses offered allow IT staff to enhance and refresh current skills. IT has received a quote from United Training to continue using its services for professional development that concludes at the end of December 2023.

All funds used to purchase training will come out of Information Technology's approved budget.

Fiscal Impact

Amount: **$9,000**

Fund: **Information Technology approved 2021-2022 budgeted funds.**

Recommendation

Information Technology recommends that the Board approve the Chairman of the Board to sign the agreement between Benton County and United Training Commercial LLC for online professional training ending in December 31, 2023.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

APPROVING THE CHAIRMAN OF THE BOARD TO SIGN AN AGREEMENT BETWEEN BENTON COUNTY AND UNITED TRAINING COMMERCIAL LLC FOR ONLINE PROFESSIONAL TRAINING

WHEREAS, Benton County Information Technology has been working with United Training Commercial LLC for several years enrolling in live courses as well as online professional training; and

WHEREAS, United Training provides a range of courses for professional development to IT staff; and

WHEREAS, Information Technology has received a quote for one year from United Training Commercial LLC and sees it as best fit for the County; and

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

WHEREAS, the Prosecuting Attorney's Office, Civil Division has reviewed the agreement and has approved to form; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and authorizes the Chairman of the Board to sign the agreement between Benton County and United Training Commercial LLC for online professional training; and

BE IT FURTHER RESOLVED, upon signature, a payment in an amount not to exceed $9,000 excluding Washington State Sales Tax will be made to United Training Commercial LLC; and

BE IT FURTHER RESOLVED, the agreement between the County and United Training Commercial LLC will terminate on December 31, 2023.

Dated this 29 day of November , 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

Prepared by: A. Garcia

Quote & Agreement for Training & Professional Development Services

Created For:

Benton County (WA)

Agreement for Services

Customer Information	
Customer Name:	Benton County - (WA)
Address:	620 Market Street
Suite:	
City, State & Zip:	Prosser, WA 99350
Contact Name:	Alex Garcia
Phone:	(509) 222-3742
Email:	alex.garcia@co.benton.wa.us

United Training Information	
Account Manager:	Spirit Dorris
Phone:	(509) 215-4300
Email:	Spirit.Dorris@UnitedTraining.com
Website:	www.unitedtraining.com
Pricing Expiration:	11/30/22
Billing Remit To:	United Training Commercial LLC PO BOX 679244, Dallas Texas 75267-9244

Learning Credit Pool		
Customer Investment and Invoice Amount	**United Training Subsidy**	**Total Learning Credit Pool**
$9000	**$9000**	**$18,000**
Up to $12,000 of remaining 2022 LCP budget will be renewed for 2023 use		

Learning Credit Pool Details

- Credit Pool funds can be used to enroll in our public schedule found at https://unitedtraining.com/eligible
- Credit Pool funds can also be used to schedule virtual instructor led private training events.
- Credit Pool funds can be used for in-person private events as well. Including associated travel expenses.
- All events are deducted from the Credit Pool at retail rates.
- Credit Pools expire one-year from the date of purchase.
- Credit Pools **cannot** be used to fund e-learning, certification vouchers.
- Credit Pools **cannot** be used for managed learning services such as curriculum design or staff augmentation.
- Credit Pools **cannot** be used to for enrollments into our partner delivered classes: AWS, Apple, Blockchain, Check Point, Cisco Advanced Classes, Cloudera, F5, Google Cloud, IBM, Kubernetes, Nutanix, Palo Alto, Citrix, RedHat, Tableau Advanced Classes, Veeam, VMware. If you have a need in one of these areas, work with your account manager to add an addendum to this agreement.

Accounts Payable Contact		
Contact Name	**Phone Number**	**Email Address**
Robert Heard	509-786-5603	Robert.heard@co.benton.wa.us
Billing Address	**Billing Suite**	**Billing City, State Zip Code**
620 Market Street		Prosser, WA 99350

Customer Completes this Section			
Method of Payment – Check One			
	Credit Card	**X**	**Invoice**
Link for Credit Card Payment will be sent by United Training within 24-Hours.		Invoices are Due Upon Receipt. Please attach a purchase order if applicable.	

Policies and Terms

- This order agreement is between United Training and the Customer listed under Customer Information on page one.
- The Customer authorizes United Training to invoice for the above items and agrees to pay upon receipt.
- All terms of this agreement are listed within and no other commitments verbal or written are valid.
- All sales are final. If you need to cancel part or all a training engagement, we will collaborate to apply the value of the investment as a credit on account for future use.
- Sales tax will be added to the invoice, where applicable, in accordance with State Law.
- This agreement confirms that the signer has read and agrees to comply with the policies and terms information located on all pages of this document and is authorized to sign for Customer.
- Cancellation and No-Show Policy
    - We ask that you notify United Training more than ten (10) business days in advance of your scheduled class, should you need to cancel or reschedule your reservation. This will secure transfer or refund.
    - If a customer chooses to cancel less than ten (10) business days prior to the scheduled training date, the customer acknowledges responsibility to pay a fee representing 100% of the total amount due.
    - Companies who are redeeming prepaid training credit for classes will forfeit the credits associated with the enrollments.
    - If available, a customer may utilize our complimentary retake policy to reschedule

Customer Signature Required			
Authorized Signature:		**Title:**	
Printed Name:		**Date:**	

Alex Garcia

From: Eric Andrews
Sent: Friday, November 18, 2022 9:07 AM
To: Alex Garcia; Robert Heard
Subject: RE: Order Agreement for 2023 Training

I see no issues with this packet or the training agreement.

Eric T. Andrews
Deputy Pros. Attorney, Civil
Benton Co. Pros. Attorney's Office
Phone: (509) 735-3591
Fax: (509) 222-3705

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

From: Alex Garcia <Alex.Garcia@co.benton.wa.us>
Sent: Thursday, November 17, 2022 9:30 AM
To: Eric Andrews <Eric.Andrews@co.benton.wa.us>; Robert Heard <Robert.Heard@co.benton.wa.us>
Subject: RE: Order Agreement for 2023 Training

Hi Eric,

Did you get a chance to look at agreement?

Thanks,

Alex Garcia
Assistant Manager
Benton County Information Technology
Ext 3742

From: Alex Garcia
Sent: Tuesday, November 15, 2022 3:30 PM
To: Eric Andrews <Eric.Andrews@co.benton.wa.us>; Robert Heard <Robert.Heard@co.benton.wa.us>
Subject: FW: Order Agreement for 2023 Training

Eric,

Can you look at attached agreement and let me know if this ok to proceed?

Thanks,

Alex Garcia
Assistant Manager
Benton County Information Technology
Ext 3742

From: Spirit Dorris <Spirit.Dorris@unitedtraining.com>
Sent: Monday, November 14, 2022 3:45 PM
To: Alex Garcia <Alex.Garcia@co.benton.wa.us>
Subject: Order Agreement for 2023 Training

This Message Is From an External Sender
This message came from outside your organization.

Original Message Attached

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Approving the Purchase of Extending Software and CoPilot support for Dell Compellent Storage Area Network
Presenter:	
Prepared By:	Alex Garcia
Reviewed By:	Robert Heard

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

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

Summary / Background Information

Per Resolution 2016-645, Information Technology replaced the County's Storage Area Network (SAN) with the Dell EqualLogic Compellent Series included with five-year software and Copilot support. Software support for the SAN is ending at the end of December 2022 and will need to be extended to continue getting software updates and technical assistance from Dell. Quotes were received from different vendors to extend software support through the end of December 2024. Information Technology will continue to evaluate the best network storage space before the expiration of this extension.

All funds used to extend Dell Compellent software support will come out of Information Technology approved budget. Software support will be purchased from Thornburg Computer Services, LLC, an authorized reseller on the Washington State NASPO ValuePoint Cooperative Contract #05815 Dell Marketing Contract #05815-003.

Fiscal Impact

Amount: **$29,990.91 excluding WSST.**

Fund: **Information Technology approved budget 2021-2022**

Recommendation

Information Technology recommends that the Board approves the purchase of extending Dell Compellent software support from Thornburg Computer Services, LLC. though the end of December 2024.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF EXTENDING SOFTWARE AND HARDWARE SUPPORT FOR DELL COMPELLENT STORAGE AREA NETWORK FROM THORNBURG COMPUTER SERVICES, LLC.

WHEREAS, per Resolution 2016-645, Information Technology replaced the County's Storage Area Network (SAN) with Dell EqualLogic Compellent Series included with five-year software and hardware support; and

WHEREAS, software and hardware support for SAN is ending at the end of December 2022; and

WHEREAS, Information Technology recommends extending software and hardware support through the end of December 2024 as it continues to evaluate the best network storage space before the new expiration; and

WHEREAS, Thornburg Computer Services, LLC is an authorized reseller on the Washington State NASPO ValuePoint Cooperative Contract #05815 Dell Marketing Contract #05815-003 Participating Addendum for Washington State; and

WHEREAS, Information Technology has reviewed the proposal and quote received and recommends extending Dell Compellent support through the end of December 2024 from Thornburg Computer Services, LLC as best fit for Benton County; and

WHEREAS, the Purchasing Department has reviewed this purchase and found it complies with Procurements, Leasing, and Contracting Policy; **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 extending software and hardware support for Dell Compellent SAN in an amount not to exceed $29,990.91 excluding Washington State Sales from Thornburg Computer Services, LLC.

Dated this 29 day of November 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

Prepared by: A. Garcia

Dell Customer Communication - Confidential

THORNBURG CS

Date: November 01, 2022
Quotation #: 15539
Valid Until: November 30, 2022
Prepared By: Brian Wheeler

Quote For:
Benton County Information Tech.
Attn: Alex Garcia
620 Market St.
Prosser, WA 99350

DES NASPO Contract
SC-05815-003

System 59776 / 59777 - Prosser, WA

Proposed Contract Dates: Jan 01, 2023 - Aug 31, 2023

Service Tag	Part	Description	Qty	EOS Date	Coverage Dates	Duration: Support | Parts	Price
	Hardware & Drives						
DKVVH82	CT-SC4020-BASE-MTCH	ProSupport, 24x7, Dell/Compellent	1	8/31/2023	01/01/2023 - 08/31/2023	8 | 0	2,477.79
J6FKRD2	EN-SC200-1235-MTCH	ProSupport, 24x7, Enclosure, SC200,	1	11/30/2023	01/01/2023 - 08/31/2023	8 | 0	1,443.75
354XHQ2	EN-SC200-1235-MTCH	ProSupport, 24x7, Enclosure, SC200,	1	11/30/2023	01/01/2023 - 08/31/2023	8 | 0	1,443.75
CRDF673	EN-SC400-1235-MTCH	ProSupport, 24x7, Enclosure, SC400,	1	8/31/2026	01/01/2023 - 08/31/2023	8 | -8	926.11
	Software						
	SW-CORE-BASE48-MTCS	Support, 24x7, SW, Storage Center OS Core	1		01/01/2023 - 08/31/2023	8 | 0	533.33
	SW-PERF-BASE48-MTCS	Support, 24x7, SW,Storage Optimization Bundle	1		01/01/2023 - 08/31/2023	8 | 0	1,066.67
	SW-RDP-BASE48-MTCS	Support, 24x7, SW, Remote Data	1		01/01/2023 - 08/31/2023	8 | 0	888.89

		Price
Coverage Type is: Zone 1, ProSupport* 24x7 w/ Priority On-Site (4 hour)	Onsite Support	$6,291.40
	3rd Party Onsite Support	$
Current Agreement Expiration Date: 12/31/2022	Support Center	$2,488.89
	Support Renewal Total	$8,780.29

* Taxes Not Included

Quote For:
Benton County Information Tech
Attn: Alex Garcia
620 Market St.
Prosser, WA 99350

System 59776 / 59777 - Prosser, WA

Asset	Service Tag #	SKU #	Model	Service Contract Type	Ship Date
Service Tag	354XHQ2	823-7228	APOS Compellent SC200	XI	9/5/2018
Service Tag	354XHQ2	823-7226	APOS Compellent SC200	XJ	9/5/2018
Service Tag	J6FKRD2	823-7228	APOS Compellent SC200	XI	9/23/2016
Service Tag	J6FKRD2	823-7226	APOS Compellent SC200	XJ	9/23/2016
Service Tag	DKVVH82	870-7611	APOS Compellent SC4020	XI	9/22/2016
Service Tag	DKVVH82	870-7609	APOS Compellent SC4020	XJ	9/22/2016
Service Tag	CRDF673	853-5774	Compellent SC400 3.5 Enclo	XI	11/4/2020
Service Tag	CRDF673	853-5796	Compellent SC400 3.5 Enclo	XJ	11/4/2020

Internal Use - Confidential

TCS
THORNBURG CS

Date: 1/Nov/2022
Quotation #: 15518
Valid Until: 30/Nov/2022
Prepared By: Brian Wheeler

Service Contract Expiration	Service Contract Type	Service Contract Description	New Contract End Date	Quantity	Price	Reinstatement Fee
12/31/2022	XI	Post Standard Support:	12/31/2024	1	$ 2,204.69	$ -
12/31/2022	XJ	Post Standard Support:	12/31/2024	1	$ 453.24	$ -
12/31/2022	XI	Post Standard Support:	12/31/2024	1	$ 2,204.69	$ -
12/31/2022	XJ	Post Standard Support:	12/31/2024	1	$ 453.24	$ -
12/31/2022	XI	Post Standard Support 4	12/31/2024	1	$ 1,494.36	$ -
12/31/2022	XJ	Post Standard Support 7	12/31/2024	1	$ 1,626.94	$ -
12/31/2022	XI	Post Standard Support:	12/31/2024	1	$ 1,699.64	$ -
12/31/2022	XJ	Post Standard Support:	12/31/2024	1	$ 468.51	$ -

Subtotal	$	10,605.31
Reinstatement Fees	$	-
Total	**$**	**10,605.31**

Internal Use - Confidential

Quote For:
Benton County Information Tech
Attn: Alex Garcia
620 Market St.
Prosser, WA 99350

System 58660/ 58661 - Prosser, WA

Asset	Service Tag #	Model	Service Contract Type	Ship Date	Service Contract Expiration		Service Contract Type
Service Tag	CRDD673	Compellent SC400 3.5 Enclo	XI	11/2/2020	8/31/2023		XI
Service Tag	CRDD673	Compellent SC400 3.5 Enclo	XJ	11/2/2020	8/31/2023		XJ
Service Tag	354WHQ2	APOS Compellent SC200	XI	9/5/2018	8/31/2023		XI
Service Tag	354WHQ2	APOS Compellent SC200	XJ	9/5/2018	8/31/2023		XJ
Service Tag	J6FJRD2	APOS Compellent SC200	XI	9/23/2016	8/31/2023		XI
Service Tag	J6FJRD2	APOS Compellent SC200	XJ	9/23/2016	8/31/2023		XJ
Service Tag	GCVVH82	APOS Compellent SC4020	XI	9/22/2016	8/31/2023		XI
Service Tag	GCVVH82	APOS Compellent SC4020	XJ	9/22/2016	8/31/2023		XJ

Internal Use - Confidential

Date: 1/Nov/2022
Quotation #: 15538
Valid Until: 30/Nov/2022
Prepared By: Brian Wheeler

Service Contract Description	New Contract End Date	Quantity	Price	Reinstatement Fee
Post Standard Support:	12/31/2024	1	$ 1,699.64	$ -
Post Standard Support:	12/31/2024	1	$ 468.51	$ -
Post Standard Support:	12/31/2024	1	$ 2,204.69	$ -
Post Standard Support:	12/31/2024	1	$ 453.24	$ -
Post Standard Support:	12/31/2024	1	$ 2,204.69	$ -
Post Standard Support:	12/31/2024	1	$ 453.24	$ -
Post Standard Support 4	12/31/2024	1	$ 1,494.36	$ -
Post Standard Support 7	12/31/2024	1	$ 1,626.94	$ -

Subtotal	$ 10,605.31
Reinstatement Fees	$ -
Total	$ 10,605.31

*Taxes Not Included

** Please Remit to orders@thornburgcs.com

Internal Use - Confidential

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 11/08/22 BC 11/29/22
Subject:	Signature on Personal Service Contract Amendment No. 5 with NCIC Inmate Communications
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

NCIC Inmate Communications continues to provide an inmate telecommunication system, telecommunications and maintenance services to the Detention Unit of the Benton-Franklin Counties Juvenile Justice Center. The current contract expires December 31, 2022, however, Juvenile Justice Center does not have a reasonable amount of time to complete an RFQ. Therefore, an extension is needed to maintain current services and have additional time to properly solicit proposals via an RFQ. Detention Unit agrees to this Personal Service Contract Amendment No. 5.

The purpose of this Amendment No. 5 is to revise Section 2 "Duration and Renewal of Contract" to extend the contract for an additional twelve (12) month period, from January 1, 2023 to December 31, 2023, and to amend Section 4(b) "Contract Representatives".

Fiscal Impact

There is no fiscal impact for either county. A 0% commission percentage on gross revenues is returned to the Counties in order to reduce communication barriers between youth and parents.

Recommendation

We recommend that the Board of County Commissioners of Benton County and the Board of Commissioners of Franklin County approve the Personal Service Contract Amendment No. 5 between the Benton-Franklin Counties Juvenile Justice Center and NCIC Inmate Communications as written.

Suggested Motion

Approved as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF THE REQUEST FOR SIGNATURE FROM THE BOARDS OF BENTON AND FRANKLIN COUNTY COMMISSIONERS ON THE PERSONAL SERVICES CONTRACT AMENDMENT NO. 5 BETWEEN THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND NCIC INMATE COMMUNICATIONS, APPROVED BY BENTON COUNTY RES. NO 2017 057 AND FRANKLIN COUNTY RES. NO. 2017 12

WHEREAS, the Benton-Franklin Counties Juvenile Justice Center currently contracts with NCIC Inmate Communications for the inmate telecommunications system and services; and

WHEREAS, NCIC Inmate Communications continues to provide telephone services to the Benton-Franklin Counties Juvenile Justice Center, Detention Unit; and

WHEREAS, the purpose of this Personal Service Contract Amendment No. 5 is to revise Section 2 "Duration and Renewal of Contract" to extend the Contract for an additional twelve (12) month period, from January 1, 2023 to December 31, 2023, and amend Section 4(b) "Contract Representatives" of the contract; **NOW, THEREFORE**

BE IT RESOLVED, that the Chairs are authorized to sign the attached NCIC Inmate Communications Personal Services Contract Amendment No. 5 in which there is no financial obligation to the Benton-Franklin Counties Juvenile Justice Center, and a 0% commission percentage on gross revenues is returned to the Counties in order to reduce communication barriers between youth and parents; and

BE IT FURTHER RESOLVED, the term of the Personal Services Contract Amendment No. 5 shall commence on January 1, 2023 and shall expire on December 31, 2023.

DATED this ____ day of _____ 2022

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this ____ day of _____ 2022

FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners; Electronic (2): 1-NCIC Amend #5, 1-BFJJC

R. Garcia

JUDGES
Hon. Jacqueline J. Shea-Brown
Hon. Joseph M. Burrowes
Hon. Samuel P. Swanberg
Hon. David L. Petersen
Hon. Jacqueline I. Stam
Hon. Norma Rodriguez
Hon. Diana N. Ruff

BENTON-FRANKLIN COUNTIES
JUVENILE JUSTICE CENTER



DAVID WHEELER, Administrator
Juvenile Court Services

SUPERIOR COURT OF THE STATE OF WASHINGTON

5606 W CANAL PLACE, SUITE 106 • KENNEWICK, WASHINGTON 99336-1388
PHONE (509) 783-2151 • FAX (509) 736-2728

DARIN R. CAMPBELL
ARTHUR D. KLYM
BRANDON P. HOLT
Court Commissioners

PERSONAL SERVICE CONTRACT AMENDMENT NO. 5

NCIC INMATE COMMUNICATIONS

This Contract 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 and Franklin County, a political subdivision, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 W. Canal Place Ste 106, Kennewick, WA 99336 (hereinafter collectively referred to as "Counties"), and NCIC Inmate Communications with its principal office at 607 E Whaley St, Longview, TX 75601 (hereinafter referred to as "Contractor").

In consideration of the mutual benefits and covenants contained herein and in the parties' contract, numbered as Benton County Resolution No. 2017 057 and executed on January 24, 2017, and Franklin County Resolution No. 2017 12 and executed on January 11, 2017 (the "Contract"), the parties agree to amend the Contract as follows:

1. In accordance with Section 2 of the Contract ("Duration and Renewal of Contract"), the parties agree to extend the Contract for an additional twelve (12) month period, from **January 1, 2023**, to **December 31, 2023**.

2. Section 4(b) of the Contract ("Contract Representative") shall be amended and shall read:

   b. For COUNTIES:

Name:	Rudy Ruelas, Interim Detention Operations Manager
Address:	5606 W. Canal Pl., Ste. 106 Kennewick, WA 99336
Phone:	(509) 736-2706
Email:	Rudy.Ruelas@co.benton.wa.us

Except as expressly provided in this Contract Amendment No. 5, all other terms and conditions of the original Contract and subsequent written contract amendments thereto remain in full force and effect.

This Amendment shall be effective January 1, 2023 and shall expire December 31, 2023.

NCIC Inmate Communications	Benton Franklin Counties Juvenile Justice Center
10/19/2022 Mark Edgecombe	10/25/2022
Mark Edgecombe **Date** **West Coast Sales**	**David Wheeler** **Date** **Juvenile Court Administrator**
BENTON COUNTY APPROVAL Approved as to Form: Stephen Hallstrom, Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: _____ Date: _____ Attest: Clerk of the Board: _____	**FRANKLIN COUNTY APPROVAL** Approved as to Form: 10/25/22 Jennifer Johnson Civil Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: _____ Date: Attest: Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 11/15/22 BC 11/29/22
Subject:	Professional Services Contract with Career Path Services
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

Career Path Services has agreed to provide Education Employment and Training Program and an Employment Specialist to work in collaboration with the Benton-Franklin Counties Juvenile Justice Center Education and Employment Specialist to connect eligible youth to paid work experience. The Employment Specialist will connect qualifying youth to the Workforce Innovation and Opportunity Act (WIOA) programming as appropriate.

The attached Professional Services Contract shall begin January 1, 2023 and shall expire on December 31, 2024.

Fiscal Impact

To be paid from Public Safety Tax Fund 0148101 and Current Expense Fund 0000101. Amount not to exceed $21,521.00.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Professional Services Contract between Career Path Services and the Benton-Franklin Counties Juvenile Justice Center for services.

Suggested Motion

Approved 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 CAREER PATH SERVICES, A PROFESSIONAL SERVICES CONTRACT TO PROVIDE AN EDUCATION EMPLOYMENT AND TRAINING PROGRAM WITH THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

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, the Juvenile Administrator recommends entering into a new Professional 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, concur with the Juvenile Administrator's recommendation and hereby awards the Professional Services Contract to Career Path Services in an amount not to exceed $21,521.00; and

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

BE IT FURTHER RESOLVED, the term of the attached contract commences on January 1, 2023 and expires on December 31, 2024.

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-Career Path Services, 1-Juvenile

R. Garcia

BENTON-FRANKLIN COUNTIES
PROFESSIONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and FRANKLIN COUNTY, a political subdivision 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 **Career Path Services**, a corporation organized under the laws of the State of Washington with its principal office at 10 N. Post Street, Suite 200 Spokane, WA 99201(hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

a. Exhibit A - Budget

2. DURATION OF CONTRACT

The term of this Contract shall begin **January 1, 2023** and shall expire on **December 31, 2024**. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. Career Path Services will provide Education Employment and Training Program and an Employment Specialist to work in collaboration with the BFJJ's Education and Employment Specialist to connect eligible youth to paid work experience.

b. The Employment Specialist will connect qualifying youth to the Workforce Innovation and Opportunity Act (WIOA) programming as appropriate.

c. Career Path Services will provide up to 1,000 hours of paid work experience for eligible youth.

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

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

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR: **Kayci Loftus**
815 N. Kellogg, Suite D
Kennewick, WA 99336
Phone: (509)734-5919
Email: kloftus@esd.wa.gov

b. For COUNTIES: **David Wheeler, Administrator**
5606 W. Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 737-2745
E-mail: david.wheeler@co.benton.wa.us

5. COMPENSATION

For the services performed hereunder, the CONTRACTOR shall be paid as follows and in accordance with Exhibit A (Budget):

a. Career Path Services will include provisions for Employment Specialist and all associated benefits, supervision, overhead and travel expenses will be paid, not to exceed $6,281.00.

b. The Contractor will bill actual cost for travel not to exceed $443.00.

c. Work experience wages ($15.74 per hour) and associated FICA and Worker's Comp taxes billed monthly at cost, not to exceed 1,000 hours for a total amount not to exceed $15,240.00

d. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this Contract shall not exceed Twenty-One Thousand Five Hundred Twenty-One Dollars and Zero Cents ($21,521.00).

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

f. 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.

g. 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.

h. 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.

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

6. **AMENDMENTS AND CHANGES IN WORK**

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

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

7. **HOLD HARMLESS AND INDEMNIFICATION**

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTIES and its officers, officials, employees and agents from and against any and all claims, actions, suits, liability, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, arising 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, 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 will be provided by an insurance carrier with a Best's Rating of not less than A-VII.

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

reporting" coverage for a minimum of 36 months after the completion of work. The CONTRACTOR shall annually provide COUNTIES with proof of all such insurance.

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

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

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

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

$1,000,000 Each Occurrence

The commercial general liability policy will 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 will 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 combined for any vehicle used in conjunction with the provision of services under this contract 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 and agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTIES shall be excess and not contributory to CONTRACTOR'S insurance policies.

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

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

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

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly

replaced. 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 a 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 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 Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability, Auto Liability and Workmen's Compensation, shall specifically include the

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

2. Certificates of Liability Insurance with endorsements attached, must be provided to the COUNTIES Contract Representative referenced in Section 4(b).

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

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

9. TERMINATION

a. The COUNTIES may terminate this Contract in whole or in part whenever the COUNTIES determines in its sole discretion that such termination is in the best interests of the COUNTIES. The COUNTIES may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTIES shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of 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.

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 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 CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent CONTRACTOR and not as an agent, employee or servant of the COUNTIES. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S

own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section **[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 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, or act or purport to act as an employee, agent, or representative of the COUNTIES.

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

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

13. COMPLIANCE WITH LAWS

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

14. 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.

The CONTRACTOR shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 W Canal PL STE 106, Kennewick WA 99336-1388.

15. INSPECTION OF BOOKS AND RECORDS

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this 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.

16. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its 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 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 expiration of the Contract, using the word processing program and version specified by the COUNTIES.

18. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTIES 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.

19. 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.

20. CONFIDENTIALITY

The CONTRACTOR, 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.

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 and/or Franklin Counties, Washington.

22. 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.

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 **[18]**); extended reporting period requirements for professional liability insurance (Section **[8(a)]**); inspection and keeping of records and books (Section **[15]**); litigation hold notice (Section **[27]**); Public Records Act (Section **[28]**) and confidentiality (Section **[20]**).

27. LITIGATION HOLD NOTICE

In the event the COUNTIES learn of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section **[15]** of this Contract may be of evidentiary value, the COUNTIES may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited

to, instructions to suspend the six (6) year purge schedule as set out above in Section **[15]**.

28. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTIES are a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTIES may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTIES that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTIES release of records covered under the Public Records Act. The COUNTIES 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 **January 1, 2023.**

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

Career Path Services	**Benton-Franklin Counties Juvenile Justice Center**
10/31/2022	11/1/2022
Andy Dwonch **Date**	**David Wheeler** **Date** **Juvenile Court Administrator**
BENTON COUNTY APPROVAL	**FRANKLIN COUNTY APPROVAL**
Approved as to Form:	Approved as to Form:
Stephen Hallstrom, Deputy Prosecuting Attorney Date	11/1/22 Jennifer Johnson, Civil Deputy Prosecuting Attorney Date
By: _____ Name: _____ Title: _____ Date: _____	By: _____ Name: _____ Title: _____ Date: _____
Attest: Clerk of the Board: _____	Attest: Clerk of the Board: _____

Counties: Benton-Franklin Counties Juvenile Justice Center

Professional Services Contract Budget for Education Employment and Training Program

Contractor: Career Path Services

Effective January 1, 2023 – December 31, 2024

BUDGET

Youth Work Experience: $15.74 per hour not to exceed 1,000 hours total	$15,240.00
Career Path Services: Employment Specialist, benefits, supervision, overhead and travel costs	$6281.00
Total Contract not to exceed	$21,521.00

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 11/15/22 BC 11/29/2022
Subject:	Interagency Agreement IAA23087 with Administrative Office of the Courts for Court Interpreter Funding
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

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

The period of performance for this agreement is from July 1, 2022 through June 30, 2023. The Interagency Agreement IAA23087 is backdated to July 1, 2022 so that services are not interrupted, and the Juvenile Justice Center can maximize the use of available funds effective on July 1, 2022. The contract was not received until November 1, 2022.

Fiscal Impact

The reimbursed compensation from the Administrative Office of the Courts (AOC) is a maximum of $30,122.55.00.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Interagency Agreement No. IAA23087 between the Benton-Franklin Counties Juvenile Justice Center and the State of Washington Administrative Office of the Courts.

Suggested Motion

Approve as part of consent agenda

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING THE INTERAGENCY AGREEMENT IAA23087 BETWEEN THE JUVENILE JUSTICE CENTER AND STATE OF WASHINGTON, ADMINISTRATIVE OFFICE OF THE COURTS

WHEREAS, David Wheeler, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Interagency Agreement IAA23087 between the State of Washington, Administrative Office of the Courts, and Benton-Franklin Counties Juvenile Justice Center be approved as presented; and

WHEREAS, the new agreement was not received until November 1, 2022 and is backdated to July 1, 2022 so that services are not disrupted and so that the Juvenile Justice Center can maximize the use of available funds effective July 1, 2022; and

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington and by the Board of Franklin County Commissioners, Franklin County, Washington, that the boards hereby concur with the Administrator and approve the Interagency Agreement IAA23087 between the Juvenile Justice Center and the State of Washington, Administrative Office of the Courts; and

BE IT FURTHER RESOLVED, the Juvenile Justice Center will be reimbursed a maximum of $30,122.55 for costs incurred during the period of performance; and

BE IT FURTHER RESOLVED, that the chairs are authorized to sign the attached Interagency Agreement IAA23087; and

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

INTERAGENCY AGREEMENT IAA23087

BETWEEN

WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS

AND

BENTON-FRANKLIN COUNTIES JUVENILE COURT

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

1. DEFINITIONS

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

a) "Certified Interpreter" means an interpreter who is certified by the Administrative Office of the Courts, as defined in RCW 2.43.020 (4) or an interpreter certified by the Office of the Deaf and Hard of Hearing (ODHH) pursuant to WAC 388-818-500, *et. seq.* The names and contact information of AOC-certified interpreters are found, and incorporated herein by reference, at **http://www.courts.wa.gov/programs_orgs/pos_interpret/**. The names and contact information of ODHH-certified interpreters are found, and incorporated herein by reference, at: https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx

b) "Registered Interpreter" means an interpreter who is registered by the Administrative Office of the Courts, as defined in RCW 2.43.020 (6). The names and contact information of registered interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/.

c) "Qualified Interpreter" means a spoken language interpreter as defined in RCW 2.43.020 (2), or sign language interpreter as defined in RCW 2.42.110 (2).

d) "Qualifying Event" means a proceeding or event for which an interpreter is appointed by an appointing officer pursuant to RCW 2.42 and/or RCW 2.43.

2. PURPOSE

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

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

- Financial Need - i.e., the gap between the court's available financial resources and the costs to meet its need for certified, registered, and qualified interpreters, and the implementation of the Court's language access plan; and
- Need for Court Interpreters - i.e., the public's right to access the court, and the court's responsibility to provide court certified, registered, and qualified interpreters as required by RCW Chapters 2.42 and 2.43.
- Need for Language Access in General - i.e., translations for websites, translated forms, interpreting equipment, technology enabling remote interpreting, and other

things that are necessary for courts to provide fair and equitable access for people who are LEP, deaf, and hard of hearing.

3. DESCRIPTION OF SERVICES TO BE PROVIDED

a) The Court will ensure that the interpreter funding is used only for language access purposes and for reimbursement of costs paid to certified, registered, and qualified interpreters for Qualifying Events pursuant to **Exhibit A,** which is incorporated herein by reference.

b) The Court agrees to track and provide interpreter cost and usage data using a form provided by the AOC Interpreter Reimbursement Program, reflecting information about the Court's interpreter and language access costs and services.

c) The Court agrees to provide the AOC Project Manager with a list of all users who require access to submit data to the Language Access and Interpreter Reimbursement Program web application.

d) The Court agrees to work with the AOC Interpreter Program, the Interpreter Commission, and neighboring courts to identify and implement best and promising practices for providing language access and interpreter services.

e) The Court agrees to encourage its staff overseeing interpreter services at the court to attend trainings (in person and/or online) provided by the AOC Interpreter Commission and Interpreter Program.

f) The Court may elect to pay for interpreter services that are not in accordance with the provisions of **Exhibit A** as set forth; however, such payments will not be reimbursed.

g) The Court is required to have a Language Assistance Plan (LAP) to be a part of the reimbursement program.

   1) Courts that submitted their LAP for review in FY22 are not required to resubmit their LAP for FY23. Courts certify that they will exercise reasonable due diligence in maintaining and updating their LAP as required by law.

   2) Courts that did not submit their LAP for review in FY22 must submit it in accordance with content guidelines provided in Exhibit B, Annotated Language Access Plan Template with Criteria for Approval. Courts certify that they will exercise reasonable due diligence in maintaining and updating their LAP as required by law.

4. PERIOD OF PERFORMANCE

The beginning date of performance under this Agreement is **July 1, 2022,** regardless of the date of execution and which shall end on **June 30, 2023.**

5. COMPENSATION

a) The Court shall be reimbursed a maximum of $30,122.55 for interpreter and language access services costs incurred during the period of July 1, 2022 to June 30, 2023. No reimbursement shall be made under this Agreement for interpreting services provided after June 30, 2023.

b) The Court shall receive payment for its costs for interpreter and language access services as set forth in **Exhibit A,** and incorporated herein.

c) The Court shall not be reimbursed for interpreter services costs for Qualifying Events or other goods and services set forth in **Exhibit A** until properly-completed A-19 invoices, and corresponding data (See *subsection 3b),* are received and approved by AOC, pursuant to the following schedule:

1) Reflecting Qualifying and non-qualifying Events, and any goods or services purchased, occurring between July 1, 2022 and September 30, 2022, must be received by the AOC no later than December 31, 2022.
2) Reflecting Qualifying and non-qualifying Events, and any goods or services, purchased occurring between October 1, 2022 and December 31, 2022, must be received by the AOC no later than January 31, 2023.
3) Reflecting Qualifying and non-qualifying Events, and any goods or services, occurring between January 1, 2023 and March 31, 2023, must be received by the AOC no later than April 30, 2023.
4) Reflecting Qualifying and non-qualifying Events, and any goods or services, occurring between April 1, 2023 and June 30, 2023, must be received by the AOC no later than July 15, 2023.

d) If this agreement is terminated, the Court shall only receive payment for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.

e) The Court shall submit its A-19 invoices quarterly through the web application.

The Data shall be submitted electronically to the AOC as described in Section 3b, above, and in conjunction with the quarterly invoice.

f) Payment to the Court for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of a properly-completed invoice and the completed data report.

g) The Court shall maintain sufficient backup documentation of expenses under this Agreement.

h) The AOC, in its sole discretion and upon notice, may initiate revenue sharing and reallocate funding among courts. If it appears the Court may not expend the maximum Agreement amount, the AOC may reduce the maximum Agreement amount. AOC may increase the maximum Agreement amount if additional funds become available through these revenue sharing provisions.

6. TREATMENT OF ASSETS AND PROPERTY

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

7. RIGHTS IN DATA

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

include material not included within the definition of "works for hire," the Court hereby assigns such rights to the AOC as consideration for this Agreement.

Data which is delivered under this Agreement, but which does not originate therefrom, shall be transferred to the AOC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which the Court has a right to grant such a license. The Court shall advise the AOC, at the time of delivery of data furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The AOC shall receive prompt written notice of each notice or claim of copyright infringement received by the Court with respect to any data delivered under this Agreement. The AOC shall have the right to modify or remove any restrictive markings placed upon the data by the Court.

8. INDEPENDENT CAPACITY

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

9. AGREEMENT ALTERATIONS AND AMENDMENTS

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

10. RECORDS, DOCUMENTS, AND REPORTS

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

11. RIGHT OF INSPECTION

The Court shall provide right of access to its facilities to the AOC, or any of its officers, or to any other authorized agent or official of the state of Washington of the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

12. DISPUTES

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

noncompliance or waiver of this section.

13. TERMINATION

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

14. GOVERNANCE

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

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

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

15. ASSIGNMENT

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

16. WAIVER

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

17. SEVERABILITY

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

18. AGREEMENT MANAGEMENT

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

AOC Program Manager	Court Program Manager
Tae Yoon PO Box 41170 Olympia, WA 98504-1170 Inter(2reterreimbursement@courts.wa.gov 360-704-5590	**David Wheeler** Administrator 5606 W Canal Pl, Ste 106 Kennewick, WA 99336-1300 david.wheeler@co.benton.wa.us (509) 783-2151

19. ENTIRE AGREEMENT

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

AGREED:

Administrative Office of the Courts	**Benton-Franklin Counties Juvenile Court**
_____ *Signature* *Date*	See attached signature page *Signature* *Date*
Dawn Marie Rubio *Name*	**David Wheeler** *Name*
Administrator, AOC *Title*	Juvenile Court Administrator *Title*

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

11/3/2022

David Wheeler, Juvenile Court Administrator **Date**

BENTON COUNTY APPROVAL

Approved as to Form:

Deputy Prosecuting Attorney Date

By: _____

Name: _____

Title: Chair, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

FRANKLIN COUNTY APPROVAL

Approved as to Form:

Jennifer Johnson, Civil Deputy Prosecuting Attorney 11/3/22 Date

By: _____

Name: _____

Title: Chair, Board of Commissioners

Date: _____

Attest:

Clerk of the Board: _____

EXHIBIT A

WASHINGTON STATE LANGUAGE ACCESS INTERPRETER REIMBURSEMENT PROGRM FUNDING

FUNDING CONDITIONS AND PAYMENT STRUCTURE

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

1. GENERAL FUNDING CONDITIONS

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

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

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

2. QUALIFYING INTERPRETING EVENTS

A. Spoken Language Interpreters Qualifying Events

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

a) If there is at least one AOC credentialed interpreter in the language being used then reimbursement will only be provided for using an AOC credentialed interpreter who is credentialed in that language.

b) Compensation for interpreters for languages for which neither a certified interpreter nor registered interpreter is offered will be reimbursed where the interpreter has been qualified on the record pursuant to RCW 2.43.

c) Courts will not be reimbursed for events using non-AOC credentialed interpreters if there is one or more AOC credentialed interpreter listed for the language being used.

B. Sign Language Interpreters Qualifying Events

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

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

Certified interpreters are listed under three categories:

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

The most up to date list can be found here:
https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx

C. Staff Interpreters (Salaried Staff)

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

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

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

3. LANGUAGE ACCESS GOODS AND SERVICES

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

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

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

Other examples can be found here:

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

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

4. SCOPE OF REIMBURSEMENT FUNDING

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

5. PAYMENT STRUCTURE

A. Reimbursement Rate

a) **Spoken Language Interpreters**

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

b) **Sign Language Interpreters**

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

c) **Staff Interpreters (Salaried Staff)**

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

d) **Contracted Interpreters**

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

e) **Remote Interpreting**

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

f) **Cancellation Fees**

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

B. Travel Time and Mileage

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

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

Exhibit B
Annotated Language Access Plan Template with Criteria for Approval

This document provides information about the criteria that the AOC will use to review and approve Language Access Plans (LAP) for courts in the reimbursement program. This document includes the LAP template with annotations related to the approval criteria. The criteria have been established by the Washington State Supreme Court Interpreter Commission and are primarily based on provisions laid out in RCW 2.43.090.

The criteria are located throughout the template in red text. The criteria are framed as a series of questions and are placed in the locations most likely to answer those questions. For example, the question *"Does the LAP identify a process for requiring and providing training to judges, court clerks, and other court staff?"* is located in **Section VI Training,** which directly relates to this question.

A few of the provisions have a broader scope and contain elements that could be addressed in multiple sections. For these provisions, the criteria are placed near the sections that most closely related to the topics.

Additional Resources

A non-annotated version of this document. Courts can use this template to create their individual LAPs. Also found as Appendix B in the Deskbook.

Deskbook on Language Access in Washington Courts
Comprehensive guide on providing language access and includes additional information and resources related to the LAP template.

RCW 2.43.090
State statues related to LAPs and provisions required by state law.

Language Access Plan Development Session
A video walk-through of the LAP template with guidance on each section.

Language Access Plan of *[name of your court]*

I. PURPOSE

This LAP sets forth the ***[name of court]*** policy and procedures for the provision of timely language access services that ensure access for all limited English proficient (LEP), deaf, hard of hearing, and deaf-blind (D/HH/DB) individuals who come in contact with [*name of your court*] services and programs. Language access services include both interpretation and translation services for LEP and D/HH/DB individuals.

II. COURT POLICY REGARDING LANGUAGE ACCESS SERVICES

Under Washington state law (chapters 2.42 and 2.43 RCW), Title VI of the Civil Rights Act of 1964 (Title VI), the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), the Americans with Disabilities Act (ADA), and the regulations implementing these federal laws, Washington courts are required to provide language access services to all LEP and D/HH/DB individuals in civil and criminal court proceedings and in all court-managed services and programs and to develop a written language access plan pursuant to RCW 2.43.090.

It is the policy of ***[name of court]*** to provide foreign language interpreter services at no cost to LEP parties, witnesses, victims, and others with an interest (e.g., parents, legal guardians, custodians) in all court proceedings and operations, both civil and criminal, other than when it is the responsibility of other government bodies pursuant to state law. It is also the policy of this court to provide sign language interpreting services at no cost to persons who are D/HH/DB as required under applicable state and federal statutes and regulations.

[Name of court] will provide accessible information to LEP and D/HH/DB persons on how to request these language assistance services and vital documents as part of its notice to the public about its language access services.

Although D/HH/DB individuals are covered under the ADA and chapter 2.42 RCW rather than Title VI and the Safe Streets Act, this plan covers language access services for both D/HH/DB and LEP individuals.

III. DATA COLLECTION AND NEEDS ASSESSMENT

Considerations for Approval
RCW 2.43.090 (1)(a)
Does the LAP:

- Identify how often language data is collected and reviewed.
- Identify the most commonly spoken languages in the service area.
- Identify the source of data. (optional)

The ***[designated language access office or person]*** for ***[name of court]*** will, on an annual basis, compile demographic data regarding the language needs of its community. The court will initially review data from sources such as the following [*check all that apply and delete those that are not relevant to your court jurisdiction*]:

- ☐ Most recent and relevant U.S. Census and American Community Survey (ACS)
- ☐ Local school district (list names of district(s))
- ☐ County health department
- ☐ Public Defender's Office/Office of Assigned Counsel
- ☐ Prosecuting Attorney's Office
- ☐ County or City Attorney's Office
- ☐ Local legal aid service providers and community-based organizations which focus their service provision on immigrant and refugee populations in order to identify possible immigration and new language trends [*list relevant community agencies, if any]*

This data will be analyzed annually to determine whether the court's allocation of language access resources is appropriate.

The [*name of your court*] will make every effort to track requests for language access services by [*check all that apply or delete those that are not relevant to your court*]:

- ☐ Language preference (both spoken, written, and signed)
- ☐ Case type (e.g. family law, criminal, housing, etc.)
- ☐ Proceeding (e.g. trial, arraignment, initial appearance, etc.)
- ☐ Location of service request (e.g. court hearing, ADR, clerk's office, etc.)
- ☐ Whether the language access service requested was granted or denied
- ☐ Reason for denial
- ☐ Other [*describe*]

In addition to mechanisms discussed under the identification of language needs section below, the ***[name of court]*** will track this internal data in a case management system where available, and/or case files if case management is not automated. On a yearly basis, the court will analyze the data collected to identify whether services requested are in fact provided, assist in the allocation of language access resources, and identify gaps in the provision of services to address future needs.

The ***[name of your court]*** will send the final data compilation and analyses in the form of a biennial report to the Washington State Court Interpreter Commission to assist the Commission in monitoring of the court's Language Access Plan, identification of interpreter training and certification strategies, and other tools to assist the AOC and local courts in the provision of language access services.

A. Identified Current Needs

The most current language need identification efforts undertaken by ***[name of court]*** shows the following ***[insert top five languages below]*** non-English languages, whether spoken or signed, that are most frequently used in our

geographic area:

- [*language xx*]
- [*language xx*]
- [*language xx*]
- [*language xx*]
- [*language xx*]

The most current language need identification efforts undertaken by ***[name of court]*** shows the following ***[insert top five languages below]*** foreign or sign languages that are most frequently used in our **court community**:

- [*language xx*]
- [*language xx*]
- [*language xx*]
- [*language xx]*
- *[language xx]*

B. Identified Future Needs (if any)

[Name of court] has identified the following emerging and/or additional languages among court users in the area for which resources will be needed in the future:

- [*language xx* or resource needed]
- [*language xx* or resource needed]
- [*language xx* or resource needed]

IV. LANGUAGE ASSISTANCE IDENTIFICATION AND RESOURCES

Considerations for Approval

RCW 2.43.090 (1)(a) and RCW 2.43.090 (1)(b)

Does the LAP:

- Establish procedures court staff will use to identify LEP persons and the languages needed. [Template, Section IV B]
- Establish a court process and mechanism for tracking requests for language services. (Specifically how the court tracks language needs).
- Refer to I-speak cards or other resources that are available for staff to identify the language needed. (optional)
- Identify an individual or department responsible for coordinating language access services and procedures for providing in-person, video remote, and telephonic interpreter services. (optional)

A. Designated Language Access Office [*or other name given by your court*]

The ***[name of court]*** has designated ***[include name of designated local Language Access Coordinator or Interpreter Coordinator]*** as the person

responsible for coordinating language access services and to whom requests for interpreters and other language access services may be addressed. This designated person is available to:

- Develop lists of interpreters and secure interpreter services
- Receive and track language assistance requests;
- Address gaps in interpreter services by conducting outreach as needed;
- Provide information to assist LEP and D/HH/DB individuals to secure language access services;
- Assist or provide referrals to attorneys, justice partners, and other relevant persons to secure language access services for their clients and constituents;
- Assist court staff with securing language access services; and
- Answer questions from LEP and D/HH/DB individuals, and the public at large, regarding the court's available language access services, including the court's language access resources such as translated materials, interpreter roster, language identification cards, and other resources identified in this Plan.

LEP and D/HH/DB individuals, attorneys, justice partners, government agencies, and any other entities in need of language access services for court programs or activities or to acquire such services or information for themselves or their clients, may contact:

[Name of person/office designated]
[Address]
[Phone number]
[Fax/Email]

B. Identification of Language Access Needs and Notice of Availability

LEP and D/HH/DB, individuals may come in contact with court personnel via the phone, TTY / TDD, in-person, or through other means. In addition, there are various points of contact within ***[name court here]*** where LEP individuals or persons who are D/HH/DB will be in contact with court staff. Sometimes people who need language access services, including translated documents, will not request these services because they do not realize that such services are available at no charge, or because they do not recognize the level of English-language proficiency or communication ability needed to effectively participate in the court program, court proceeding, or court services. The first step in providing language access services is to enable LEP individuals or persons who are D/HH/DB to properly identify their language needs.

As a first step towards ensuring that LEP and D/HH/DB individuals are able to properly identify their language needs and to request language access and assistance services, ***[name of court]*** has a legal obligation to provide accessible notice to the public of an individual's right to spoken and sign language interpreter services and to be provided vital documents in translated form

whenever necessary to access court proceedings and court-managed programs.

Considerations for Approval
RCW 2.43.090 (1)(c)
Does the LAP:

- Provide a description of how the court notifies court users of the right to and availability of interpreter services and how to request those services.
- Identify specific locations where the notice will be placed or acknowledge that the court will prominently display the translated notice in the languages identified in RCW 2.43.090 (1)(a).

1. **Identifying Language Needs at Points of Access**
   [Name of court] will identify language access needs at all points of contact with the court, such as the following [*Check all that apply or delete those that are not relevant to your court*]:`
   - ☐ Telephone calls to court staff.
     - [*insert court phone numbers*]
   - ☐ Security screening at court house entrances at the following courthouses:
     - [*insert court locations where screening exists*]
   - ☐ Clerks' Offices at the following locations:
     - [*insert court locations*]
   - ☐ Jury Offices at:
     - [*insert court locations*]
   - ☐ Court Records Office at:
     - [*insert court locations*]
   - ☐ Cashier Offices at:
     - [*insert court locations*]
   - ☐ Small Claims or Alternative Dispute Resolution Services at:
     - *[insert court locations*]
   - ☐ Courtroom(s) at the following court houses:
     - [*insert court locations where courtrooms are situated]*
   - ☐ Court Facilitator or pro se services provided by the court at:
     - [*insert court locations*]
   - ☐ Court-managed programs and services at:
     - [*insert locations and services provided*]
   - ☐ Other [*Describe other points of access and the locations]*

To ensure the earliest possible identification of the need for language access services, the ***[name of court]*** has established internal protocols with the various justice partners which routinely interact with this court in order for these partners to communicate to the appropriate court staff the needs of LEP or D/HH/DB participants who will be coming into contact with the court. While justice partners themselves may be under a separate legal obligation to provide language access services to their clients, the court will be notified of any services that fall under the responsibility of the court as early as possible so

services may be provided in a timely and efficient manner. Examples of justice partners to be notified include [*check all that apply or delete those that are not relevant to your court*]:

- ☐ Jail staff
- ☐ Domestic violence victim's advocate
- ☐ Attorney/public defender
- ☐ Court facilitator
- ☐ Law enforcement
- ☐ Other [*add any other justice partners*]

2. Notice of the Availability of Language Access Services

In order to facilitate the ability of LEP and D/HH/DB individuals to request their need for language access services, the **[*name of court*]** shall provide notice of the availability of language access services translated into Washington State's most frequently used languages that states:

"*You have the right to language access services at no cost to you. To request these services, please contact [insert designated language access office or appropriate contact here]*".

The **[*name of court*]** displays this notice on its website and at the following locations:

- [location xx]
- [location xx]
- [location xx]

Additionally, **[*name of court*]** has the following resources available at its points of contact, including those listed above when appropriate, to help LEP and D/HH/DB and court staff communicate with each other [*Check all that apply or delete those that are not relevant to your court*]:

- ☐ Language identification cards at all points of contact
- ☐ Multi-lingual notices at all appropriate points of contact notifying members of the public of their right to request an interpreter or other language assistance at any point during their contact with the court.
- ☐ Other [*Add any additional mechanism for self-identification for LEP and* D/HH/DB *persons*]: _____

When it appears that an individual has difficulty communicating due to a language barrier, **[*name of court*]** staff must inform the LEP or D/HH/DB person of his or her right to have language access services provided by the courts at no cost to them, even if the LEP or D/HH/DB person has not made a request for the language access services.

V. LANGUAGE ACCESS SERVICES

Considerations for Approval

RCW 2.43.090 (1)(b) and RCW 2.43.090 (1)(d).

Elements that address the criteria below may be found in multiple sections including Section III, Section IV, Section V and section VII.

Does the LAP:

- Establish a process the court will use to appoint and provide interpreter services in legal proceedings consistent with RCW 2.43.030.
- Establish procedures for providing timely language services outside of the courtroom.
- Identify a mechanism to identify and address delays in access to courts due to language barriers.
- Acknowledge the commitment to provide timely services. (optional)

Once the **[*name of court*]** staff has determined interpreter services are required for an LEP or D/HH/DB individual, court staff have access to the following procedures for securing an interpreter.

A. Language Access Services Inside the Court Room

1. Appointment of a Certified, Registered, or Qualified Interpreter for In Court Proceedings

The person responsible for appointing or securing the assistance of an interpreter at the [*name your court*] will comply with the following order of preference in appointing an interpreter as set forth in RCW 2.43.030(1)(b) and (2).

RCW 2.43.030(1) (b) states:

> An in-person Certified or Registered interpreter who has been credentialed by the Administrative Office of the Courts shall be appointed, whenever possible, unless good cause is found and noted by the appointing authority. "Good cause" includes, but is not limited to, a determination that:
>
> (i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of an in-person credentialed interpreter are not reasonably available to the appointing authority; or
>
> (ii) The current list of credentialed interpreters maintained by the Administrative Office of the Courts does not include an interpreter in the language spoken by the LEP.

RCW 2.43.030(2) states:

> If good cause is found for using an interpreter who is not credentialed by

the Administrative Office of the Court, the appointing authority shall make a preliminary determination that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for who the interpreter would interpret; and
(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.

In the event no in-person interpreter is available locally, the court or designated authority will weigh the need for moving forward with the proceeding against any possible negative consequences to the LEP or D/HH/DB person's ability to effectively participate in the proceedings through the use of a remote interpreter, as may be allowed by Washington court rule or law. When evidentiary matters are before the court, the court shall reschedule the hearing until an in-person interpreter is available, whether located in-state or out-of-state, and be made present at the hearing.

[*Name of your court*] will NOT appoint as interpreters anyone with a potential conflict of interest in the case, including the following: minors; friends and family of the LEP or D/HH/DB person; advocates and attorneys; justice partner bilingual staff; or anyone deemed unqualified after voir dire by the court.

2. Practices in the Appointment and Use of Interpreters

In appointing interpreters, staff at **[*name of court*],** will ensure that the interpreter and the LEP or D/HH/DB participant can effectively communicate. It is also the practice of **[*name of court*]** to:

- ☐ Make a determination of the appropriate number of interpreters that may be required for the proceeding. When the proper administration of justice so requires the court will appoint multiple or separate interpreters.

- ☐ For long hearing sessions or trials, appoint a team of two interpreters or if no second interpreter is available, allow the interpreter to have frequent breaks to avoid interpreting fatigue, ensure accuracy, and avoid subsequent errors.

- ☐ Only allow an LEP or D/HH/DB person to waive his or her right to the assistance of an interpreter if the waiver is knowing, voluntary, and on the record. The waiver of an interpreter may be rejected by the court or later revoked by the person.

- ☐ Require interpreters to provide sight translations for documents related to the court proceedings.

- ☐ Prohibit interpreters from assisting LEP or D/HH/DB with entering information on

court forms without the involvement of court staff in the completion of such forms.

- ☐ Provide sign language interpreters for jurors who are D/HH/DB when such persons are called and selected for jury service

3. Calendaring and Scheduling of Interpreters for In-court and Out-of-court Contacts

[*Name of court*] will provide interpreter services in a timely manner. In order to provide high quality language access services in an efficient manner, **[*Name of court*]** employs the following practices: [*check all that apply or delete those that are not relevant to your court*]

- ☐ Batching of matters for which an interpreter for a specific language is needed so long as this does not cause unnecessary delays in access and loss of remedies available to litigants, such as:
  - [*list any matters for which batching would be appropriate*]
- ☐ Coordinating calendars so an interpreter may be available for several matters in the same court location on the same day.
- ☐ Establishing systems so that an interpreter coordinator can easily dispatch an interpreter from one court location to another, or one courtroom to another, efficiently, such as:
  - [*list any systems*]
- ☐ Coordinating the use of interpreters so that when an interpreter is not busy in a courtroom proceeding he or she may be available in person or telephonically to assist in other court-managed services, such as clerk's offices, pro se clinics, etc.
- ☐ Creating a pool of interpreters who may be available by telephone or video to assist in non-evidentiary proceedings or other court programs.
- ☐ Other: [*Describe additional practices*]

4. Remote Interpreting

For short non-evidentiary hearings the **[*name of court*]** uses the following remote interpreting technologies: [*check all that apply or delete those that are not relevant to your court*]

- ☐ Video-remote interpreting (VRI)
- ☐ Telephonic interpreting provided by credentialed interpreters
- ☐ Telephonic interpreting agencies
- ☐ Other: [*Describe remote interpreting technologies*]

The policy or practice of the court with regard to the use of remote interpreting services is as follows: [*insert/attach your court's policy here, or if your court does not have policy, use the following points as a guide as it relates to remote interpreting*]

- ☐ Video remote and telephonic interpreting use will be consistent with GR 11.3 and will be used with caution. Generally, in-person interpreters are preferred.

- ☐ Telephonic interpreting will be a last resort for courtroom proceedings, and reserved for brief non-evidentiary proceedings such as continuances, given that non-verbal cues – not visible when on the telephone – are critical for communication. Telephonic interpreting can be particularly problematic in some circumstances such as for individuals who are deaf or hard of hearing, the elderly, those struggling with mental illness, quiet or nonverbally communicative individuals, and others.

- ☐ Video remote interpreting (VRI) will be used appropriately and will meet the requirements for providing effective communication, including,

    - Real-time, full-motion video and audio;
    - A clear, large image;
    - A clear transmission of voices;
    - Adequate training of staff in utilizing the equipment; and
    - Use of Certified interpreters with legal training

    in order to be an efficient and effective mechanism for providing language access services when an in-person interpreter is not available, or when only a non-credentialed interpreter is available in person (but a credentialed one is available via video).

The court requires training for staff and appointing authorities on VRI and telephonic interpreting, how to use the technologies, how to best utilize the remote interpreter, and what are appropriate events for such types of remote interpreting service. VRI shall not be the only option available to the court and should be used when in-person interpretation services are not available.

B. Language Services Outside the Courtroom

The **[*name of court*]** is responsible for taking reasonable steps to ensure that LEP, deaf and hearing impaired individuals have meaningful access to services outside the courtroom. It is the practice of the court to provide interpreters for court-managed services, programs and operations consistent with state and federal language access mandates. In compliance with such mandates, the court shall provide language access services at: [*check all that apply or delete those that are not relevant to your court]*

- ☐ Alternative dispute resolution programs
- ☐ Anger management class
- ☐ CASA Programs
- ☐ Cashiers
- ☐ Court-ordered visitation

- ☐ Court facilitator services
- ☐ Criminal diversion programs
- ☐ Family Team Decision Making
- ☐ Guardians Ad Litem
- ☐ Electronic home monitoring
- ☐ Information counters
- ☐ Intake or filing offices
- ☐ Juvenile detention
- ☐ Juvenile diversion programs
- ☐ Mandatory mediation
- ☐ Prostitute patron ("John") class
- ☐ Parenting classes
- ☐ Pro se clinics
- ☐ Probation offices
- ☐ Records rooms
- ☐ Other [*Describe additional locations*]

The court, in compliance with federal and state civil rights laws and regulations, shall provide the most appropriate language access service for these programs and services, including qualified interpreters, bilingual staff, and translated materials and information. When the most appropriate language access service is the appointment of a qualified interpreter, the court shall follow the guidelines described for the appointment of interpreters.

As noted in the policy interpretation section earlier, chapter 2.42 RCW requires that courts provide interpreters for persons who are D/HH/DB when they are required to attend court ordered-programs or services. In addition to the provision of qualified interpreters in all proceedings where required, court's bilingual staff may assist with language needs outside of court proceedings. Bilingual staff shall be trained to understand their role, how it differs from the role of an interpreter, and that staff are only used for basic communications.

C. Translated Forms and Documents

Considerations for Approval

RCW 2.43.090 (1)(e)

Does the LAP:

- Include procedures to evaluate the need for translation of written materials.
- Identify the languages for which translations will be prioritized.
- Identify a process for translation requests, maintenance, and quality.
- Identify how the public is provided access to printed materials where no translation is provided.
- Identify existing translated materials and a process for adding future translations as needed. (optional)
- Identify the qualification of translators and include a prohibition of machine translation. (optional)

The **[*name of court*]** understands the importance of translating forms, documents, and electronic materials into non-English languages, so that LEP individuals have greater access to the courts' services. Judicial and court staff shall not use web-based applications or software to process or provide translations for LEP individuals.

State forms which have been translated are available at www.courts.wa.gov/forms. Additional informational resources translated into Spanish include:

- A Guide to Washington State Courts / Guía de los Tribunale del Estado de Washington
- Self-Represented Persons in District Court / Personas que se representan a sí mismas en el Tribunal de Distrito
- Self-Represented Persons in Municipal Court / Personas que se auto representan en los Tribunales Municipales
- Self-Represented Persons in Superior Court Civil Proceedings / Personas que se auto representan en procedimientos civiles en el Tribunal Superior
- An Introduction to Small Claims Court / Una Introducción Al Juzgado De Demandas De Cuantía Menor

[If your court has translated forms, use this section below to identify the forms]:

The [*name of your court*] currently has the following forms translated into commonly used languages [*list any forms/pamphlets your court has translated or include a link to the webpage containing those forms*]:

- [X, Y and Z Criminal Court Forms have been translated into . . .]
- [X, Y and Z Domestic Abuse forms have been translated into. . .]
- [XX]
- [YY]

The court shall make available such forms at appropriate locations in its court system and on the court's website. Information posted on the court's website for such forms shall be made accessible in the language the form is translated into.

[If your court has not translated any local forms, use this section]
[*Name of court*] has not translated any local forms and relies solely on translated general pattern forms provided by the AOC. When translated forms are not available, this court may: [*check all that apply or delete those that are not relevant to your court]*

- ☐ Provide sight translation of the form using bilingual staff
- ☐ Provide information regarding the content of the form using bilingual staff.
- ☐ Have an in-person interpreter sight translate the form
- ☐ Refer LEP party to a community resource
- ☐ Use telephonic interpreting
- ☐ Other *[describe other practices]*

D. Providing Emergency Information to LEP Court Customers

The **[name of court]** is responsible for taking reasonable steps to ensure that LEP and D/HH/DB individuals have meaningful access to emergency information should an emergency situation arise. The court provides such information in the following ways:

- ☐ There are universally understood emergency signs located in the strategic places throughout the courthouse building;
- ☐ Emergency exits are clearly marked [possibly also in the most common non-English language(s) used in the area];
- ☐ Evacuation map(s) are located in visible public area points with an indication using the most common non-English language (in addition to English) spoken in the area to designate the evacuation map(s).
- ☐ Bilingual staff is informed and trained to provide emergency information.

VI. TRAINING

Considerations for Approval
RCW 2.43.090 (1)(f)
Does the LAP:

- Identify a process for requiring and providing training to judges, court clerks, and other court staff.
- Identify the topics of the training to include requirements of the language access plan and how to effectively access and work with interpreters.
- Identify procedures to ensure existing staff and new staff are trained in an ongoing manner. (optional)

The **[*name of court*]** is committed to providing training for all judicial and court staff members who come in contact with LEP and D/HH/DB individuals in order to ensure the successful delivery of language access services. The court will provide staff training on all requirements in this Language Access Plan. Additional training opportunities will include [*check all that apply or delete those that are not relevant to your court*]:

- ☐ Proper appointment and scheduling of interpreters for all court proceedings and court-managed programs and services
- ☐ How to voir dire a non-credentialed court interpreter
- ☐ Role of an interpreter, modes of interpreting, and interpreter ethics and professional standards
- ☐ Courtroom management when interpreters are used
- ☐ Use of remote technologies for interpreting
- ☐ Cultural competence
- ☐ Other *[describe other trainings]*

Training efforts will include an initial training for new staff on the requirements of the current Language Access Plan and an annual training for existing court personnel that addresses any revisions made to the Plan.

Resources and information regarding language access services, policies and procedures and tools for providing language assistance (such as bench cards, language identification guides, brochures, etc.) are available to all court staff and decision makers at: [*check all that apply or delete those that are not relevant to your court]*

- ☐ The court's intranet
- ☐ The court's Language Access Coordinator/Interpreter Coordinator [*or your name for designated office/person.*]
- ☐ Other [*list other resources*]

VII. COMPLAINT PROCESS FOR NON-COMPLIANCE

1. Complaints Against Local Court

This specific complaint process is designed to bring to the attention of the local court, and if necessary, the Commission, allegations filed by LEP or D/HH/DB parties that the local court is out of compliance with the its own Language Access Plan, any applicable federal statutes or regulations, state statutory provisions, such as chapters 2.42 or 2.43 RCW and/or any applicable state or local court rules. This is an informal process whereby the Commission may be involved in providing consultation and guidance to LEP parties and local courts in resolving and removing barriers to language access services and resources.

LEP and D/HH/DB individuals are encouraged to first file a complaint with the local court using local court customer complaint filing procedures. The local court complaint rules are as follows:

A. Local Court Complaint Process

(Court insert its local court complaint process here)

B. Complaint Filed with the Court Interpreter Commission (Optional)

1. Except in extraordinary circumstances, the complaint must be filed with the Commission by an aggrieved party within 60 days from the date of the events on which the complaint is based.

Within 3 business days of the receipt of the complaint against a local court, Commission staff will inform complainant, using the contact information provided by complainant, of their option to file their complaint with the Department of Justice and of the need to file such complaint within 180 days from the date of the alleged discrimination.

2. Complaints filed with the Court or the AOC must be in writing and must be signed. The complaint must include the following information:

a. A clear and brief description of the complaint and any evidence upon which the allegation is based, with relevant supporting documentation. The description and supporting evidence should include relevant facts that support the complaint that the court did not provide language access services;

b. If possible, the complaint should identify the section(s) of the court's plan, statutes or regulations alleged to have been violated and the time frame in which the lack of compliance is alleged to have occurred;

c. Disclosure of any other channels the complainant is pursuing, including legal action (optional); and

d. A statement authorizing the Commission to send a copy of the complaint to the court that is the subject of the complaint.

Complaints filed with the Interpreter Commission should be sent to:

Washington State Interpreter Commission
c/o Interpreter Commission Staff
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1170.

Or by contacting Robert W. Lichtenberg at 360-350-5373 by telephone or via email to Robert.Lichtenberg@courts.wa.gov

3. Interpreter Commission Complaint Review

a. The Commission shall determine whether the complaint alleges facts that raise issues relating to the court's compliance with its LAP,

federal civil rights laws, chapters 2.42 and/or 2.43 RCW or court rules. This determination shall be made within 10 business days of receiving the complaint. The Commission may request additional information from the complainant if appropriate. If the Commission concludes that the complaint does not raise issues relating compliance with the LAP, Title VI of the Civil Rights Act, chapters 2.42 and/or 2.43 RCW, the matter will be closed and the complainant will be notified of the decision.

b. If the Commission determines that the complaint may raise possible compliance issues, the complaint shall be sent to the court and a response requested. The Commission ordinarily will request the presiding judge of the court or their designee to respond within 30 days.

c. If the response from the court establishes that the court is not out of compliance with respect to the matters raised in the complaint, the Commission will close the matter.

   If the court's response does not clearly establish that it is operating in compliance with the matters raised by the complaint, the Commission may appoint a fact-finder to investigate the issues raised by the complaint and to report on the court's response, if necessary. The complaint, the court's response, and fact-finder's report, if any, shall be referred to the Commission for any further action deemed necessary by the Commission.

d. The person making the complaint will be notified promptly regarding the conclusion of the Commission's review.

VIII. PUBLIC NOTIFICATION AND EVALUATION OF LAP

A. LAP Approval & Notification

[*Name of court*] LAP has been approved by the [*Presiding Judge*, *Court Administrator, Court Manager, and/or County Clerk*], and a copy has been forwarded to Washington State Administrative Office of the Courts' Interpreter Program Coordinator. Any revisions to the Plan are to be submitted to the [*Presiding Judge, Court Administrator, Court Manager, and/or County Clerk*] for approval, and then forwarded to the Interpreter Program Coordinator. Copies of **[*name of court*]** LAP shall be provided upon request. In addition, the court shall post its LAP on its own website at: ***[Insert court's URL]***

B. Outreach and Communication of Plan

The **[*name of court*]** shall inform the public of the existence of the LAP and to

this end, the court will: [*check all that apply or delete those that are not relevant to your court*]:

- ☐ Collaborate with local bar associations, justice partners and other relevant organizations to ensure distribution of information.
- ☐ Translate vital outreach materials into the following languages:
  - [*Insert languages with high diffusion in the court's area to which vital documents and materials will be translated*].
- ☐ Use ethnic media outlets (print, audio, TV, and digital media) to communicate regarding their language access policies and administrate policies. The court has identified the following ethnic media outlets with whom it will collaborate:
  - *[Insert local, regional and or statewide media outlets].*
- ☐ Establish mechanisms for obtaining feedback from the public, attorneys and justice partners regarding the implementation and effectiveness of the administrative protocol and take this feedback into account at the yearly evaluation of the protocol.
- ☐ Other:

C. Annual Evaluation of the LAP

Considerations for Approval
RCW 2.43.090 (1)(g)
Does the LAP:

- Identify a process for ongoing plan evaluation and updating.
- Identify a process for monitoring implementation.
- Include the frequency of review, who is responsible for the review, and how the evaluation will incorporate stakeholder feedback. (optional)
- Include a process to assess utilization of interpreter services, including reports. (optional)

[Name of court] will conduct an annual needs assessment to determine whether changes to the LAP are needed. To this end, the court will continue to communicate on an ongoing basis with stakeholders, including LEP and D/HH/DB persons, attorneys, and the public in the following manner(s):

- [*Fill in the method for notifying stakeholders of protocol for needs assessment*].

This assessment will be done by reviewing various areas in which the court provides language access services, taking into consideration, at a minimum, the number of interpreters requested by language in the courts and the identification of emerging changes in the languages spoken or signed within the court's local population as identified by any informational means or by other methods. Elements of the assessment evaluation shall include [*check all that apply or*

delete those that are not relevant to your court]:

- ☐ Number of LEP or D/HH/DB persons requesting court interpreters;
- ☐ Assessment of current language needs to determine if additional services or translated materials should be provided;
- ☐ Assessing whether staff members adequately understand LAP policies and procedures and how to carry them out; and
- ☐ Gathering feedback from LEP, deaf and hearing impaired communities around the state.
- ☐ Identification of challenges or trends your court is experiencing with providing language access services.
- ☐ Other [*describe other assessments*]

Any revisions made to the Plan will be communicated to all court personnel, and an updated version of the plan will be posted on the court's web site. In addition, the ***[Name of court]*** will submit to the AOC a copy of any updated information contained in this LAP within 60 days of its approval by **[*Name of court or designated authority here].***

D. Ideas for Future Improvements in Language Access [Optional]

[*Name of court*] will review the results of its annual needs assessment and conduct the following activities *[Check all that apply]*:

- ☐ Identify any challenges or trends your court is experiencing with providing language access services, sourcing of interpreters, document translation tasks, and website information that is accessible to LEP and D/HH/DB individuals.

- ☐ Engage in collaborative efforts with other courts to improve and coordinate interpreter scheduling where interpreter resources are shared.

- ☐ Identify and implement changes or improvements identified by your court to improve language access services that are within the scope of this LAP

- ☐ Other:

LAP Contact Person

State Contact:
Robert Lichtenberg
AOC Interpreter Program
1206 Quince Street SE
PO Box 41170
Olympia, WA 98504-1170

Local Contact:
[Insert Local Contact Information]

Robert.Lichtenberg@courts.wa.gov
(360) 350-5373

The effective date of this LAP plan is _____.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/29/22
Subject:	Awarding professional services agreements for Juvenile Court criminal case defense
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 provides public defense services in Benton County Juvenile Court by way of contract attorneys. All of the professional services agreements are scheduled to expire on December 31, 2022. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Juvenile Court public defense contracts for the 2023-24 contract cycle.

a) Jared Hanson
b) Branden Landon - Amended
c) Hayden Sebald

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH JARED HANSON TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSE

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Juvenile Court for defendants charged with criminal cases; and

WHEREAS, the existing agreement for public defense services on juvenile cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new agreements; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Jared Hanson for public defense services on criminal cases in Benton County Juvenile Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Jared Hanson, designated BCJC2324JH001, for services to be provided in Benton County Juvenile Court to defendants charged with criminal offenses, commencing January 1, 2023 and expiring December 31, 2024, with a per month compensation in the amount of $8,323.00 in 2023 and $8,490.00 in 2024 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Jared Hanson
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT CONTRACT # BCJC2324JH001

CONTRACT SUMMARY			
Contract Type	**Full Caseload**		
Contract Number	**BCJC2324JH001**	**Contract Holder**	**Jared Hanson**
WSBA #	**47891**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**235**	**Compensation**	**$8,323/mo (2023)** **$8,490/mo (2024)**
Assigned Court	**Juvenile Court**	**Compensation Structure**	**☐ By the case** **☐ Monthly** **☐ Hourly** **☒ By the case but paid monthly**
Compensation Payable To:	**Betancourt Law, PLLC**		

THIS AGREEMENT is entered into by and between **Jared Hanson**, attorney at law, Washington State Bar Association **# 47891** ("Attorney"), **dba Betancourt Law, PLLC**, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court Juvenile Division ("Juvenile 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 juveniles charged with criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

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

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

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1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023,** 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 (or has access to) an office adequate and appropriate for the practice of law at **2411 N Steptoe St, Richland, WA 99352**; Attorney's current local office telephone is **509-317-8184**; and Attorney's current office/work e-mail address is **jared@betancourtlawpllc.com**.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any crime of dishonesty or deception.

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

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

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

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

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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 effectively perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

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

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

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government

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business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

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

- Any criminal matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Juvenile Court **not including Class A felony and sex offenses**.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any diversion referral consultation and/or diversion revocation proceeding.
- Any material witness or truancy matter (limited to those truancy matters scheduled on first-appearance dockets).
- Any misdemeanor or gross misdemeanor filed directly in Juvenile Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Juvenile Court.
- Any case or matter returned to Juvenile Court from any higher court.
- Any other type of Juvenile Court case or matter (regardless whether criminal-based or civil-based) in which another Juvenile Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court for Benton County (e.g., Juvenile Court civil defense panel attorney) is unable to handle due to a conflict of interest.

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- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs.

- **Attorney shall be appointed, and shall only accept appointments for, cases filed in Benton County Juvenile Court under this Agreement. If Attorney accepts appointments for any other jurisdiction, including Franklin County Juvenile Court, such appointments will not fall under the purview of this Agreement, will not be eligible for compensation, and will not count toward caseload limits in this Agreement.**

6. **CONTINUED REPRESENTATION.**

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

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

(i) Any civil-based matter,

(ii) Any deferred disposition matter,

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

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

(v) Special Sex Offender Disposition Alternative Revocation hearings,

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

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

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

8. **CASE EQUIVALENTS.**

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

- All criminal cases (including Class A felony cases or cases that require a declination hearing) shall count as one (1) case equivalent.

- An appointment to a dependency case shall count as five (5) case equivalents per year.

- An appointment on a mental or alcohol commitment shall count as one-third (1/3) of a case equivalent.

- An appointment on a Child In Need of Services (CHINS), Alternative Residential Placement (ARP), or a Youth at Risk Petition (YARP) shall count as two-thirds (2/3) of a case equivalent.

- An appointment to a Termination of Parental Rights case shall count as five (5) case equivalents per year. Provided, that if County, at any time, in its sole discretion, feels that counting Termination of Parental Rights cases as case equivalents may result in insufficient caseload resources to handle anticipated criminal caseloads, then County may, for any one or more Termination of Parental Rights cases, disregard the case equivalents for said cases and, instead, compensate Attorney in the amount of $1,659 per Termination of Parental Rights case per year.

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- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the JCA or PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate.

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

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

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

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

9. **CLIENT ELIGIBILITY.** The Juvenile Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains

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

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

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

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

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

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

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

12. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services under this Agreement, the County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the sum of $425 per mixed-caseload case as a flat fee (regardless of whether the case is a felony or misdemeanor). However, for the mutual convenience of the parties, this compensation shall be paid in monthly equal payments **of $8,323.00 (2023) and $8,490.00 (2024**) based on Attorney's selected maximum caseload. This monthly payment shall be paid regardless of whether Attorney's actual annual caseload reaches the stated maximum caseload or not.

All compensation shall be payable to: Betancourt Law, PLLC since Attorney is an associate with that firm.

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

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

Description	**Additional Compensation**
Truancy or At-Risk Youth Dockets	$450 per docket
Trial Per Diem	$350 per day or $175 per half day

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Recurring Assignment as "Attorney of the Week"	$450 per month
Cases assigned in excess of maximum caseload (only if attorney affirmatively agrees to the assignment(s) and confirms that Attorney would remain in compliance with Public Defense Standards	$475 per felony case and $225 per misdemeanor or gross misdemeanor case
Class A felony appointment	$875 per case (regardless of how many Class A felony charges there are in the case); **only when attorney handles it without a second chair or supervised attorney**

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

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

13. **HOMICIDE AND DECLINATION CASE COMPENSATION.** Homicide cases are appointed to the Juvenile Court Criminal Defense Panel members on a rotational basis. Additionally, appointed serious felony matters may be subject to discretionary declination proceedings at the choosing of the prosecutor. Attorney shall receive additional compensation for appointments to homicide cases in any degree at the rate of **$95.00 per hour** up to **a maximum aggregate amount of $5,000.00 per case** (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity). Attorney shall receive additional compensation for cases for which Attorney must prepare for a declination hearing at the rate of **$75 per hour** up to a maximum of $2,000 per case exclusive of the declination hearing itself (which is paid as a trial per diem) and starting from the time when Attorney learns of the need to prepare for declination proceedings.

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

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDM that descriptively sets forth and details the total number of hours (documented and stated in one-tenth ($1/10^{th}$) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time

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expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

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

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

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

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are

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matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County (or either of them). All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

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

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and their elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of their elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this

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paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

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

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

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

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

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

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall

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comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

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

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

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

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

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

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19. **TERMINATION.**

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

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

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

32. **NOTICES.**

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

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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

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.

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

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

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

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

SIGNATURES APPEAR ON FOLLOWING PAGE

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

DocuSigned by:
Michael Vander Sys
3C4D65FD0BC4489...

Michael Vander Sys
Public Defense Manager

ATTORNEY

11/14/2022
Date_____

DocuSigned by:
Jared Hanson
EDBC040A5E57432...

Jared Hanson, WSBA **#47891**

Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

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

DocuSigned by:
Angel Betancourt
41EE83432C0E456...

Angel Betancourt, WSBA **#49091**

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

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:
Jared Hanson
FDBC040A5E57432...

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:	11/29/22
Subject:	Awarding professional services agreements for Juvenile Court criminal case defense
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 provides public defense services in Benton County Juvenile Court by way of contract attorneys. All of the professional services agreements are scheduled to expire on December 31, 2022. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Juvenile Court public defense contracts for the 2023-24 contract cycle.

a) Jared Hanson
b) Branden Landon - Amended
c) Hayden Sebald

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH HAYDEN SEBALD TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSE

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Juvenile Court for defendants charged with criminal cases; and

WHEREAS, the existing agreement for public defense services on juvenile cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new agreements; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Hayden Sebald for public defense services on criminal cases in Benton County Juvenile Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Hayden Sebald, designated BCJC2324HS001, for services to be provided in Benton County Juvenile Court to defendants charged with criminal offenses, commencing January 1, 2023 and expiring December 31, 2024, with a per month compensation in the amount of $8,323.00 in 2023 and $8,490.00 in 2024 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Hayden Sebald
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT CONTRACT # BCJC2324HS001

CONTRACT SUMMARY			
Contract Type	**Full Caseload**		
Contract Number	**BCJC2324HS001**	**Contract Holder**	**Hayden Sebald**
WSBA #	**57458**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**235**	**Compensation**	**$8,323/mo (2023)** **$8,490/mo (2024)**
Assigned Court	**Juvenile Court**	**Compensation Structure**	**☐ By the case** **☐ Monthly** **☐ Hourly** **☐ By the case but paid monthly**
Compensation Payable To:	**Glatzer Law Office PLLC**		

THIS AGREEMENT is entered into by and between **Hayden Sebald**, attorney at law, Washington State Bar Association **# 57458** ("Attorney"), **dba Glatzer Law Office PLLC**, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court Juvenile Division ("Juvenile 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 juveniles charged with criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

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

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

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1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023,** 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 (or has access to) an office adequate and appropriate for the practice of law at **1108 N Cleveland St., Unit #D**; Attorney's current local office telephone is **509-824-6774**; and Attorney's current office/work e-mail address is **hayden@glatzcorplaw.com**.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any crime of dishonesty or deception.

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

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

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

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

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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 effectively perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

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

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

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government

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business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

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

- Any criminal matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Juvenile Court **not including Class A felony and sex offenses**.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any diversion referral consultation and/or diversion revocation proceeding.
- Any material witness or truancy matter (limited to those truancy matters scheduled on first-appearance dockets).
- Any misdemeanor or gross misdemeanor filed directly in Juvenile Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Juvenile Court.
- Any case or matter returned to Juvenile Court from any higher court.
- Any other type of Juvenile Court case or matter (regardless whether criminal-based or civil-based) in which another Juvenile Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court for Benton County (e.g., Juvenile Court civil defense panel attorney) is unable to handle due to a conflict of interest.

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- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs.

- **Attorney shall be appointed, and shall only accept appointments for, cases filed in Benton County Juvenile Court under this Agreement. If Attorney accepts appointments for any other jurisdiction, including Franklin County Juvenile Court, such appointments will not fall under the purview of this Agreement, will not be eligible for compensation, and will not count toward caseload limits in this Agreement.**

6. **CONTINUED REPRESENTATION.**

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

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

(i) Any civil-based matter,

(ii) Any deferred disposition matter,

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

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

(v) Special Sex Offender Disposition Alternative Revocation hearings,

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

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

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

8. **CASE EQUIVALENTS.**

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

- All criminal cases (including Class A felony cases or cases that require a declination hearing) shall count as one (1) case equivalent.

- An appointment to a dependency case shall count as five (5) case equivalents per year.

- An appointment on a mental or alcohol commitment shall count as one-third (1/3) of a case equivalent.

- An appointment on a Child In Need of Services (CHINS), Alternative Residential Placement (ARP), or a Youth at Risk Petition (YARP) shall count as two-thirds (2/3) of a case equivalent.

- An appointment to a Termination of Parental Rights case shall count as five (5) case equivalents per year. Provided, that if County, at any time, in its sole discretion, feels that counting Termination of Parental Rights cases as case equivalents may result in insufficient caseload resources to handle anticipated criminal caseloads, then County may, for any one or more Termination of Parental Rights cases, disregard the case equivalents for said cases and, instead, compensate Attorney in the amount of $1,659 per Termination of Parental Rights case per year.

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- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the JCA or PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate.

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

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

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

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

9. **CLIENT ELIGIBILITY.** The Juvenile Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains

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

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

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

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

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

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

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

12. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services under this Agreement, the County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the sum of **$425 per mixed-caseload case as a flat fee** (regardless of whether the case is a felony or misdemeanor). However, for the mutual convenience of the parties, this compensation shall be paid in monthly equal payments **of $8,323.00 (2023) and $8,490.00 (2024**) based on Attorney's selected maximum caseload. This monthly payment shall be paid regardless of whether Attorney's actual annual caseload reaches the stated maximum caseload or not.

All compensation shall be payable to: **Glatzer Law Office PLLC** since a principle with that firm.

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

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

Description	**Additional Compensation**
Truancy or At-Risk Youth Dockets	$450 per docket
Trial Per Diem	$350 per day or $175 per half day

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Recurring Assignment as "Attorney of the Week"	$450 per month
Cases assigned in excess of maximum caseload (only if attorney affirmatively agrees to the assignment(s) and confirms that Attorney would remain in compliance with Public Defense Standards	$475 per felony case and $225 per misdemeanor or gross misdemeanor case
Class A felony appointment	$875 per case (regardless of how many Class A felony charges there are in the case); **only when attorney handles it without a second chair or supervised attorney**

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

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

13. **HOMICIDE AND DECLINATION CASE COMPENSATION.** Homicide cases are appointed to the Juvenile Court Criminal Defense Panel members on a rotational basis. Additionally, appointed serious felony matters may be subject to discretionary declination proceedings at the choosing of the prosecutor. Attorney shall receive additional compensation for appointments to homicide cases in any degree at the rate of **$95.00 per hour** up to **a maximum aggregate amount of $5,000.00 per case** (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity). Attorney shall receive additional compensation for cases for which Attorney must prepare for a declination hearing at the rate of **$75 per hour** up to a maximum of $2,000 per case exclusive of the declination hearing itself (which is paid as a trial per diem) and starting from the time when Attorney learns of the need to prepare for declination proceedings.

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

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDM that descriptively sets forth and details the total number of hours (documented and stated in one-tenth ($1/10^{th}$) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time

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expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

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

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

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

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are

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matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County (or either of them). All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

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

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and their elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of their elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this

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paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

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

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

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

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

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

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall

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comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

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

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

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

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

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

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19. **TERMINATION.**

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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

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.

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

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

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

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

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

SIGNATURES APPEAR ON FOLLOWING PAGE

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

DocuSigned by:
Michael Vander Sys
3C4D65FD0BC4480...

Michael Vander Sys
Public Defense Manager

ATTORNEY

11/10/2022

Date_____

DocuSigned by:
Hayden Sebald
[illegible]

Hayden Sebald, WSBA #57458

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

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:
Hayden Sebald
3CA2EE65B75C4D1...

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:	11/29/22
Subject:	Awarding public professional service agreements for therapeutic courts and miscellaneous dockets
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 provides public defense services in Benton County's therapeutic and other miscellaneous dockets by way of contract attorneys. Almost all of the professional services agreements for District Court Drug Court, Civil Contempt Child Support docket, Veterans' Court, Mental Health Court, Juvenile Drug Court, Adult Drug Court, and the Involuntary Treatment Act ("ITA") docket are expiring December 31, 2022. After a Request for Qualifications process, the following attorneys are recommended for contract award to provide legally mandated services in those listed therapeutic courts and miscellaneous dockets:

a) Michelle Alexander (District Court Drug Court) - Amendment
b) Judy Chang (Civil Contempt – Child Support)
c) Catherine Harkins (Veterans' Court)
d) Dawn Hickman (Mental Health Court)
e) Karyn Oldfield (Juvenile Drug Court)
f) Deric Orr (Adult Drug Court)
g) Alan Tindell (ITA Docket)

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY KARYN OLDFIELD TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT TO DEFENDANTS PARTICIPATING IN THE BENTON COUNTY JUVENILE DRUG COURT PROGRAM

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Juvenile Court for defendants participating in, or contemplating participation in the Benton County Juvenile Drug Court program ("Juvenile Cases"); and

WHEREAS, Benton County provides representation in Juvenile Drug Court Cases by way of a contract attorney; and

WHEREAS, the existing agreement for public defense services on Juvenile Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award a new agreement; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Karyn Oldfield for public defense services on Juvenile Cases in Benton County Juvenile Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Karyn Oldfield, designated BCJC2324KO001, for services to be provided in Benton County Juvenile Court to defendants participating in or contemplating participation in Benton County Juvenile Drug Court, commencing January 1, 2023 and expiring December 31, 2024, with a per month compensation in the amount of $2,200.00 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Karyn Oldfield
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT
BCJC2324KO001

CONTRACT SUMMARY			
Contract Type	**Full Caseload – Drug Court**		
Contract Number	**BCJC2324KO001**	**Contract Holder**	**Karyn Oldfield**
WSBA #	**23053**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**25**	**Compensation**	**$2,200 per month**
Assigned Court	**Juvenile Court – Drug Court**	**Compensation Structure**	☒ **By the case** ☐ **Monthly** ☐ **Hourly** ☐ **By the case but paid monthly**
Compensation Payable To:	**Karyn Oldfield**		

THIS AGREEMENT is entered into by and between **Karyn K. Oldfield**, attorney at law, Washington State Bar Association **# 23053** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court Juvenile Division ("Juvenile 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 juveniles charged with criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. County operates a Juvenile Drug Court therapeutic court and is legally obligated to provide public defense counsel to juveniles who are participating in Juvenile Drug Court.

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 juveniles subject to criminal charges in Juvenile Court and to juveniles participating in the Juvenile Drug Court therapeutic court.

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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 **January 1, 2023,** 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 (or has access to) an office adequate and appropriate for the practice of law at **316 Shaw, Richland, WA 99354**; Attorney's current local office telephone and fax numbers are **(509) 371-9804** and Attorney's current office/work e-mail address is **karynoldfield@gmail.com**.

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

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

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

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court juvenile public defense for Class B and Class C felonies as adopted by the Supreme Court; meets the

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qualifications for Superior Court juvenile public defense for Class A felonies and sex offenses; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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at their sole discretion, to terminate this Agreement and, if they elect to do so, may do so with ten (10) days written notice to Attorney:

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

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

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

(d) Any crime of dishonesty or deception.

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

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

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

From time to time, County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is

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

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

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

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

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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 ATTORNEYS.**

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

5. **CONTRACT DUTIES.**

Juvenile Drug Court - Attorney shall provide full legal representation to participants in the Juvenile Drug Court when such participants enter Drug Court by reason of a Juvenile Court case filed in Benton County and shall also provide pre-Drug Court consultation and counseling as required.

6. **CONTINUED REPRESENTATION.**

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

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows: In the event of termination of this Agreement at the election of either party by providing ninety (90) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM and JCA with accurate documentation identifying Attorney's then-existing Juvenile Court caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the

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Caseload Information to the PDM and JCA contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM and JCA with updated Caseload Information sixty (60) days prior to the effective date of Agreement termination and again at thirty (30) days prior to said termination date. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination, except for the following matters in which Attorney's continuing representation of the client shall be limited to sixty (60) days following the termination date:

(i) Any civil-based matter,

(ii) Any deferred disposition matter,

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

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

(v) Special Sex Offender Disposition Alternative Revocation hearings,

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

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

7. **NUMBER OF APPOINTMENTS.**

The caseload that Attorney is expected to assume shall not exceed **25 participants at any given time**, based on the current funding and allocation level of the bi-county Benton and Franklin Counties Juvenile Drug Court program. If the funding level or allocation of participant slots changes during the pendency of this Agreement, then the parties agree to re-negotiate this Agreement with particular attention to the level of compensation.

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

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representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Juvenile Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Juvenile Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

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

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

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person) or otherwise as soon thereafter as

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reasonably possible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

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

11. **COMPENSATION.**

a. Compensation for Attorney's services rendered to Juvenile Drug Court participants, County shall pay Attorney the sum of **$2,200 based on a capacity of 25 slots** for Benton County participants. The parties agree that if the Benton County Superior Court modifies the capacity of Juvenile Drug Court, then Attorney's monthly compensation shall be adjusted upward or downward accordingly, at the rate of $100 per participant per month.

All compensation shall be payable to **Karyn Oldfield** since Attorney is a principle with that firm.

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be

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reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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

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

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complexity of the particular matter, the Juvenile Court would have the ultimate and inherent discretion and power to do so.

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

15. **INSURANCE.**

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

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

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

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of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

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

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

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

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

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

a. Upon receiving such complaint, the JCA/PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this

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Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM and JCA within five (5) business days). The JCA/PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The JCA will then follow-up with the Presiding Juvenile Court Judge to confirm or advise that the complaint has been, or is in the process of being, addressed and resolved. The foregoing procedure does not interfere with or otherwise impair the Juvenile Courts/Office of Public Defense's ability and/or duty to monitor the performance of attorneys appearing before the Court.

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

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 such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Juvenile Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

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

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

18. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Juvenile Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment

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to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the JCA, the PDM, nor the Juvenile Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

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

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

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

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

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

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losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

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

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

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

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

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

(iv) In the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the 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 expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing persons in Juvenile Court.

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.

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

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before the Juvenile Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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 are, for whatever reason, determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

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,

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if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

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

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

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 PDM and the JCA at their respective below-stated office addresses; mailed to the PDM and the JCA at their respective below-stated office addresses via certified U.S. mail, postage prepaid; or emailed to the County's PDM and JCA at their official email address.

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Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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

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.

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 its contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

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

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Attorney's performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely (including providing BCOPD with, upon request, metrics data that it cannot easily obtain without Attorney's reporting. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

DocuSigned by:
Michael Vander Sys
3C4D65ED0BC4489...

Michael Vander Sys
Public Defense Manager

ATTORNEY

11/11/2022
Date_____

DocuSigned by:
Karyn Oldfield
530757A2CCB94F5...

, WSBA

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 33 of this Agreement and that said Monitoring will comprise of the following:

a. 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:
Karyn Oldfield
5387E4A2CD954F5...

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:	11/29/22
Subject:	Awarding professional services agreements for Juvenile Court criminal case defense
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 provides public defense services in Benton County Juvenile Court by way of contract attorneys. All of the professional services agreements are scheduled to expire on December 31, 2022. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Juvenile Court public defense contracts for the 2023-24 contract cycle.

a) Jared Hanson
b) Branden Landon - Amended
c) Hayden Sebald

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE PROFESSIONAL SERVICES AGREEMENT WITH BRANDEN LANDON, RESOLUTION 2022-007, FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY JUVENILE COURT FOR DEFENDANTS CHARGED WITH CRIMINAL OFFENSE AND TO PROVIDE FOR MODIFYING THE COMPENSATION TERMS AND AGREEMENT END DATE TO MATCH THOSE OF OTHER RENEWING CONTRACTS

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Juvenile Court for defendants charged with criminal cases; and

WHEREAS, County has been contracting with attorney Branden Landon ("Attorney") on juvenile cases; and

WHEREAS, it has become necessary to modify the agreement with Attorney because compensation terms and the agreement end date were modified for other attorneys who were renewing their contracts; and

WHEREAS, it is therefore appropriate to amend the professional services agreement with Attorney to provide for modifying the compensation terms and agreement end date to match those of other renewing attorney contracts; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Branden Landon, previously executed by and through Resolution 2022-007, is hereby amended as proposed, to provide for modifying the compensation terms and agreement end date to match those of other renewing attorney contracts, specifically 1) increasing the monthly compensation to $8,323.00 in 2023 and $8,490.00 in 2024, plus other allowable expenses, premiums and fees as detailed and 2) changing the agreement time period to 01/01/22 through 12/31/24.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Branden Landon
Copy – Auditor, S Godinez

M Vander Sys

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AMENDED
PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO JUVENILES IN BENTON COUNTY JUVENILE COURT
CONTRACT # BCJC2324BDL001

CONTRACT SUMMARY			
Contract Type	**Full Caseload**		
Contract Number	**BCJC2324BDL001**	**Contract Holder**	**Branden D Landon**
WSBA #	**55433**	**Effective Dates**	**January 1, 2022 – December 31, 2024**
Caseload Cap	**235**	**Compensation**	**$8,323/mo (2023)** **$8,490/mo (2024)**
Assigned Court	**Juvenile Court**	**Compensation Structure**	**☐ By the case** **☐ Monthly** **☐ Hourly** **☒ By the case but paid monthly**
Compensation Payable To:	**Landon Law, PLLC**		

THIS AGREEMENT is entered into by and between **Branden D Landon**, attorney at law, Washington State Bar Association **# 55433** ("Attorney"), **dba Landon Law, PLLC**, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court Juvenile Division ("Juvenile 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 juveniles charged with criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

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

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

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1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2022,** and shall continue thereafter through and including **December 31, 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 (or has access to) an office adequate and appropriate for the practice of law at **8350 W Grandridge Blvd, Suite 200 #454**; Attorney's current local office telephone is **509-842-5073**; and Attorney's current office/work e-mail address is **blandon@landonlawoffice.com**.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any crime of dishonesty or deception.

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

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

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

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

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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 effectively perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

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

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

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government

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business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

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

- Any criminal matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Juvenile Court **not including Class A felony and sex offenses**.
- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.
- Any diversion referral consultation and/or diversion revocation proceeding.
- Any material witness or truancy matter (limited to those truancy matters scheduled on first-appearance dockets).
- Any misdemeanor or gross misdemeanor filed directly in Juvenile Court, whether as a part of another separate case or filed independently.
- Any material witness matter relating to a felony case or matter filed in Juvenile Court.
- Any case or matter returned to Juvenile Court from any higher court.
- Any other type of Juvenile Court case or matter (regardless whether criminal-based or civil-based) in which another Juvenile Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Juvenile Court for Benton County (e.g., Juvenile Court civil defense panel attorney) is unable to handle due to a conflict of interest.

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- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs.

- **Attorney shall be appointed, and shall only accept appointments for, cases filed in Benton County Juvenile Court under this Agreement. If Attorney accepts appointments for any other jurisdiction, including Franklin County Juvenile Court, such appointments will not fall under the purview of this Agreement, will not be eligible for compensation, and will not count toward caseload limits in this Agreement.**

6. **CONTINUED REPRESENTATION.**

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

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

(i) Any civil-based matter,

(ii) Any deferred disposition matter,

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

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

(v) Special Sex Offender Disposition Alternative Revocation hearings,

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

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

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

8. **CASE EQUIVALENTS.**

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

- All criminal cases (including Class A felony cases or cases that require a declination hearing) shall count as one (1) case equivalent.
- An appointment to a dependency case shall count as five (5) case equivalents per year.
- An appointment on a mental or alcohol commitment shall count as one-third (1/3) of a case equivalent.
- An appointment on a Child In Need of Services (CHINS), Alternative Residential Placement (ARP), or a Youth at Risk Petition (YARP) shall count as two-thirds (2/3) of a case equivalent.
- An appointment to a Termination of Parental Rights case shall count as five (5) case equivalents per year. Provided, that if County, at any time, in its sole discretion, feels that counting Termination of Parental Rights cases as case equivalents may result in insufficient caseload resources to handle anticipated criminal caseloads, then County may, for any one or more Termination of Parental Rights cases, disregard the case equivalents for said cases and, instead, compensate Attorney in the amount of $1,659 per Termination of Parental Rights case per year.

- If Attorney is appointed to a case and withdraws prior to the omnibus hearing for any reason, including the substitution of retained counsel or a conflict of interest, that appointment shall not count as any case equivalent; provided that the JCA or PDM shall retain discretion to award a case equivalent value (or fractional portion thereof) if deemed appropriate.

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

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

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

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

9. **CLIENT ELIGIBILITY.** The Juvenile Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Juvenile Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains

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

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

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

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

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

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

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

12. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services under this Agreement, the County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the sum of **$425 per mixed-caseload case as a flat fee** (regardless of whether the case is a felony or misdemeanor). However, for the mutual convenience of the parties, this compensation shall be paid in monthly equal payments **of $8,323.00 (2023) and $8,490.00 (2024**) based on Attorney's selected maximum caseload. This monthly payment shall be paid regardless of whether Attorney's actual annual caseload reaches the stated maximum caseload or not.

All compensation shall be payable to: Landon Law, PLLC since Attorney is a principle with that firm.

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

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

Description	**Additional Compensation**
Truancy or At-Risk Youth Dockets	$450 per docket
Trial Per Diem	$350 per day or $175 per half day

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Recurring Assignment as "Attorney of the Week"	$450 per month
Cases assigned in excess of maximum caseload (only if attorney affirmatively agrees to the assignment(s) and confirms that Attorney would remain in compliance with Public Defense Standards	$475 per felony case and $225 per misdemeanor or gross misdemeanor case
Class A felony appointment	$875 per case (regardless of how many Class A felony charges there are in the case); **only when attorney handles it without a second chair or supervised attorney**

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

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

13. **HOMICIDE AND DECLINATION CASE COMPENSATION.** Homicide cases are appointed to the Juvenile Court Criminal Defense Panel members on a rotational basis. Additionally, appointed serious felony matters may be subject to discretionary declination proceedings at the choosing of the prosecutor. Attorney shall receive additional compensation for appointments to homicide cases in any degree at the rate of **$95.00 per hour** up to **a maximum aggregate amount of $5,000.00 per case** (or such greater maximum aggregated amount as may be specifically approved and ordered by the court in a particular case as being reasonable and necessary due to its extraordinary facts, nature, and complexity). Attorney shall receive additional compensation for cases for which Attorney must prepare for a declination hearing at the rate of **$75 per hour** up to a maximum of $2,000 per case exclusive of the declination hearing itself (which is paid as a trial per diem) and starting from the time when Attorney learns of the need to prepare for declination proceedings.

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

b. As a precondition to Attorney being paid the above-mentioned additional compensation for a homicide case, Attorney shall be required to submit a vendor warrant payment voucher to the PDM that descriptively sets forth and details the total number of hours (documented and stated in one-tenth ($1/10^{th}$) hour intervals) expended by Attorney on such case and that further describes and details the particular actions taken by Attorney on such case that correspond to such expended and billed hours (exercising appropriate discretion to protect client confidentiality given that such vouchers are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time

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expended to prepare, submit, and process vouchers shall not be billable to the County. All payment vouchers and requests for additional compensation under this paragraph shall be subject to the court's review and final approval for payment. Attorney shall submit such payment vouchers within sixty (60) days of the date on which Attorney expended time for which additional compensation is sought under this paragraph, and the County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period.

14. **COSTS AND EXPENSES.**

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

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

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

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are

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matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County (or either of them). All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

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

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and their elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of their elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of their elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this

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paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

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

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

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

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

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

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall

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comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

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

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

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

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

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

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19. **TERMINATION.**

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

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

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

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Attorney shall continue to receive case appointments during the first sixty (60) days of the notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A ninety (90) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW

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

32. **NOTICES.**

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

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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

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.

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

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

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

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

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

SIGNATURES APPEAR ON FOLLOWING PAGE

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

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

DocuSigned by:
Michael Vander Sys
2C4D65ED0BC4480...

Michael Vander Sys
Public Defense Manager

ATTORNEY

Date 11/14/2022

DocuSigned by:
Branden Landon
[illegible]F54C3...

Branden Landon, WSBA **#55433**

Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

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

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

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

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

Attorney acknowledgment:

DocuSigned by:
Branden Landon
2300C6ED81E5403...

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.

RESOLUTION

BENTON COUNTY RESOLUTION NO.

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING SECOND AMENDMENT OF AGREEMENT FROM GRT22086 WITH WASHINGTON STATE OFFICE OF PUBLIC DEFENSE IN ORDER TO RECEIVE AND EXPEND PUBLIC DEFENSE GRANT FUNDING FOR ADDRESSING CASES PURSUANT TO STATE V. BLAKE THROUGH DECEMBER 31, 2023

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Courts; and

WHEREAS, as a result of the Supreme Court decision in *State v. Blake*, it has become necessary to take action to resentence or vacate convictions ("Post-Conviction Relief") in an extremely large volume of past cases; and

WHEREAS, Washington State Office of Public Defense ("State OPD") has awarded Benton County OPD a grant in the amount of $224,000, over the 2021-2022 biennium, to provide partial funding toward the expenses of Post-Conviction Relief in cases pursuant to *State v. Blake*; and

WHEREAS, the agreement needs to be amended to extend the grant through December 31, 2023; and

WHEREAS, it is therefore in the best interests of Benton County to execute the proposed amended grant funding agreement in order to receive and expend the grant funding to further the interests of public defense in Benton County as it relates to cases needing Post-Conviction Relief pursuant to *State v. Blake*; **NOW, THEREFORE**

BE IT RESOLVED that the second amended grant funding agreement with State OPD, **Agreement No. GRT22086**, be executed as presented.

BE IT FURTHER RESOLVED that the Public Defense Manager be authorized to sign the said agreement on behalf of the Board of Commissioners.

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

_____
Chairman of the Board

_____
Chairman Pro-Tem

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

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

cc: Originals – to Washington State Office of Public Defense for countersignature M. Vander Sys
Copy – Commissioners; Auditor (after original received back from State OPD)

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/29/22
Subject:	Awarding professional services agreements for Superior Court criminal cases
Presenter:	
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 provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. All of the professional services agreements are scheduled to expire on December 31, 2022. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2023-24 contract cycle:

a) Nicholas Blount
b) Brian Hultgrenn
c) Karla Kane
d) Ian Sinclair

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH NICHOLAS BLOUNT TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing professional service agreements for public defense services on Criminal Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new agreements; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Nicholas Blount for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Nicholas Blount, designated BCSC2324NB001, for services to be provided in Benton County Superior Court to defendants charged with criminal offenses, commencing January 1, 2023 and expiring December 31, 2024, with a per case compensation in the amount of $772.00 in 2023 and $788.00 in 2024 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Nicholas Blount
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT
CONTRACT # BCSC2324NB001

CONTRACT SUMMARY			
Contract Type	**Full Caseload**		
Contract Number	**BCSC2324NB001**	**Contract Holder**	**Nicholas Blount**
WSBA #	**44783**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**140**	**Compensation**	**$9,006.67/mo (2023)** **$9,193.33/mo (2024)**
Assigned Court	**Superior Court**	**Compensation Structure**	**☐ By the case** **☐ Monthly** **☐ Hourly** **☒ By the case but paid monthly**
Compensation Payable To:	**Law Office of Nicholas Blount**		

THIS AGREEMENT is entered into by and between **Nicholas Blount,** attorney at law, Washington State Bar Association **#44783** ("Attorney"), **dba Law Office of Nicholas Blount** and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

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

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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 **January 1, 2023,** 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 to, 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 Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **1030 N Center Pkwy, Ste 307, Kennewick, WA 99336**; Attorney's current local office telephone is **509-735-5054**; and Attorney's current office/work e-mail address is **blountlawoffice@gmail.com**.

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

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

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

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B

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felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent 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 Benton County Superior 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 felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.

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

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- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.

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

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

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior 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 case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior 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; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

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

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment 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.

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

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

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

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

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

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	**Treatment**
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional

	compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

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 Superior Court and Attorney continues representing the same person in such matter within a twelve (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, 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)

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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. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

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

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

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

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including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

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

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

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$772.00 per case (2023); $788.00 per case (2024).** For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments **of $9,006.67 (2023) and $9,193.33 (2024)**, based on Attorney's selected caseload.

All compensation shall be payable to **Law Office of Nicholas Blount** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$772 (2023) $788 (2024)
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager or designee)
Material witness matters	$275
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$350
DOSA or SSOSA review on Attorney's own case	$275 per year that reviews continue
Post-sentencing matter on Attorney's own case	$275

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive **$450.00 per day for each full day of trial and $225.00 for each partial day of trial**, not to include pre-trial motions or time waiting for disposition. A

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full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $450.00 if the matter was scheduled for a jury trial or $225.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree

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shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2022 is due by March 15, 2022. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report.

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Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of **$95 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours**. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

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

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

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

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

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

17. **INSURANCE.**

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

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

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

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

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County

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Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

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

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

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

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the

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

19. **TERMINATION.**

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

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

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

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

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be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

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

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney

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assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

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

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

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

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any

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reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

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

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

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

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and

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would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court

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action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

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

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

32. **NOTICES.**

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

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Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

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

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

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

35. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate

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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

11/14/2022

Date_____

DocuSigned by:
Nicholas Blount
A4B2E2897AD1468...

Nicholas Blount, WSBA **#44783**

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

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

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

Attorney acknowledgment:

DocuSigned by:
Nicholas Blount
AAB3E2397AD1463...

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:	11/29/22
Subject:	Awarding professional services agreements for Superior Court criminal cases
Presenter:	
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 provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. All of the professional services agreements are scheduled to expire on December 31, 2022. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2023-24 contract cycle:

a) Nicholas Blount
b) Brian Hultgrenn
c) Karla Kane
d) Ian Sinclair

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH KARLA KANE TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing professional service agreements for public defense services on Criminal Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new agreements; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Karla Kane for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Karla Kane, designated BCSC2324KK001, for services to be provided in Benton County Superior Court to defendants charged with criminal offenses, commencing January 1, 2023 and expiring December 31, 2024, with a per case compensation in the amount of $772.00 in 2023 and $788.00 in 2024 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Karla Kane
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT
CONTRACT # BCSC2324KK001

CONTRACT SUMMARY			
Contract Type	**Full Caseload**		
Contract Number	**BCSC2324KK001**	**Contract Holder**	**Karla Kane**
WSBA #	**31930**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**140**	**Compensation**	**$9,006.67/mo (2023)** **$9,193.33/mo (2024)**
Assigned Court	**Superior Court**	**Compensation Structure**	**☐ By the case** **☐ Monthly** **☐ Hourly** **☒ By the case but paid monthly**
Compensation Payable To:	**Kane Law PLLC**		

THIS AGREEMENT is entered into by and between **Karla Kane,** attorney at law, Washington State Bar Association #**31930** ("Attorney"), **dba Kane Law PLLC** and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

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

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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 **January 1, 2023,** 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 to, 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 Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **21 N Cascade St, Kennewick, WA 99336**; Attorney's current local office telephone is **509-545-4646**; and Attorney's current office/work e-mail address is **karla@kanelawpllc.com**.

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

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

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

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B

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felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent 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 Benton County Superior 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 felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.

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

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- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.

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

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

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior 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 case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior 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; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

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

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment 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.

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

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

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

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

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

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	**Treatment**
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional

	compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

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 Superior Court and Attorney continues representing the same person in such matter within a twelve (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, 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)

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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. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

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

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

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

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including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

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

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

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$772.00 per case (2023); $788.00 per case (2024).** For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments **of $9,006.67 (2023) and $9,193.33 (2024)**, based on Attorney's selected caseload.

All compensation shall be payable to **Kane Law PLLC** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$772 (2023) $788 (2024)
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager or designee)
Material witness matters	$275
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$350
DOSA or SSOSA review on Attorney's own case	$275 per year that reviews continue
Post-sentencing matter on Attorney's own case	$275

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive **$450.00 per day for each full day of trial and $225.00 for each partial day of trial**, not to include pre-trial motions or time waiting for disposition. A

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full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $450.00 if the matter was scheduled for a jury trial or $225.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree

shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2022 is due by March 15, 2022. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report.

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Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of **$95 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours**. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

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

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

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

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

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

17. **INSURANCE.**

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

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

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

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

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County

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Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

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

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

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

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

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

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the

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

19. **TERMINATION.**

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

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

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

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

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be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

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

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney

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assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

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

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

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

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any

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reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

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

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

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

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and

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would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court

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action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

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

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

32. **NOTICES.**

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

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Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

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

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

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

35. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate

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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

11/9/2022

Date_____

DocuSigned by:
karla kane
3B5AADB23A4B4C3...

Karla Kane, WSBA #31930

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.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

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

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

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

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

Attorney acknowledgment:

DocuSigned by:
karla kane
[illegible]

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:	11/29/22
Subject:	Awarding professional services agreements for Superior Court criminal cases
Presenter:	
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 provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. All of the professional services agreements are scheduled to expire on December 31, 2022. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2023-24 contract cycle:

a) Nicholas Blount
b) Brian Hultgrenn
c) Karla Kane
d) Ian Sinclair

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH BRIAN HULTGRENN TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing professional service agreements for public defense services on Criminal Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new agreements; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Brian Hultgrenn for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Brian Hultgrenn, designated BCSC2324BH001, for services to be provided in Benton County Superior Court to defendants charged with criminal offenses, commencing January 1, 2023 and expiring December 31, 2024, with a per case compensation in the amount of $772.00 in 2023 and $788.00 in 2024 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Brian Hultgrenn
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT
CONTRACT # BCSC2324BH001

CONTRACT SUMMARY			
Contract Type	**Partial Caseload**		
Contract Number	**BCSC2324BH001**	**Contract Holder**	**Brian Hultgrenn**
WSBA #	**36277**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**110**	**Compensation**	**$7,076.67/mo (2023)** **$7,223.33 /mo (2024)**
Assigned Court	**Superior Court**	**Compensation Structure**	**☐ By the case** **☐ Monthly** **☐ Hourly** **☒ By the case but paid monthly**
Compensation Payable To:	**Hultgrenn Law**		

THIS AGREEMENT is entered into by and between **Brian Hultgrenn,** attorney at law, Washington State Bar Association **#36277** ("Attorney"), **dba Hultgrenn Law** and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

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

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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 **January 1, 2023,** 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 to, 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 Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **1030 N Center Parkway, Kennewick, WA 99336**; Attorney's current local office telephone is **509-737-0050**; and Attorney's current office/work e-mail address is **brian@hultgrennlaw.com**.

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

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

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

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B

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felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent 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 Benton County Superior 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 felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.

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

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- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.

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

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

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior 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 case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior 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; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

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

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment 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.

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

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

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

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **110 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	**Treatment**
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional

	compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

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 Superior Court and Attorney continues representing the same person in such matter within a twelve (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, 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.

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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. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

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

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

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

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of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Superior Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

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

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

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

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

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$772.00 per case (2023); $788.00 per case (2024).** For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments **of $7,076.67 (2023) and $7,223.33 (2024)**, based on Attorney's selected caseload.

All compensation shall be payable to **Brian Hultgrenn** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$772 (2023) $788 (2024)
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager or designee)
Material witness matters	$275
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$350
DOSA or SSOSA review on Attorney's own case	$275 per year that reviews continue
Post-sentencing matter on Attorney's own case	$275

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

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b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive **$450.00 per day for each full day of trial and $225.00 for each partial day of trial**, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $450.00 if the matter was scheduled for a jury trial or $225.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM

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to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2022 is due by March 15, 2022. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of **$95 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours**. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

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

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exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

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

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

17. **INSURANCE.**

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

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

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

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

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

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

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

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

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

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

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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.

19. **TERMINATION.**

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

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

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

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

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continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

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

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

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

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

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

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

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

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of

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such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

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

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

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

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that,

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it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money

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damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

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

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

32. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his/her below-stated office address; mailed to the County's PDM at

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his/her below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at his/her official email address.

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

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

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

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

35. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through

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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

ATTORNEY

11/15/2022

Date_____

DocuSigned by:
Brian Hultgrenn
4B1B8B4AF1B746A...

Brian Hultgrenn, WSBA #36277

Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

Approved as to Form and Content

DocuSigned by:
Michael Vander Sys
3C4D65ED0BC4489...

Michael Vander Sys
Public Defense Manager

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

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

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

Attorney acknowledgment:

DocuSigned by:
Brian Hultgrenn
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:	11/29/22
Subject:	Awarding professional services agreements for Superior Court criminal cases
Presenter:	
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 provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. All of the professional services agreements are scheduled to expire on December 31, 2022. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that the following attorneys be awarded Benton County Superior Court public defense contracts for the 2023-24 contract cycle:

a) Nicholas Blount
b) Brian Hultgrenn
c) Karla Kane
d) Ian Sinclair

Proposed resolutions and professional services agreements for each of these attorneys is attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreement with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH IAN SINCLAIR TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

WHEREAS, the existing professional service agreements for public defense services on Criminal Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award new agreements; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Ian Sinclair for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Ian Sinclair, designated BCSC2324IS001, for services to be provided in Benton County Superior Court to defendants charged with criminal offenses, commencing January 1, 2023 and expiring December 31, 2024, with a per case compensation in the amount of $772.00 in 2023 and $788.00 in 2024 (paid as a flat monthly rate, plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Ian Sinclair
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT
CONTRACT # BCSC2324IS001

CONTRACT SUMMARY			
Contract Type	**Full Caseload**		
Contract Number	**BCSC2324IS001**	**Contract Holder**	**Ian Sinclair**
WSBA #	**49913**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**140**	**Compensation**	**$9,006.67/mo (2023)** **$9,193.33/mo (2024)**
Assigned Court	**Superior Court**	**Compensation Structure**	**☐ By the case** **☐ Monthly** **☐ Hourly** **☒ By the case but paid monthly**
Compensation Payable To:	**Ian Sinclair**		

THIS AGREEMENT is entered into by and between **Ian Sinclair,** attorney at law, Washington State Bar Association #**49913** ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

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

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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 **January 1, 2023,** 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 to, 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 Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **5906 Washougal Lane, Pasco, WA 99301**; Attorney's current local office telephone is **509-591-9281**; and Attorney's current office/work e-mail address is **ian.sinclairlaw@gmail.com**.

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

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

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

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B

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felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent 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 Benton County Superior 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 felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.

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

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- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.

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

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

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior 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 case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior 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; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

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

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment 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.

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

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

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

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b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

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

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	**Treatment**
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional

	compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

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 Superior Court and Attorney continues representing the same person in such matter within a twelve (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, 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.

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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. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

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

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

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

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of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Superior Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

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

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate this Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

(i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130 or misdemeanor sex offense under the laws of the State of Washington, any other State, or Federal law.

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(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

(iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other State or Federal Statute

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$772.00 per case (2023); $788.00 per case (2024).** For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments **of $9,006.67 (2023) and $9,193.33 (2024)**, based on Attorney's selected caseload.

All compensation shall be payable to **Ian Sinclair** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$772 (2023) $788 (2024)
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager or designee)
Material witness matters	$275
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$350
DOSA or SSOSA review on Attorney's own case	$275 per year that reviews continue
Post-sentencing matter on Attorney's own case	$275

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

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b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive **$450.00 per day for each full day of trial and $225.00 for each partial day of trial**, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $450.00 if the matter was scheduled for a jury trial or $225.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM

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to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2022 is due by March 15, 2022. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of **$95 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours**. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not

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exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In

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the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

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(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Court.

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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.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

Further, in the event that the Benton County Superior Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall

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continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

20. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the PDM, the Superior Court Administrator, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

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21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of

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such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

d. Attorney may sub-contract substantially all of the duties to be provided pursuant to this Agreement provided that all of the following conditions are met:

(i) The proposed sub-contractor meets all the criteria set out in Section 3 of this Agreement; and

(ii) County agrees to the selection of the sub-contractor in its sole and exclusive discretion; and

(iii) Sub-contractor signs an acknowledgement and agreement to abide by all the terms and conditions of this Agreement (in such form as may be required by County); and

In the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that,

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it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

26. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

27. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

28. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money

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damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his/her below-stated office address; mailed to the County's PDM at

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his/her below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at his/her official email address.

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to the recipient in the manner described above. A party may change the address(es) to which notices are to be sent by giving notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGER** Attorney acknowledges that the County has employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the PDM (and his/her designees), and to promptly comply with reasonable requests from the PDM (and/or his/her designees), to allow for the effective monitoring and evaluation of Attorney's performance under this Agreement.

35. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through

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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

11/15/2022
Date_____

DocuSigned by:
Ian Sinclair
SBA3...

Ian Sinclair, WSBA #49913

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.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

Attorney acknowledges that County will be engaging in Performance Standards Monitoring as more fully described in Section 34 of this Agreement and that said Monitoring will comprise of the following:

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

b. Court Observation Monitoring will also entail direct observation of Attorney's performance in court (including, but not limited to pre-trial dockets, motion dockets and trials) by Benton County Office of Public Defense Supervisory Staff to evaluate, among other things:

- Attorney's preparedness and readiness
- Attorney's interactions with clients
- Attorney's ability and willingness to advocate to the court on behalf of clients

Attorney acknowledgment:

DocuSigned by:
Ian Sinclair
6E9EE3AE34ff5473

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:	11/29/22
Subject:	Awarding public professional service agreements for therapeutic courts and miscellaneous dockets
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 provides public defense services in Benton County's therapeutic and other miscellaneous dockets by way of contract attorneys. Almost all of the professional services agreements for District Court Drug Court, Civil Contempt Child Support docket, Veterans' Court, Mental Health Court, Juvenile Drug Court, Adult Drug Court, and the Involuntary Treatment Act ("ITA") docket are expiring December 31, 2022. After a Request for Qualifications process, the following attorneys are recommended for contract award to provide legally mandated services in those listed therapeutic courts and miscellaneous dockets:

a) Michelle Alexander (District Court Drug Court) - Amendment
b) Judy Chang (Civil Contempt – Child Support)
c) Catherine Harkins (Veterans' Court)
d) Dawn Hickman (Mental Health Court)
e) Karyn Oldfield (Juvenile Drug Court)
f) Deric Orr (Adult Drug Court)
g) Alan Tindell (ITA Docket)

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ALAN TINDELL TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO RESPONDENTS IN INVOLUNTARY TREATMENT ACT PROCEEDINGS

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for respondents at risk of loss of liberty through Involuntary Treatment Act proceedings ("ITA Cases"); and

WHEREAS, the existing agreement for public defense services on ITA Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award a new agreement; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Alan Tindell for public defense services on ITA Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Alan Tindell, designated BCSC2324AJT001, for services to be provided in Benton County Superior Court to respondents in ITA cases, commencing January 1, 2023 and expiring December 31, 2024, with a per month compensation in the amount of $4,000.00 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Alan Tindell
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS SUBJECT TO INVOLUNTARY COMMITMENT PROCEEDINGS IN BENTON COUNTY

CONTRACT #BCSC2324AJT001

CONTRACT SUMMARY			
Contract Type	**Full Monthly**		
Contract Number	**BCSC2324AJT001**	**Contract Holder**	**Alan J Tindell**
WSBA #	**21828**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**60**	**Compensation**	**ITA Hearings Docket: $4,000/month** **Other Miscellaneous Civil Matters: $65/hr**
Assigned Court	**Superior Court Involuntary Treatment Act Hearings Only**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly** ☐ **By the case but paid monthly**
Compensation Payable To:	**Alan J Tindell**		

THIS AGREEMENT is entered into by and between **ALAN J TINDELL,** attorney at law, Washington State Bar Association **#21828 (“**Attorney”); and **BENTON COUNTY**, a state of Washington political subdivision (“County”) on behalf of Benton County Superior Court (“Superior Court”).

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The County, as part of its duties to the public, is required to provide legal representation for individuals involuntarily committed for treatment of mental illness (RCW 71.05.150 et seq.) or chemical/alcohol dependency (RCW 70.96A.140 et seq.), or facing hearings with the potential of resulting in such commitment, and who are financially unable to obtain legal counsel.

B. The County, as part of its duties to the public, is also required to provide legal representation for individuals in the custody of the Washington State Department

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of Social and Health Services ("DSHS") by virtue of criminal insanity (RCW 10.77) when such individuals file a request for conditional release and a court hearing results from such a request.

C. The determination of indigence and appointment of legal counsel to represent indigent individuals subject to involuntary commitment is made by the Benton County Superior Court ("Superior Court").

D. Despite the bi-county nature of the Superior Court judicial district, it is Benton County's intent (and legal duty) to contract only for legal representation on Benton County cases and this agreement shall, for all purposes, be construed as for services associated with such cases only.

E. Attorney is engaged in the private practice of law, has direct experience in handling and litigating cases involving persons subject to involuntary commitment proceedings, and desires to contract with County and Superior Court to provide legal services to indigent persons subject to involuntary commitment proceedings in Superior Court.

F. Additionally, from time to time, the Office of Public Defense is directed by District or Superior Court to provide counsel to individuals on Miscellaneous Civil Matters (including privately filed contempt of court proceedings, privately filed termination of parental rights/adoption proceedings, or creditor/debtor matters where a debtor is in contempt of court and incarcerated). Attorney is capable of handling such matters and may, on a case-by-case basis, be able to take such cases on.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County, Superior Court, and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023** and shall continue thereafter through and including **December 31, 2024,** unless earlier terminated pursuant to the applicable terms and provisions of this Agreement

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office for the practice of law at **1030 N Center Parkway, Kennewick, WA, 99336**. Attorney's current local office telephone is **509-308-8765**; and Attorney's current office/work e-mail address is ajtlawyer@gmail.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 Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another 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 County, Benton/Franklin Human Services, the Benton County Prosecuting Attorney, the Benton County Superior Court Clerk, and the Benton County Superior Court Administrator.

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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 legal counsel to indigent persons subject to involuntary commitment proceedings in Superior Court based on alleged mental illness or chemical/alcohol dependency. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys practicing law in the County and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law in the state of Washington; has had at least one (1) year of direct litigation experience in representing persons subject to involuntary commitment proceedings based on alleged mental illness and/or chemical/alcohol dependency; otherwise meets the minimum standards adopted by the Washington State Supreme Court for the public defense representation of persons subject to involuntary commitment proceedings based on alleged mental illness and/or chemical/alcohol dependency; has not been found by a court of competent jurisdiction to have rendered ineffective assistance of counsel; has not been censored, 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; and has not been suspended or disbarred from the practice of law in any state or jurisdiction at any time in the past.

(i) This Agreement shall be subject to termination pursuant to paragraph 14 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 censored, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within one (1) business day if any event specified in paragraph 3.a.(i) occurs.

b. During each calendar year during the term of this Agreement, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses relating to the subject of public defense. Attorney shall provide the Benton County Office of Public Defense ("BCOPD") 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 Chapter 10.101, Attorney shall attend at least one (1) public defense services-

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related training seminar sponsored and/or approved by the Washington Office of Public Defense ("WOPD"), and the County may provide Attorney's name and address to the WOPD for purposes of the WOPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the Administrators with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

c. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload and schedule; Attorney's personal 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 further represents and warrants that Attorney's private law practice and personal 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 hearings/trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the indigent persons whom Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

d. No later than by the 10th day of each month during the term of this Agreement, Attorney shall provide the BCOPD with a written report showing the total number of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. The report must be in the format required by BCOPD and must include the case number for each case.

e. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

f. 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

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control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

g. 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. **CASE APPOINTMENTS AND CASELOAD.** 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 involuntary commitment matter in Superior Court in which publicly-provided counsel is furnished or required by law. More specifically, Attorney shall accept Superior Court appointments to represent the following persons **on Benton County cases only**:

a. Adult or juvenile indigent persons subject to involuntary commitment proceedings based on alleged mental illness (RCW 71.05.50 et seq., as now existing or as may be amended/recodified) or for chemical/alcohol dependency (RCW 70.96A.140 et seq., as now existing or as may be amended/recodified).

b. Adult or juvenile indigent persons in the custody of the Washington State Department of Social and Health Services ("DSHS") pursuant to the provisions of Chapter 10.77, RCW, who are seeking review of their case for purposes of conditional release pursuant to RCW 10.77.150.

Additionally, on a strictly case-by-case basis, subject to Attorney's consent, in his sole discretion, Attorney may be assigned other civil matters wherein the court has ordered the County's Office of Public Defense to provide public defense counsel to a litigant, including without limitation privately filed contempt matters, termination of parental rights/adoption matters, or debtor/creditor matters (collectively "Miscellaneous Civil Matters").

Based on historic case filing data for the past five years, expected caseload for this contract is no more than **45%** of a "full-time caseload" pursuant to Washington State Indigent Defense Standards ("SID") with the anticipation that the number of involuntary commitment cases filed during each year of this agreement will not exceed 350 and that only approximately 20% of cases will require any work beyond a consultation and stipulation (including, but not limited to, an initial detention hearing, an additional commitment hearing, or a Least Restrictive Alternative revocation hearing), and the total time commitment per week not exceeding 18 hours. It is anticipated that cases requiring no more than a consultation and stipulation will qualify as "docket representation" for purposes of caseload calculation (and the time for such consultations and stipulations have been included in the estimate of weekly time commitment). This caseload statement is an

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estimate for guidance purposes only. Regardless of the actual caseload involved in providing contracted services, Attorney maintains the individual, personal, professional responsibility for complying with SID caseload standards as currently in place or as may change from time to time during the life of this agreement.

5. **CONTINUED REPRESENTATION.**

a. In the event that a change of venue is granted to a person for whom Attorney has been appointed to represent under this Agreement, Attorney shall continue to represent such person in the court where venue is transferred without Attorney receiving any additional compensation beyond the compensation amount(s) specified in this Agreement.

b. Additionally, Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. In that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded during the term of this Agreement, and Attorney's obligation to fully complete all cases encompassed by this Agreement following its termination date shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

6. **CLIENT ELIGIBILITY.** The Superior Court, consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. If Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive such publicly-provided representation under the standards established by the Superior Court, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Superior Court of such possibility for purposes of the court taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the court then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an involuntary commitment proceeding in which Attorney has not been appointed by the Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

7. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Superior Court aware of such development for purposes of the court taking action to appoint

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another attorney to assume and undertake legal representation in such case. Since it would create an inherent and continuing conflict of interest, Attorney shall not, while this Agreement is in force, serve as a criminal prosecutor in or for any jurisdiction within Benton or Franklin Counties.

8. **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 shall include the investigation of the underlying facts, the research of relevant law, appropriate communication with the client, review of potential case resolution alternatives, and the preparation for and appearance on behalf of the client in all stages of Superior Court proceedings including, without limitation, hearings, motions, trials, appeals (including the preparation and filing of any and all pleadings necessary and appropriate to perfect an appeal to a higher court, including the appointment of publicly-provided counsel, if and when applicable), representation of an appellant until appointment of replacement appellate counsel is made, and any post-case resolution reviews. Without limiting the foregoing, if a person whom Attorney is appointed to represent hereunder requests a jury to determine whether he/she should be subject to involuntary commitment proceedings, Attorney shall prepare for and attend at said trial.

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, if Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/detained), Attorney shall arrange to meet face-to-face with the person as soon as possible but no later than within three (3) business days of Attorney receiving the appointment (unless applicable law or the circumstances of a particular case reasonably require that Attorney make sooner initial contact with the person). Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless applicable law or the circumstances of a particular case reasonably require that Attorney make sooner contact with the person). Without limiting any of the foregoing, with regard to any post-appointment court hearing involving an "in custody" person, Attorney shall contact (either in person or via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

b. Attorney shall open, compile and maintain an appropriate case file for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such file in its entirety (or a complete and legible copy thereof) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded.

9. **COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder, County shall pay Attorney, as professional service attorney fees and not as employment salary/wages, the following sum:

- **$4,000.00 per month** as a flat fee, constituting full compensation for Attorney's services in representing respondents at ITA hearings.

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- Attorney shall be compensated in the amount of **$65 per hour, up to a maximum of $2,000 per case, for Miscellaneous Civil Matters** to which he is appointed. The per case maximum may be increased at the discretion of the Benton County Public Defense Manager or designee, **up to a grand total of $4,000 per case.**

c. The above-stated payments to Attorney will immediately cease in the event that this Agreement is terminated for any reason prior to the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective August 31, 2021, the above-stated monthly compensation to Attorney would also terminate as of such date, and Attorney would not be entitled to receive any further monthly payments; provided that, Attorney would be entitled to receive any then-accrued and unpaid amounts for services rendered hereunder prior to such termination date.

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney is reasonable and equitable, and that such compensation shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney during the term of this Agreement.

e. Attorney shall also be entitled to the following additional compensation for each day spent in actual jury trial on a matter encompassed by this agreement:

$**400** for each full day of trial
$**200** for each half day of trial

For purposes of this subsection only, "actual trial" shall be defined as only that time actually spent in court and includes jury selection, and pre-trial motions only if argued on the morning of trial. "Actual trial" shall not include time spent preparing for trials, on recess from trials, or time spent waiting for a jury verdict, and also does not include those instances where a plea deal is reached prior to the seating of the jury. "Full days" shall be defined as in-court trial time in excess of 4 hours in any single 24 hour day. "Half day" shall be defined as 4 hours or less of in-court trial time in any single 24 hour day. No additional compensation shall be provided for any bench trials, even if such trials are held in a courtroom instead of at Lourdes Counseling Center.

Claims for additional compensation by virtue of being in trial shall be filed within 60 days of the time of trial in the manner prescribed by the BCOPD. In the event of a dispute between Attorney's record keeping and that of the Court, in terms of calculating actual time in trial, that of the Court shall control unless good cause is found at the sole discretion of the Public Defense Manager to utilize Attorney's record keeping instead.

f. Attorney shall also be compensated for each appointment to represent adult indigent persons in the custody of the Washington State Department of Social and Health Services ("DSHS") pursuant to the provisions of Chapter 10.77, RCW by virtue of a conviction in a criminal case filed in Benton County, who are seeking review of their case for purposes of conditional release pursuant to RCW 10.77.150 in the additional sum of **$550** per appointment. Claims for additional compensation by virtue of being appointed to such cases shall be filed within 60 days of the time of the appointment in the manner prescribed by the BCOPD, or at the end of the proceedings if later.

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10. **COSTS AND EXPENSES.** Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County, Superior Court or BFHS 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, and/or office facilities). However, the County, Superior Court and BFHS recognize that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

a. Attorney shall be entitled to receive reimbursement (or, in the case of experts or investigators, direct payment to the provider) from County, through BCOPD, for the actual cost of such 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 such process as may be designated by BCOPD.

b. Furthermore, in order to be able to claim reimbursement for any cost incurred, Attorney shall comply with any procedures for such (including associated forms) designated by BCOPD and shall submit such payment vouchers to BCOPD within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and County shall have the right to deny payment of any voucher that is not timely submitted within said requisite sixty (60) day period, in which case neither BFHS, Superior Court, nor County shall have any further obligation to reimburse Attorney for the specific incurred expenses not claimed in time.

c. In the case of properly pre-approved investigator and expert services, such investigators or experts will be responsible for complying with BCOPD policies and procedures for claiming compensation in order to be compensated for their fees.

11. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify the County, Superior Court and BFHS and hold the County, Superior Court and BFHS, their representatives, officers, employees, and agents fully harmless 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, 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, Superior Court or BFHS or any of their 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 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, Superior Court or BFHS or any of their representatives, officers, employees or agents in such suits or other legal proceedings. The indemnification and hold harmless provisions of this paragraph shall survive the termination of this Agreement.

12. **INSURANCE.**

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a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

13. **COMPLAINTS; PERFORMANCE MONITORING.**

In the event that the PDM, another employee/representative of BCOPD, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Courts.

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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.

14. **TERMINATION.**

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable for any additional costs or expenses incurred by the County, Superior Court and/or BFHS relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder in addition to any other damages sustained by the County, Superior Court and/or BFHS arising out of Attorney's conduct and breach.

Further, in the event that the 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 for any additional costs or expenses incurred by the County and/or BFHS relating to such substitute appointment(s) in addition to any other damages sustained by the County and/or BFHS arising out of Attorney's conduct and/or breach.

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 material provision of this Agreement by giving Attorney ten (10) days advance written notice of termination, which notice shall specify the reason(s) for the termination. 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.

d. In any event, consistent with the provisions of paragraph 9.c. 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 or BFHS in the event this Agreement is terminated; provided that, however,

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Attorney shall be entitled to be paid for all services duly performed by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 5 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decide in their discretion to provide public defense representation for cases contemplated by this Agreement in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

15. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County, Superior Court or BFHS 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, 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, Attorney shall have sole and absolute discretion in Attorney's professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and the County, Superior Court and BFHS shall have no authority or duty to directly control or supervise the performance of Attorney's duties or services hereunder.

16. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as provided 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) In the event that Attorney needs the services of a substitute attorney for reasons of conflict or unavailability, Attorney may substitute the services of another attorney provided that Attorney has obtained the advance written consent of the Public Defense Manager ("PDM"), the substitute attorneys meets all qualifications required by this Agreement and agrees to abide by all provisions therein, and the substitute attorney agrees at all times to act under the direction of Attorney. Notwithstanding any other provision, however, it is mutually agreed between the parties that attorney Patrick McBurney Jr. shall be permitted to substitute for Attorney for any hearings or other services required of Attorney by virtue of this Agreement on a regular, as-needed basis. This agreement regarding attorney McBurney shall be conditioned on attorney McBurney agreeing to be bound by all of the terms (other than compensation) contained within this Agreement, including insurance compliance. Furthermore, any compensation for attorney McBurney's services shall be a matter of direct negotiation between Attorney and attorney McBurney, and in no way shall County be deemed to have the obligation to compensate attorney

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McBurney in any manner even if Attorney shall fail to compensate attorney McBurney for services rendered and compensation is deemed appropriate under an unjust enrichment or other theory. Any such claims by attorney McBurney, shall be regarded as a claim for which Attorney has indemnification obligations pursuant to Section 11 herein.

b) In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks leave of absence from the practice of law during the term of this Agreement, Attorney may seek and obtain the assistance of another reputable and qualified attorney to make temporary, substitute appearances for Attorney during such absence 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 County and BFHS) 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. Provided further that:

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 or BFHS for such substitution(s); and

Attorney shall be strictly 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 12 above), and Attorney shall be strictly liable for any and all damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

17. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the termination date specified in paragraph 1 above, the Countyß may initiate, implement and pursue any actions or process they deem appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons subject to involuntary commitment proceedings in Superior Court.

18. **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 cases involving involuntary commitment proceedings based on alleged mental illness and/or chemical/alcohol dependency pending before the Benton County Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

19. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other

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type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties' authorized representatives.

20. **CAPTIONS.** 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.

21. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

22. **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.

23. **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.

24. **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.

25. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

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c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

26. **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/her below-stated office address; mailed to the County's PDM at his/her below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at his/her official email address.

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

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

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notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

27. **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 and BFHS's respective policies that no person will be subjected to discrimination by the County, BFHS, 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.

28. **PUBLIC DEFENSE MANAGER** Attorney acknowledges that the County has employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the PDM (and his/her designees), and to promptly comply with reasonable requests from the PDM (and/or his/her designees), to allow for the effective monitoring and evaluation of Attorney's performance under this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

ATTORNEY

11/9/2022

Date_____

DocuSigned by:
Alan Tindell
6A2B7BEAC34D1...

Alan Tindell, WSBA #21828

Approved as to Form and Content

DocuSigned by:
Michael Vander Sys
3C4D65ED0BC1489...

Michael Vander Sys
Public Defense Manager

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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/29/22
Subject:	Awarding public professional service agreements for therapeutic courts and miscellaneous dockets
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 provides public defense services in Benton County's therapeutic and other miscellaneous dockets by way of contract attorneys. Almost all of the professional services agreements for District Court Drug Court, Civil Contempt Child Support docket, Veterans' Court, Mental Health Court, Juvenile Drug Court, Adult Drug Court, and the Involuntary Treatment Act ("ITA") docket are expiring December 31, 2022. After a Request for Qualifications process, the following attorneys are recommended for contract award to provide legally mandated services in those listed therapeutic courts and miscellaneous dockets:

a) Michelle Alexander (District Court Drug Court) - Amendment
b) Judy Chang (Civil Contempt – Child Support)
c) Catherine Harkins (Veterans' Court)
d) Dawn Hickman (Mental Health Court)
e) Karyn Oldfield (Juvenile Drug Court)
f) Deric Orr (Adult Drug Court)
g) Alan Tindell (ITA Docket)

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY CATHERINE HARKINS TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO DEFENDANTS PARTICIPATING IN THE BENTON COUNTY VETERANS' COURT PROGRAM

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for defendants participating in, or contemplating participation in the Benton County Veteran's Court program ("Veterans' Court Cases"); and

WHEREAS, Benton County provides representation in Veterans' Court Cases by way of a contract attorney; and

WHEREAS, the existing professional services agreement for Veteran's Court Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award a new agreement; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Catherine Harkins for public defense services on Veterans' Court Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Catherine Harkins, designated BCSC2324CEH001VC, for services to be provided in Benton County Superior Court to defendants participating in, or contemplating participation in, Benton County Veterans' Court, commencing January 1, 2023 and expiring December 31, 2024, with a per month compensation in the amount of $4,166.00 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Catherine Harkins
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT VETERANS' COURT PROGRAM

CONTRACT #BCSC2324CEH001VC

CONTRACT SUMMARY			
Contract Type	**Veterans' Court**		
Contract Number	**BCSC2324CEH001VC**	**Contract Holder**	**Catherine Harkins**
WSBA #	**38113**	**Effective Dates**	**January 1, 2023 - December 31, 2024**
Caseload Cap	**n/a**	**Compensation**	**$4,166 month**
Assigned Court	**Superior Court Veterans' Court**	**Compensation Structure**	**☐ By the case ☒ Monthly ☐ Hourly ☐ By the case but paid monthly**
Compensation paid to:	**Quantum Legal, PLLC**		

THIS AGREEMENT is entered into by and between **Catherine Harkins,** attorney at law, Washington State Bar Association **#38113** ("Attorney"), **dba Quantum Legal, PLLC**, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in Benton County Superior Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023,** 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 to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's

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staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **7502 W Deschutes Pl, Kennewick, WA 99336**; Attorney's current local office telephone **is 509-783-5551**; and Attorney's current office/work e-mail address is **catherine@qtmlegal.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Benton-Franklin Counties Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton-Franklin Counties Superior Court Administrator ("Superior Court Administrator").

c. Regardless of the location or manner in which Attorney decides to maintain an office, throughout the entire term of this Agreement the office facility must comply with any and all applicable public defense standards adopted by the Washington Supreme Court.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from

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the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

b. Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in its sole discretion, even at times after execution of this Agreement. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year of the term of this Agreement, Attorney shall obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the PDM with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the PDM with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

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From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and effectively perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year.

Additionally, in the event that the public defense reporting requirements under RCW 10.101.050, other applicable statute or relevant case law are later amended/modified (or, in the case of case law, reasonably required as a best practice) Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in

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which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent 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 Benton County Superior Court in which publicly provided counsel is furnished or required by law.

Attorney's caseload will consist of full public defense representation to all participants or prospective participants in Veteran's Court ("VC").

More specifically, Attorney shall have the following duties regarding cases accepted into VC:

i. Attendance at all VC "Team meetings";

ii. Attendance at all VC dockets;

iii. Meeting with VC participants as necessary to advise them about the VC process or system, assist them with participation hurdles, encourage compliance, answer questions, and prepare to advocate against sanctions;

iv. Preparation for, and advocacy on behalf of, clients at any sanctions hearings;

v. Taking any and all other action necessary to effectively advocate for the legal rights and interests of, participants in VC as would be required of Attorney by the

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Rules of Professional Conduct and such standards as are recognized by the appellate courts of Washington State that would be applicable to attorneys defending participants in a similar therapeutic court;

Attorney shall have the following duties regarding cases involving *prospective* VC participants (ie that have been identified as potential candidates for VC or have been referred to VC for review, but have not yet been formally accepted into the VC program):

vi. Meeting with potential VC participants to discuss the VC program and advise them of their legal rights and options in regard thereto ("Pre-VC Counseling");

vii. Participation in VC case screening with the VC Manager or other VC staff or team members;

viii. Consulting with other criminal defense lawyers as requested to assist them with referrals to the VC program;

ix. If the case has been appointed to Attorney pre-VC acceptance, then Attorney shall attend pre-trial court dates with the client and take any necessary action, including, but not limited to, advising the court and prosecutor of the fact that the case may be admitted to VC, in order to protect the rights of such a client until a decision is made whether to admit the case to VC;

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 case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance

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date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and

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receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

8. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

9. **SCOPE OF REPRESENTATION; FILE RETENTION; CONVICTION OF CRIMINAL OFFENSE.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation should include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Superior Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any

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new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate this Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

(i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130 or misdemeanor sex offense under the laws of the State of Washington, any other State, or Federal law.

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

(iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other State or Federal Statute

(iv) Any crime of dishonesty or deception.

10. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$4,166.00 per month** for Veterans' Court representation.

All compensation shall be payable to **Quantum Legal, PLLC** since Attorney is a principal with that law firm.

b. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2023, 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

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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, 2023, 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).

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases and matters handled by Attorney under this Agreement.

11. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be

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reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

12. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

13. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys'

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fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

14. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and

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indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

15. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior

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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.

16. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

Further, in the event that the Benton County Superior Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or

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language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

17. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the PDM, the Superior Court Administrator, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

18. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

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a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written

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request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

d. Attorney may sub-contract substantially all of the duties to be provided pursuant to this Agreement provided that all of the following conditions are met:

(i) The proposed sub-contractor meets all the criteria set out in Section 3 of this Agreement; and

(ii) County agrees to the selection of the sub-contractor in its sole and exclusive discretion; and

(iii) Sub-contractor signs an acknowledgement and agreement to abide by all the terms and conditions of this Agreement (in such form as may be required by County); and

In the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

19. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

20. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

21. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

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22. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

23. **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.

24. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

25. **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.

26. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

27. **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.

28. **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

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complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

29. **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/her below-stated office address; mailed to the County's PDM at his/her below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at his/her official email address.

Public Defense Manager
Benton County Office of Public Defense

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7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

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

30. **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.

31. **PUBLIC DEFENSE MANAGER** Attorney acknowledges that the County has employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the PDM (and his/her designees), and to promptly comply with reasonable requests from the PDM (and/or his/her designees), to allow for the effective monitoring and evaluation of Attorney's performance under this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

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

11/16/2022

Date_____

DocuSigned by:
[signature]
9B2C4[illegible]

Catherine E Harkins, WSBA #**38113**

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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/29/22
Subject:	Awarding public professional service agreements for therapeutic courts and miscellaneous dockets
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 provides public defense services in Benton County's therapeutic and other miscellaneous dockets by way of contract attorneys. Almost all of the professional services agreements for District Court Drug Court, Civil Contempt Child Support docket, Veterans' Court, Mental Health Court, Juvenile Drug Court, Adult Drug Court, and the Involuntary Treatment Act ("ITA") docket are expiring December 31, 2022. After a Request for Qualifications process, the following attorneys are recommended for contract award to provide legally mandated services in those listed therapeutic courts and miscellaneous dockets:

a) Michelle Alexander (District Court Drug Court) - Amendment
b) Judy Chang (Civil Contempt – Child Support)
c) Catherine Harkins (Veterans' Court)
d) Dawn Hickman (Mental Health Court)
e) Karyn Oldfield (Juvenile Drug Court)
f) Deric Orr (Adult Drug Court)
g) Alan Tindell (ITA Docket)

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH HSIU-LIN "JUDY" CHANG TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO RESPONDENTS IN CHILD SUPPORT CONTEMPT PROCEEDINGS AND MISCELLANEOUS CIVIL CASES

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for respondents at risk of incarceration through child support contempt proceedings ("Child Support Cases"); and

WHEREAS, the existing agreement for public defense services on Child Support Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award a new agreement; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Hsiu-Lin "Judy" Chang for public defense services on Child Support Cases in Benton County Superior Court; and

WHEREAS, additionally, from time-to-time Benton County's Office of Public Defense is ordered by Superior Court to provide public defense representation on miscellaneous civil matters, often relating to termination of parental rights cases filed by private attorneys, and Attorney is willing to be appointed to such cases on a per-hour basis; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Hsiu-Lin "Judy" Chang, designated BCSC2324HLC001CC, for services to be provided in Benton County Superior Court to respondents in Child Support cases, commencing January 1, 2023 and expiring December 31, 2024, with a per month compensation in the amount of $2,391.40 in 2023 and $2,439.23 in 2024 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement), as well as for miscellaneous civil cases during the same time period with a per-hour rate of $65, be approved as proposed.

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, Judy Chang
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS CHARGED WITH CIVIL CONTEMPT IN BENTON COUNTY SUPERIOR COURT

CONTRACT #BCSC2324HLC001CC

CONTRACT SUMMARY			
Contract Type	**Full Monthly**		
Contract Number	**BCSC2324HLC001CC**	**Contract Holder**	**Hsiu-Lin "Judy" Chang**
WSBA #	**39367**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**60**	**Compensation**	**Contempt Docket: $2,391.40/mo (2023)** **$2,439.23/mo (2024)** **Other Miscellaneous Civil Matters: $65/hr**
Assigned Court	**Superior Court Civil Contempt – Child Support**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly** ☐ **By the case but paid monthly**
Compensation Payable To:	**H Chang Law Office, PLLC**		

THIS AGREEMENT is entered into by and between **Hsiu-Lin "Judy" Chang** attorney at law, Washington State Bar Association **#39367** ("Attorney"), **dba H Chang Law Office, PLLC** and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with civil contempt arising from child support enforcement cases initiated by the State who are in jeopardy of incarceration when their cases are pending in Benton County Superior Court ("Contempt Cases").

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B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with Contempt Cases in Superior Court, and desires to contract with the County to provide legal services to indigent persons subject to such Contempt Cases.

C. Additionally, from time to time, the Office of Public Defense is directed by District or Superior Court to provide counsel to individuals on Miscellaneous Civil Matters (including privately filed contempt of court proceedings, privately filed termination of parental rights/adoption proceedings, or creditor/debtor matters where a debtor is in contempt of court and incarcerated). Attorney is capable of handling such matters and may, on a case-by-case basis, be able to take such cases on.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023,** and shall continue thereafter through and including **December 31, 2024**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **6855 W Clearwater Ave., Ste A103, Kennewick, WA 99336**; Attorney's current local office telephone is **509-542-7610;** and Attorney's current office/work e-mail address is **hchang.law@gmail.com.**

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, 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 Office of Public Defense the Benton County Prosecuting Attorney, and the Benton-Franklin Counties Superior Court Administrator ("Superior Court Administrator").

c. Regardless of the location or manner in which Attorney decides to maintain an office, throughout the entire term of this Agreement the office facility must comply with any and all applicable public defense standards adopted by the Washington Supreme Court.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

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a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters as well as experience in representing individuals facing contempt of court proceedings and subject to penalties that include incarceration; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

b. Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in its sole discretion, even at times after execution of this Agreement. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year of the term of this Agreement, Attorney shall obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the PDM with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year.

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Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the PDM with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and effectively perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

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

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obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent 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 Benton County Superior 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 matter in which an individual has been charged with civil contempt in Benton County Superior Court arising out of a child support enforcement case filed by the State, is in jeopardy of punishment or sanction by loss of liberty and is otherwise financially unable to obtain legal counsel.

Additionally, on a strictly case-by-case basis, subject to Attorney's consent, in his sole discretion, Attorney may be assigned other civil matters wherein the court has ordered the County's Office of Public Defense to provide public defense counsel to a litigant, including without limitation privately filed contempt matters, termination of parental rights/adoption matters, or debtor/creditor matters (collectively "Miscellaneous Civil Matters").

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6. **CONTINUED REPRESENTATION.**

a. Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. In that regard, Attorney shall continue to provide representation for those persons whom Attorney was appointed to represent and whose case was not concluded prior to the effective date of termination of this Agreement for up to ninety (90) days following the effective date of termination. Attorney's obligation to continue post-termination representation shall not in any way entitle Attorney to receive any additional compensation beyond the compensation amount(s) specified in this Agreement.

(i) By way of example, in the event that Attorney is required by this paragraph to continue representing a person charged with a civil contempt violation after the termination date of this Agreement, Attorney shall not be entitled to receive any compensation as a result of such continued, post-termination representation.

(ii) By way of further example, in the event that Attorney is required by this paragraph to continue representing a person charged with a civil contempt violation after the termination date of this Agreement, the only compensation that Attorney would be entitled to receive as a result of such continued, post-termination representation is court-authorized cost reimbursements specified in paragraph 13.b below.

b. Notwithstanding anything in this paragraph 6 or elsewhere in this Agreement to the contrary, Attorney's post-termination duty and obligation to continue representing persons whom Attorney was appointed to represent in Benton County District and/or Superior Court for up to ninety (90) days shall be limited to a sixty (60) day period following the termination date for the following types of matters:

(i) Any civil-based matter other than civil contempt;

(ii) Any matter involving a represented person for whom a warrant has been issued; and

(iii) Any case where personal service is not effected within thirty (30) days of the date of the notice of termination.

c. Attorney will be appointed to no new cases under this Agreement during the thirty (30) day period prior to its termination date specified in paragraph 1 above if Attorney provides written notice to the County at least sixty (60) days prior to such termination date of Attorney's desire and intent to not pursue contracting with the County again to provide indigent defense services in Benton County District and/or Superior Court after such termination date. Attorney may belatedly provide such written notice at any time within said sixty (60) day time period, but the appointment of new cases to Attorney will not stop until thirty (30) days after the date such notice is received by the County.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in

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the Benton County District and/or Superior Court up to a maximum of **sixty (60) total case equivalents per calendar year** (proratable for any partial calendar year). The date on which a case or matter is filed (rather than its final date of disposition) shall be used to determine the calendar year in which a case equivalent is to be counted.

8. **CASE EQUIVALENTS.**

a. For purposes of calculating Attorney's above-referenced "case equivalents" under this Agreement only, and specifically not as any sort of a "weighting system" as provided by the Washington Standards for Indigent Defense, the following provisions shall apply:

- Each and any appointment to a civil contempt matter in Benton County Superior Court shall be counted as one-half (1/2) case equivalent and shall receive an additional one-half (1/2) case equivalent for each additional 12-month period during which representation continues.

- 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.

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 and/or Superior 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 civil contempt violation 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 appearance 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, found to be in contempt, 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. Throughout the term of this Agreement, the PDM shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor the number of Attorney's appointments and total case equivalents hereunder. The PDM shall provide copies of such records to the County and Attorney on

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a monthly basis. Attorney shall have the burden of proof in the event that Attorney ever disagrees with any such records, and Attorney must notify the PDM in writing within ten (10) business days of records receipt if Attorney disagrees with, and desires to dispute, any such records, otherwise such records shall be conclusively presumed as being accurate.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Benton County Superior Court of such possibility for purposes of the Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive publicly-provided representation. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION; CONVICTION OF CRIMINAL OFFENSE.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation should include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Superior Court proceedings

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including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate this Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

(i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130 or misdemeanor sex offense under the laws of the State of Washington, any other State, or Federal law.

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile

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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. As compensation for Attorney's performance and rendering of independent professional legal services hereunder, Attorney's monthly compensation hereunder shall be **$2,391.40 (2023) and $2,439.23 (2024).**

All compensation shall be payable to **H Chang Law Office, PLLC** since Attorney is a principal with that law firm.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive **$300.00 per day for each full day of trial and $150.00** for each partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $300.00 if the matter was scheduled for a jury trial or $150.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney shall be compensated in the amount of **$65 per hour, up to a maximum of $2,000 per case, for Miscellaneous Civil Matters** to which he is appointed. The per case maximum may be increased at the discretion of the Benton County Public Defense Manager or designee, **up to a grand total of $4,000 per case.**

d. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

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e. As a precondition to Attorney receiving payment of the compensation specified under paragraphs 12.a. and/or 12.b. above, Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

f. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

g. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

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h. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** Homicide and persistent offender cases are appointed to attorneys pursuant to a separate contract and Attorney should not expect to receive any such appointments under this Agreement.

14. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** This section is not applicable to this contract.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

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17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and

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throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without

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notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

Further, in the event that the Benton County Superior Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with ninety (90) days advance written notice of such election. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall not be appointed any new cases during the last thirty (30) calendar days of said ninety (90) day notice period.

d. In any event, consistent with the provisions of paragraph 12.f. 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. 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.

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e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

20. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the PDM, the Superior Court Administrator, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a. and 21.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. In the event that Attorney needs the services of a substitute attorney for reasons of conflict or unavailability, Attorney may substitute the services of another attorney provided that Attorney has obtained the advance written consent of the Public Defense Manager ("PDM"), the substitute attorneys meets all qualifications required by this Agreement and agrees to abide by all provisions therein, and the substitute attorney agrees at all times to act under the direction of Attorney. Notwithstanding any other provision, however, it is mutually agreed between the parties that attorney Patrick McBurney, WSBA #22497. shall be permitted to substitute for Attorney for any hearings or other services required of Attorney by virtue of this Agreement on a regular, as-needed basis. This agreement regarding attorney McBurney shall be conditioned on attorney McBurney agreeing to be bound by all of the terms (other than compensation) contained within this Agreement, including insurance compliance. Furthermore, any compensation for attorney McBurney's services shall be a matter of direct negotiation between Attorney and attorney McBurney, and in no way shall County be deemed to have the obligation to compensate attorney McBurney in any manner even if Attorney shall fail to compensate attorney McBurney for services rendered and compensation is deemed appropriate under an unjust enrichment or other theory. Any such claims by attorney McBurney, shall be regarded as a claim for which Attorney has indemnification obligations pursuant to Section 11 herein.

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b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

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23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

26. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

27. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

28. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

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30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled

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to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his/her below-stated office address; mailed to the County's PDM at his/her below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at his/her official email address.

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to the recipient in the manner described above. A party may change the address(es) to which notices are to be sent by giving notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGER** Attorney acknowledges that the County has employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the

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PDM (and his/her designees), and to promptly comply with reasonable requests from the PDM (and/or his/her designees), to allow for the effective monitoring and evaluation of Attorney's performance under this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

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 11/16/2022

DocuSigned by:
Judy Chang
AGE4C3D0BC7D0F...

Hsiu-Lin Chang, WSBA #39367

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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/29/22
Subject:	Awarding public professional service agreements for therapeutic courts and miscellaneous dockets
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 provides public defense services in Benton County's therapeutic and other miscellaneous dockets by way of contract attorneys. Almost all of the professional services agreements for District Court Drug Court, Civil Contempt Child Support docket, Veterans' Court, Mental Health Court, Juvenile Drug Court, Adult Drug Court, and the Involuntary Treatment Act ("ITA") docket are expiring December 31, 2022. After a Request for Qualifications process, the following attorneys are recommended for contract award to provide legally mandated services in those listed therapeutic courts and miscellaneous dockets:

a) Michelle Alexander (District Court Drug Court) - Amendment
b) Judy Chang (Civil Contempt – Child Support)
c) Catherine Harkins (Veterans' Court)
d) Dawn Hickman (Mental Health Court)
e) Karyn Oldfield (Juvenile Drug Court)
f) Deric Orr (Adult Drug Court)
g) Alan Tindell (ITA Docket)

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY DERIC ORR TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO DEFENDANTS PARTICIPATING IN THE BENTON COUNTY ADULT DRUG COURT PROGRAM

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County Superior Court for defendants participating in, or contemplating participation in the Benton County Adult Drug Court program ("Drug Court Cases"); and

WHEREAS, Benton County provides representation in Adult Drug Court Cases by way of a contract attorney; and

WHEREAS, the existing agreement for public defense services on Drug Court Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award a new agreement; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Deric Orr for public defense services on Drug Court Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Deric Orr, designated BCSC2324DJO001ADC, for services to be provided in Benton County Superior Court to defendants participating in, or contemplating participation in, Benton County Adult Drug Court, commencing January 1, 2023 and expiring December 31, 2024, with a per month compensation in the amount of $5,740.00 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Deric Orr
Copy – Auditor, S Godinez

M Vander Sys

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PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO PERSONS PARTICIPATING IN BENTON COUNTY SUPERIOR COURT ADULT DRUG COURT PROGRAM

CONTRACT #BCSC2324DJO001ADC

CONTRACT SUMMARY			
Contract Type	**Adult Drug Court**		
Contract Number	**BCSC2324DJO001ADC**	**Contract Holder**	**Deric J. Orr**
WSBA #	**47332**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**50 case floating cap (max slots of 50 in the program)**	**Compensation**	**$5,740 per month**
Assigned Court	**Superior Court Adult Drug Court**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly** ☐ **By the case but paid monthly**
Compensation Payable To:	**Johnson & Orr PLLC**		

THIS AGREEMENT is entered into by and between **Deric J Orr**, attorney at law, Washington State Bar Association # **46332** ("Attorney"), **dba Johnson & Orr PLLC,** and the **COUNTY of BENTON,** a State of Washington political subdivisions (the "County"), for and on behalf of the Benton County Superior Court.

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. Drug court programs, such as the Benton-Franklin Superior Court Adult Drug Court program, have been shown to reduce recidivism and save taxpayers nationwide money and resources through offering participants an alternative to full criminal prosecution at the pre-adjudication level. As such, Benton County, and Benton County Superior Court, have elected to operate such a Drug Court program.

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to

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contract with the County to provide legal services to persons participating in the Benton County Superior Court Adult Drug Court program.

D. While the Counties of Benton & Franklin have a joint, bi-county judicial district and operate a joint Adult Drug Court, this Agreement is intended to, and shall only, provide public defense services for persons participating in said Adult Drug Court by virtue of a case filed in Benton County Superior Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County of Benton and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023**, and shall continue thereafter through and including **December 31, 2024**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains an office adequate and appropriate for the practice of law **at 1038 Jadwin Ave, Richland, WA 99352.** Attorney's current local office telephone **509-579-0080;** and Attorney's current office/work e-mail address is **deric@johnsonorr.com.**

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain 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-Franklin Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton County Superior Court Administrator ("Superior Court Administrator").

c. The County prefers that Attorney locate and maintain Attorney's office in a commercial/professional building. However, regardless of the location Attorney decides to maintain his/her office, the office must be capable of accommodating confidential face-to-face meetings between Attorney and persons whom Attorney is appointed to represent under this Agreement, must be capable of regularly receiving mail, and must have adequate telephone service to facilitate and ensure prompt response to contact with or from represented persons.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in the Benton County Superior Court and to persons participating in the Benton County Superior Court Adult Drug Court ("Drug Court") program. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

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a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters or direct experience in the specific practice areas covered 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 18 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within 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.

b. To comply with the provisions of RCW 72.05.440, WAC 388-700-0010, and RCW 13.40.570, Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year of the term of this Agreement, Attorney shall be required to obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the PDM with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any

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CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the PDM with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

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 December 31st of each calendar year, 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 month and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding month. Additionally, in the event that the public defense attorney caseload activity reporting requirements under RCW 10.101.050 are later amended/modified, Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

4. **OTHER INDIGENT DEFENSE AGREEMENTS.** The County has entered or will enter into separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with said other attorneys, the Benton County Superior Court, the Drug Court, the Superior 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 Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent 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 Drug Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent persons on any of the following types of matters:

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- Any criminal matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in the Benton County Superior Court in which the defendant has been admitted to, or in certain circumstances is pending admission to, the Drug Court program.

- Any post-disposition proceeding relating to the specific underlying criminal case as may be required under the rules and/or policies of the Drug Court.

6. **POST-TERMINATION REPRESENTATION.** Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. Provided that, however, unless the parties subsequently agree otherwise in writing, Attorney's duty in that regard shall terminate upon the date this Agreement terminates, and Attorney shall have no obligation to continue post-termination representation beyond that date.

7. **DRUG COURT APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent all persons participating in the Drug Court program (by and through cases filed in Benton County) solely with regard to matters relating to their participation in Drug Court: Attorney shall not represent Drug Court participants in any underlying criminal matters without specific approval from, or at the direction of, the Drug Court Judge. Attorney's representation of participants in the Drug Court program by and through cases filed in Franklin County, shall be a matter of direct contract between Attorney and Franklin County, and shall be completely and totally outside of the scope of this Agreement.

8. **CASE EQUIVALENTS AND CASELOAD.** Throughout the term of this Agreement, the Attorney shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor Attorney's appointments hereunder. For purposes of calculating Attorney's appointments under this Agreement, each appointment shall be deemed and counted as being one (1) "case equivalent." The caseload that Attorney is expected to assume, and the associated compensation, under this Agreement shall not exceed 50 participants at any given time (i.e. accounting for Benton County participants only). If the portion of Drug Court capacity allocated to participants by the Drug Court program with cases filed in Benton County increases or decreases, then the parties agree to renegotiate the compensation and other related provisions of this Agreement.

9. **CLIENT ELIGIBILITY.** The Drug Court (or its designee), consistent with applicable laws, rules and standards and the policies of the Drug Court, shall determine the eligibility of any particular person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly-provided representation. However, if Attorney is appointed to represent a person and subsequently discovers that such person may not be eligible to receive publicly-provided representation under applicable laws, rules and standards, Attorney, if able to do so within the bounds of applicable ethical rules and professional standards, shall promptly notify the Drug Court of such possibility for purposes of the Drug Court (or its designee) taking action at its discretion to re-determine whether such person is/remains eligible to receive such publicly-provided representation. If the Drug Court (or its designee) then determines that such person is not eligible for publicly provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an

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action in which Attorney has not been appointed by the Drug Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Drug Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Drug Court aware of such development for purposes of the Drug Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case.

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 shall include:

a. Evaluation and investigation of the underlying allegation and ensuring that the Drug Court participant's due process rights are fully protected.

b. Participating fully as a Drug Court team member, committing to the program's mission and goals and working as a full partner to ensure the program's and participant's success.

c. Fully advising Drug Court participants of their legal rights, legal options, treatment options, program terms, conditions and policies and potential sentencing outcomes while maintaining a relationship with the participant that promotes the participant's long-term best interest.

d. Monitoring participant progress and encouraging full participation in the appropriate treatment and/or other rehabilitative services.

e. Advocating for appropriate and effective incentives and sanctions in order to promote the participant's success and achieve program compliance.

f. Without limiting Attorney's duty to initially meet with a 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 shall 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.

g. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case; and Attorney shall

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use best efforts to apprise the person of any new developments 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 shall contact (preferably in person or at least via telephone) such person to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

h. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. Attorney shall retain such case records in their entirety (or a complete and legible copy thereof, to include electronic file storage) for a period of no less than seven (7) years from the date on which the case or matter is fully and finally concluded or for any other time period specified under applicable court rule or statute, whichever date/event occurs last.

i. 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 under RCW Title 50 and result in the immediate and automatic termination of this Agreement:

(i) Any felony sex offense as defined in RCW 9.94A.030 and RCW 9A.44.130;

(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.

12. **MONTHLY COMPENSATION.**

a. As compensation for Attorney's performance and rendering of independent professional legal services hereunder, Attorney shall be compensated in the amount of **$5,740.00 per month.**

All compensation shall be payable to **Johnson & Orr PLLC** since Attorney is a principal with that law firm.

b. The above-stated payments to Attorney will immediately cease upon the termination of this Agreement on, or for any reason prior to, the termination date specified in paragraph 1 above. For example, if this Agreement is terminated effective October 31, 2023, 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, 2023, the above-stated monthly payments to Attorney would also terminate as of such date, and Attorney would

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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).

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney shall constitute Attorney's full and exclusive compensation hereunder for all cases and matters handled by Attorney under this Agreement.

13. **DRUG COURT FUNDING.** Notwithstanding anything contained herein to the contrary (including, without limitation, the terms and provisions in paragraph 18 below), in the event that alternate or supplemental funding sources for the Drug Court program are either terminated or otherwise become no longer available, the County shall have the right to terminate this Agreement upon thirty (30) days written notice to Attorney.

14. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of out-of-pocket expenses directly related to 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 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 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 amounts that the County would be obligated to pay and reimburse to employees of the Benton County Superior Court under then-existing employee travel-related policies and rules.

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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 Superior 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.

15. **INDEMNIFICATION 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.

16. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

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(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 16.a throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 and Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and its elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 16.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 16.b throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder. Provided that, however, Attorney may elect to delay and forego obtaining the Commercial General Liability insurance coverage required by this paragraph 16.b until January 1, 2009, at which time such coverage or such other coverage as may be agreed must be obtained and thereafter maintained throughout the entire remaining term of this Agreement and throughout any longer time period during which attorney is obligated to continue performing services and duties hereunder.

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c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County and their then-designated Risk Manager(s) with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 16, and Attorney shall annually provide the Risk Manager(s) with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

17. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that an employee/representative of the County or the Drug Court or the PDM 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, 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 Superior 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 immediately 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 Drug 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 Drug 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 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 Drug 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.

18. **TERMINATION.**

a. In addition to any other automatic termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Drug

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Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder.

Further, in the event that the Drug Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Drug Court relating to such substitute appointment(s).

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. Without limiting/waiving other provisions of this Agreement relating to Attorney's obligation and duty to accept and complete cases appointed to Attorney, Attorney shall be obligated to provide professional services throughout the full ninety (90) day period.

d. In any event, consistent with the provisions of paragraph 12.d. 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.

e. If the County decides in its discretion to provide public defense representation in Drug Court through a County agency (such as an Office of Public Defense or similar entity) that would eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can mutually coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic or in any way guaranteed.

19. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Drug

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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 PDM, nor the Drug Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

20. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 20.a. and 20.b. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement. The parties expressly agree that it is permissible for Attorney to discharge his duties pursuant to this Agreement fully, or mostly through attorneys who are either shareholders or employees at his law firm (collectively "Substitute Attorneys"), namely the following:

- Scott Johnson, WSBA #27839

provided that Substitute Attorneys shall, at all times while providing the services contemplated by this Agreement, be fully and completely supervised by Attorney, that Attorney takes full responsibility for the services provided by Substitute Attorneys and for Substitute Attorneys' compliance with this Agreement and that Attorney shall maintain full insurance coverage (as required by Section 16 herein) that names and covers the Substitute Attorneys fully and completely at all times.

a. Attorney and any of the Benton County Superior Court Criminal Defense Panel members may mutually agree to have a panel member make temporary, substitute appearances for Attorney on routine docket matters and routine court hearings on an as-needed basis as approved by the Drug 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 a Benton County Superior Court Criminal Defense Panel member for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said panel member, and said panel member shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his/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 any Benton County Superior Court Criminal Defense Panel member 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

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file a written certification with the Drug Court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 16 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 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.

21. **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 persons in Drug Court.

22. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform 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.

23. **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 court other than Drug Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively

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perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitations 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. Any judicial services rendered by Attorney under this paragraph shall fully comply with all applicable Rules of Professional Conduct and Judicial Canons.

24. **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.

25. **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.

26. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

27. **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.

28. **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.

29. **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.

30. **DISPUTE RESOLUTION.**

a. In the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, and assuming that the parties are unable to resolve such dispute within a reasonable time after it arises, the parties agree that the dispute shall be submitted to mediation through the assistance of an experienced

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mediator chosen by mutual agreement between the parties. 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.

b. 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 shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator and those two (2) so selected arbitrators shall mutually select a third arbitrator. The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Benton County Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days of notice of arbitration, the arbitrator(s) shall be selected and designated and the hearing shall be held within thirty (30) business days thereafter. 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.

31. **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/her below-stated office address; mailed to the County's PDM at his/her below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at his/her official email address.

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

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

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notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

32. **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.

33. **PUBLIC DEFENSE MANAGER** Attorney acknowledges that the County has employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the PDM (and his/her designees), and to promptly comply with reasonable requests from the PDM (and/or his/her designees), to allow for the effective monitoring and evaluation of Attorney's performance under this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

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

11/14/2022

Date_____

DocuSigned by:
DE0665365B46D...

Deric J Orr, WSBA #47322

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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/29/22
Subject:	Awarding public professional service agreements for therapeutic courts and miscellaneous dockets
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 provides public defense services in Benton County's therapeutic and other miscellaneous dockets by way of contract attorneys. Almost all of the professional services agreements for District Court Drug Court, Civil Contempt Child Support docket, Veterans' Court, Mental Health Court, Juvenile Drug Court, Adult Drug Court, and the Involuntary Treatment Act ("ITA") docket are expiring December 31, 2022. After a Request for Qualifications process, the following attorneys are recommended for contract award to provide legally mandated services in those listed therapeutic courts and miscellaneous dockets:

a) Michelle Alexander (District Court Drug Court) - Amendment
b) Judy Chang (Civil Contempt – Child Support)
c) Catherine Harkins (Veterans' Court)
d) Dawn Hickman (Mental Health Court)
e) Karyn Oldfield (Juvenile Drug Court)
f) Deric Orr (Adult Drug Court)
g) Alan Tindell (ITA Docket)

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE PROFESSIONAL SERVICES AGREEMENT WITH MICHELLE ALEXANDER, RESOLUTION 2022-704, FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT FOR DEFENDANTS CHARGED WITH CRIMINAL OFFENSE AND THE DISTRICT COURT DRUG COURT PROGRAM, TO PROVIDE FOR MODIFYING THE COMPENSATION TERMS AND AGREEMENT END DATE TO MATCH THOSE OF OTHER RENEWING CONTRACTS

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for adult defendants charged with criminal offenses ("Criminal Cases") and the Benton County District Court Drug Court Program (Drug Court Cases); and

WHEREAS, County has been contracting with attorney Michelle Alexander ("Attorney") on Criminal Cases and Drug Court Cases; and

WHEREAS, it has become necessary to modify the agreement with Attorney because compensation terms and the agreement end date were modified for other attorneys who were renewing their contracts; and

WHEREAS, it is therefore appropriate to amend the professional services agreement with Attorney to provide for modifying the compensation terms and agreement end date to match those of other renewing attorney contracts per contract #BCSC2324MA001DC; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Michelle Alexander, previously executed by and through Resolution 2022-704, is hereby amended as proposed, to provide for modifying the compensation terms and agreement end date to match those of other renewing attorney contracts, specifically 1) increasing the monthly compensation to $9,090.00 in 2023 and $9,210.00 in 2024, plus other allowable expenses, premiums and fees as detailed and 2) changing the agreement time period to 05/21/21 through 12/31/24.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, Michelle Alexander
Copy – Auditor, S Godinez

M Vander Sys

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AMENDED
PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT and DISTRICT COURT DRUG COURT PROGRAM
CONTRACT # BCSC2324MA001DC

CONTRACT SUMMARY			
Contract Type	**Partial Superior Court Caseload; District Court Drug Court**		
Contract Number	**BCSC2324MA001DC**	**Contract Holder**	**Michelle Alexander**
WSBA #	**29291**	**Effective Dates**	**May 21, 2021 – December 31, 2024**
Caseload Cap	**90 – Superior Court; Drug Court – n/a**	**Compensation**	**$9,090.00/mo (2023)** **$9,210.00/mo (2024)**
Assigned Court	**Superior Court; District Court – Drug Court**	**Compensation Structure**	**☐ By the case** **☒ Monthly** **☐ Hourly** **☒ By the case but paid monthly**
Compensation Payable To:	**Alexander Law, PLLC**		

THIS AGREEMENT is entered into by and between **Michelle Alexander,** attorney at law, Washington State Bar Association **#29291** ("Attorney"), **dba Alexander Law, PLLC** and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court and 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 felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in Benton County Superior Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023,** 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 to, 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 Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **7135 W Hood Place, Kennewick, WA 99336** ; Attorney's current local office telephone is **509-204-3119**; and Attorney's current office/work e-mail address is **mdralexander@gmail.com**.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, 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-Franklin Counties Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton-Franklin Counties Superior Court Administrator ("Superior Court Administrator").

c. Regardless of the location or manner in which Attorney decides to maintain an office, throughout the entire term of this Agreement the office facility must comply with any and all applicable public defense standards adopted by the Washington Supreme Court.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B

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felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

b. Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in its sole discretion, even at times after execution of this Agreement. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year of the term of this Agreement, Attorney shall obtain at least **seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits** in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the PDM with written proof and confirmation that such CLE credits have been **obtained no later than by December 31st of each calendar year.** Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar

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sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the PDM with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and effectively perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year.

Additionally, in the event that the public defense reporting requirements under RCW 10.101.050, other applicable statute or relevant case law are later amended/modified (or, in the case of case law, reasonably required as a best practice) Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing

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requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent 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 Benton County Superior 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 felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

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- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.

- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.

- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior 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 case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior 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; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

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i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment 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.

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 case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

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b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. NUMBER OF APPOINTMENTS. During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of 90 total cases per calendar year (proratable for any partial calendar year).

The second part of Attorney's caseload will consist of full public defense representation to all participants or prospective participants in District Court Drug Court ("DC").

More specifically, Attorney shall have the following duties regarding cases accepted into DC:

(i) Attendance at all DC "Team meetings";

(ii) Attendance at all DC dockets;

(iii) Meeting with DC participants as necessary to advise them about the DC process or system, assist them with participation hurdles, encourage compliance, answer questions, and prepare to advocate against sanctions;

(iv) Preparation for, and advocacy on behalf of, clients at any sanctions hearings;

(v) Taking any and all other action necessary to effectively advocate for the legal rights and interests of, participants in DC as would be required of Attorney by the Rules of Professional Conduct and such standards as are

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recognized by the appellate courts of Washington State that would be applicable to attorneys defending participants in a similar therapeutic court;

Attorney shall have the following duties regarding cases involving prospective DC participants (ie that have been identified as potential candidates for DC or have been referred to DC for review, but have not yet been formally accepted into the DC program):

(vi) Meeting with potential VC participants to discuss the DC program and advise them of their legal rights and options in regard thereto ("Pre-DC Counseling");

(vii) Participation in VC case screening with the DC Manager or other DC staff or team members;

(viii) Consulting with other criminal defense lawyers as requested to assist them with referrals to the DC program

(ix) If the case has been appointed to Attorney pre-DC acceptance, then Attorney shall attend pre-trial court dates with the client and take any necessary action, including, but not limited to, advising the court and prosecutor of the fact that the case may be admitted to DC, in order to protect the rights of such a client until a decision is made whether to admit the case to DC.

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	**Treatment**
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case

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Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

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 Superior Court and Attorney continues representing the same person in such matter within a twelve (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, 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. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular

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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 Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION; CONVICTION OF CRIMINAL OFFENSE.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation should include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Superior Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

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appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate this Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

(i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130 or misdemeanor sex offense under the laws of the State of Washington, any other State, or Federal law.

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

(iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other State or Federal Statute

(iv) Any crime of dishonesty or deception.

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12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$772.00 per case (2023); $788.00 per case (2024) for Superior Court felony cases** and **$3,300.00 per month for District Court Drug Court representation**. For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments **of $9,090.00 (2023) and $9,210.00 (2024)**, based on Attorney's selected caseload.

All compensation shall be payable to **Alexander Law, PLLC** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$772 (2023) $788 (2024)
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager or designee)
Material witness matters	$275
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$350
DOSA or SSOSA review on Attorney's own case	$275 per year that reviews continue
Post-sentencing matter on Attorney's own case	$275

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive **$450.00 per day for each full day of trial and $225.00 for each partial day of trial**, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor

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or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $450.00 if the matter was scheduled for a jury trial or $225.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then

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proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2022 is due by March 15, 2022. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is

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capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of **$95 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours**. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that

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has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this

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paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall

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comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

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19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

Further, in the event that the Benton County Superior Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

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d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

20. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the PDM, the Superior Court Administrator, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members

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for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

d. Attorney may sub-contract substantially all of the duties to be provided pursuant to this Agreement provided that all of the following conditions are met:

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(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

In the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.

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26. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

27. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

28. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party

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may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his/her below-stated office address; mailed to the County's PDM at his/her below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at his/her official email address.

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Ste #A220
Kennewick, WA 99336

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.

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c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to the recipient in the manner described above. A party may change the address(es) to which notices are to be sent by giving notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGER** Attorney acknowledges that the County has employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the PDM (and his/her designees), and to promptly comply with reasonable requests from the PDM (and/or his/her designees), to allow for the effective monitoring and evaluation of Attorney's performance under this Agreement.

35. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

BENTON COUNTY

Date_____

Chairman

Commissioner

Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

Clerk of the Board

Approved as to Form and Content

DocuSigned by:
Michael Vander Sys
3C4D65ED0BC4489...

Michael Vander Sys
Public Defense Manager

ATTORNEY

11/15/2022

Date_____

DocuSigned by:
Michelle Alexander
[illegible]452...

Michelle Alexander, WSBA **#29291**

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 and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

b. Court Observation Monitoring will also entail direct observation of Attorney's performance in court (including, but not limited to pre-trial dockets, motion dockets and trials) by Benton County Office of Public Defense Supervisory Staff to evaluate, among other things:

- Attorney's preparedness and readiness
- Attorney's interactions with clients
- Attorney's ability and willingness to advocate to the court on behalf of clients

Attorney acknowledgment:

DocuSigned by:
Michelle Alexander
16A82696F4E65452

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:	11/29/22
Subject:	Awarding public professional service agreements for therapeutic courts and miscellaneous dockets
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 provides public defense services in Benton County's therapeutic and other miscellaneous dockets by way of contract attorneys. Almost all of the professional services agreements for District Court Drug Court, Civil Contempt Child Support docket, Veterans' Court, Mental Health Court, Juvenile Drug Court, Adult Drug Court, and the Involuntary Treatment Act ("ITA") docket are expiring December 31, 2022. After a Request for Qualifications process, the following attorneys are recommended for contract award to provide legally mandated services in those listed therapeutic courts and miscellaneous dockets:

a) Michelle Alexander (District Court Drug Court) - Amendment
b) Judy Chang (Civil Contempt – Child Support)
c) Catherine Harkins (Veterans' Court)
d) Dawn Hickman (Mental Health Court)
e) Karyn Oldfield (Juvenile Drug Court)
f) Deric Orr (Adult Drug Court)
g) Alan Tindell (ITA Docket)

Proposed resolutions and professional services agreements are attached for Board review and execution.

Fiscal Impact

None other than budgeted.

Recommendation

Approve resolutions as proposed, execute proposed professional services agreements with attorneys listed above.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY DAWN HICKMAN TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY DISTRICT COURT TO DEFENDANTS PARTICIPATING IN THE BENTON COUNTY MENTAL HEALTH COURT PROGRAM

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for defendants participating in, or contemplating participating in the Benton County Mental Health Court program ("MHC Cases"); and

WHEREAS, Benton County provides representation in Mental Health Court by way of a contract attorney; and

WHEREAS, the existing professional services agreement for public defense services on MHC Cases is set to expire on December 31, 2022; and

WHEREAS, it is therefore necessary to seek Statements of Qualifications from interested attorneys in order to award a new agreement; and

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Dawn Hickman for public defense services on MHC Cases in Benton County District Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Dawn Hickman, designated BCDC2324DH001MHC, for services to be provided in Benton County District Court to defendants participating, or contemplating participating in, Benton County Mental Health Court, commencing January 1, 2023 and expiring December 31, 2024, with a per month compensation in the amount of $6,500.00 (plus other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement) be approved as proposed.

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, Dawn Hickman
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 MENTAL HEALTH COURT

CONTRACT # BCDC2324DH001MHC

CONTRACT SUMMARY			
Contract Type	**Mental Health Court**		
Contract Number	**BCDC2324DH001MHC**	**Contract Holder**	**Dawn Hickman**
WSBA #	**32597**	**Effective Dates**	**January 1, 2023 – December 31, 2024**
Caseload Cap	**n/a**	**Compensation**	**$6,500.00 month**
Assigned Court	**District Court Mental Health Court**	**Compensation Structure**	☐ **By the case** ☒ **Monthly** ☐ **Hourly** ☐ **By the case but paid monthly**
Compensation Payable To:	**Hickman Law, PLLC**		

THIS AGREEMENT is entered into by and between **Dawn Hickman,** attorney at law, Washington State Bar Association **#32597** ("Attorney"), **dba Hickman Law, PLLC**, 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 criminal offenses alleged to have been committed within the County's jurisdictional boundaries. The County further has the legal responsibility to provide public defense services to indigent persons who are contemplating, or are actively participating in Benton County's Mental Health Court.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, has specific experience working with and representing indigent defendants participating in Benton County's Mental Health Court, and desires to contract with the County to provide legal services to indigent persons subject to misdemeanor criminal charges in the

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Benton County District Court and to indigent persons contemplating, or actively participating in, Benton County's Mental Health Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2023** 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, Suite 111, Kennewick, WA 99336.** Attorney's current local office telephone is **509-551-8937**; and Attorney's current office/work e-mail address is **dhickman302@yahoo.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 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

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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 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

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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 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.

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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's duties shall consist of full public defense representation to all participants or prospective participants in Mental Health Court ("MHC").

More specifically, Attorney shall have the following duties regarding cases accepted into MHC:

a) Attendance at all MHC "Team meetings";

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b) Attendance at all MHC dockets;

c) Meeting with MHC participants as necessary to advise them about the MHC process or system, assist them with participation hurdles, encourage compliance, answer questions, and prepare to advocate against sanctions;

d) Preparation for, and advocacy on behalf of, clients at any sanctions hearings;

e) Taking any and all other action necessary to effectively advocate for the legal rights and interests of, participants in MHC as would be required of Attorney by the Rules of Professional Conduct and such standards as are recognized by the appellate courts of Washington State that would be applicable to attorneys defending participants in a similar therapeutic court;

Attorney shall have the following duties regarding cases involving *prospective* MHC participants (ie that have been identified as potential candidates for MHC or have been referred to MHC for review, but have not yet been formally accepted into the MHC program):

a) Meeting with potential MHC participants to discuss the MHC program and advise them of their legal rights and options in regard thereto ("Pre-MHC Counseling");

b) Participation in MHC case screening with the MHC Manager or other MHC staff or team members;

c) Consulting with other criminal defense lawyers as requested to assist them with referrals to the MHC program;

d) If the case has been appointed to Attorney pre-MHC acceptance, then Attorney shall attend pre-trial court dates with the client and take any necessary action, including, but not limited to, advising the court and prosecutor of the fact that the case may be admitted to MHC, in order to protect the rights of such a client until a decision is made whether to admit the case to MHC;

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 empanelled 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 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

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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.**

Throughout the term of this Agreement, the Attorney shall keep and maintain records consistent with the provisions of this Agreement in a format adequate to accurately track and monitor Attorney's appointments hereunder. The caseload that Attorney is expected to assume, and the associated compensation, under this Agreement shall is based on a total program size of **75 participants** at any given time.

8. **CASE EQUIVALENTS.**

This section is inapplicable given Attorney's exclusive duties representing participants in the Benton County Mental Health Court program with a participant cap as stated above.

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.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the

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Benton County District Court aware of such development for purposes of the District Court taking immediate action to appoint another attorney to assume and undertake legal representation in such case. 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 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

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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.**

Attorney shall be compensated in the amount of **$6,500.00 per month**.

All compensation shall be payable to **Hickman Law, PLLC** since Attorney is a principal with that law firm.

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,

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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.

(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.

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15. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and

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throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

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.

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.

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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.

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

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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 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 Attorney shall continue to provide the services for which he is contracted under this Agreement, for the entirety of the 90 day notice period.

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

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given by Attorney to the other 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 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.

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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 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.

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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.

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.

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b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

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/her below-stated office address; mailed to the County's PDM at his/her below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at his/her official email address for notices:

Public Defense Manager
Benton County Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

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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 employed the PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the PDM (and his/her designees), and to promptly comply with reasonable requests from the PDM (and/or his/her designees), to allow for the effective monitoring and evaluation of Attorney's performance under this Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

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IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

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

11/14/2022

Date_____

DocuSigned by:
Dawn Hickman
D17973BF51034C2...

Dawn Hickman, WSBA **#32597**

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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022 **Memo Date:** November 1, 2022
Subject:	Hearings Examiner Contract Renewal 2023-2024
Presenter:	
Prepared By:	Donna Hutchinson
Reviewed By:	Michelle Cooke

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☐ Public Hearing	☒ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☒ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

The Board of County Commissioners on October 28, 2014, replaced the Board of Adjustment with a Hearings Examiner as the party responsible for making decisions on various permits, decisions and appeals. The Board signed a Hearing Examiner Personal Services Contract (Contract) with Susan E. Drummond, PLLC on November 10, 2020, which expires on December 31, 2022. The Benton County Planning Department contacted Ms. Drummond with regards to the expiration of the Contract and she responded by stating that she would be willing to renew the Contract with Benton County for two years ending on December 31, 2024.

Fiscal Impact

For the 2023-2024 Contract years the compensation for the performance of services for the Hearings Examiner as shown in Exhibit B of the contract will remain the same. The expenses for the Hearing Examiner have been included with the draft Planning Division budget cycle for 2023-2024 not to exceed $3500.00 per month.

Recommendation

It is the Planning Division's recommendation that the Board of County Commissioners sign the two-year Contract with Susan Elizabeth Drummond, PLLC for January 1, 2023, to December 31, 2024.

Suggested Motion

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

BEFORE THE BENTON COUNTY BOARD OF COMMISSIONERS IN THE MATTER OF COUNTY PLANNING RE: A PERSONAL SERVICES CONTRACT WITH SUSAN ELIZABETH DRUMMOND, PLLC, TO PROVIDE HEARINGS EXAMINER SERVICES FOR THE 2023-2024 CALENDAR YEARS

WHEREAS, the Board of County Commissioners on October 28, 2014, adopted Ordinances which replaced the Board of Adjustment with a Hearings Examiner as the party responsible for making decisions on various permits, decisions and appeals; and,

WHEREAS, on November 10, 2020, a Hearing Examiner Services Contract with Susan Elizabeth Drummond, PLLC, was prepared and signed by the Board of County Commissioners commencing on January 1, 2021, and expiring on December 31, 2022; and,

WHEREAS, Susan Elizabeth Drummond was contacted by the Benton County Planning Division informing her that the Contract would expire on December 31, 2022 and asked if she would be willing to extend the contract for another two years; and,

WHEREAS, Susan Elizabeth Drummond has indicated that she is willing to extend the contract for two years; **NOW THEREFORE**,

BE IT RESOLVED that the Board of County Commissioners hereby approves the attached Personal Services Contract between Benton County and Susan Elizabeth Drummond, PLLC for Hearings Examiner Services effective January 1, 2023, and which shall expire on December 31, 2024, unless extended by written amendment by both parties; and,

BE IT FURTHER RESOLVED that the County agrees to compensate Ms. Drummond no more than $3500.00 per month for the 2023-2024 calendar years as outlined in Exhibit B.

Dated this _____ day of November 20____.

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of County Commissioners of Benton County Washington.

Attest.....
Clerk of the Board

GW/djh

Copy to PA's Office and
Planning Division

BENTON COUNTY
HEARING EXAMINER 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 the Law Offices of Susan Elizabeth Drummond, PLLC, a Washington corporation with its principal offices at 12224 NE Bel Red Road, Bellevue, Washington 98009-3157, (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of the following documents:

a. These Terms and Conditions;
b. Exhibit A, Scope of Work; and
c. Exhibit B, Compensation.

2. DURATION OF CONTRACT

This Contract shall be effective January 1, 2023 and shall expire on December 31, 2024 unless extended for another two years by written amendment of this section by the parties. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

a. 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 and deadlines agreed by the parties.

e. Except as limited by the Appearance of Fairness Doctrine or other applicable laws, the CONTRACTOR shall confer with the COUNTY from time to time during the

progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

The COUNTY shall:

a. Prepare SEPA determinations, if required, on matters heard by CONTRACTOR.

b. Prepare agendas and schedule hearing items.

c. Publish all necessary legal advertisements and notices required for CONTRACTOR'S hearings.

d. Provide written staff reports to CONTRACTOR at least seven (7) calendar days prior to hearings, as well as maps and other exhibits as may be necessary regarding each matter to be heard.

e. Provide a staff person at all hearings to set up hearing room, record the hearing and receive the record of the hearing.

f. Maintain the official file for each case.

g. Distribute CONTRACTOR decisions to COUNTY departments, parties of record and any other person entitled to receipt of a decision.

h. Provide CONTRACTOR with copies of all ordinances adopted by the COUNTY during the duration of the contract, related to land use laws and the Office of the Hearing Examiner, within a reasonable time after adoption.

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' representatives are as follows:

a. For CONTRACTOR: Susan Elizabeth Drummond, PLLC
12224 NE Bel Red Road
Bellevue, Washington 98009-3157
(206) 310-4709
http://www.susandrummond.com

b. For COUNTY: Benton County Planning Manager
P.O. Box 910
Prosser, WA 99350

5. COMPENSATION

For the services performed hereunder, the CONTRACTOR shall be paid as follows:

a. A detailed description of the compensation to be paid by the COUNTY is set forth in "Exhibit B, Compensation", which is attached hereto and incorporated herein by reference.

b. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

c. The CONTRACTOR may, in accordance with Exhibit B, submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.

d. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.

e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

f. Unless otherwise provided in this Contract or any exhibits attached 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. INDEMNIFICATION BY CONTRACTOR

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments asserted by any employee or agent of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

b. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature, including reasonable costs and attorney's fees in defense thereof, for injuries, sickness or death of persons, and damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONTRACTOR, its officers, agents, or employees, occurring in connection with the services required under this Contract; provided, this section shall not apply to allegations of any negligent act, error, or omission of CONTRACTOR in making a recommendation or a decision on an application as the Hearing Examiner.

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, the CONTRACTOR'S employees, agents or subcontractors.

8. LEGAL REPRESENTATION/INDEMNIFICATION BY COUNTY

a. The COUNTY agrees to provide insurance in the amount and kinds the COUNTY purchases in its policy with the Washington Counties' Risk Pool during the terms of this Contract for claims and lawsuits against CONTRACTOR alleging error in CONTRACTOR'S decisions as Hearing Examiner, and the COUNTY will hold harmless, indemnify and defend CONTRACTOR with respect to claims and lawsuits brought by third parties seeking monetary damages and/or reversal of CONTRACTOR'S decision under the same terms and conditions that a COUNTY employee would enjoy; provided, no indemnification or defense will be provided if the COUNTY elects to appeal or challenge CONTRACTOR'S decision as the Hearing Examiner unless CONTRACTOR has been named as a party in its personal capacity in the lawsuit.

b. The costs of such legal representation by the COUNTY under section 8.a above shall not be charged to the Hearing Examiner as long as the decision rendered is within the scope of the duties called for by this Contract. CONTRACTOR agrees that the COUNTY may settle any matter for which it provides legal representation in any manner deemed appropriate by the COUNTY, with or without consulting with or obtaining the consent of CONTRACTOR. In the event any decision rendered by CONTRACTOR is determined to be outside the scope of CONTRACTOR'S duties, the COUNTY shall have no obligation to represent or defend CONTRACTOR or any decision rendered, and CONTRACTOR'S indemnity obligations set forth in this Contract shall apply.

9. INSURANCE

a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employer's liability.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

b. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any auto (Symbol 1), or if the Contractor has no owned autos, 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 be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR. CONTRACTOR may use an excess or umbrella policy in conjunction with the underlying auto policy to satisfy the limit requirements of this subsection.

c. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.

2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, 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.

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.

10. Umbrella or excess liability policies shall provide coverage at least as broad as specified for underlying coverages and cover those insured by the underlying policies. Coverage shall be "pay on behalf", with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion of claims or suits by one insured against another.

d. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington and have a A. M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton County Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and 284-15 WAC.

1. Any insurance or self-insurance maintained by the COUNTY, its elected and 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, are to be provided to the County's Contract Representative referenced in Section 4.b.

3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.b.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract, including any excess or umbrella policies, upon request of the Benton County Risk Manager at the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336

10. TERMINATION

a. The COUNTY may terminate this Contract, with or without cause, upon sixty (60) days written notice personally delivered to the CONTRACTOR or mailed to the address set forth above in section 4.a. In the event of termination, all finished or unfinished documents, reports, or other material or work of the CONTRACTOR pursuant to this Contract shall be submitted to the COUNTY, and the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the date of termination 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 section 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 services accepted by the COUNTY, in accordance with Exhibit B of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere.

11. NON-ASSIGNMENT AND PRO-TEM HEARING EXAMINER

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. It is contemplated that there will be times when CONTRACTOR cannot serve because of conflict of interest, an appearance of fairness conflict, illness or other good cause, and that the COUNTY may appoint or contract with a third party to serve as a pro-tem hearing examiner in the event of CONTRACTOR'S failure or inability to perform under this Contractor for any other reason at the COUNTY'S sole discretion.

12. OWNERSHIP OF WORK PRODUCTS

The COUNTY shall keep the official record in each matter before CONTRACTOR and all primary copies of exhibits. CONTRACTOR shall possess only secondary, working copies of all data, materials, reports, memoranda and other documents or recordings developed under this Contract. Upon any notice of termination, CONTRACTOR shall complete any outstanding, unfinished matter within all time periods required under this Contract. All completed decisions shall become the property of the COUNTY. Upon termination or expiration of this Contract, CONTRACTOR shall return any working copies in its possession, as requested by COUNTY, but shall be entitled to retain attorney work product.

13. 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.

14. 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 Exhibit B 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 or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.

d. CONTRACTOR shall pay for all federal, state and local taxes, fees, licenses, or other payments or contributions required by federal, state or local law which are now or may be enacted during the term of this Contract that are due with respect to Contractor's business or employees engaged in the performance 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 made with reasonable basis to do so from the COUNTY'S contract representative or designee.

15. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract, including but not limited to laws pertaining to the ability of CONTRACTOR to act as hearing examiner in situations where CONTRACTOR may have an actual or apparent conflict of interest or appearance of unfairness.

16. 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 all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

17. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled, or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. 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.

20. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

21. 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.

22. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

23. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the Contract Representatives Section of this Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately, if personally served. For service by facsimile, service shall be effective at the beginning of the next working day.

24. 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, 8, and 9); inspection and keeping of records and books (Section 16); litigation hold notice (Section 25); and Public Records Act (Section 26).

25. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 16 of this agreement 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 as set out above in Section 16.

26. PUBLIC RECORDS ACT

CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, RCW 42.56 *et seq.* 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 actually in its possession or deemed by judicial determination to be in its possession, which may include records provided to the COUNTY by CONTRACTOR that CONTRACTOR might regard as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, it agrees to conspicuously mark the records as such. CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or

proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

The parties to this Contract have executed this Contract to take effect as of the date written below.

DATED: _____

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman

_____
Member

_____
Member

Constituting the Board of
County Commissioners of Benton County, Washington.

Attest: _____, Clerk of the Board

Approved as to Form:

_____, Deputy
Prosecuting Attorney

DATED: October 31, 2022

CONTRACTOR
Law Offices of Susan Elizabeth Drummond, PLLC

_____
Susan Drummond, Member

EXHIBIT A

SCOPE OF WORK

1. All duties of CONTRACTOR shall be performed pursuant to the direction of the COUNTY'S Planning Manager or his or her designee.

2. CONTRACTOR shall assist in the implementation and improvement of a hearing examiner system for the COUNTY, and such assistance shall include but is not limited to monitoring and consulting on possible updates to the COUNTY'S Rules of Procedure of the Office of Hearing Examiner that comply with Benton County Code Chapter 17.20 and all applicable law.

3. CONTRACTOR shall, at the COUNTY'S request, conduct hearings, render decisions and perform all necessary related acts in order to fulfill the duties set forth in Benton County Code Chapter 17.20, as currently in effect or as hereafter amended. Such related acts include, but are not limited to, receiving and examining all information presented to it, conducting all necessary public hearings, preparing and adopting written Findings of Fact and Conclusions of Law and Decisions, when legally required or when otherwise appropriate. Such decisions shall be rendered within the time period allowed by Benton County Code Chapter 17.20 as currently in effect or as hereafter amended.

4. CONTRACTOR shall regularly hold hearings on dates convenient to staff and as frequently as needed to review and decide upon applications in a timely manner. Unless special notification is given otherwise, hearings will be held in Prosser, Washington. CONTRACTOR may schedule special meetings and continued meetings, as deemed necessary and with concurrence of the COUNTY.

5. CONTRACTOR will work independently and without direct supervision. CONTRACTOR will remain fully knowledgeable of COUNTY zoning code and all other COUNTY codes, regulations, ordinances, resolutions and policies affecting the areas of concern related to CONTRACTOR'S duties.

6. CONTRACTOR shall perform its duties under the Contract to the COUNTY'S satisfaction, including, but not limited to, conducting orderly and impartial hearings, creating a professional and courteous environment for applicants, citizens and staff; and timely preparing decisions based on sound reasoning and all applicable law. When deemed appropriate and under the circumstances allowed by law, CONTRACTOR shall make site visits to familiarize itself with the site of the proposed land use and surrounding area.

7. CONTRACTOR shall provide all office space and equipment necessary to perform its obligations under this Contract and shall maintain an active e-mail address for electronic communications and transfer of information.

8. CONTRACTOR shall annually report in writing to the COUNTY by December 31st of each year regarding the decisions rendered during the year and state any recommendations for changing or improving the COUNTY'S hearing examiner system.

EXHIBIT B

COMPENSATION

For the performance of services under this Contract, the COUNTY agrees to compensate CONTRACTOR as follows:

A. For months where hearing(s) are held in Benton County:

(1) $3,000.00 for a month if only one trip to the County for public hearings is required in a month and the hearing(s) on that day end by 9:00 p.m. or,

(2) $3,500.00 for each month that more than one trip by the contractor is necessary for public hearing(s), or if the hearing(s) extends past 9:00 p.m. on a particular date; or,

B. For months where no hearings are held in Benton County:

(1) $250.00, as compensation for advice and non-hearing items.

C. CONTRACTOR is not entitled to reimbursement for expenses incurred under this Contract, and the above amounts are the sole compensation and consideration payable to CONTRACTOR under this Contract.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	2023 Annual Road Program and Major Equipment Purchases
Presenter:	Matt Rasmussen, Deputy County Administrator & Matt Mahoney, Public Works Manager
Prepared By:	Matt Mahoney, Public Works Manager
Reviewed By:	Matt Rasmussen, Deputy County Administrator

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:**	
☒ 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

Washington Administrative Code (WAC) Chapter 136-16 requires that the County Engineer prepare and submit to the Board a recommended annual road program. On August 2, 2022, the Board reviewed and approved the Six-Year Annual Transportation Program (Resolution 2022-532) which included all construction projects proposed for the year 2023. The Public Works Department has provided the Board a preliminary budget which included those projects on the adopted six-year plan that would be attempted in 2023 and those pieces of equipment intended for purchase in 2023 based on estimated available funds.

WAC 136-16-018 states: *"The county legislative authority shall adopt a final annual program at any time prior to the adoption of the budget."* Further, WAC 136-16-030 states: *"In accordance with RCW 36.81.130. The annual program shall also include a list of all major road equipment purchases and repairs contemplated for the year, together with the estimated costs thereof. The total estimated cost of all equipment listed shall be approximately equal to the amount budgeted for equipment purchase in the annual equipment rental and revolving fund budget. The equipment list may include an item for miscellaneous minor equipment in any amount up to ten percent of the estimated total cost. The list may also include a list of alternate or additional items of equipment totaling up to fifteen percent of the basic list cost to allow for unforeseen conditions."*

The attached annual construction program and major equipment purchases lists represent the final annual program based on anticipated revenues.

As part of the initial project selection an environmental assessment for each project was done. All projects have been found to have an insignificant impact on the environment or are exempt from environmental assessment.

Fiscal Impact

All programs and purchases shown for 2023 are included in the 2023 - 2024 budgets submitted for both the County Roads fund and the Equipment Rental & Revolving (ER&R) fund.

Recommendation

Staff recommends the Board adopt the 2023 Annual Road Program and Major Equipment Purchases as presented.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS
OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE 2023 ANNUAL ROAD PROGRAM AND MAJOR EQUIPMENT PURCHASES

WHEREAS, Pursuant to Chapter 136 Washington Administrative Code (WAC) the County Road Administration Board (CRAB) requires that all Counties make certain reports each year to ensure they are in compliance with the Standards of Good Practice; and

WHEREAS, the County Engineer and Public Works Manager have submitted to the Board of Benton County Commissioners a program for the design and construction of roads by the County Road Fund and a list of major equipment purchase to be made by the County Roads and Equipment Rental & Revolving Funds; and

WHEREAS, this program and list were considered in conjunction with the adoption of the 2023 - 2024 budget; and

WHEREAS, an environmental assessment has been made for each road project by the County Engineer; and

WHEREAS, the Board of Benton County Commissioners has reviewed this Annual Road Program, including the Annual Construction Program with the environmental assessments contained therein, and the Major Equipment Purchase List; **NOW, THEREFORE,**

BE IT RESOLVED that the attached 2023 Annual Road Program and Major Equipment Purchases are hereby approved and adopted, and the County Engineer and Public Works Manager are hereby authorized and directed to proceed with the same.

APPROVED this 29th day of November, 2022

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Member

Attest:

Constituting the Board of County Commissioners
Benton County, Washington

_____
Clerk of the Board

Original: Clerk of the Board
Copy: Public Works

M. Mahoney

2023 Annual Road Program
Estimated Revenues

ORG Code	Revenue Description	Estimated Revenues
RD291740	RD Est Beginning Fund Balance	8,827,817
RD311100	RD Real & Personal Property Ta	6,600,000
RD317200	RD Leasehold Excise Tax	130,000
RD321910	RD Franchise Fees	15,000
RD333202	RD Department Of Transportation	1,696,000
RD334036	RD State Grant from DOT	1,102,875
RD334038	RD State Grant from TIB	216,250
RD334371	RD Rural Arterial Program (RAP	500,000
RD334372	RD CO Arterial Pres Prgm (CAPP	500,000
RD336007	RD Multimodal Transport -Count	154,227
RD336008	RD Motor Vehicle Fuel Tax-Co R	3,472,448
RD341430	RD Budget & Accounting Service	25,000
RD341820	RD Engineering Services	7,500
RD341930	RD Custodial/Jan/Maint/Building	5,000
RD344100	RD Various Road Repairs	13,000
RD344109	RD Road Maint & Repair Charges	20,000
RD344190	RD Road Maint & Repair Charges	33,000
RD344270	RD Road Signs	2,000
RD361110	RD Investment Interest	120,000
RD362500	RD Space & Facility Rental L-T	5,992
RD367000	RD Contributions -Traffic Mitigation Fees	231,000
RD369100	RD Sale of Surplus	500
RD369910	RD Miscellaneous Other	2,500
RD369915	RD Miscellaneous Revenue	200
RD389300	RD Custodial Type Collections	1,700
RD397100	RD Operating Transfer In - Current Expense	5,000
RD397101	RD Operating Transfer In - Flood Control	3,000
RD397111	RD Operating Transfer In - Paths & Trails	92,500
RD397112	RD Operating Transfer In - CRIM	2,565,584
	GRAND TOTAL ROAD REVENUES	26,348,093

2023 Annual Road Program
Estimated Expenditures

ORG Code	Expenditure Description	Estimated Expenditures
GF251700	Traffic Law Enforcement (Diversion of County Road Funds)	692,036
RD542000	Maintenance	10,283,697
RD543000	Administration/General Services	5,336,547
RD544000	Operations	115,500
RD589000	Sales Tax Processing	1,700
RD591000	Redemption of Long-Term Debt (PWTF Loan SR397)	197,750
RD592000	Interest and Other Debt Services Cost (PWTF Loan SR397)	3,461
RD594000	Capitalized Expenditures (Equipment)	715,000
RD595000	Road/Street Construction	5,431,184
	GRAND TOTAL ROAD EXPENDITURES	22,776,875

Benton County

2023

Annual Construction Program

WAC 136-16

(A) TOTAL CONSTRUCTION DONE (total sum of column 13 + column 14): $2,235,000.00

(B) COMPUTED COUNTY FORCES LIMIT: $1,790,304.25

(C) TOTAL COUNTY FORCES CONSTRUCTION (total sum of column 14): $234,000.00

Date of Environmental Assessment:

Date of Final Adoption:

Ordinance/Resolution Number:

(1)	(2)	(3)	(4)					(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information Road Name	BMP	EMP	FFC	Project Length(mi.)	Project Type Code	Environmental Assessment	Sources of Funds County Road Funds	Other Funds Amount	Other Funds Program Source	Estimated Expenditures Dollars PE & CE (595.10)	Right of Way (595.20)	Construction Contract	Construction County Forces	Grand Total (All 595)
1		Guardrail and Guidepost - County Wide 2019						N/A	Safety	E	$7,000	$43,000.00	HSIP	$7,000		$43,000		$50,000
2		Guardrail and Guidepost - County Wide 2021						N/A	Safety	E	$7,000	$43,000.00	HSIP	$7,000	$0	$43,000	$0	$50,000
3		Crosby Road - Phase 2	22190	**Road Name:** Crosby Road **From:** McClure Y **To:** EMP	7.76	10.64	08	2.88	RC	E	$525,000			$75,000	$0	$450,000	$0	$525,000
4	2	Dague Road	75650	**Road Name:** Dague Road **From:** Terril Road **To:** Game Farm Road	0.00	0.50	19	0.50	NEW	E	$650,000			$95,000	$0	$555,000		$650,000
5	3	Hanks Road Phase 1	22220	**Road Name:** Hanks Road **From:** Crosby Road **To:** McDonald Road	6.07	7.60	08	1.53	3R	E	$10,000	$1,000,000.00	RAP	$100,000	$0	$910,000		$1,010,000
6		Reata Road (Bermuda Road) Intersection Improvements	50180 50010	**Road Name:** Reata Road **From:** M.P. 2.56 **To:** M.P. 3.16 **Road Name:** Bermuda Road **From:** M.P. 0.25 **To:** M.P. 0.85	2.56 0.25	3.16 0.85	17 19	1.20	3R Safety Cpty	E	$275,000			$275,000	$0	$0	$0	$275,000
7	5	County Well Road Phase I	11110	**Road Name:** County Well Road **From:** SR 221 **To:** McBee Road	0.00	3.12	08	3.12	3R	E	$5,000	$45,000.00	RAP	$50,000				$50,000
8	10	County Well Road Phase II	11110	**Road Name:** County Well Road **From:** McBee Road **To:** Clodius Road	3.12	5.13	08	2.01	3R	E	$50,000			$50,000				$50,000
9	11	County Well Road Phase III	11110	**Road Name:** County Well Road **From:** Clodius Road **To:** M.P. 6.93	5.13	6.93	08	1.80	3R	E	$50,000			$50,000				$50,000
10	9	Adair Road	44830	**Road Name:** Adair Road **From:** Existing Termini **To:** Christensen Road	1.48	2.58	09	1.10	NEW	I	$0	$250,000.00	County	$150,000	$100,000			$250,000
11	24	Special Paths and Trails						N/A	P&T	E	$20,000			$3,000			$17,000	$20,000
12	25	Railroad Crossings						N/A	Other	E	$20,000			$3,000			$17,000	$20,000

(1)	(2)	(3)	(4)				(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road Segment Information				Project Length(mi.)	Project Type Code	Environmental Assessment	Sources of Funds			Estimated Expenditures Dollars				
			Road #	Road Name	BMP	EMP	FFC				County Road Funds	Other Funds		PE & CE (595.10)	Right of Way (595.20)	Construction		Grand Total (All 595)
												Amount	Program Source			Contract	County Forces	
13	26	Emergent Projects					N/A	Other	E	$250,000			$50,000			$200,000	$250,000
										$1,869,000	**$1,381,000**		**$915,000**	**$100,000**	**$2,001,000**	**$234,000**	**$3,250,000**

BENTON COUNTY PUBLIC WORKS
2022
MAJOR EQUIPMENT PURCHASES

EQUIPMENT RENTAL & REVOLVING FUND

Pickups, Vans, and Suv's:

Pickup (2)	$	100,000
SUV (1)	$	40,000

Heavy Trucks and Equipment:

Semi with Dump Body (2)	$	1,200,000
Broom (1)	$	40,000
Motor Grader (1)	$	450,000
TOTAL	**$**	**1,830,000**

COUNTY ROAD FUND

Jet/Vac Truck (Approved via Resolution 2022-254)	$	715,000
TOTAL	**$**	**715,000**

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Contract Amendment #2 w/ C.H. Johnson Consulting, Inc. for the Fairgrounds Feasibility Study & Master Plan
Presenter:	N/A
Prepared By:	P. Schut
Reviewed By:	R. Blain

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance
	☐ Sign Letter/Document	☒ Execute Contract

Summary / Background Information

Per Resolution 2021-702, the Board of Benton County Commissioners entered into a contract with C.H. Johnson Consulting, Inc. to perform a feasibility study & master plan of the fairgrounds.

Per Resolution 2022-318, the Board of Benton County Commissioners approved the First Contract Amendment that extended the contract expiration date from May 31, 2022, to December 31, 2022.

The Second Contract Amendment is needed to extend the expiration date from December 31, 2022, to June 30, 2023, to allow more time to complete the feasibility study and master plan.

A Contract Amendment has been prepared, reviewed, and approved as to form by our departmental deputy prosecuting attorney and signed by C.H. Johnson Consulting, Inc.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

Approve Contract Amendment #2 with C.H. Johnson Consulting, Inc. to extend the expiration date from December 31, 2022, to June 30, 2023.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE SECOND AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT WITH C.H. JOHNSON CONSULTING, INC. FOR THE FAIRGROUNDS FEASIBILITY STUDY & MASTER PLAN

WHEREAS, per Resolution 2021-702, the Board of Benton County Commissioners entered into a contract with C.H. Johnson Consulting, Inc. to perform a feasibility study & master plan of the fairgrounds; and

WHEREAS, per Resolution 2022-318, the Board of Benton County Commissioners approved the First Contract Amendment that extended the contract expiration date from May 31, 2022, to December 31, 2022; and

WHEREAS, the Second Contract Amendment is needed to extend the expiration date from December 31, 2022, to June 30, 2023, to allow more time to complete the feasibility study and master plan; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby agrees to sign the attached first amendment to the professional services contract with C.H. Johnson Consulting, Inc. to extend the contract expiration date from December 31, 2022 to June 30, 2023.

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.: File – Purchasing Department P. Schut
cc: Auditors; S.Godinez; C.H. Johnson Consulting, Inc.

DocuSign Envelope ID: 78C0160B-0125-4DAD-8955-46BFF633A332

SECOND CONTRACT AMENDMENT

BENTON COUNTY
PROFESSIONAL SERVICES CONTRACT

THIS SECOND CONTRACT AMENDMENT (hereinafter "Second 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 **C.H. JOHNSON CONSULTING, INC.**, a corporation organized under the laws of the State of Illinois, with its principal offices at 6 East Monroe Street, Suite 500, Chicago, Illinois, 60603 (hereinafter "CONTRACTOR").

WHEREAS, per Benton County Resolution No. 2021-702, the parties entered into a Professional Services Contract, beginning September 21, 2021, and ending May 31, 2022 (hereinafter the "CONTRACT"), whereby CONTRACTOR agreed to put together a Master Plan for the Benton County Fairgrounds; and

WHEREAS, per Benton County Resolution No. 2022-318, the parties agreed to the First Contract Amendment, which extended the contract expiration date from May 31, 2022, to December 31, 2022; and

WHEREAS, this Second Amendment is necessary to extend the Contract from December 31, 2022, to June 30, 2023; and

NOW THEREFORE, the parties agree that all provisions of the CONTRACT remain in full force and effect, except for the following amendment:

2. The term of this Contract shall begin on September 21, 2021, 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.

IN WITNESS WHEREOF, the parties have caused this Second 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
B4F7673BB8A1486...
Eric Andrews, Civil Deputy Prosecuting Attorney

Dated: 11/3/2022

FOR: C.H. JOHNSON CONSULTING, INC

DocuSigned by:
Charles Johnson
6EA2EB8C6DCB4ED...
Signature

President
Title:

Charles Johnson
Print Name

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Purchase Agreement between Benton County and W.W. Grainger, Inc. utilizing City of Tucson, AZ Contract # 192163
Presenter:	
Prepared By:	Paul Schut
Reviewed By:	Eric Andrews; Purchasing Department

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Per Resolution 2020-749, Benton County entered into an agreement with National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise.

The City of Tucson, AZ, is also a member of OMNIA Partners and issued RFP # 192163 for Maintenance, Repair and Operations (MRO) Supplies, Parts, Equipment, Materials, and Related Services on April 11, 2019, to establish a national cooperative contract for said services per Contract # 192163, for a term commencing July 4, 2019, and terminating December 31, 2023.

The Benton County Fairgrounds/Event Center wishes to utilize Contract # 192163 for the purchase of a Noble Floor Scrubber, as further outlined in the attached Purchase Agreement between Benton County and W.W. Grainger, Inc. and the documents attached thereto, for a contract amount not to exceed $25,854.58, plus WSST.

Fiscal Impact

Amount: $25,854.58 Plus WSST

Fund: General Fund # 0010; Department #139 CARES/ARPA Funds

Recommendation

Approve the attached Resolution and Purchase Agreement between Benton County and W.W. Grainger, Inc., and authorize the Chairman of the Board to sign said agreement.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF FLOOR SCRUBBER FROM W.W. GRAINGER, INC. UTILIZING THE OMNIA PARTNERS CONTRACT AND CITY OF TUCSON, AZ CONTRACT #192163 FOR THE BENTON COUNTY FAIRGROUNDS/EVENT CENTER

WHEREAS, per Resolution 2020-749 dated October 20, 2020, the Board of Benton County Commissioners approved the agreement between Benton County and National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise; and

WHEREAS, the City of Tucson, AZ, is also a member of OMNIA Partners and issued RFP #192163 for Maintenance, Repair and Operations (MRO) Supplies, Parts, Equipment, Materials, and Related Services on April 11, 2019, to establish a national cooperative contract for said supplies and services; and

WHEREAS, the Benton County Fairgrounds/Event Center wishes to purchase a Noble Floor Scrubber from W.W. Grainger, Inc. and wishes to utilize Contract #192163, as further outlined in the attached Purchase Agreement between Benton County and W.W. Grainger, Inc. and documents attached thereto, for an overall contract amount not to exceed $25,854.58 excluding WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the attached Purchase Agreement between Benton County and W.W. Grainger, Inc., utilizing the OMNIA Partners and City of Tucson, AZ Contract #192163 for the purchase of a Noble Floor Scrubber for Benton County Fairgrounds/Event Center, with a Purchase Agreement amount not to exceed $25,854.58 excluding WSST; and

BE IT FURTHER RESOLVED, the Chairman of the Board is hereby authorized to sign the attached Purchase Agreement between Benton County and W.W. Grainger, Inc.

Dated this _____ day of _____, 2022.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: Purchasing Department
Cc: Auditors, PA, T. French, L. Ivey, Procurement P.Schut

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PURCHASE AGREEMENT
Benton County, Washington

Benton County is a political subdivision, with its principal offices located at 620 Market Street, Prosser, WA 99350

RESOLUTION No: _____

Resolution number must appear on all invoices, packing slips, packages, correspondence, etc.

Vendor: W.W. Grainger, Inc. - Authorized Dealer: Pacific Office Solutions
Vendor Code:
Vendor Contact: Daniel Gomez
Vendor Contact Phone: (509) 375-5040
Vendor Principal Place of Business: 2574 Robertson Drive, Richland WA 99352

AGREEMENT:
The Vendor agrees to provide Items listed below to Benton County under the terms described herein.

Ship To:	Bill To:
Benton County Fairgrounds/Event Center	Benton County Purchasing Department
1500 S Oak Street; Bldg 20	7122 W Okanogan Place; STE E330
Kennewick, WA 99336	Kennewick, WA 99336

Line	Description	Qty	Price
1	MV-SSR-3001 - Noble Speed Scrub Rider -	1	25,854.58
	Model #: SSR		
	26" Disk Scrub Head		
	EC-H20 NanoClean		
	360 AH Lead Acid Battery		
	HydroLink Watering System		
	On-board Charger		
	Benton County's OMNIA Partners Membership Number:		
	2562889		
		Subtotal	$ 25,854.58
		Sales Tax (8.7%)	$ 2,249.35
		Grand Total	$ 28,103.93

The term of this Agreement shall commence upon signature of both parties and shall expire 12/31/2023

This purchase agreement incorporates by reference all terms and conditions issued off the City of Tucson, AZ Contract No. 192163 as a registered member of the OMNIA Partners.

In addition, the Vendor agrees to the terms of Exhibit B - ARP/CSLFRF CFDA 21.027 Funding.

Vendor signature on this Purchase Agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms and/or previous contracts.

Benton County obtains all rights of City of Tucson, AZ Contract No. 192163

Questions and Clarifications should be Addressed to Buyer Contact:
Contact: Paul Schut
Address: 7122 W. Okanogan Pl, STE E330
Kennewick, WA 99336
Phone: 509-737-3943
Email: Paul.Schut@co.benton.wa.us

Approved as to Form (Deputy Prosecutor): DocuSigned by: Eric Andrews
Eric Andrews, Civil DPA

By signing in the space provided, the parties hereby acknowledge the following:

1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
2) The person executing this Agreement is authorized to do so by his/her party;
3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreement(s) for all purposes.

Vendor Name (Print): Daniel Gomez Title: Account Manager Date: 11/8/2022

Vendor Signature: DocuSigned by: Daniel Gomez

Chairman
Benton County
Board of Commissioners: _____ Date: _____

DocuSign Envelope ID: E282A5FC-6F0A-4D5E-A130-0DE9F8C0F61C

PACIFIC
OFFICE SOLUTIONS

November 4th, 2022

Paul Schut
Benton County Purchasing Department
1500 S Oak St
BLDG 20
Kennewick, WA 99337

Hello Paul,

Please see the quote below: 2052447106

Vendor Part #	Description	QTY	UOM	Unit	Total	Notes
MV-SSR-3001	Brand: Noble Speed Scrub Rider Model Number: SSR 26" disk scrub head ec-H20 NanoClean 360AH lead acid battery HydroLink watering system, on-board charger	1	EA	$25,854.58	$25,854.58	13 Week Lead time Non-Cancellable Non-Returnable
	Shipping				$0.00	Free
	Subtotal				$25,854.58	

Let me know if you have any questions or require any additional information.

Best Regards,

Daniel Gomez

509 375-5040
dgomez@posolutions.com

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EXHIBIT B – ARP/CSLFRF CFDA 21.027 FUNDING

American Rescue Plan (ARP)
Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)
Funding Authority: U.S. Department of Treasury
CFDA# 21.027 – Coronavirus State and Local Fiscal Recovery Funds

The Contractor specifically agrees to comply with all applicable state and federal laws, rules, regulations, requirements, program guidance, including but not limited to the following:

All applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies including, but not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288, as amended), Ethics in Public Services (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

Comply with all procurement requirements of 2 CFR Part 200.317 - 200.327. All sole source contracts expected to exceed $50,000 must be submitted to Benton County for review and approval prior to the award and execution of a contract.

Any contract awarded to the successful Contractor must contain and/or comply with the following provisions in accordance with 2 CFR Part 200.317 - 200.327:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;
- Termination for cause and for convenience by Benton County or the Contractor including the manner by which it will be affected and the basis for settlement;
- Compliance with Executive Order 11246, "Equal Employment Opportunity," (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, as supplemented in Department of Labor regulations (41 CFR Chapter 60);
- For Capital Expenditures that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For all contracts in excess of $100,000 with respect to water, sewer, or broadband that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For construction or repair contracts: Compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR part 3);
- For construction contracts in excess of $2,000 when required by Federal grant program legislation: Compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
- For construction contracts in excess of $100,000 that involve the employment of mechanics and laborers: Compliance with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Compliance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency;

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- For contracts in excess of $150,000: Compliance with all applicable standards, orders or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended;
- Compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Federal awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by Benton County, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions;
- Retention of all required records for six years after Benton County makes final payment and all other pending matters are closed;
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871);
- Notice of awarding agency requirements and regulations governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards (37 C.F.R. Part 401) and the standard patent rights clause (37 C.F.R. section 401.14);
- Compliance with Executive Order 13858 "Strengthening Buy-American Preferences for Infrastructure Projects" as appropriate and to the extend consistent with law; and
- Compliance with 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115¬232 (2018).

Contractor must comply with Executive Orders 12549 and 12689 and 2 C.F.R. Part 180, which restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor must certify that it is not presently debarred, suspended or proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Contractor must comply with the requirements of 31 U.S.C. § 3729-3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See also 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.

Contractor must maintain a Conflict of Interest Policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the award. All potential conflicts of interest related to this award must be reported to Benton County and/or U.S. Treasury.

Contractor is required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

Contractor's costs must be compliant with 2 CFR Part 200 Subpart E Cost Principles.

Contractor must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, Member of Congress, an officer, or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning an award, making of any federal grant, federal loan, continuation, renewal, amendment or modification of any federal contract, grant loan, or cooperative agreement, and that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award, the Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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In the event of the Contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, Benton County may rescind, cancel, or terminate the contract in whole or in part in its sole discretion. The Contractor is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars, or policies.

CERTIFICATION

DocuSigned by:
Daniel Gomez
F008ABB10E9342D...

Signature, Administrator, or Applicant Agency

11/8/2022

Date

Daniel Gomez Account Manager

print name and title

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Purchase Agreement between Benton County and Affordable Interior Systems, Inc. utilizing Region 4 ESC - TX Contract # R191801
Presenter:	
Prepared By:	Paul Schut
Reviewed By:	Eric Andrews; Purchasing Department

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Per Resolution 2020-749, Benton County entered into an agreement with National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise.

Region 4 ESC - TX is also a member of OMNIA Partners and issued RFP # 19-18 for Furniture, Installation, & Related Services on November 7, 2019, to establish a national cooperative contract for said services per Contract # R191801, for a term commencing May 1, 2020, and terminating April 30, 2023.

The Benton County Fairgrounds/Event Center wishes to utilize Contract # R191801 to purchase chairs, as further outlined in the attached Purchase Agreement between Benton County and Affordable Interior Systems, Inc. and the documents attached thereto, for a contract amount not to exceed $47,507.40, plus WSST.

Fiscal Impact

Amount: $47,507.58 plus WSST

Fund: General Fund # 0010; Department #139 CARES/ARPA Funds

Recommendation

Approve the attached Resolution and Purchase Agreement between Benton County and Affordable Interior Systems, Inc., and authorize the Chairman of the Board to sign said agreement.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF CHAIRS FROM AFFORDABLE INTERIOR SYSTEMS, INC. UTILIZING THE OMNIA PARTNERS CONTRACT AND REGION 4 ESC - TX CONTRACT #R191801 FOR THE BENTON COUNTY FAIRGROUNDS/EVENT CENTER

WHEREAS, per Resolution 2020-749 dated October 20, 2020, the Board of Benton County Commissioners approved the agreement between Benton County and National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise; and

WHEREAS, Region 4 ESC - TX is also a member of OMNIA Partners and issued RFP #19-18 for Furniture, Installation, & Related Services on November 7, 2019, to establish a national cooperative contract for said supplies and services; and

WHEREAS, the Benton County Fairgrounds/Event Center wishes to purchase chairs from Affordable Interior Systems, Inc. and wishes to utilize Contract #R191801, as further outlined in the attached Purchase Agreement between Benton County and Affordable Interior Systems, Inc. and documents attached thereto, for an overall contract amount not to exceed $47,507.40 excluding WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the attached Purchase Agreement between Benton County and Affordable Interior Systems, Inc., utilizing the OMNIA Partners and Region 4 ESC - TX Contract #R191801 for the purchase of chairs for the Benton County Fairgrounds/Event Center, with a Purchase Agreement amount not to exceed $47,507.40 excluding WSST; and

BE IT FURTHER RESOLVED, the Chairman of the Board is hereby authorized to sign the attached Purchase Agreement between Benton County and Affordable Interior Systems, Inc.

Dated this _____ day of _____, 2022.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: Purchasing Department
Cc: Auditors, PA, T. French, L. Ivey, Procurement P.Schut

DocuSign Envelope ID: 88DA5EFE-CABF-4993-AEEC-B6E83F9ABDAE

PURCHASE AGREEMENT
Benton County, Washington

Benton County is a political subdivision, with its principal offices located at 620 Market Street, Prosser, WA 99350

RESOLUTION No: _____

Resolution number must appear on all invoices, packing slips, packages, correspondence, etc.

Vendor: Affordable Interior Systems, Inc.. - Authorized Dealer: Brutzman's Office Solutions
Vendor Code:
Vendor Contact: Anita Clark
Vendor Contact Phone: (509) 735-0300
Vendor Principal Place of Business: 2501 N Columbia Center Blvd, Richland WA 99352

AGREEMENT:
The Vendor agrees to provide Items listed below to Benton County under the terms described herein.

Ship To:	Bill To:
Benton County in care of Bruztmans Office Solutions	Benton County Purchasing Department
2501 N Columbia Center Blvd.	7122 W Okanogan Place: STE E330
Richland, WA 99352	Kennewick, WA 99336

Line	Description	Qty	Price
1	AIS Multi-Purpose Triad Stack Chair	505	43,162.35
	Material Type: Polypropylene		
	Color: Black		
2	Chair Dollys	13	1,683.50
3	Freight Charges	1	1,621.55
4	Deilvery/Installation Charges	1	1,040.00
	Benton County's OMNIA Partners Membership Number:		
	2562889		
		Subtotal	$ 47,507.40
		Sales Tax (8.7%)	$ 4,133.14
		Grand Total	$ 51,640.54

The term of this Agreement shall commence upon signature of both parties and shall expire 4/30/2023

This purchase agreement incorporates by reference all terms and conditions issued off the Region 4 ESC Contract # R191801 as a registered member of the OMNIA Partners.

In addition, the Vendor agrees to the terms of Exhibit B - ARP/CSLFRF CFDA 21.027 Funding.

Vendor signature on this Purchase Agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms and/or previous contracts.

Benton County obtains all rights of Region 4 ESC Contract No. R191801

Questions and Clarifications should be Addressed to Buyer Contact:
Contact: Paul Schut
Address: 7122 W. Okanogan Pl, STE E330
Kennewick, WA 99336
Phone: 509-737-3943
Email: Paul.Schut@co.benton.wa.us

Approved as to Form (Deputy Prosecutor): DocuSigned by: Eric Andrews B4F7673B88A149E...
Eric Andrews, Civil DPA

By signing in the space provided, the parties hereby acknowledge the following:

1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
2) The person executing this Agreement is authorized to do so by his/her party;
3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreement(s) for all purposes.

Vendor Name (Print): Ken Brutzman Title: VP Date: 11/8/2022

Vendor Signature: DocuSigned by: Ken Brutzman 72B82691SFBB415...

Chairman
Benton County
Board of Commissioners: _____ Date: _____

DocuSign Envelope ID: 88DA5EFE-CABF-4993-AEEC-B6E83F9ABDAE

Quote

BRUTZMAN'S OFFICE SOLUTIONS

P.O. BOX 6044
KENNEWICK, WA 99336-0044
phone:(509) 735-0300
FAX:(509) 735-0330

order number: 0000880953
customer number: 7865600
telephone number: ( )783-1310 ext:
fax number: ( ) -
page number: 1
order date: 10/10/2022

sold to:
BENTON CO. COMMISSIONERS
7122 W OKANOGAN PL
SUITE E330
KENNEWICK , WA 99336

ship to:
TRI-CITIES OFFICE-0302
BENTON COUNTY COMMISSIONERS
7122 W. OKANOGAN
KENNEWICK , WA 993362359

special comments/instructions:

purchase order	customer representative	invoice terms	sales representative
QUOTE - TRIAD		NET 10TH PROX	ANITA CLARK

quantity	mfg/product number	product description	unit price	net price	unit	amount
505	XXXF	FURNITURE ITEMS AS FOLLOWS #3100BK = AIS-MULTI-PURPOSE TRIAD STACK CHAIR,BLACK	231.00 / 1	85.47 / 1	EA	43,162.35
13	XXXF	FURNITURE ITEMS AS FOLLOWS #3100DOLLY - DOLLY HOLDS UP TO 40 CHAIRS	350.00 / 1	129.50 / 1	EA	1,683.50
		FREIGHT CHARGES FREIGHT FROM MANUFACTURE (LOGISTICS FEE)				1,621.55
		INSTALLATION SERVICES RECEIVE,INSPECT, UNCARTON,DELIVER ON THE DOLLIES				1,040.00
		ATTN:PAUL SCHUT #737-3943				
		PRICING PER OMNIA PARTNERS CONTRACT #R191801				

	47,507.40
sales tax	4,133.14
total	51,640.54

DocuSign Envelope ID: 88DA5EFE-CABF-4993-AEEC-B6E83F9ABDAE

EXHIBIT B – ARP/CSLFRF CFDA 21.027 FUNDING

American Rescue Plan (ARP)
Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)
Funding Authority: U.S. Department of Treasury
CFDA# 21.027 – Coronavirus State and Local Fiscal Recovery Funds

The Contractor specifically agrees to comply with all applicable state and federal laws, rules, regulations, requirements, program guidance, including but not limited to the following:

All applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies including, but not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288, as amended), Ethics in Public Services (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

Comply with all procurement requirements of 2 CFR Part 200.317 - 200.327. All sole source contracts expected to exceed $50,000 must be submitted to Benton County for review and approval prior to the award and execution of a contract.

Any contract awarded to the successful Contractor must contain and/or comply with the following provisions in accordance with 2 CFR Part 200.317 - 200.327:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;
- Termination for cause and for convenience by Benton County or the Contractor including the manner by which it will be affected and the basis for settlement;
- Compliance with Executive Order 11246, "Equal Employment Opportunity," (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, as supplemented in Department of Labor regulations (41 CFR Chapter 60);
- For Capital Expenditures that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For all contracts in excess of $100,000 with respect to water, sewer, or broadband that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For construction or repair contracts: Compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR part 3);
- For construction contracts in excess of $2,000 when required by Federal grant program legislation: Compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
- For construction contracts in excess of $100,000 that involve the employment of mechanics and laborers: Compliance with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Compliance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency;

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- For contracts in excess of $150,000: Compliance with all applicable standards, orders or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended;
- Compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Federal awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by Benton County, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions;
- Retention of all required records for six years after Benton County makes final payment and all other pending matters are closed;
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871);
- Notice of awarding agency requirements and regulations governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards (37 C.F.R. Part 401) and the standard patent rights clause (37 C.F.R. section 401.14);
- Compliance with Executive Order 13858 "Strengthening Buy-American Preferences for Infrastructure Projects" as appropriate and to the extend consistent with law; and
- Compliance with 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115¬232 (2018).

Contractor must comply with Executive Orders 12549 and 12689 and 2 C.F.R. Part 180, which restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor must certify that it is not presently debarred, suspended or proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Contractor must comply with the requirements of 31 U.S.C. § 3729-3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See also 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.

Contractor must maintain a Conflict of Interest Policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the award. All potential conflicts of interest related to this award must be reported to Benton County and/or U.S. Treasury.

Contractor is required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

Contractor's costs must be compliant with 2 CFR Part 200 Subpart E Cost Principles.

Contractor must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, Member of Congress, an officer, or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning an award, making of any federal grant, federal loan, continuation, renewal, amendment or modification of any federal contract, grant loan, or cooperative agreement, and that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award, the Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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In the event of the Contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, Benton County may rescind, cancel, or terminate the contract in whole or in part in its sole discretion. The Contractor is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars, or policies.

CERTIFICATION

DocuSigned by:
Ken Brutzman
72B825915FBB415...

11/8/2022

Signature, Administrator, or Applicant Agency — Date

Ken Brutzman VP

print name and title

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Awarding the Purchase of Tables to P.R.E. Sales ,Inc. for Benton County Fairgrounds/Event Center
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Eric Andrews, Purchasing Department

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:**	
☒ 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 Benton County Fairgrounds/Event Center wishes to purchase tables that event holders can utilize during their event.

Per Resolution 2021-233, the County-wide Procurement, Leasing, and Contracting Policy allows purchases between $10,000 and $50,000 to be solicited from at least three vendors.

The Benton County Purchasing Department solicited a total of three (3) vendors with the following results:

- P.R.E. Sale Inc. - $23,535.00 excluding W.S.S.T
- Event Décor Direct - $23,746.76 excluding W.S.S.T
- Event Stable - $26,643.88 excluding W.S.S.T

Fiscal Impact

Amount: $23,535.00 excluding W.S.S.T.

Fund: General Fund # 0010; Department #139 CARES/ARPA Funds

Recommendation

Approve awarding the purchase of tables to P.R.E. Sales, Inc. and authorize the Chairman of the Board to sign said agreement.

Suggested Motion

Approve as part of the Consent Agenda.

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING THE PURCHASE OF TABLES TO P.R.E. SALES, INC. FOR THE BENTON COUNTY FAIRGROUNDS/EVENT CENTER

WHEREAS, the Benton County Fairgrounds/Event Center wishes to purchase tables that event holders can utilize for their events; and

WHEREAS, per Resolution 2021-233, the County-wide Procurement, Leasing, and Contracting Policy allows purchases between $10,000 and $50,000 to be solicited from at least three vendors; and

WHEREAS, the Benton County Purchasing Department solicited a total of three (3) vendors with the following results:

- P.R.E. Sale Inc. - $23,535.00 excluding W.S.S.T
- Event Décor Direct - $23,746.76 excluding W.S.S.T
- Event Stable - $26,643.88 excluding W.S.S.T

WHEREAS, the Purchasing Department has reviewed the quotes for the purchase of the tables mentioned above and recommends awarding the purchase to P.R.E. Sales, Inc. as the lowest bidder; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, concurs with the recommendation and hereby awards the purchase of tables to P.R.E. Sales as the lowest bidder for an amount not to exceed $ 23,535.00 excluding W.S.S.T; and

BE IT FURTHER RESOLVED, the Chairman of the Board is hereby authorized to sign the attached Purchase Agreement between Benton County and P.R.E. Sales, Inc.

Dated this 29th day of November 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; PA, T. French, L Ivey, Procurement

Prepared by: P. Schut

DocuSign Envelope ID: A1DDB73A-9952-46BA-8295-18E55872C1FB

PURCHASE AGREEMENT
Benton County, Washington

Benton County is a political subdivision, with its principal offices located at 620 Market Street, Prosser, WA 99350

RESOLUTION No: _____

Resolution number must appear on all invoices, packing slips, packages, correspondence, etc.

Vendor: P.R.E Sales, Inc.
Vendor Code:
Vendor Contact: Jeff Wechsler
Vendor Contact Phone: (858) 408-0156
Vendor Principal Place of Business: 8606 Miramar Road, San Diego, CA 92126

AGREEMENT:
The Vendor agrees to provide Items listed below to Benton County under the terms described herein.

Ship To:	Bill To:
Benton County Fairgrounds/Event Center	Benton County Purchasing Department
1500 S Oak St; Bldg #20	7122 W Okanogan Place; STE330
Kennewick, WA 99336	Kennewick, WA 99336

Line	Description	Qty	Price
1	Table - 71" Rhinolite Plastic Round - White Granite	50	9,515.00
2	Table - 6' x30" Rhinolite Plastic Banquet - White Granite	50	3,495.00
3	Table - 6' x18" Rhinolite Plastic Training - White Granite	50	3,235.00
4	Dolly - Rhino Table Vertical - Universal	15	2,790.00
5	Freight Charges	1	4,500.00
	Exhibit A - Vendor Quote		
		Subtotal	$ 23,535.00
		Sales Tax (8.7%)	$ 2,047.55
		Grand Total	$ 25,582.55

The term of this Agreement shall commence upon signature of both parties and shall expire 6/30/2023

The Vendor agrees to the Terms of Exhibit B - ARP/CSLFRF CFDA 21.027 Funding.

Vendor signature on this Purchase Agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms and/or previous contracts.

Questions and Clarifications should be Addressed to Buyer Contact:
Contact: Paul Schut
Address: 7122 W. Okanogan Pl, STE E330
Kennewick, WA 99336
Phone: 509-737-3943
Email: Paul.Schut@co.benton.wa.us

Approved as to Form (Deputy Prosecutor): DocuSigned by: Eric Andrews B4F7673BB8A1488...
Eric Andrews, Civil DPA

By signing in the space provided, the parties hereby acknowledge the following:

1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
2) The person executing this Agreement is authorized to do so by his/her party;
3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreement(s) for all purposes.

Vendor Name (Print): Jeff Wechsler Title: VP Sales Date: 11/9/2022

Vendor Signature: DocuSigned by: Jeff Wechsler 85ACAF81ADC246D...

Chairman
Benton County
Board of Commissioners: _____ Date: _____

DocuSign Envelope ID: A1DDB73A-9952-46BA-8295-18E55872C1FB

Sales Order

Date	S.O. No.
9/13/2022	28549

Bill To	Ship To
Benton County Fair Ground Paul Schut 1500 South Oak St. Building # 20 Kennewick, WA 99336	Benton County Fair Ground Paul Schut 509-737-3943 1500 South Oak St. Building # 20 Kennewick, WA 99336

P.O. No.	Terms	Rep	Ship Detail	Ship Date	Ship Via	FOB
	CBD	PE		9/13/2022	Ltl	

Item	Description	Ordered	Rate	Amount
3717 SD	Table - 71" Rhinolite Plastic Round - White Granite	50	190.30	9,515.00T
3712 SD	Table - 6'X30" Rhinolite Plastic Banquet - White Granite	50	69.90	3,495.00T
6725 SD	Table - 6'X18" Rhinolite Plastic - White Granite	50	64.70	3,235.00T
9376 SD U	Dolly - Rhino Table Vertical - Universal	15	186.00	2,790.00T
0023 SD	Shipping Charge	1	4,500.00	4,500.00T

We are updating our files.
Please send copy of Resale Certificate before we process your order.

Subtotal	$23,535.00
Sales Tax (0.0%)	$0.00
Total	$23,535.00

Final Freight charges to be determined at time of shipment Due to Fuel surcharge Fluctuation

PLEASE MAKE CHECKS PAYABLE TO PRE SALES INC.

Signature _____

Corporate Office: 8606 Miramar Road - San Diego, CA 92126 - Tel: 858-408-0156 - Fax: 858-348-4016 - Toll Free 800-773-8511
Branch Office: 500 West Main St. Suite 9 Wyckoff, NJ 07481 - Tel: 201-282-2100

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EXHIBIT B – ARP/CSLFRF CFDA 21.027 FUNDING

American Rescue Plan (ARP)
Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)
Funding Authority: U.S. Department of Treasury
CFDA# 21.027 – Coronavirus State and Local Fiscal Recovery Funds

The Contractor specifically agrees to comply with all applicable state and federal laws, rules, regulations, requirements, program guidance, including but not limited to the following:

All applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies including, but not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288, as amended), Ethics in Public Services (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

Comply with all procurement requirements of 2 CFR Part 200.317 - 200.327. All sole source contracts expected to exceed $50,000 must be submitted to Benton County for review and approval prior to the award and execution of a contract.

Any contract awarded to the successful Contractor must contain and/or comply with the following provisions in accordance with 2 CFR Part 200.317 - 200.327:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;
- Termination for cause and for convenience by Benton County or the Contractor including the manner by which it will be affected and the basis for settlement;
- Compliance with Executive Order 11246, "Equal Employment Opportunity," (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, as supplemented in Department of Labor regulations (41 CFR Chapter 60);
- For Capital Expenditures that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For all contracts in excess of $100,000 with respect to water, sewer, or broadband that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For construction or repair contracts: Compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR part 3);
- For construction contracts in excess of $2,000 when required by Federal grant program legislation: Compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
- For construction contracts in excess of $100,000 that involve the employment of mechanics and laborers: Compliance with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Compliance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency;

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- For contracts in excess of $150,000: Compliance with all applicable standards, orders or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended;
- Compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Federal awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by Benton County, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions;
- Retention of all required records for six years after Benton County makes final payment and all other pending matters are closed;
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871);
- Notice of awarding agency requirements and regulations governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards (37 C.F.R. Part 401) and the standard patent rights clause (37 C.F.R. section 401.14);
- Compliance with Executive Order 13858 "Strengthening Buy-American Preferences for Infrastructure Projects" as appropriate and to the extend consistent with law; and
- Compliance with 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115¬232 (2018).

Contractor must comply with Executive Orders 12549 and 12689 and 2 C.F.R. Part 180, which restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor must certify that it is not presently debarred, suspended or proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Contractor must comply with the requirements of 31 U.S.C. § 3729-3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See also 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.

Contractor must maintain a Conflict of Interest Policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the award. All potential conflicts of interest related to this award must be reported to Benton County and/or U.S. Treasury.

Contractor is required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

Contractor's costs must be compliant with 2 CFR Part 200 Subpart E Cost Principles.

Contractor must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, Member of Congress, an officer, or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning an award, making of any federal grant, federal loan, continuation, renewal, amendment or modification of any federal contract, grant loan, or cooperative agreement, and that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award, the Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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In the event of the Contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, Benton County may rescind, cancel, or terminate the contract in whole or in part in its sole discretion. The Contractor is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars, or policies.

CERTIFICATION

DocuSigned by:
Jeff Wechsler
85ACAF81ADC246D...

Signature, Administrator, or Applicant Agency

11/9/2022

Date

Jeff Wechsler VP Sales

print name and title

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Authorizing the purchase of grader blade edges from DMC Wear Parts, LLC Minneapolis, MN
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

ERR needs to have grader blade edges in inventory for installation on the graders, used by the Public Works Department in the routine maintenance of County roads, when the blade edges get damaged or worn down. Three vendors were solicited to provide quotes for grader blade edges. The quotes provided are as follows:

DMC Wear Parts, LLC – Minneapolis, MN	$15,395.00 excluding WSST
Rebuilding & Hardfacing Inc. – Colville, WA	$16,800.00 excluding WSST
Pape Machinery – Pasco, WA	$25,784.00 excluding WSST

Fiscal Impact

Amount: **$15,395.00 excluding WSST**

Fund: **Road Fund (0101-101)**

Recommendation

Approve the purchase of grader blade edges for installation on graders used by the Public Works Department from DMC Wear Parts, LLC Minneapolis, MN in the amount of $15,395.00 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 AUTHORIZATION TO PURCHASE GRADER BLADE EDGES FOR USE BY THE BENTON COUNTY PUBLIC WORKS DEPARTMENT FROM DMC WEAR PARTS, LLC, MINNEAPOLIS, MN

WHEREAS, per Resolution 2021-233, the Board of Benton County Commissioners approved a County-Wide Procurement, Leasing and Contracting Policy; and

WHEREAS, per Section 2.2.3 (Purchases or Leases between $10,000.00 and $50,000.00), county departments are required to obtain quotations from at least three (3) vendors on the vendor list or proof of solicitation from at least three (3) vendors and such purchase is to be approved by the Board of Benton County Commissioners by Resolution; and

WHEREAS, the following companies were solicited to provide quotes for grader blade edges for use by the Benton County Public Works Department:

DMC Wear Parts, LLC – Minneapolis, MN	$15,395.00 excluding WSST
Rebuilding & Hardfacing Inc. – Colville, WA	$16,800.00 excluding WSST
Pape Machinery – Pasco, WA	$25,784.00 excluding WSST

WHEREAS, the Fleet Manager recommends the purchase of grader blade edges from DMC Wear Parts, LLC, Minneapolis, MN; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby approves the purchase of grader blade edges for use by the Benton County Public Works Department from DMC Wear Parts, LLC, Minneapolis, MN in the amount of $15,395.00 excluding WSST.

Dated this 29th day of November 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member
Constituting the Board of County Commissioners of Benton County, Washington

Attest:_____
Clerk of the Board

Orig.: Public Works D. Hope
cc: Auditor, PA, Procurement, DMC Wear Pars

DMC Wear Parts LLC
3135 Humboldt Ave S
Minneapolis, MN 55408
(605) 840-8082
kody@dmcwearparts.com
www.dmcwearparts.com

Estimate 1439

ADDRESS
Benton County
Washington
Prosser 99350

DATE	TOTAL	EXPIRATION DATE
11/08/2022	**$15,395.00**	11/30/2022

ACTIVITY	QTY	RATE	AMOUNT
RTI:7D1557 3/4x8x7' Curved Grader Blade - Heat Treated 3/4 Punch Free Delivery - In Stock!	100	153.95	15,395.00

TOTAL $15,395.00

THANK YOU.

Accepted By

Accepted Date

Rebuilding & Hardfacing Inc.

1390 N. Main
Colville, WA 99114

QUOTE

Date	Estimate #
10/31/2022	2969

Name / Address	Ship To
BENTON COUNTY PUBLIC WORKS P.O. BOX 1001 PROSSER, WA 99350-0100	BENTON COUNTY PUBLIC WORKS 102808 WISER PARKWAY KENNEWICK, WA 99338

Qty	Description	Rate	Total
100	3487 CHT DB 3/4" PB GRADER BLADE 7D1577 SHIP; 6- 8 WEEKS Freight NO charge on exact quantities.	168.00	16,800.00T

Subtotal	$16,800.00
Sales Tax (8.7%)	$1,461.60
Total	$18,261.60

Phone #	Fax #	E-mail
5096844879	(509) 684-4870	rhi@rhicolville.com

11/09/22 P A P E ' M A C H I N E R Y ESTIMATE #- 324705
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700157 BENTON COUNTY PUBLIC WOR
102808 WISER PARKWAY
KENNEWICK WA 99338
509-786-5611

MK/MODEL:
SERIAL #:
EQUIP #:

SPG: /

SEG- 1

Qty	Part Number/Description	Wt	O/H	Sell	Ext/Cst
100	7D1577 GRADER BLAD@ PLUS FREIGHT	128.000		257.84	25,784.00

PARTS	LABOR	MISC	
25,784.00	.00	.00	25,784.00
		STATE/LOCAL TAX	2,088.50
		GRAND TOTAL-->	27,872.50

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Purchase Agreement between Benton County and Bob Barker Company utilizing County of Sacramento, CA Contract WA00034777
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Eric Andrews; Purchasing Department

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Per Resolution 2020-749, Benton County entered into an agreement with National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise.

The County of Sacramento is also a member of OMNIA Partners and issued RFP #8259 for Inmate and Detention Supplies, Solutions and Services on February 3, 2016, to establish a national cooperative contract for said services per Contract WA00034777, for a term commencing October 5, 2016 and terminating October 4, 2024.

The Benton County Corrections Department and Juvenile Detention wishes to utilize Contract WA00034777 for as needed inmate and detention supplies, solutions and services, as further outlined in the attached Purchase Agreement between Benton County and Bob Barker Company and the documents attached thereto, for a contract amount not to exceed $90,000, plus WSST.

Fiscal Impact

Expenditures shall be paid from the approved budget of each department that utilizes the attached Purchase Agreement for an overall contract amount not to exceed $90,000, plus WSST.

Recommendation

Approve the attached Resolution and Purchase Agreement between Benton County and Bob Barker Company and authorize the Chairman of the Board to sign said agreement.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF INMATE AND DETENTION SUPPLIES, SOLUTIONS, AND SERVICES FROM BOB BARKER COMPANY UTILIZING THE OMNIA PARTNERS CONTRACT AND COUNTY OF SACRAMENTO, CA CONTRACT WA00034777 FOR ALL BENTON COUNTY DEPARTMENTS

WHEREAS, per Resolution 2020-749 dated October 20, 2020, the Board of Benton County Commissioners approved the agreement between Benton County and National Intergovernmental Purchasing Alliance Company dba/ OMNIA Partners to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise; and

WHEREAS, the County of Sacramento, CA is also a member with OMNIA Partners and issued RFP #8259 for Inmate and Detention Supplies, Solutions and Services on February 3, 2016, to establish a national cooperative contract for said supplies and services; and

WHEREAS, the County of Sacramento, CA extended their Contract WA00034777 with Bob Barker Company with a term expiring October 4, 2024; and

WHEREAS, various Benton County departments currently purchase from Bob Barker and wish to utilize Contract WA00034777 for their as needed supplies, as further outlined in the attached Purchase Agreement between Benton County and Bob Barker Company and documents attached thereto, for an overall contract amount not to exceed $90,000 excluding WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the attached Purchase Agreement between Benton County and Bob Barker Company, utilizing the OMNIA Partners and County of Sacramento, CA Contract WA00034777 for the purchase of as needed inmate and detention supplies, solutions, and services for all Benton County Departments, with a Purchase Agreement amount not to exceed $90,000 excluding WSST; and

BE IT FURTHER RESOLVED, the attached Purchase Agreement shall commence October 5, 2022 and shall terminate October 4, 2024; and

BE IT FURTHER RESOLVED, expenditures shall be paid from the budget of each department that utilizes the attached Purchase Agreement; and

BE IT FURTHER RESOLVED, the Chairman of the Board is hereby authorized to sign the attached Purchase Agreement between Benton County and Bob Barker Company.

Dated this _____ day of _____, 2022.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: BCCD
Cc: Auditors, PA, County Depts, Bob Barker Co. L. Small

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PURCHASE AGREEMENT
Benton County, Washington

Benton County is a political subdivision, with its principal offices located at 620 Market Street, Prosser, WA 99350

RESOLUTION No: _____

Resolution number must appear on all invoices, packing slips, packages, correspondence, etc.

Vendor: Bob Barker Company
Vendor Code:
Vendor Contact: Debbie Sargent, Customer Service Representative
Vendor Contact Phone: (800) 334-9880
Vendor Principal Place of Business: 7925 Purfoy Rd. Fuquay-Varina, NC 27526

Ship To:	Bill To:
Benton County	Benton County
7122 W Okanogan Pl. Bldg. B	7122 W Okanogan Pl. Bldg B
Kennewick, WA 99336	Kennewick, WA 99336

AGREEMENT:
The Vendor agrees to make available the goods provided in Exhibit A to Benton County under the terms described herein.

Line	Description	Qty		
	Vendor agrees to provide all items and name brands associated with Exhibit A available to the County for the purchase at the price discounts provided in Exhibit A, as currently in effect, or hereafter amended pursuant to the County of Sacramento, CA Contract No. WA00034777.		Amount not to exceed	$ 90,000.00
	Benton County's OMNIA Partners Membership Number:			
	2562889			
			Subtotal	$ 90,000.00
			WSST @ 8.7%	7,830.00
			Total Contract Amount	$ 97,830.00

The term of this Agreement shall commence October 5, 2022 and shall expire October 4, 2024.

This purchase agreement incorporates by reference all terms and conditions issued off the County of Sacramento, CA Contract WA00034777 (copy attached hereto as Master Contract) as well as the Price Worksheet (attached as Exhibit A); as a registered member of the OMNIA Partners.

Vendor signature on this Purchase Agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms and/or previous contracts.

In case of conflict, the order of precedence is:
1. The County of Sacramemnto Contract No. WA00034777
2. Pricing Worksheet attached hereto as Exhibit A, as currently in effect, or hereafter amended.
3. This Purchase Agreement

Questions and Clarifications should be Addressed to Buyer Contact:

Contact: Lisa Small
Address: 7122 W. Okanogan Pl, Bldg B
Kennewick, WA 99336
Phone: 509-786-1451 ext. 3880
Email: Lisa.Small@co.benton.wa.us

Approved as to Form (Deputy Prosecutor): DocuSigned by: Eric Andrews
B4F2C3BBCA3A4A6... Eric Andrews, Civil DPA

DocuSign Envelope ID: 329E34C6-1BCB-444F-A2BF-F04756D71965

By signing in the space provided, the parties hereby acknowledge the following:

1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
2) The person executing this Agreement is authorized to do so by his/her party;
3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreement(s) for all purposes.

Vendor Name (Print): KAT MALCOLM Title: CONTRACT SPEC. Date: 11/07/2022

Vendor Signature: Kat Malcolm

Chairman
Benton County
Board of Commissioners: _____ Date: _____
Shon Small, Chairman

DocuSign Envelope ID: 329E34C6-1BCB-444F-A2BF-F04756D71965

Exhibit A

WA00034777 - Bob Barker Co
Price List Effective October 5, 2016

Item Description	U/M	Catalog Number	Unit Price Yr1,2&3	Unit Price Yr4 &5	Unit Price Yr6 &7	Unit Price Yr8	Remark
Clothing							
Stenciled Orange Shirt in Sizes							
Medium	Each	NPOS-M	$4.39	$4.57	$5.64	$5.87	Catalog Number updated on 8/13/2019
Large	Each	NPOS-L	$4.39	$4.57	$5.64	$5.87	
XL	Each	NPOS-XL	$4.39	$4.57	$5.64	$5.87	
2XL	Each	NPOS-2XL	$4.39	$4.57	$5.64	$5.87	
3XL	Each	NPOS-3XL	$4.39	$4.57	$5.64	$5.87	
4XL	Each	NPOS-4XL	$4.39	$4.57	$5.64	$5.87	
5XL	Each	NPOS-5XL	$4.69	$4.88	$5.64	$5.87	
6XL	Each	NPOS-6XL	$4.69	$4.88	$5.64	$5.87	
Stenciled Orange and White Striped Shirt in Sizes							
Medium	Each	JTOWSNP-M	$4.39	$4.57	$5.64	$5.87	
Large	Each	JTOWSNP-L	$4.39	$4.57	$5.64	$5.87	
XL	Each	JTOWSNP-XL	$4.39	$4.57	$5.64	$5.87	
2XL	Each	JTOWSNP-2XL	$4.39	$4.57	$5.64	$5.87	
3XL	Each	JTOWSNP-3XL	$4.39	$4.57	$5.64	$5.87	
4XL	Each	JTOWSNP-4XL	$4.39	$4.57	$5.64	$5.87	
Stenciled Orange Unisex Pants in Sizes							
Small - XL	Pair	TOT-S, TOT-M, TOT-L, TOT-XL	$5.67	$5.90	$6.79	$7.06	
2XL	Pair	TOT-2XL	$5.67	$5.90	$6.79	$7.06	
162.5	Pair	TOT-3XL	$5.67	$5.90	$6.79	$7.06	
4XL	Pair	TOT-4XL	$5.67	$5.90	$6.79	$7.06	
5XL	Pair	TOT-5XL	$5.67	$5.90	$6.79	$7.06	
Stenciled Navy Blue Unisex Pants in Sizes							

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WA00034777 - Bob Barker Co
Price List Effective October 5, 2016

Item Description	U/M	Catalog Number	Unit Price Yr1,2&3	Unit Price Yr4 &5	Unit Price Yr6 &7	Unit Price Yr8	Remark
Small - XL	Pair	TNT-S, TNT-M, TNT-L, TNT-XL	$5.67	$5.90	$6.79	$7.06	
2XL	Pair	TNT-2XL	$5.67	$5.90	$6.79	$7.06	
3XL	Pair	TNT-3XL	$5.67	$5.90	$6.79	$7.06	
4XL - 5XL	Pair	TNT-4XL, TNT-5XL	$5.67	$5.90	$6.79	$7.06	
Stenciled Unisex White Kitted Short-Sleeve Polo Shirt in Sizes							
Small - XL	Each	Z8800WH-SIZE	$5.40	$5.40	$6.94	$7.22	
2XL	Each	Z8800WH-2XL	$6.99	$6.99	$8.12	$8.44	
3XL	Each	Z8800WH-3XL	$6.99	$6.99	$8.12	$8.44	
4XL	Each	Z8800WH-4XL	$6.99	$6.99	$8.12	$8.44	
Stenciled White Thermal Shirt in Sizes							
XL	Dozen	63-XL	$32.40	$32.40	$41.42	$43.08	Sold in dozen
2XL	Dozen	63-2XL	$33.84	$33.84	$41.42	$43.08	Sold in dozen
3XL	Dozen	63-3XL	$34.56	$34.56	$41.42	$43.08	Sold in dozen
4XL	Dozen	63-4XL	$36.84	$36.84	$41.42	$43.08	Sold in dozen
White Tube Sock	Dozen	1700-W	$4.16	$4.16	$5.23	$5.44	Tube Sock 21”
~~Non-Stenciled Navy or Dark Colors Paper Jumpsuit in Sizes 3XL (Size Fits All)~~	~~Each~~	~~3575-3XL~~	~~$1.19~~	~~$1.19~~	NA	NA	Item removed due to market instability on 10/12/2021.
Non-Stenciled Navy Shorts							S & 5XL - Packed in case of 12 pairs
Small	Pair	J618-S	$3.60	$3.74	$4.89	$5.09	
Medium	Pair	618-M	$3.60	$3.74	$4.89	$5.09	
Large	Pair	618-L	$3.60	$3.74	$4.89	$5.09	
XL	Pair	618-XL	$3.66	$3.81	$4.89	$5.09	
2XL	Pair	618-2XL	$4.55	$4.73	$5.75	$5.98	
3XL	Pair	618-3XL	$4.55	$4.73	$5.75	$5.98	
4XL	Pair	618-4XL	$4.60	$4.78	$5.75	$5.98	

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WA00034777 - Bob Barker Co
Price List Effective October 5, 2016

Item Description	U/M	Catalog Number	Unit Price Yr1,2&3	Unit Price Yr4 &5	Unit Price Yr6 &7	Unit Price Yr8	Remark
5XL	Pair	J618-5XL	$4.60	$4.78	$5.75	$5.98	
Footwear							
Men's Deck Shoes, Gum-Soled	Pair	155NV-SIZE	$3.21	$3.26	$3.99	$4.15	
V-Strap Thongs	Pair	1800-SIZE	$0.49	$0.49	$0.69	$0.72	Sold in dozen
For Eva (Ethyl Vinyl Acetate) Slip-On Shoes	Pair	FEVST35-OR-SIZE	$2.18	$2.18	$3.33	$3.46	Catalog Number updated on 8/13/2019
~~Slip-On PVC Sandal, Tan Sizes (6-16)~~	~~Pair~~	~~BB888-SIZE~~	~~$1.39~~	~~$1.39~~	NA	NA	Item removed due to discontinuation on 6/14/2021.
Bedding and Linen							
Mattress Cover	Each	VMC30724	$9.77	$10.75	$12.36	$12.85	Mattress 75"x30"x4"
Non-Stenciled Isolation/Suicide Cell Smock	Each	505	$66.00	$66.00	$75.90	$78.94	
Non-Stenciled Isolation/Suicide Cell Blanket	Each	SB5480	$60.25	$60.25	$71.72	$74.59	
Mattress							Mattress 1. Size 75"x30"x4" 2. Add $11 each for recycle fee.
Mattress (mattress recycle fee not included)	Each	PJM30754	$34.50	$37.95	$63.03	$65.60	Price updated from $88.43 to $63.03 effect March 7, 2022 Price updated from $63.03 to $64.76 for the 7th year
Mattress for Probation (mattress recycle fee not included)	Each	SSCM30754P	$57.50	$63.25	$103.38	$107.52	
Personal Hygiene Product							
Hair & Scalp Conditioner, Bergamot, 12 Oz Each, 12 per Case	Case	024	$20.64	$20.64	$22.72	$23.63	
Body Lotion with Aloe, 14.8 Oz Each, 12 per Case	Case	LB92151	$13.98	$13.98	$18.67	$19.51	Catalog Number updated on 6/14/2021
Tampon, Super Absorbency, Cardboard Applicator, 500 per Case	Case	SBTPX500	$45.08	$45.08	$54.45	$56.63	
Toothbrush, Full-Sized, Clear Handle, Nylon Bristle Brush, 30-Tuft, Medium, 144 per Pack, 10 per Case	Case	BB28	$56.60	$56.60	$65.10	$67.70	

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WA00034777 - Bob Barker Co
Price List Effective October 5, 2016

Item Description	U/M	Catalog Number	Unit Price Yr1,2&3	Unit Price Yr4 &5	Unit Price Yr6 &7	Unit Price Yr8	Remark
Toothbrush Cover, Ivory Color, 1,440 per Case	Case	NTBC	$67.50	$67.50	$77.60	$80.70	
Deodorant, Roll-On, 1.5 Oz Each, 96 per Case	Case	RD7990	$26.62	$26.62	$33.61	$34.95	Catalog Number updated on 6/14/2021
Hand Sanitizer, 4 Oz Each, 60 per Case	Case	AG467	$38.60	$38.60	$72.33	$75.22	Catalog Number updated on 6/14/2021
A & D Ointment, 4 Oz Each, 72 per Case	Case	JZ-1155	$109.80	$109.80	$126.27	$131.32	Catalog Number updated on 6/14/2021

Notes:

1. Delivery Time: 3 to 30 days
2. Miscellaneous Inmate and Detention Supplies - 10% discount off the current product catalog price, with the exclusion of furniture and metal product lines.

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County of Sacramento

Open Item Contract

Contract and Purchasing
Services Division
9660 Ecology Ln.
Sacramento, CA 95827
(916) 876-6360

Reprint of
Open Item Contract WA00034777 / 09/01/2016

Your Vendor number with us
608629

BOB BARKER CO
PO BOX 429
FUQUAY VARINA NC 27526-0429

Vendors Contact Person: Ruchal Smith
Vendors Phone Number: 919-346-2189

This number must appear on all correspondence to the Purchasing Division.
Contract number/date
WA00034777 / 09/01/2016
Issuing Officer/Telephone
Poon, Vivian/916-876-6377

Signature: Vivian Poon

Contract Period
Valid from: 10/05/2016
Valid to: 10/04/2024

F.O.B. Dest., Freight Prepaid
Payment Terms: Due in 30 Days
Contractual maximum value: 2,703,000.00

You are hereby notified that the goods and/or services listed have been awarded to you subject to terms and conditions referenced and to the general conditions listed on the last page of contract.

Before supplying any goods or services to the County, the vendor must obtain one of the following 2 options (1) a CSO (Contract Shipping Order) number or (2) Procurement Card authorization from the ordering department. A CSO is an authorized release (Purchase Order) against the contract and shall be provided in written form. "Verbal" orders are not acceptable unless it is being processed on a Procurement Card. For either a CSO or a Procurement Card authorization to be considered valid, it must be within the scope of this contract and be consistent with its pricing, terms and conditions. The CSO number or Procurement Card authorization number must be referenced on all documents related to the order (packing slips, invoices, etc.) For Procurement Card authorizations, only reference the last 4 digits (for Security confidentially). Failure to obtain a CSO or Procurement Card authorization and reference its number may result in the delay or non-payment of the invoice.

20221007 Contract Change vp
Reso #2022-00809
Board of Supervisors' authorization to extend Contract No. WA00034777 with Bob Barker Co. for the period of October 5, 2022 through October 4, 2024

20220307 Contract Change vp
Changed Mattress #PJM30754 $88.43 to $63.03
Updated the pricing for the 6th year term
Listed the updated pricing on the column "Unit Price Yr 6 FINAL"
Enclosed Price List update to the contract

DocuSign Envelope ID: 329E34C6-1BCB-444F-A2BF-F04756D71965

As per email dated March 7, 2022 from Ruchal Smith

20211012 Contract Change vp
Updated the pricing for the 6th year term
Listed the updated pricing on the column "Unit Price Yr 6 FINAL"
Enclosed Price List update to the contract

20210614 Contract Change vp
Reso #2021-0263
Board of Supervisors' authorization to extend Contract No. WA00034777 with Bob Barker Co. for the period of October 5, 2021 through October 4, 2022

20191218 Contract Change vp
Reso #2019-0795
Board of Supervisors' authorization to extend Contract No. WA00034777 with Bob Barker Co. for the period of April 5, 2020 through October 4, 2021

Contractor Contact:

Ordering:
Debbie Sargent
Customer Service Representative
customerservicewest@bobbarker.com
800-334-9880 (Customer Service Line)

Crissa Rhead
Customer Service Representative
customerservicewest@bobbarker.com
800-334-9880 (Customer Service Line)

Lauretta Smuck
Customer Service Representative
customerservicewest@bobbarker.com
800-334-9880 (Customer Service Line

Contract Administration Updated on 6/14/2021:
Ruchal Smith
Contract Specialist
ruchalsmith@bobbarker.com
919-346-2189 (Direct)
800.334.9880 (Office)
800.322.7537 (Fax)

Erika Flynn
Bids Manager
erikaflynn@bobbarker.com
919-753-1657 (Direct)

****
IMPORTANT:
1. Price List Effective October 5, 2016 enclosed.
2. Miscellaneous Inmate and Detention Supplies - 10% discount off the current product catalog price, with the exclusion of furniture and metal product lines.
****

DocuSign Envelope ID: 329E34C6-1BCB-444F-A2BF-F04756D71965

This contract is established as a purchasing agreement between Bob Barker Co (Contractor) and the County of Sacramento (County) for the provision of Inmate and Detention Supplies, Solutions and Services as per the terms and conditions under the Request for Proposal (RFP), RFP8259, which is hereby incorporated by reference and made a part of this contract.

Price: As per the Price List Effective October 5, 2016 enclosed. Price shall be the lowest, current and most favorable with all applicable volume, special, promotional and governmental discounts during the contract period.

FOB Point: Pricing must be FOB destination to include inside delivery.

Deliveries: Deliveries shall be made on an "as required" basis by means of a CSO issued against the Contract.

Packing Slip: All deliveries must be accompanied by a legible Packing Slip that includes Item Description and Part Number of all items and CSO Number.

Invoicing:

A. The vendor will be expected to adhere to invoicing procedures as required by the County auditor-controller's office. Failure to comply with established procedures will be grounds for the County to terminate the contract.

B. Each invoice shall contain the following minimum information; "bill to" and "ship to" addresses; Contract Number; CSO Number; quantities; item descriptions; unit prices and extensions and invoice total.

C. A separate invoice shall be prepared for each order CSO received.

D. Invoicing to the County shall be done in arrears.

E. Invoice discrepancies shall be handled in a professional, courteous, and expeditious manner.

F. Invoice shall be submitted in duplicate each order entity.

G. In the state of California, government agencies are not allowed to pay excess interest and late charges. Per government code, section 926.10, interest shall be entitled commencing the 61st day and shall be 6% per annum.

Contract Term: In order to promote efficiency and economy, the County reserves the right to extend this contract for two additional twelve-month periods. Such extensions will be at the County's option, under the same terms and conditions, and will be subject to agreement between the Contractor and the County.

Quality: All materials and workmanship must be subject to inspection, examination and testing by County staff at any time. The County reserves the right to reject defective materials and workmanship and require correction.

Estimated Quantities: The quantity listed is an estimated requirement. The County does not guarantee to purchase a minimum quantity or does not guarantee to purchase Contractor's remaining stock.

Unrestricted Quantities: The County is not limited to purchase all of its requirements from this contract.

DocuSign Envelope ID: 329E34C6-1BCB-444F-A2BF-F04756D71965

Changes: The County shall retain the right to implement changes as necessary to uphold the original intent of the contract. This includes adding or deleting line items, as well as adjusting unit prices on the contract. Such changes shall not void the contract, but shall be added to or be deducted from the contract, as the case may be, by a fair and reasonable valuation, and subject to the mutual agreement of the parties.

Continuation: Continuation of the contract for the full term specified shall be contingent upon satisfactory performance by the contractor and products. Continuing un-rectifiable performance deficiencies may result in cancellation of the contract without penalty to the County.

Sales Report: Upon request from the County, Contractor is required to provide annual sales report including details of all the purchases made under the contract.

Termination:
A. County may terminate any resulting agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by County to contractor and it is later determined that contractor was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
B. County may terminate any resulting agreement for cause immediately upon giving written notice to contractor, should contractor materially fail to perform any of the covenants contained in this agreement in the time and/or manner specified. In the event of such termination, County may proceed with the work in any manner deemed proper by County. If notice of termination for cause is given by County to contractor and it is later determined that contractor was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
C. County may terminate or amend any resulting agreement immediately upon giving written notice to contractor, 1) if advised that funds are not available from external sources for this agreement or any portion thereof, including if distribution of such funds to the County is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in County's yearly proposed and/or final budget are not appropriated by County for this agreement or any portion thereof; or 4) if funds that were previously appropriated for this agreement are reduced, eliminated, and/or re-allocated by the County as a result of mid-year budget reductions.
D. If any resulting agreement is terminated under paragraph A or (C) above, contractor shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph a or c above, contractor shall be paid an amount which bears the same ratio to the total compensation authorized by the agreement as the services actually performed bear to the total services of contractor covered by this agreement, less payments of compensation previously made. In no event, however, shall County pay contractor an amount which exceeds a pro rata portion of the agreement total based on the portion of the agreement term that has elapsed on the effective date of the termination.
E. Contractor shall not incur any expenses under any resulting agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that contractor can legally cancel.

****
IMPORTANT:
1. Price List Effective October 5, 2016 enclosed.
2. Miscellaneous Inmate and Detention Supplies - 10% discount off the current product catalog price, with the exclusion of furniture and metal product lines.
****

DocuSign Envelope ID: 329E34C6-1BCB-444F-A2BF-F04756D71965

Item Mat Num	Tgt. qty.	Unit Description	Price / Unit	Unit of Measure	Extended Value
00010	2,100,000	Each All Contract Items - Inmate Supplies	1.00	/ 1 EA	2,100,000.00
		Price List Effective October 5, 2016.			
00020	43,000	Each Main Non Contract Items-Inmate Supplies	1.00	/ 1 EA	43,000.00
		10% discount off current product catalog.			
00030	310,000	Each RCCC Non Contract Items-Inmate Supplies	1.00	/ 1 EA	310,000.00
		10% discount off current product catalog			
00040	230,000	Each Youth Non Contract Items-Inmate Supplies	1.00	/ 1 EA	230,000.00
		10% discount off current product catalog			
00050	20,000	Each DHS&DHA NonContractItems-InmateSupplies	1.00	/ 1 EA	20,000.00
		10% discount off current product catalog			

DocuSign Envelope ID: 329E34C6-1BCB-444F-A2BF-F04756D71965

PURCHASE ORDER/CONTRACT GENERAL CONDITIONS

1. **BID/QUOTE/PROPOSAL/GENERAL CONDITIONS:** All of the terms and conditions of the bid, quote, or proposal against which this purchase document is applied, are hereby incorporated.
2. **SALES TAX NOT INCLUDED:** Unless otherwise definitely specified, the unit prices do not include California sales and use tax or Sacramento County sales and use tax.
3. **CASH DISCOUNTS:** In connection with any cash discount specified on this quote, time will be computed from the date of complete delivery of the supplies or equipment as specified, or from date correct invoices are received in the County Auditor's Office if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the County warrant or check.
4. **AMERICANS WITH DISABILITIES ACT:** As a condition of accepting a purchase order from the County of Sacramento, the contractor certifies that their business entity is in compliance with the Americans With Disabilities Act of 1990, as amended. Failure to certify shall prohibitthe award of a purchase order to the contractor.
5. **HOLD HARMLESS:** The contractor shall hold the County of Sacramento, its officers, agents, servants and employees harmless from liability of any nature or kind because of use of any copyrighted, or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used under this order, and agrees to defend, at his own expense, any and all actions brought against the County of Sacramento or himself because of the unauthorized use of such articles.
6. **DEFAULT BY CONTRACTOR:** In case of default by contractor, the County of Sacramento may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the contractor, the difference between the price named in the contract or purchase order and actual cost thereof to the County of Sacramento. Prices paid by the County shall be considered the prevailingmarket price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.
7. **RIGHT TO AUDIT:** The County of Sacramento reserves the right to verify, by examination of contractor's records, all invoiced amounts when firm prices are not set forth in the purchase agreement.
8. **ASSIGNMENT: (a)** This award is not assignable by contractor either in whole or in part, without the prior written approval of the Purchasing Agent of the County of Sacramento. **(b)** In submitting a quote to a public purchasing body, the quoter offers and agrees that if the quote is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec.15) & the Cartwright Act (Chapter 2 [commencing with Section 16700] of part 2 of Division 7 of the Business and Professions Code), arising from the purchases of goods, materials, or services by the quoter for sale to the purchasing body pursuant to the quote. Such assignment shall be made and become effective at the time the purchasing body tenders final payment.
9. **APPLICABILITY TO HEIRS:** Time is of the essence of each and all the provisions of this agreement, and, subject to the limitations of Paragraph 8, the provisions of this agreement shall extend to and be binding upon and inure to the benefits of the heirs, executors, administrators, successors, and assigns of the respective parties hereto.
10. **F.E.T. EXEMPTION:** Sacramento County is exempted from payment of Federal Excise Tax. No Federal tax shall be included in price.
11. **CHARGES NOT INCLUDED ON FACE NOT ACCEPTABLE:** No charge will be accepted for packing, boxing, or cartage, except as specified in the Notice of Award. Freight collect shipments will not be accepted. Merchandise will not be accepted if payment is to be made at the time ofdelivery.
12. **TITLE:** Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by seller to buyer shall pass to the buyer upon buyer's inspection and acceptance of such items at buyer's building.
13. **CHANGES WITHOUT NOTICE PROHIBITED:** No changes in price, quantity or merchandise will be recognized by the County of Sacramento without written notice of acceptance thereof prior to shipment.
14. **ALL UNDERSTANDINGS IN WRITING:** It is mutually understood and agreed that no alteration or variation of terms of this award shall be valid unless made in writing and signed by the parties hereto, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on any of the parties hereto.
15. **FORCE MAJEURE:** The contractor will not be held liable for failure or delay in the fulfillment of conditions of purchase order/contract if hindered or prevented by fire, strikes, or Acts of God.
16. **INVOICING:** Upon submission of itemized invoices, in duplicate, payment shall be made of the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Payment on partial deliveries may be made whenever amounts due so warrant or when requested by the vendor and approved by the Purchasing Agent.
17. **SPECIAL CONDITIONS:** Buyer's standard terms and conditions shall govern any contract awarded. If, after award of contract, contractor provides additional terms or conditions, they shall be considered void. To the extent not otherwise stated in the contract, the California Commercial code shall apply.
18. **INFORMATION TECHNOLOGY ASSURANCES:** Contractor shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by contractor in the performance of services under this agreement, other than those owned or provided by County, shall be free from viruses. Nothing in this provision shall be construedto limit any rights or remedies otherwise available to County under thisagreement.
19. **CHILD, FAMILY, AND SPOUSAL SUPPORT:** Contractor hereby certifies that either: **(a)** The Contractor is a government or non-profit entity; or **(b)** the Contractor has no Principal Owners (25% or more); or **(c)** each Principal Owner (25% or more) does not have any existing child support orders; or **(d)** Contractor's Principal Owners are currently in substantial compliance with any court-ordered child, family and spousal support order, including orders to provide current residence address, employment information, and whether dependenthealth insurance coverage is available. If not in compliance, PrincipalOwner has become current or has arranged a payment schedule with the Department of Child Support Services or the court. New Contractor shall certify that each of the following statements is true: **(a)** Contractor has fully complied with all applicable state and federal reporting requirements relating to employment reporting for its employees; and **(b)** Contractor has fully complied with all lawfully served wage and earnings assignment orders and notices of assignment and will continue to maintain compliance. **NOTE:** Failure to comply with state and federal reporting requirements regarding Contractor's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment constitutes a default under any contract with the County. Failure to cure such default within 90 days of notice by the County shall be grounds for termination of contract.
20. **COMPLIANCE WITH ALL LAWS, LICENSES AND PERMITS:** In the performance of their duties, Contractor shall comply with all applicable federal, state, and county statutes, ordinances, regulations,directives, and lawsand this contract shall be deemed to be executed within the State of California and construed with and governed by the laws of the State of California. Contractor shall possess and maintain necessary licenses, permits, certificates and credentials required by the laws of the UnitedStates, the State of California, County of Sacramento and all other credentials required by County. Failure to comply with all laws, licenses and permits shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Contract.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Accepting work performed by Banlin Construction, LLC for the Administration Building 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

The County entered into a contract with Banlin Construction, LLC for the New Administration Building Project (Res. 2020-101). Banlin Construction, LLC has completed all work required under the contract. The County has received all releases from DOR, ESD, and L&I. The project has been examined by the Director of Operations and Capital Programs and has been found to be in compliance with the project specifications and drawings and recommends release of retainage.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The Director of Operations and Capital Programs recommends that the Board formally accept Banlin Construction, LLC's work on the Administration Building, the project as complete, and authorize the release of retainage.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ACCEPTING WORK PERFORMED BY BANLIN CONSTRUCTION, LLC UNDER CONTRACT FOR THE NEW ADMINISTRATION BUILDING PROJECT

WHEREAS, on January 28th, 2020 the Board of County Commissioners entered into a contract with Banlin Construction, LLC of Kennewick, Washington (Resolution 2020-101) for the new Administration Building project; and

WHEREAS, the contractor has completed all work required pursuant to their contract with Benton County for the project; and

WHEREAS, all releases for the project retainage have been received from Department of Revenue, Employment Security Department, and Labor and Industries and all close out paperwork is in order; and

WHEREAS, this project has been examined by the Director of Operations and Capital Programs and has been found to be in compliance with the applicable project specifications and drawings; and

WHEREAS, it is the Director of Operations and Capital Programs' recommendation that the Board of Benton County Commissioners formally accept the contractor's work and the project as complete; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Director of Operations and Capital Programs' recommendation and hereby accepts the work performed by Banlin Construction, LLC for the new Administration Building project as being completed in conformance with the contract documents; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the release of the retainage.

Dated this 29th day of November 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: Procurement
cc: PA, Auditor, Banlin

D. Hope

STATE OF WASHINGTON
DEPARTMENT OF REVENUE

BENTON COUNTY
C/O ROBERT BLAIN
PO BOX 1001
PROSSER WA 99350-0954

September 20, 2022
Letter ID: L0020812445
UBI: 602-556-199
Account ID: 602-556-199
Account Type: Excise Tax
Audit ID: A63167
Audit Period: 01/01/20 - 04/30/22

We hereby certify that taxes, increases and penalties due or to become due from the contractor listed below under Chapter 180, Laws of 1935, as amended, with respect to the following publics works contract:

LINDSTROM CONSTRUCTION CO LLC

Public Agency: Benton County Public Works

Project Name: Benton County Administration Building

Contract Number: CB19-25

Description of Work: New Construction of a three story 41,422 SF Building

has been paid in full, or is in the Department's opinion readily collectible without recourse to the state's lien on the retained percentage.

This certificate is issued pursuant to the provision of Chapter 60.28 Revised Code of Washington for the sole purpose of informing the state, county, or municipal officer charged with the duty of disbursing or authorizing the payment of public funds to said contractor that the Department of Revenue hereby releases the state's lien on the retained percentage provided by this Chapter for excise taxes due from said contractor.

This certificate does not release said contractor from liability for additional tax that may be later determined to be due with respect to the above-mentioned contract or other activities.

Dated September 20, 2022 at Olympia, Washington,

State of Washington
Department of Revenue

Certifying Officer

Employment Security Department
WASHINGTON STATE

May 23, 2022

ESD# 000330072003
UBI# 602556199000

BANLIN CONSTRUCTION LLC
320 W. COLUMBIA DR
KENNEWICK,WA-99336

BENTON COUNTY PUBLIC WORKS

Employment Security Department hereby certifies those contributions, penalties and interest due from the above named contractor under the Employment Security Act have been paid in full or provided for with respect to the following public works contract:

Description Benton County Administration Building
Contract number CB19-25

The Employment Security Department hereby certifies that it has no claim pursuant to RCW 50.24.130 against the public body named above for tax attributable to service performed for said public body by the above named contractor on the above described contract. The Employment Security Department releases its lien on the retained percentage which is provided by RCW 60.28.040 for contributions, penalties and interest due from said contractor.

This certificate does not release said contractor from liability for additional contributions, penalties and interest which may be later determined to be due with respect to the above mentioned contract.

If we may be of further assistance, please call (360) 890-3499 or email publicworks@esd.wa.gov

EMPLOYMENT SECURITY DEPARTMENT

STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

PO Box 44274 Olympia, Washington 98504-4274

November 15, 2022

BENTON COUNTY PUBLIC WORKS
PO BOX 1001
PROSSER WA 99350

CERTIFICATE TO RELEASE L&I'S HOLD ON RETAINAGE

The Washington State Department of Labor & Industries is granting approval to release our hold on the retained amount for **BENTON COUNTY ADMINISTRATION BUILDING** , **Contract CB19-25**, **Affidavit 1109328** to the following contractor:

BANLIN CONSTRUCTION LLC	5966001	602 556 199

We have determined that all workers' compensation premiums, increases, and penalties for this contractor have been paid in full or are readily collectible without recourse to the retained funds, per chapter 60.28 RCW.

The contractor may still be liable for payment if we later determine they owe additional premiums related to this contract or other activities.

Before final payment can be made to the contractor, you will also need to receive releases from the Departments of Revenue and Employment Security Department in addition to ensuring:

- All liens against retainage have been satisfied
- All *Affidavit of WagesPaid* forms have been filed

Thank you,

Christina Summers
Contract Release Specialist
(360)902-5772
SUMC235@LNI.WA.GOV

cc: BANLIN CONSTRUCTION LLC
320 W COLUMBIA DR
KENNEWICK WA 99336-3680

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	Executing Third Contract Amendment with Moon Security Services, Inc. for Security & Fire Monitoring Services
Presenter:	N/A
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 Information

Resolution 2020-072 authorized the Board of Benton County Commissioners to sign a Personal Services Contract for fire and security monitoring services at various County locations with Moon Security Services.

Resolution 2021-727 authorized the Chairman of the Board of County Commissioners to sign the First Contract amendment that replaced the analog communicator with a digital communicator at the Justice Center.

Resolution No. 2022-738, authorized the Chairman of the Board of County Commissioners to sign the Second Contract Amendment with Moon Security Services, Inc. that added the Coroner's Office & the new Moderate Risk Waste Facility to the monitoring services.

Benton County recently purchased the former Kennewick General Hospital site and the monitoring services need to be transferred to the County.

A contract amendment has been prepared, reviewed, and approved as to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division and executed by Moon Security Services, Inc.

Fiscal Impact

Amount: $88 per month excluding W.S.S.T.

Fund: General Fund (Fund # 0010) – Facilities Department

Recommendation

Execute the contract amendment for additional security & fire monitoring services with Moon Security Services, Inc. and authorize the Chairman to sign the said Contract.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ENTERING INTO THE THIRD AMENDMENT TO THE PERSONAL SERVICES CONTRACT BETWEEN BENTON COUNTY AND MOON SECURITY SERVICES, INC.

WHEREAS, Resolution 2020-072 authorized the Board of Benton County Commissioners to sign a Personal Services Contract for fire and security monitoring services at various County locations with Moon Security Services; and

WHEREAS, Resolution 2021-727 authorized the Chairman of the Board of County Commissioners to sign the First Contract Amendment that replaced the analog communicator with a digital communicator at the Justice Center; and

WHEREAS, Resolution No. 2022-738, authorized the Chairman of the Board of County Commissioners to sign the Second Contract Amendment with Moon Security Services, Inc. that added the Coroner's Office & the new Moderate Risk Waste Facility to the monitoring services; and

WHEREAS, Benton County recently purchased the former Kennewick General Hospital site and the monitoring services need to be transferred to the County; and

WHEREAS, the proposed Third Amendment to the Personal Services Contract would update the monitoring costs to include the monitoring of the former Kennewick General Hospital site; and

WHEREAS, a Third Amendment has been prepared, has been reviewed and approved by a Deputy Prosecuting Attorney, has been signed by Moon Security Services, Inc., and is recommended for approval by the Director of Operations & Capital Programs; **NOW, THEREFORE,**

BE IT RESOLVED, that the attached Third Amendment to the Personal Services Contract between Benton County and Moon Security Services, Inc. is hereby approved, and the Chairman of the Board of Benton County Commissioners is authorized to sign said Amendment; and

BE IT FURTHER RESOLVED, the monitoring fees for the former Kennewick General Hospital site will be $88.00 per month; and

BE IT FURTHER RESOLVED, all other terms and conditions of said Personal Services Contract remain the same.

Dated this 29th day of November 2022.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: Purchasing Department
c: Auditor, Sonia (PA), Facilities, & Procurement

P. Schut

DocuSign Envelope ID: 969E4684-F267-451F-A91A-394AFEDB4F0F

THIRD CONTRACT AMENDMENT
to the
PERSONAL SERVICES CONTRACT

THIS THIRD CONTRACT AMENDMENT (hereinafter "Third 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 **MOON SECURITY SERVICE, INC.** a Washington for profit corporation authorized to do business in the State of Washington, with its principal offices at 515 West Clark Street, Pasco, WA 99302 (hereinafter "CONTRACTOR").

WHEREAS, per Benton County Resolution No. 2020-072, the COUNTY entered into a Personal Services Contract with Moon Security Service, Inc., beginning January 1, 2020 and expiring December 31, 2022 (hereinafter the "CONTRACT"), whereby CONTRACTOR agreed to provide fire and security monitoring services for various Benton County locations; and

WHEREAS, per Benton County Resolution No. 2021-727, the COUNTY signed the First Contract Amendment with Moon Security Service, Inc.(hereinafter the "CONTRACT"), whereby the Justice Center Building was upgraded from analog communicator to digital communicator; and

WHEREAS, per Benton County Resolution No. 2022-738, the COUNTY signed the Second Contract Amendment with Moon Security Service, Inc.(hereinafter the "CONTRACT"), whereby a new security system was added to the Coroner's Office & the new Moderate Risk Waste Facility was added to the monitoring service; and

WHEREAS, Benton County recently purchased the former Kennewick General Hospital site and the monitoring services need to be transferred to the County; and

WHEREAS, the monthly monitoring cost for the former Kennewick General Hospital site are $88 a month and

WHEREAS, this Third Amendment is necessary to update Exhibit A of the CONTRACT with the new monitoring costs for new County Facilities, and the Parties have mutually agreed to these changes; **NOW THEREFORE**

The parties agree that all other provisions of the CONTRACT remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Third Amendment to the CONTRACT to be signed by their duly constituted legal representatives and it is effective on the last date signed.

FOR BENTON COUNTY

Chairman Date

MOON SECURITY SERVICES, INC.

DocuSigned by: Tom Pitcher 6088EBDEE9848B... 11/9/2022

Signature Date

Tom Pitcher

Name

General Manager

Title

APPROVED AS TO FORM:

DocuSigned by: Eric Andrews B4E7673BB8A1486...

Benton County Deputy Prosecuting Attorney, Civil

DocuSign Envelope ID: 969E4684-F267-451F-A91A-394AFEDB4F0F

Moon Security Services, Inc.
P.O. Drawer B, Pasco, WA 99302
office 509.545.1881 · toll-free 800.722.1070 · fax 509.545.4585
ccarlson@moonsecurity.com

Quote

Bid: **Benton County Facility (old KGH/Trios building)**
To: Paul Schut
900 South Auburn Street
Kennewick, Washington 99336

Date: 08/24/2022
Phone: 509-737-3943
System Type: Security, Fire
Salesperson: Cole Carlson - 38 (38-101162)

Benton County Facilities - Monitoring

#	QTY	MFR	MODEL	DESCRIPTION
1	1	NEW ACCOUNT	BENTON COUNTY (OLD KGH) BUILDING (FIRE)	BASIC FIRE $49.00
2	1	NEW ACCOUNT	BENTON COUNTY (OLD KGH) BUILDING (SECURITY)	BASIC SECURITY $39.00
3	1	L416334	BENTON COUNTY MODERATE WASTE FACILITY (FIRE)	BASIC FIRE $44.00 + CELLULAR COMMUNICATION $25.29 + REPORT TEXT $5.00
4	1	310868	BENTON COUNTY CORONER (SECURITY)	BASIC SECURITY $44 + BASIC PLUS $8.50 + CELLULAR COMMUNICATOR $15.95 + VIRTUAL KEYPAD $10.00
5	1	112401	BENTON COUNTY CORONER (FIRE)	BASIC FIRE $44 + REPORT TEXT $5.00
6	1	524690	BENTON COUNTY JUSTICE CENTER	BASIC FIRE $44 + CELLULAR COMMUNICATOR $25.95 + REPORT TEXT $5.00
7	1	319963	BENTON COUNTY HEALTH DEPARTMENT	BASIC FIRE $44 + REPORT TEXT $5.00
8	1	814292	BENTON COUNTY FAIRGROUNDS	BASIC FIRE $44 + CELLULAR COMMUNICATOR $25.95 + REPORT TEXTS $5.00
9	1	310857	BENTON COUNTY ANIMAL CONTROL (FIRE)	BASIC FIRE $44 + REPORT TEXTS $5.00
10	1	510857	BENTON COUNTY ANIMAL CONTROL (SECURITY)	BASIC SECURITY $39.00 + PARTITION $20.00 + REPORT TEXTS $5.00
11	1	112408	BENTON COUNTY COURTHOUSE	BASIC FIRE $44 + REPORT TEXT $5.00
12	1	521684	BENTON CO. PUBLIC SERVICE	$44 BASIC FIRE + $25.95 CELLULAR COMMUNICATOR +$5.00 REPORT TEXT
13	1	310457	BENTON COUNTY KENNEWICK ROAD SHOP	$44 BASIC FIRE + $5.00 REPORT TEXT
14	1	310459	BENTON COUNTY PROSSER ROAD SHOP	$44 BASIC FIRE + $5.00 REPORT TEXT

Recurring

BASIC FIRE	$49.00
BASIC COMMERCIAL	$44.00
Total	**$93.00/mo**

Hook Up To Monitoring Agreement

Under this agreement, Moon Security Services, Inc. will perform only the programming and testing necessary to switch customer to its Central Dispatch Center.

Panel Type: Fire / Security Combo
Manufacturer: Silent Knight
Model: 5104B & 4820

Adding new recurring services to old KGH building.

Line Items reflect Amended Master Account to include:
Fire monitoring of Silent Knight 5104B communicating over phone lines at 900 S Auburn.
Security monitoring of Silent Knight 4820 communicating over phone lines at 216 W 10th.

Recurring reflects:
Fire monitoring of Silent Knight 5104B and Security monitoring of Silent Knight 4820.

NOTE:

SYSTEM SUBTOTAL		$0.00
TAX	8.70%	$0.00
GRAND TOTAL		**$0.00**

Content generated on: Friday, November 4, 2022 8:32:51 AM

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	11/29/2022
Subject:	Public Hearing on the 2023 Levy Rates, Tax Collections, and the Adoption of the Final Biennium Budgets for 2023-2024
Presenter:	Linda Ivey
Prepared By:	Linda Ivey
Reviewed By:	

PA Review, Approval to Form: ☐ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☒ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

Public Hearing on the 2023 Levy Rates, Tax Collections, and the Adoption of the Final Biennium Budgets for 2023-2024.

Suggested Motion

MOTION: Move to approve the Resolution certifying the Current Expense Levy for 2023 Collection.

MOTION: Move to approve the Resolution certifying the Benton County Road Levy for 2023 Collection.

MOTION: Move to approve the Resolution certifying budgeted taxes for collection in 2023 for Benton County.

MOTION: Move to approve the Resolution adopting the Final 2023-2024 Benton County Budgets as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE BOARD OF BENTON COUNTY COMMISSIONERS CERTIFYING THE CURRENT EXPENSE LEVY FOR 2023 COLLECTION

WHEREAS, the Board of Benton County Commissioners has properly given notice of the public hearing held November 29, 2022 to consider Benton County's 2023 property tax levy for the General fund budget pursuant to RCW 36.40 et. seq. and RCW 84.55.120; and,

WHEREAS, the Board of Benton County Commissioners, after hearing, and after duly considering all relevant evidence and testimony presented, has determined that Benton County's General fund for 2023 – 2024 requires sustainability in property tax revenue from the previous year, in addition to that resulting from the addition of new construction, improvements to property, newly constructed wind turbines, and any increase in the value of state assessed property, and any annexations that have occurred and refunds made, in order to discharge the expected expenses and obligations of Benton County's General fund for 2023 - 2024; and,

WHEREAS, the rate of inflation based on the percentage of change in the Implicit Price Deflator (IPD), as defined in RCW 84.55.005(1), published in the Bureau of Economic Analysis' September 2022 *Survey of Current Business* is 6.457% and,

WHEREAS, under RCW 84.55.005(2)(c), the limit factor for a taxing district with a population of 10,000 or over is the lesser of 101% or 100% plus inflation; and,

WHEREAS, the Board of Benton County Commissioners has determined, that to provide adequate funding for general operations and maintenance expenses in the years 2023 and thereafter, there is a substantial need for the establishment of a limit factor of 101% for 2023 to ensure sustainable funding in future years and to levy necessary property taxes for 2023; and,

WHEREAS, the previous year Current Expense highest lawful levy was $27,092,948.97; and,

WHEREAS, the previous year Current Expense levy base was $25,915,950.06, which is the previous year's actual levy of $25,940,794.00 less administrative refund of $24,843.94; **NOW THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners has determined that the property tax regular levy shall not be decreased and that an increase in the levy base of the 2023 regular property tax levy in the amount of $259,408 (which includes a State mandated $0.025/$1,000 for mental health and $0.01125/$1,000 for veterans' assistance), is appropriate and authorized for the 2023 Current Expense levy, and that this is a percentage increase of 1.00% from the previous year; and,

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners has decided to bank the 0.00% to help ensure adequate funding is available in future years; and,

BE IT FURTHER RESOLVED, that the above described increase is exclusive of additional revenues resulting from the County administrative refund levies for 2023; and,

BE IT FURTHER RESOLVED, that the above described increase is exclusive of additional revenues resulting from new construction, improvements to property, newly constructed wind turbines, and any increase in the value of state assessed property, and any annexations that have occurred and refunds made; and,

BE IT FURTHER RESOLVED, the Clerk is hereby directed to certify a copy of this resolution and forward the same to the Benton County Assessor so that the levies set herein can be extended upon the assessment roll of the County in the manner and at the time set forth by law.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: Assessor; Auditor; Treasurer; file

Prepared by: L. Ivey

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE BOARD OF BENTON COUNTY COMMISSIONERS CERTIFYING THE COUNTY ROAD LEVY FOR 2023 COLLECTION

WHEREAS, the Board of Benton County Commissioners has properly given notice of the public hearing held November 29, 2022 to consider Benton County's 2023 property tax levy for the County Road budget pursuant to RCW 36.40 et. seq. and RCW 84.55.120; and,

WHEREAS, the Board of Benton County Commissioners, after hearing, and after duly considering all relevant evidence and testimony presented, has determined that Benton County's Road fund for 2023 - 2024 requires sustainability in property tax revenue from the previous year, in addition to that resulting from the addition of new construction, improvements to property, newly constructed wind turbines, and any increase in the value of state assessed property, and any annexations that have occurred and refunds made, in order to discharge the expected expenses and obligations of Benton County's Road fund for 2023 - 2024; and,

WHEREAS, the rate of inflation based on the percentage of change in the Implicit Price Deflator (IPD), as defined in RCW 84.55.005(1), published in the Bureau of Economic Analysis' September 2021 *Survey of Current Business* is 6.457%; and,

WHEREAS, under RCW 84.55.005(2)(c), the limit factor for a taxing district with a population of 10,000 or over is the lesser of 101% or 100% plus inflation; and,

WHEREAS, the Board of Benton County Commissioners has determined, that to provide adequate funding for the road projects expected in years 2023 and thereafter, there is a substantial need for the establishment of a limit factor of 101% for 2023 to ensure sustainable funding in future years and to levy necessary property taxes for 2023; and,

WHEREAS, the previous year County Road highest lawful levy was $8,286,886.24; and,

WHEREAS, the previous year County Road levy base of $7,227,716.89 which is the previous year's actual levy of $7,227,716.89 less administrative refund of $0.00; **NOW THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners has determined that the property tax road levy shall not be decreased and that an increase in the levy base of the 2023 road property tax levy in the amount of $72,277.00, is appropriate and authorized for the 2023 County Road levy, and that this is a percentage increase of 1.00% from the previous year; and,

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners has decided to bank the 0.00% to help ensure adequate funding is available in future years; and,

BE IT FURTHER RESOLVED, that the above described increase is exclusive of additional revenues resulting from the County administrative refund levies for 2023; and,

BE IT FURTHER RESOLVED, that the above described increase is exclusive of additional revenues resulting from new construction, improvements to property, newly constructed wind turbines, and any increase in the value of state assessed property, and any annexations that have occurred and refunds made; and,

BE IT FURTHER RESOLVED, the Clerk is hereby directed to certify a copy of this resolution and forward the same to the Benton County Assessor so that the levies set herein can be extended upon the assessment roll of the County in the manner and at the time set forth by law.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: Public Works; Assessor; Auditor; Treasurer; file

Prepared by: L. Ivey

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF CERTIFYING BUDGETED TAXES FOR COLLECTION IN THE YEAR 2023 FOR BENTON COUNTY

WHEREAS, the Board of Benton County Commissioners has properly given notice of the public hearing held November 29, 2022 to consider Benton County's 2023 property tax levy pursuant to RCW 36.40 et. seq. and RCW 84.55.120; **NOW THEREFORE**,

BE IT RESOLVED, pursuant to RCW 84.52.070, the Board of Benton County Commissioners hereby certifies the following estimated levy amounts for Benton County for 2023 collection as estimated in the County's budget, which will be adopted following a public hearing scheduled to be held on November 29, 2022:

Current Expense*	$27,177,395.85
Including: Mental Health	$ 719,787.32
Veteran's Assistance	$ 323,904.29
County Road	$ 7,575,217.38
Including: Diverted Road	$ 733,558.16
Administrative Refunds:	
Current Expense	$ 6,985.15
County Road	$ 6,871.62
	0
Veterans' Assistance	$ 69.84
Mental Health	$ 154.91

BE IT FURTHER RESOLVED, the actual levy amounts should be as requested and allowed by Resolutions _____ and _____.

*Note: The collections for Mental Health is to be collected at $0.025/$1,000 of assessed value and Veterans' Assistance is to be collected at $0.01125/$1,000 of assessed value.

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board

Chairman Pro Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: Public Works; Assessor, Auditor, Treasurer, file

Prepared by: L. Ivey

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF ADOPTING THE FINAL 2023 - 2024 BENTON COUNTY BUDGETS

WHEREAS, after notice given pursuant to RCW 36.40 et. seq. the first public hearing on the 2023 - 2024 budgets was held on November 29, 2022 for the purpose of fixing the final budgets; **NOW THEREFORE,**

BE IT RESOLVED, the 2023 – 2024 Benton County budgets are adopted by the Board of Benton County Commissioners at the following levels:

- Agency Expenses: Transfers-out (50000's) – category level within each department.
- Salary (51000's) – category level within each department, and line item level within each department for overtime, temporary help, and holiday pay.
- Benefits (52000's) – category level within each department, and line item level within each department for uniform & accessories (52105) and uniform laundry (52106). Employee payroll benefits for social security, retirement, paid family medical leave, and medical insurance cannot be used for employee benefits such as uniforms & accessories (52105), and uniform laundry (52106) without Board approval.
- Supplies (53000's) – category level within each department.
- Services and pass-through payments (54000's) – category level within each department.
- Capital outlays (56000's) – category level within each department.
- Debt service principal and debt service interest and issuance costs (57000s and 58000s) - category level within each department.
- Interfund payments (90000's) – line item level within each department with the exception of the County Road Fund (1010) which is at the object code level.

BE IT FURTHER RESOLVED, line item transfers from all categories, that are meant to create a new position, reclassify/regrade a position or increase an employee's step beyond the normal annual increase, in Salary (51000's) and/or Benefits (52000's), are to be brought before the Board of Commissioners under scheduled business for review and approval; and

BE IT FURTHER RESOLVED, line item transfers from all categories within each department, to or from overtime, temporary help, and holiday pay will need Board approval; and

BE IT FURTHER RESOLVED, line item transfers between categories within each department, with the exception of transfers between Supplies (53000's) and Services (54000's), will need Board approval; and

BE IT FURTHER RESOLVED, line item transfers **to** an Interfund payment (94000's) line item from a Supplies (53000's) or Services (54000's) line item within each department will not need Board approval; and

BE IT FURTHER RESOLVED, each department is required to account for expenditures and revenues within the prescribed BARS-assigned account numbers as detailed by each departmental budget; and

BE IT FURTHER RESOLVED per the detailed attachments to this resolution, the Benton County budgets for 2023 - 2024 are hereby adopted:

Total Current Expense Revenues	$173,017,665
Total Current Expense Expenditures	$173,050,756
To Balance	$ 33,091
Total Road Fund Revenues	$ 35,176,311
Total Road Fund Expenditures	$ 43,358,465
To Balance	$ 8,182,154
Total Other Funds Revenues	$151,415,754
Total Other Funds Expenditures	$281,227,362
To Balance	$129,811,608
Total Revenues	**$359,609,730**
Total Expenditures	**$497,636,583**
To Balance	**$138,026,853**

Dated this . . . . . day of . . . . . , 20 . . . .

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

cc: All Dept; State Auditor; Journal; file

Prepared by: L. Ivey

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	2023 Interlocal Agreement with City of Kennewick for District Court Services
Presenter:	Jerrod MacPherson
Prepared By:	Cami McKenzie
Reviewed By:	Jerrod MacPherson/Ryan Brown

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

The Amended and Restated Interlocal Agreement for District Court Services between Benton County and the City of Kennewick will expire on December 31, 2022. The County Administrator has been negotiating an Interlocal Agreement with the City of Kennewick and the parties have agreed to a new Interlocal Agreement, effective January 1, 2023 through December 31, 2027. The PA's office has reviewed and approved the Interlocal Agreement as to form.

Fiscal Impact

Recommendation

Recommend the Board approve the 2023 Interlocal Agreement between Benton County and the City of Kennewick for District Court Services, as presented.

Suggested Motion

I move to approve the attached 2023 Interlocal Agreement between Benton County and the City of Kennewick for District Court Services, effective January 1, 2023 through December 31, 2027 as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE 2023 INTERLOCAL AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK FOR DISTRICT COURT SERVICES

WHEREAS, per Resolution 2019-191 the Board entered into an Amended and Restated Interlocal Agreement with the City of Kennewick for District Court Services; and

WHEREAS, that Amended and Restated Interlocal Agreement expires on December 31, 2022; and

WHEREAS, Benton County and the City of Kennewick have negotiated a new Interlocal Agreement for District Court Services effective January 1, 2023, and upon execution by the parties and recording with the Benton County Auditor; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby agrees to execute the attached 2023 Interlocal Agreement between Benton County and the City of Kennewick for District Court Services; and

BE IT FURTHER RESOLVED, the attached Interlocal Agreement is effective January 1, 2023, and upon execution by the parties and recording with the Benton County Auditor through December 31, 2027.

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

cc: PA., City of Kennewick, BCDC, R. Brown C. McKenzie

Please return recorded document to:

Kennewick City Clerk
P. O. Box 6108
Kennewick, WA 99336

2023
INTERLOCAL AGREEMENT
BETWEEN
BENTON COUNTY
AND
THE CITY OF KENNEWICK
FOR DISTRICT COURT SERVICES

THIS AGREEMENT is effective January 1, 2023, by and between the CITY OF KENNEWICK, a municipal corporation, hereinafter called "City" and BENTON COUNTY, a political subdivision of the State of Washington, hereinafter called "County".

WHEREAS, the County has an established District Court System; and

WHEREAS, a municipal department of the Benton County District Court for the City was established by the Benton County Commissioners pursuant to the adoption of the Benton County District Court Districting Plan on June 8, 1973, under Chapters 3.38 and 3.46, Revised Code of Washington; and

WHEREAS, in 2009 the City and the County agreed to terminate the City's municipal department and that the County would provide the services of its District Court System to the City pursuant to an Interlocal Agreement authorized by RCW 39.34.180 and executed in July and August of 2009 by the City and the County, respectively; and

WHEREAS, the District Court Districting Plan was amended on August 31, 2009, and is consistent with this Interlocal Agreement; and

WHEREAS, under the parties' 2019 agreement, the City currently pays its pro rata share of the Judges' salaries and benefits, the salaries and benefits of the District Court personnel, and all other costs of District Court, except for the costs of a Mental Health Court and Veteran's Court, based on the City's share of usage of District Court; and

WHEREAS, the 2019 agreement expires December 31, 2022, and the parties wish to set forth their agreement commencing January 1, 2023; NOW THEREFORE,

BE IT AGREED by and between the parties as follows:

(1) **District Court Services.** The County and its District Court shall furnish to the City the facilities and services of the Benton County District Court for all cases filed by the City in the District Court, over which District Court has jurisdiction, for purposes of enforcing violation of state statutes or city ordinances committed by persons within the City's jurisdiction that constitute gross misdemeanors, misdemeanors, or civil infractions. Nothing in this Agreement shall permit the City to regulate the administration of the court. District Court services shall include the use of the County's Mental Health and Veterans courts, if any, for City defendants that meet the participation requirements so long as the County imposes an additional sales tax of three-tenths of one percent authorized by RCW 82.14.450, commonly referred to as the Public Safety Tax.

(2) **Compensation.**

(a) Calculation of Percentage of Usage. The parties have determined, and do hereby agree, that in return for the facility usage and services of District Court, the City shall pay to the County, the City's pro rata share of the total costs of and overhead of the District Court, including the salaries and benefits of the District Court Judges. This pro rata share shall be an amount equal to the ratio of the total number of violations filed by the City, whether infractions or criminal violations, to the total number of: (1) violations filed by all jurisdictions in the District Court, plus (2) felony complaints filed in District Court, plus (3) small claims cases filed, plus (4) civil cases filed, plus (5) petitions for anti-harassment orders. The payment of such pro rata share of costs by the City constitutes a fair reimbursement to the County for the facility usage and services of District Court, and the parties agree that no separate filing fee shall be required from the City for the cases it files in District Court under this Agreement.

(b) Costs to be Allocated by Percentage. The total costs allocated by paragraph 2(a) above shall include, but are not limited to, the salaries and benefits of the District Court Judges, salaries and benefits of the District Court personnel and all other costs of and overhead for the District Court, excluding: (i) the costs of public defense for criminal defendants in District Court, which shall be reimbursed by the City pursuant to a separate agreement between the parties; and (ii) the costs of a Mental Health Court and a Veteran's Court established under chapter 2.30, RCW that are reflected in a budget separate from the County's General Fund Budget for expenses payable from the Public Safety Tax Budget.

(c) Time Period for Determining Percentage. The ratio described above in paragraph 2(a) shall for each year be based on the figures for the twelve-month time period consisting of the preceding July through June, unless the Presiding District Court Judge notifies the County and the City that a different 12-month period will be used for such calculations.

(d) Credit for Probation Assessments. The County will give the City a credit each month in the billing set forth in paragraph (3) below equal to the amount of revenue received in the prior month in the form of probation assessment payments in criminal cases prosecuted by the City.

(e) Administration Cost: In addition to the amounts owed under Sections 3(a) through 3(d) above, the City shall pay a monthly Administration Fee in the amount of five percent (5%) of the expenditures in the prior month from the Benton County General Fund, Fund 0010, District Court Department 111.

(3) **Billings.** The County will invoice the City monthly for the City's pro rata share of the expenses incurred by District Court in the preceding month. All sums due to the County from the City shall be paid within thirty (30) days of mailing of such invoice, via regular mail or electronic mail.

(4) **Distribution of Revenues to the City.** All money received by the District Court pursuant to court action in a case filed by the City, including penalties, fines, bail forfeitures, fees and costs, except as otherwise provided herein, shall be paid by District Court to the City; provided, that the County may retain all money received as payments of assessments for probation costs ordered in the City's cases. The City shall not be entitled to any revenue received by District Court other than revenues received pursuant to court action in a case filed by the City.

(5) **City Obligations with Respect to Revenues.** The District Court shall provide the City a Remittance Summary prepared by the Washington State Administration of the Courts (AOC) for the appropriate time period at the same time it makes a payment to the City under paragraph (4) above. It shall be the City's obligation to pay from the revenues, including interest revenues, that it receives pursuant to paragraph (4) above, all amounts due and owing to the State of Washington and to deposit that portion of the revenues that it retains in accordance with law. The City agrees to hold the County harmless with respect to any claims or allegations that the City has not remitted the required amounts to the State of Washington.

(6) **Term.** This Agreement shall be effective upon execution by the parties and recording with the Benton County Auditor and shall remain in effect through December 31, 2027, unless earlier terminated pursuant to the terms of this Agreement or extended by written amendment.

(7) **Termination and Notice of Termination.** This Agreement is terminable by either party without cause if such party provides written notice of intent to terminate in accordance with RCW 3.50.810 and 35.20.010. Any such notice from the City must be received by the Chairperson of the Benton Board of County Commissioners by the statutorily required date, and any such notice from the County must be received by the Mayor of the City by the statutorily required date.

(8) **Ownership of Property.** All real and personal property used in the operation of District Court has been and shall continue to be acquired by the County, owned by the County and may be disposed of in the discretion of the County.

(9) **Waiver of Binding Arbitration.** Provided that this Agreement is not earlier terminated pursuant to the terms stated above, this Agreement will expire on December 31, 2027, unless a written renewal Agreement is executed prior to such date. The City and the County waive and release any right to invoke binding arbitration under RCW 3.62.070, 35.20.010, 39.34.180 or other applicable law as related to this Agreement, any extension or amendment of this Agreement, or any discussions or negotiations relating thereto.

(10) **Advisory Committee.** The appropriate costs and overhead of the District Court shall be determined by the County legislative authority. An advisory committee composed of the Chairperson of the Board of Benton County Commissioners or his or her designee, the Presiding Judge of the District Court, the District Court Administrator, and a designee from each city within the County that pursuant to agreement pays a pro rata share of the cost of District Court will meet prior to the adoption of each General Fund Budget by the County to review that portion of the General Fund Budget pertaining to District Court and may make a recommendation on such budget to the County legislative authority. Such committee may also make a recommendation to the Presiding Judge regarding any requested change in the twelve-month period used to allocate costs for the following year. Additionally, such committee shall meet in odd numbered years prior to September 15th of each such year to conduct a mid-budget review for the benefit of the City's annual budget preparation process.

(11) **Indemnification Regarding City Ordinances.** The City agrees that the County does not assume any liability or responsibility for or release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any City ordinance, rule, regulation, policy or procedure is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney fees. This provision shall survive the termination of this Agreement.

(12) **General Indemnification.** The City and the County each agree to defend and indemnify the other and its elected and appointed officials, officers, employees and agents against all claims, losses, damages, suits, and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of, or result from, the negligence or willful misconduct of the indemnitor or its elected or appointed officials, officers, employees and agents in the performance of this Agreement. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor or of any contractor or subcontractor or indemnitor. The indemnitor waives its immunity under Title 51 of the Revised Code of Washington solely for the

purpose of this provision and acknowledges that this waiver was mutually negotiated. This provision shall survive the termination of this Agreement.

(13) **Captions.** The paragraph and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement.

(14) **Entire Agreement.** This Agreement contains the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties, including but not limited to the interlocal agreement executed by the parties in 2015 for District Court Services.

(15) **Governing Law.** This Agreement shall be interpreted in accordance with the laws and court rules of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the parties agree that such action shall be brought in a court of competent jurisdiction situated in Benton County, Washington.

(16) **No Third Party Rights.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

(17) **Amendment or Waiver.** This Agreement may not be modified or amended except by written instrument approved by resolution or ordinance duly adopted by the City and the

County. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year herein above mentioned.

Date:_____

CITY OF KENNEWICK

_____
MARIE MOSLEY, City Manager

Attest:

_____
TERRI WRIGHT, City Clerk

Approved as to Form:

_____
LISA BEATON, City Attorney

Date:_____

BOARD OF COUNTY COMMISSIONERS
OF BENTON COUNTY

_____
SHON SMALL, Chairman

_____
JEROME DELVIN, Commissioner

_____
WILL MCKAY, Commissioner

Constituting the Board of County Commissioners of Benton County, Washington.

Attest:

_____
CAMI MCKENZIE, Clerk of the Board

Approved as to Form:

_____
RYAN BROWN, Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	2023 Interlocal Agreement with City of Prosser for District Court Services
Presenter:	Jerrod MacPherson
Prepared By:	Cami McKenzie
Reviewed By:	Jerrod MacPherson/Ryan Brown

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

The Amended and Restated Interlocal Agreement for District Court Services between Benton County and the City of Prosser will expire on December 31, 2022. The County Administrator has been negotiating an Interlocal Agreement with the City of Prosser and the parties have agreed to a new Interlocal Agreement, effective January 1, 2023 through December 31, 2027. The PA's office has reviewed and approved the Interlocal Agreement as to form.

Fiscal Impact

Recommendation

Recommend the Board approve the 2023 Interlocal Agreement between Benton County and the City of Prosser for District Court Services, as presented.

Suggested Motion

I move to approve the attached 2023 Interlocal Agreement between Benton County and the City of Prosser for District Court Services, effective January 1, 2023 through December 31, 2027 as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE 2023 INTERLOCAL AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF PROSSER FOR DISTRICT COURT SERVICES

WHEREAS, per Resolution 2019-190 the Board entered into an Amended and Restated Interlocal Agreement with the City of Prosser for District Court Services; and

WHEREAS, that Amended and Restated Interlocal Agreement expires on December 31, 2022; and

WHEREAS, Benton County and the City of Prosser have negotiated a new Interlocal Agreement for District Court Services effective January 1, 2023, and upon execution by the parties and recording with the Benton County Auditor; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby agrees to execute the attached 2023 Interlocal Agreement between Benton County and the City of Prosser for District Court Services; and

BE IT FURTHER RESOLVED, the attached Interlocal Agreement is effective January 1, 2023, and upon execution by the parties and recording with the Benton County Auditor through December 31, 2027.

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

cc: PA., City of Prosser, BCDC, R. Brown C. McKenzie

Please return recorded document to:

Prosser City Clerk
P. O. Box 1639
Prosser, WA 99350

2023
INTERLOCAL AGREEMENT
BETWEEN
BENTON COUNTY
AND
THE CITY OF PROSSER
FOR DISTRICT COURT SERVICES

THIS AGREEMENT is effective January 1, 2023, by and between the CITY OF PROSSER, a municipal corporation, hereinafter called "City" and BENTON COUNTY, a political subdivision of the State of Washington, hereinafter called "County".

WHEREAS, the County has an established District Court System; and

WHEREAS, a municipal department of the Benton County District Court for the City was established by the Benton County Commissioners pursuant to the adoption of the Benton County District Court Districting Plan on June 8, 1973, under Chapters 3.38 and 3.46, Revised Code of Washington; and

WHEREAS, in 2009 the City and the County agreed to terminate the City's municipal department and that the County would provide the services of its District Court System to the City pursuant to an Interlocal Agreement authorized by RCW 39.34.180 and executed in July and August of 2009 by the City and the County, respectively; and

WHEREAS, the District Court Districting Plan was amended on August 31, 2009, and is consistent with this Interlocal Agreement; and

WHEREAS, under the parties' 2019 agreement, the City currently pays its pro rata share of the Judges' salaries and benefits, the salaries and benefits of the District Court personnel, and all other costs of District Court, except for the costs of a Mental Health Court and Veteran's Court, based on the City's share of usage of District Court; and

WHEREAS, the 2019 agreement expires December 31, 2022, and the parties wish to set forth their agreement commencing January 1, 2023; NOW THEREFORE,

BE IT AGREED by and between the parties as follows:

(1) **District Court Services.** The County and its District Court shall furnish to the City the facilities and services of the Benton County District Court for all cases filed by the City in the District Court, over which District Court has jurisdiction, for purposes of enforcing violation of state statutes or city ordinances committed by persons within the City's jurisdiction that constitute gross misdemeanors, misdemeanors, or civil infractions. Nothing in this Agreement shall permit the City to regulate the administration of the court. District Court services shall include the use of the County's Mental Health and Veterans courts, if any, for City defendants that meet the participation requirements so long as the County imposes an additional sales tax of three-tenths of one percent authorized by RCW 82.14.450, commonly referred to as the Public Safety Tax.

(2) **Compensation.**

(a) Calculation of Percentage of Usage. The parties have determined, and do hereby agree, that in return for the facility usage and services of District Court, the City shall pay to the County, the City's pro rata share of the total costs of and overhead of the District Court, including the salaries and benefits of the District Court Judges. This pro rata share shall be an amount equal to the ratio of the total number of violations filed by the City, whether infractions or criminal violations, to the total number of: (1) violations filed by all jurisdictions in the District Court, plus (2) felony complaints filed in District Court, plus (3) small claims cases filed, plus (4) civil cases filed, plus (5) petitions for anti-harassment orders. The payment of such pro rata share of costs by the City constitutes a fair reimbursement to the County for the facility usage and services of District Court, and the parties agree that no separate filing fee shall be required from the City for the cases it files in District Court under this Agreement.

(b) Costs to be Allocated by Percentage. The total costs allocated by paragraph 2(a) above shall include, but are not limited to, the salaries and benefits of the District Court Judges, salaries and benefits of the District Court personnel and all other costs of and overhead for the District Court, excluding: (i) the costs of public defense for criminal defendants in District Court, which shall be reimbursed by the City pursuant to a separate agreement between the parties; and (ii) the costs of a Mental Health Court and a Veteran's Court established under chapter 2.30, RCW that are reflected in a budget separate from the County's General Fund Budget for expenses payable from the Public Safety Tax Budget.

(c) Time Period for Determining Percentage. The ratio described above in paragraph 2(a) shall for each year be based on the figures for the twelve-month time period consisting of the preceding July through June, unless the Presiding District Court Judge notifies the County and the City that a different 12-month period will be used for such calculations.

(d) Credit for Probation Assessments. The County will give the City a credit each month in the billing set forth in paragraph (3) below equal to the amount of revenue received in the prior month in the form of probation assessment payments in criminal cases prosecuted by the City.

(e) Administration Cost: In addition to the amounts owed under Sections 3(a) through 3(d) above, the City shall pay a monthly Administration Fee in the amount of five percent (5%) of the expenditures in the prior month from the Benton County General Fund, Fund 0010, District Court Department 111.

(3) **Billings.** The County will invoice the City monthly for the City's pro rata share of the expenses incurred by District Court in the preceding month. All sums due to the County from the City shall be paid within thirty (30) days of mailing of such invoice, via regular mail or electronic mail.

(4) **Distribution of Revenues to the City.** All money received by the District Court pursuant to court action in a case filed by the City, including penalties, fines, bail forfeitures, fees and costs, except as otherwise provided herein, shall be paid by District Court to the City; provided, that the County may retain all money received as payments of assessments for probation costs ordered in the City's cases. The City shall not be entitled to any revenue received by District Court other than revenues received pursuant to court action in a case filed by the City.

(5) **City Obligations with Respect to Revenues.** The District Court shall provide the City a Remittance Summary prepared by the Washington State Administration of the Courts (AOC) for the appropriate time period at the same time it makes a payment to the City under paragraph (4) above. It shall be the City's obligation to pay from the revenues, including interest revenues, that it receives pursuant to paragraph (4) above, all amounts due and owing to the State of Washington and to deposit that portion of the revenues that it retains in accordance with law. The City agrees to hold the County harmless with respect to any claims or allegations that the City has not remitted the required amounts to the State of Washington.

(6) **Term.** This Agreement shall be effective upon execution by the parties and recording with the Benton County Auditor and shall remain in effect through December 31, 2027, unless earlier terminated pursuant to the terms of this Agreement or extended by written amendment.

(7) **Termination and Notice of Termination.** This Agreement is terminable by either party without cause if such party provides written notice of intent to terminate in accordance with RCW 3.50.810 and 35.20.010. Any such notice from the City must be received by the Chairperson of the Benton Board of County Commissioners by the statutorily required date, and any such notice from the County must be received by the Mayor of the City by the statutorily required date.

(8) **Ownership of Property.** All real and personal property used in the operation of District Court has been and shall continue to be acquired by the County, owned by the County and may be disposed of in the discretion of the County.

(9) **Waiver of Binding Arbitration.** Provided that this Agreement is not earlier terminated pursuant to the terms stated above, this Agreement will expire on December 31, 2027, unless a written renewal Agreement is executed prior to such date. The City and the County waive and release any right to invoke binding arbitration under RCW 3.62.070, 35.20.010, 39.34.180 or other applicable law as related to this Agreement, any extension or amendment of this Agreement, or any discussions or negotiations relating thereto.

(10) **Advisory Committee.** The appropriate costs and overhead of the District Court shall be determined by the County legislative authority. An advisory committee composed of the Chairperson of the Board of Benton County Commissioners or his or her designee, the Presiding Judge of the District Court, the District Court Administrator, and a designee from each city within the County that pursuant to agreement pays a pro rata share of the cost of District Court will meet prior to the adoption of each General Fund Budget by the County to review that portion of the General Fund Budget pertaining to District Court and may make a recommendation on such budget to the County legislative authority. Such committee may also make a recommendation to the Presiding Judge regarding any requested change in the twelve-month period used to allocate costs for the following year. Additionally, such committee shall meet in odd numbered years prior to September 15th of each such year to conduct a mid-budget review for the benefit of the City's annual budget preparation process.

(11) **Indemnification Regarding City Ordinances.** The City agrees that the County does not assume any liability or responsibility for or release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any City ordinance, rule, regulation, policy or procedure is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney fees. This provision shall survive the termination of this Agreement.

(12) **General Indemnification.** The City and the County each agree to defend and indemnify the other and its elected and appointed officials, officers, employees and agents against all claims, losses, damages, suits, and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of, or result from, the negligence or willful misconduct of the indemnitor or its elected or appointed officials, officers, employees and agents in the performance of this Agreement. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor or of any contractor or subcontractor or indemnitor. The indemnitor waives its immunity under Title 51 of the Revised Code of Washington solely for the

purpose of this provision and acknowledges that this waiver was mutually negotiated. This provision shall survive the termination of this Agreement.

(13) **Captions.** The paragraph and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement.

(14) **Entire Agreement.** This Agreement contains the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties, including but not limited to the interlocal agreement executed by the parties in 2015 for District Court Services.

(15) **Governing Law.** This Agreement shall be interpreted in accordance with the laws and court rules of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the parties agree that such action shall be brought in a court of competent jurisdiction situated in Benton County, Washington.

(16) **No Third Party Rights.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

(17) **Amendment or Waiver.** This Agreement may not be modified or amended except by written instrument approved by resolution or ordinance duly adopted by the City and the County. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year herein above mentioned.

Date:_____

CITY OF PROSSER

_____
RANDY TAYLOR, Mayor

Attest:

_____
RACHEL SHAW, City Clerk

Approved as to Form:

_____
HOWARD SAXTON, City Attorney

Date:_____

BOARD OF COUNTY COMMISSIONERS
OF BENTON COUNTY

_____
SHON SMALL, Chairman

_____
JEROME DELVIN, Commissioner

_____
WILL MCKAY, Commissioner

Constituting the Board of County Commissioners of Benton County, Washington.

Attest:

_____
CAMI MCKENZIE, Clerk of the Board

Approved as to Form:

_____
RYAN BROWN, Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	2023 Interlocal Agreement with City of Richland for District Court Services
Presenter:	Jerrod MacPherson
Prepared By:	Cami McKenzie
Reviewed By:	Jerrod MacPherson/Ryan Brown

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

The Amended and Restated Interlocal Agreement for District Court Services between Benton County and the City of Richland will expire on December 31, 2022. The County Administrator has been negotiating an Interlocal Agreement with the City of Richland and the parties have agreed to a new Interlocal Agreement, effective January 1, 2023 through December 31, 2027. The PA's office has reviewed and approved the Interlocal Agreement as to form.

Fiscal Impact

Recommendation

Recommend the Board approve the 2023 Interlocal Agreement between Benton County and the City of Richland for District Court Services, as presented.

Suggested Motion

I move to approve the attached 2023 Interlocal Agreement between Benton County and the City of Richland for District Court Services, effective January 1, 2023 through December 31, 2027 as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE 2023 INTERLOCAL AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF RICHLAND FOR DISTRICT COURT SERVICES

WHEREAS, per Resolution 2019-192 the Board entered into an Amended and Restated Interlocal Agreement with the City of Richland for District Court Services; and

WHEREAS, that Amended and Restated Interlocal Agreement expires on December 31, 2022; and

WHEREAS, Benton County and the City of Richland have negotiated a new Interlocal Agreement for District Court Services effective January 1, 2023, and upon execution by the parties and recording with the Benton County Auditor; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby agrees to execute the attached 2023 Interlocal Agreement between Benton County and the City of Richland for District Court Services; and

BE IT FURTHER RESOLVED, the attached Interlocal Agreement is effective January 1, 2023, and upon execution by the parties and recording with the Benton County Auditor through December 31, 2027.

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

cc: PA., City of Richland, BCDC, R. Brown C. McKenzie

Please return recorded document to:

Richland City Clerk
625 Swift Blvd., MS-05
Richland, WA 99352

2023
INTERLOCAL AGREEMENT
BETWEEN
BENTON COUNTY
AND
THE CITY OF RICHLAND
FOR DISTRICT COURT SERVICES

THIS AGREEMENT is effective January 1, 2023, by and between the CITY OF RICHLAND, a municipal corporation, hereinafter called "City" and BENTON COUNTY, a political subdivision of the State of Washington, hereinafter called "County".

WHEREAS, the County has an established District Court System; and

WHEREAS, a municipal department of the Benton County District Court for the City was established by the Benton County Commissioners pursuant to the adoption of the Benton County District Court Districting Plan on June 8, 1973, under Chapters 3.38 and 3.46, Revised Code of Washington; and

WHEREAS, in 2009 the City and the County agreed to terminate the City's municipal department and that the County would provide the services of its District Court System to the City pursuant to an Interlocal Agreement authorized by RCW 39.34.180 and executed in July and August of 2009 by the City and the County, respectively; and

WHEREAS, the District Court Districting Plan was amended on August 31, 2009, and is consistent with this Interlocal Agreement; and

WHEREAS, under the parties' 2019 agreement, the City currently pays its pro rata share of the Judges' salaries and benefits, the salaries and benefits of the District Court personnel, and all other costs of District Court, except for the costs of a Mental Health Court and Veteran's Court, based on the City's share of usage of District Court; and

WHEREAS, the 2019 agreement expires December 31, 2022, and the parties wish to set forth their agreement commencing January 1, 2023; NOW THEREFORE,

BE IT AGREED by and between the parties as follows:

(1) **District Court Services.** The County and its District Court shall furnish to the City the facilities and services of the Benton County District Court for all cases filed by the City in the District Court, over which District Court has jurisdiction, for purposes of enforcing violation of state statutes or city ordinances committed by persons within the City's jurisdiction that constitute gross misdemeanors, misdemeanors, or civil infractions. Nothing in this Agreement shall permit the City to regulate the administration of the court. District Court services shall include the use of the County's Mental Health and Veterans courts, if any, for City defendants that meet the participation requirements so long as the County imposes an additional sales tax of three-tenths of one percent authorized by RCW 82.14.450, commonly referred to as the Public Safety Tax.

(2) **Compensation.**

(a) Calculation of Percentage of Usage. The parties have determined, and do hereby agree, that in return for the facility usage and services of District Court, the City shall pay to the County, the City's pro rata share of the total costs of and overhead of the District Court, including the salaries and benefits of the District Court Judges. This pro rata share shall be an amount equal to the ratio of the total number of violations filed by the City, whether infractions or criminal violations, to the total number of: (1) violations filed by all jurisdictions in the District Court, plus (2) felony complaints filed in District Court, plus (3) small claims cases filed, plus (4) civil cases filed, plus (5) petitions for anti-harassment orders. The payment of such pro rata share of costs by the City constitutes a fair reimbursement to the County for the facility usage and services of District Court, and the parties agree that no separate filing fee shall be required from the City for the cases it files in District Court under this Agreement.

(b) Costs to be Allocated by Percentage. The total costs allocated by paragraph 2(a) above shall include, but are not limited to, the salaries and benefits of the District Court Judges, salaries and benefits of the District Court personnel and all other costs of and overhead for the District Court, excluding: (i) the costs of public defense for criminal defendants in District Court, which shall be reimbursed by the City pursuant to a separate agreement between the parties; and (ii) the costs of a Mental Health Court and a Veteran's Court established under chapter 2.30, RCW that are reflected in a budget separate from the County's General Fund Budget for expenses payable from the Public Safety Tax Budget.

(c) Time Period for Determining Percentage. The ratio described above in paragraph 2(a) shall for each year be based on the figures for the twelve-month time period consisting of the preceding July through June, unless the Presiding District Court Judge notifies the County and the City that a different 12-month period will be used for such calculations.

(d) Credit for Probation Assessments. The County will give the City a credit each month in the billing set forth in paragraph (3) below equal to the amount of revenue received in the prior month in the form of probation assessment payments in criminal cases prosecuted by the City.

(e) Administration Cost: In addition to the amounts owed under Sections 3(a) through 3(d) above, the City shall pay a monthly Administration Fee in the amount of five percent (5%) of the expenditures in the prior month from the Benton County General Fund, Fund 0010, District Court Department 111.

(3) **Billings.** The County will invoice the City monthly for the City's pro rata share of the expenses incurred by District Court in the preceding month. All sums due to the County from the City shall be paid within thirty (30) days of mailing of such invoice, via regular mail or electronic mail.

(4) **Distribution of Revenues to the City.** All money received by the District Court pursuant to court action in a case filed by the City, including penalties, fines, bail forfeitures, fees and costs, except as otherwise provided herein, shall be paid by District Court to the City; provided, that the County may retain all money received as payments of assessments for probation costs ordered in the City's cases. The City shall not be entitled to any revenue received by District Court other than revenues received pursuant to court action in a case filed by the City.

(5) **City Obligations with Respect to Revenues.** The District Court shall provide the City a Remittance Summary prepared by the Washington State Administration of the Courts (AOC) for the appropriate time period at the same time it makes a payment to the City under paragraph (4) above. It shall be the City's obligation to pay from the revenues, including interest revenues, that it receives pursuant to paragraph (4) above, all amounts due and owing to the State of Washington and to deposit that portion of the revenues that it retains in accordance with law. The City agrees to hold the County harmless with respect to any claims or allegations that the City has not remitted the required amounts to the State of Washington.

(6) **Term.** This Agreement shall be effective upon execution by the parties and recording with the Benton County Auditor and shall remain in effect through December 31, 2027, unless earlier terminated pursuant to the terms of this Agreement or extended by written amendment.

(7) **Termination and Notice of Termination.** This Agreement is terminable by either party without cause if such party provides written notice of intent to terminate in accordance with RCW 3.50.810 and 35.20.010. Any such notice from the City must be received by the Chairperson of the Benton Board of County Commissioners by the statutorily required date, and any such notice from the County must be received by the Mayor of the City by the statutorily required date.

(8) **Ownership of Property.** All real and personal property used in the operation of District Court has been and shall continue to be acquired by the County, owned by the County and may be disposed of in the discretion of the County.

(9) **Waiver of Binding Arbitration.** Provided that this Agreement is not earlier terminated pursuant to the terms stated above, this Agreement will expire on December 31, 2027, unless a written renewal Agreement is executed prior to such date. The City and the County waive and release any right to invoke binding arbitration under RCW 3.62.070, 35.20.010, 39.34.180 or other applicable law as related to this Agreement, any extension or amendment of this Agreement, or any discussions or negotiations relating thereto.

(10) **Advisory Committee.** The appropriate costs and overhead of the District Court shall be determined by the County legislative authority. An advisory committee composed of the Chairperson of the Board of Benton County Commissioners or his or her designee, the Presiding Judge of the District Court, the District Court Administrator, and a designee from each city within the County that pursuant to agreement pays a pro rata share of the cost of District Court will meet prior to the adoption of each General Fund Budget by the County to review that portion of the General Fund Budget pertaining to District Court and may make a recommendation on such budget to the County legislative authority. Such committee may also make a recommendation to the Presiding Judge regarding any requested change in the twelve-month period used to allocate costs for the following year. Additionally, such committee shall meet in odd numbered years prior to September 15th of each such year to conduct a mid-budget review for the benefit of the City's annual budget preparation process.

(11) **Indemnification Regarding City Ordinances.** The City agrees that the County does not assume any liability or responsibility for or release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any City ordinance, rule, regulation, policy or procedure is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney fees. This provision shall survive the termination of this Agreement.

(12) **General Indemnification.** The City and the County each agree to defend and indemnify the other and its elected and appointed officials, officers, employees and agents against all claims, losses, damages, suits, and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of, or result from, the negligence or willful misconduct of the indemnitor or its elected or appointed officials, officers, employees and agents in the performance of this Agreement. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor or of any contractor or subcontractor or indemnitor. The indemnitor waives its immunity under Title 51 of the Revised Code of Washington solely for the

purpose of this provision and acknowledges that this waiver was mutually negotiated. This provision shall survive the termination of this Agreement.

(13) **Captions.** The paragraph and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement.

(14) **Entire Agreement.** This Agreement contains the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties, including but not limited to the interlocal agreement executed by the parties in 2015 for District Court Services.

(15) **Governing Law.** This Agreement shall be interpreted in accordance with the laws and court rules of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the parties agree that such action shall be brought in a court of competent jurisdiction situated in Benton County, Washington.

(16) **No Third Party Rights.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

(17) **Amendment or Waiver.** This Agreement may not be modified or amended except by written instrument approved by resolution or ordinance duly adopted by the City and the County. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year herein above mentioned.

Date:_____

CITY OF RICHLAND

_____
JON AMUNDSON, City Manager

Attest:

_____
JENNIFER ROGERS, City Clerk

Approved as to Form:

_____
HEATHER KINTZLEY, City Attorney

Date:_____

BOARD OF COUNTY COMMISSIONERS
OF BENTON COUNTY

_____
SHON SMALL, Chairman

_____
JEROME DELVIN, Commissioner

_____
WILL MCKAY, Commissioner

Constituting the Board of County Commissioners of Benton County, Washington.

Attest:

_____
CAMI MCKENZIE, Clerk of the Board

Approved as to Form:

_____
RYAN BROWN, Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	2023 Interlocal Agreement with City of West Richland for District Court Services
Presenter:	Jerrod MacPherson
Prepared By:	Cami McKenzie
Reviewed By:	Jerrod MacPherson/Ryan Brown

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

The Amended and Restated Interlocal Agreement for District Court Services between Benton County and the City of West Richland will expire on December 31, 2022. The County Administrator has been negotiating an Interlocal Agreement with the City of West Richland and the parties have agreed to a new Interlocal Agreement, effective January 1, 2023 through December 31, 2027. The PA's office has reviewed and approved the Interlocal Agreement as to form.

Fiscal Impact

Recommendation

Recommend the Board approve the 2023 Interlocal Agreement between Benton County and the City of West Richland for District Court Services, as presented.

Suggested Motion

I move to approve the attached 2023 Interlocal Agreement between Benton County and the City of West Richland for District Court Services, effective January 1, 2023 through December 31, 2027 as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE 2023 INTERLOCAL AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF WEST RICHLAND FOR DISTRICT COURT SERVICES

WHEREAS, per Resolution 2019-193 the Board entered into an Amended and Restated Interlocal Agreement with the City of West Richland for District Court Services; and

WHEREAS, that Amended and Restated Interlocal Agreement expires on December 31, 2022; and

WHEREAS, Benton County and the City of West Richland have negotiated a new Interlocal Agreement for District Court Services effective January 1, 2023, and upon execution by the parties and recording with the Benton County Auditor; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners hereby agrees to execute the attached 2023 Interlocal Agreement between Benton County and the City of West Richland for District Court Services; and

BE IT FURTHER RESOLVED, the attached Interlocal Agreement is effective January 1, 2023, and upon execution by the parties and recording with the Benton County Auditor through December 31, 2027.

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

cc: PA., City of West Richland, BCDC, R. Brown C. McKenzie

Please return recorded document to:

West Richland City Clerk
3100 Belmont Blvd., Suite 100
West Richland, WA 99353

2023
INTERLOCAL AGREEMENT
BETWEEN
BENTON COUNTY
AND
THE CITY OF WEST RICHLAND
FOR DISTRICT COURT SERVICES

THIS AGREEMENT is effective January 1, 2023, by and between the CITY OF WEST RICHLAND, a municipal corporation, hereinafter called "City" and BENTON COUNTY, a political subdivision of the State of Washington, hereinafter called "County".

WHEREAS, the County has an established District Court System; and

WHEREAS, a municipal department of the Benton County District Court for the City was established by the Benton County Commissioners pursuant to the adoption of the Benton County District Court Districting Plan on June 8, 1973, under Chapters 3.38 and 3.46, Revised Code of Washington; and

WHEREAS, in 2009 the City and the County agreed to terminate the City's municipal department and that the County would provide the services of its District Court System to the City pursuant to an Interlocal Agreement authorized by RCW 39.34.180 and executed in July and August of 2009 by the City and the County, respectively; and

WHEREAS, the District Court Districting Plan was amended on August 31, 2009, and is consistent with this Interlocal Agreement; and

WHEREAS, under the parties' 2019 agreement, the City currently pays its pro rata share of the Judges' salaries and benefits, the salaries and benefits of the District Court personnel, and all other costs of District Court, except for the costs of a Mental Health Court and Veteran's Court, based on the City's share of usage of District Court; and

WHEREAS, the 2019 agreement expires December 31, 2022, and the parties wish to set forth their agreement commencing January 1, 2023; NOW THEREFORE,

BE IT AGREED by and between the parties as follows:

(1) **District Court Services.** The County and its District Court shall furnish to the City the facilities and services of the Benton County District Court for all cases filed by the City in the District Court, over which District Court has jurisdiction, for purposes of enforcing violation of state statutes or city ordinances committed by persons within the City's jurisdiction that constitute gross misdemeanors, misdemeanors, or civil infractions. Nothing in this Agreement shall permit the City to regulate the administration of the court. District Court services shall include the use of the County's Mental Health and Veterans courts, if any, for City defendants that meet the participation requirements so long as the County imposes an additional sales tax of three-tenths of one percent authorized by RCW 82.14.450, commonly referred to as the Public Safety Tax.

(2) **Compensation.**

(a) Calculation of Percentage of Usage. The parties have determined, and do hereby agree, that in return for the facility usage and services of District Court, the City shall pay to the County, the City's pro rata share of the total costs of and overhead of the District Court, including the salaries and benefits of the District Court Judges. This pro rata share shall be an amount equal to the ratio of the total number of violations filed by the City, whether infractions or criminal violations, to the total number of: (1) violations filed by all jurisdictions in the District Court, plus (2) felony complaints filed in District Court, plus (3) small claims cases filed, plus (4) civil cases filed, plus (5) petitions for anti-harassment orders. The payment of such pro rata share of costs by the City constitutes a fair reimbursement to the County for the facility usage and services of District Court, and the parties agree that no separate filing fee shall be required from the City for the cases it files in District Court under this Agreement.

(b) Costs to be Allocated by Percentage. The total costs allocated by paragraph 2(a) above shall include, but are not limited to, the salaries and benefits of the District Court Judges, salaries and benefits of the District Court personnel and all other costs of and overhead for the District Court, excluding: (i) the costs of public defense for criminal defendants in District Court, which shall be reimbursed by the City pursuant to a separate agreement between the parties; and (ii) the costs of a Mental Health Court and a Veteran's Court established under chapter 2.30, RCW that are reflected in a budget separate from the County's General Fund Budget for expenses payable from the Public Safety Tax Budget.

(c) Time Period for Determining Percentage. The ratio described above in paragraph 2(a) shall for each year be based on the figures for the twelve-month time period consisting of the preceding July through June, unless the Presiding District Court Judge notifies the County and the City that a different 12-month period will be used for such calculations.

(d) Credit for Probation Assessments. The County will give the City a credit each month in the billing set forth in paragraph (3) below equal to the amount of revenue received in the prior month in the form of probation assessment payments in criminal cases prosecuted by the City.

(e) Administration Cost: In addition to the amounts owed under Sections 3(a) through 3(d) above, the City shall pay a monthly Administration Fee in the amount of five percent (5%) of the expenditures in the prior month from the Benton County General Fund, Fund 0010, District Court Department 111.

(3) **Billings.** The County will invoice the City monthly for the City's pro rata share of the expenses incurred by District Court in the preceding month. All sums due to the County from the City shall be paid within thirty (30) days of mailing of such invoice, via regular mail or electronic mail.

(4) **Distribution of Revenues to the City.** All money received by the District Court pursuant to court action in a case filed by the City, including penalties, fines, bail forfeitures, fees and costs, except as otherwise provided herein, shall be paid by District Court to the City; provided, that the County may retain all money received as payments of assessments for probation costs ordered in the City's cases. The City shall not be entitled to any revenue received by District Court other than revenues received pursuant to court action in a case filed by the City.

(5) **City Obligations with Respect to Revenues.** The District Court shall provide the City a Remittance Summary prepared by the Washington State Administration of the Courts (AOC) for the appropriate time period at the same time it makes a payment to the City under paragraph (4) above. It shall be the City's obligation to pay from the revenues, including interest revenues, that it receives pursuant to paragraph (4) above, all amounts due and owing to the State of Washington and to deposit that portion of the revenues that it retains in accordance with law. The City agrees to hold the County harmless with respect to any claims or allegations that the City has not remitted the required amounts to the State of Washington.

(6) **Term.** This Agreement shall be effective upon execution by the parties and recording with the Benton County Auditor and shall remain in effect through December 31, 2027, unless earlier terminated pursuant to the terms of this Agreement or extended by written amendment.

(7) **Termination and Notice of Termination.** This Agreement is terminable by either party without cause if such party provides written notice of intent to terminate in accordance with RCW 3.50.810 and 35.20.010. Any such notice from the City must be received by the Chairperson of the Benton Board of County Commissioners by the statutorily required date, and any such notice from the County must be received by the Mayor of the City by the statutorily required date.

(8) **Ownership of Property.** All real and personal property used in the operation of District Court has been and shall continue to be acquired by the County, owned by the County and may be disposed of in the discretion of the County.

(9) **Waiver of Binding Arbitration.** Provided that this Agreement is not earlier terminated pursuant to the terms stated above, this Agreement will expire on December 31, 2027, unless a written renewal Agreement is executed prior to such date. The City and the County waive and release any right to invoke binding arbitration under RCW 3.62.070, 35.20.010, 39.34.180 or other applicable law as related to this Agreement, any extension or amendment of this Agreement, or any discussions or negotiations relating thereto.

(10) **Advisory Committee.** The appropriate costs and overhead of the District Court shall be determined by the County legislative authority. An advisory committee composed of the Chairperson of the Board of Benton County Commissioners or his or her designee, the Presiding Judge of the District Court, the District Court Administrator, and a designee from each city within the County that pursuant to agreement pays a pro rata share of the cost of District Court will meet prior to the adoption of each General Fund Budget by the County to review that portion of the General Fund Budget pertaining to District Court and may make a recommendation on such budget to the County legislative authority. Such committee may also make a recommendation to the Presiding Judge regarding any requested change in the twelve-month period used to allocate costs for the following year. Additionally, such committee shall meet in odd numbered years prior to September 15th of each such year to conduct a mid-budget review for the benefit of the City's annual budget preparation process.

(11) **Indemnification Regarding City Ordinances.** The City agrees that the County does not assume any liability or responsibility for or release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, rules or regulations, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any City ordinance, rule, regulation, policy or procedure is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney fees. This provision shall survive the termination of this Agreement.

(12) **General Indemnification.** The City and the County each agree to defend and indemnify the other and its elected and appointed officials, officers, employees and agents against all claims, losses, damages, suits, and expenses, including reasonable attorneys' fees and costs, to the extent they arise out of, or result from, the negligence or willful misconduct of the indemnitor or its elected or appointed officials, officers, employees and agents in the performance of this Agreement. The indemnitor's duty to defend and indemnify extends to claims by the elected or appointed officials, officers, employees or agents of the indemnitor or of any contractor or subcontractor or indemnitor. The indemnitor waives its immunity under Title 51 of the Revised Code of Washington solely for the

purpose of this provision and acknowledges that this waiver was mutually negotiated. This provision shall survive the termination of this Agreement.

(13) **Captions.** The paragraph and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement.

(14) **Entire Agreement.** This Agreement contains the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties, including but not limited to the interlocal agreement executed by the parties in 2015 for District Court Services.

(15) **Governing Law.** This Agreement shall be interpreted in accordance with the laws and court rules of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the parties agree that such action shall be brought in a court of competent jurisdiction situated in Benton County, Washington.

(16) **No Third Party Rights.** Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

(17) **Amendment or Waiver.** This Agreement may not be modified or amended except by written instrument approved by resolution or ordinance duly adopted by the City and the County. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year herein above mentioned.

Date:_____

CITY OF WEST RICHLAND

_____
BRENT GERRY, Mayor

Attest:

_____
STEPHANIE HAUG, City Clerk

Approved as to Form:

_____
BRONSON BROWN, City Attorney

Date:_____

BOARD OF COUNTY COMMISSIONERS
OF BENTON COUNTY

_____
SHON SMALL, Chairman

_____
JEROME DELVIN, Commissioner

_____
WILL MCKAY, Commissioner

Constituting the Board of County Commissioners of Benton County, Washington.

Attest:

_____
CAMI MCKENZIE, Clerk of the Board

Approved as to Form:

_____
RYAN BROWN, Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	November 29, 2022
Subject:	2023 Historic Preservation Grant Overview & Committee Funding Recommendations
Presenter:	Shyanne Palmus, Communications Coordinator
Prepared By:	Shyanne Palmus, Communications Coordinator
Reviewed By:	Adam Fyall, Sustainable Development Manager

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☒ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

The 2022 Historic Preservation Grant RFP was open September 6 – October 7, 2022 and received seven (7) applications for project funding, totaling $49,707.71. The available yearly budget for the Historic Preservation Grant is $50,000.

Detailed information for each request is provided in the attached PDF. Staff recommends approval of the projects as outlined in said document, for a total amount of $44,707.00.

RCW 36.22.170 states that one dollar ($1) of the recording fee is placed in the Benton County Historical Preservation Fund 0157-101, to be used at the County Commissioners' discretion for promotion of historical preservation and/or programs in the County. Each year, the County calls upon a review committee to determine recommended project funding for Board of Commissioners' approval.

Staff is requesting authorization for the County Administrator to approve the grant disbursement agreements in order to streamline disbursement of grant funds to the recipients, as was authorized in 2021.

Fiscal Impact

$44,707.00 from Historical Preservation Fund

Recommendation

Staff recommends approval of the resolution and projects as presented.

Suggested Motion

I move to approve the 2023 Historic Preservation Grant allocations as presented, and hereby authorize the County Administrator to sign the grant disbursement agreements.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVING 2023 HISTORIC PRESERVATION GRANT AWARDS AND AUTHORIZING THE COUNTY ADMINISTRATOR TO APPROVE DISBURSEMENT AGREEMENTS

WHEREAS, RCW 36.22.170 states that one dollar of a document recording fee is placed in the Benton County Historical Preservation Fund 0157-101, to be used at the County Commissioners' discretion for promotion of historical preservation and/or programs in the County and the Board of Commissioners is supportive of funding historic preservation projects as solicited from qualified non-profit organizations and government entities; and

WHEREAS, the Historic Preservation Advisory Committee, established by the Board of Benton County Commissioners in 2008, has reviewed all applications; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby agrees with the Committee's recommendation, and approves funding of the 2023 Benton County Historic Preservation Grant awards as presented, in a total amount not to exceed $44,707.00; and

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners hereby authorizes the County Auditor's Office to make such payments and execute any agreements necessary for the disbursement of the aforementioned funds; and

BE IT FURTHER RESOLVED, that the Board of Benton County Commissioners hereby authorizes the County Administrator to sign the 2023 Benton County Historic Preservation Grant Program disbursement agreements for historic preservation projects and programs.

Dated this 29th day of November, 2022.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest .....
Clerk of the Board

Cc: Auditor; PA – Contract Compliance; Sustainable Development S Palmus

2023 BENTON COUNTY HISTORIC PRESERVATION GRANT

Organization	Project Name	Description	Request	Amount(s)
Benton County Sheriff's Office	Historic BCSO Display	Display cases and mounts for historic law enforcement memorabilia.	Display cases, framing, and holders	$ 12,000.00
			Total Request	**$ 12,000.00**
			Recommended	**$ 12,000.00**
Benton County Museum	Display Room	Conversion of existing storage area to display space, including installation of flooring and wall coverings, and necessary display furniture.	Floor covering and installation	$ 3,500.00
			Wall covering and installation	$ 2,400.00
			Historic photo enlargements and display furniture	$ 1,750.00
			Total Request	**$ 7,650.00**
			Recommended	**$ 7,650.00**
Kiona-Benton Cemetery Assoc.	Evergreen Cemetery	Improvement of irrigation system for visitor safety, damage prevention.	Irrigation upgrade and repair	$ 1,500.00
			Total Request	**$ 1,500.00**
			Recommended	**$ 1,500.00**
Kiona-Benton City Historical Society	Augmented Reality Tour	Augmented reality history tour of a local Benton City landmark or walking tour.	Create AR scenes and application access	$ 5,000.00
			Total Request	**$ 5,000.00**
			Recommended	**$ -**
Kiona-Benton City Historical Society	Heritage Barns Short Series	Video series featuring each of Benton County's barns on Heritage Barn Register (WA Dept of Archaeology)	Phase 1: Pre-Production	$ 4,900.00
			Phase 2: Production	$ 4,200.00
			Phase 3: Post-Production	$ 3,850.00
			Total Request	**$ 12,950.00**
			Recommended	**$ 12,950.00**
Kiona-Benton City Historical Society	Historical Interpretive Signs	Installation of up to 9 historical signs, with at least 5 along Babs Ave including: Methodist Church of early Ki-Be, Swimming hole and nearby structures, Yellowstone Trail Marker, 1895 Kiona Benton School, Annie and Courtland Powell, Kerr Home, Kendall Holstein Dairy, and Kiona South	8 - 36" x 24" graphic panels ($215 ea)	$ 1,720.00
			2 - Rail mounted frames for smaller panels ($550 ea)	$ 1,100.00
			Cantilevered exhibit bases for flat surface mounting	$ 1,230.00
			1 - Mason mount exhibit	$ 675.00
			1 - 36" x 48" panel	$ 520.00
			Upright exhibit base for larger panel	$ 775.00
			Design cost for panels	$ 2,500.00
			Total Request	**$ 8,520.00**
			Recommended	**$ 8,520.00**
White Bluffs Quilt Museum	Textile Preservation	Cleaning of textiles and proper stroage in archival boxes. All current boxes are at end of life and need replacement. Some have already been purchased. Workshops will be provided to those interested in quilt preservation, damage repair, cleaning, and storage.	24 - Barrier textile boxes	$ 1,351.80
			Archival tissue	$ 328.74
			2-speed vacuum	$ 396.17
			Vacuum filters	$ 11.00
			Permalife bond paper	$ -
			Sakura pigma pens	$ -
			Total Request	**$ 2,087.71**
			Recommended	**$ 2,087.00**
			Total 2023 Grant Requests	**$ 49,707.71**
			Total 2023 Recommended Grant Awards	**$ 44,707.00**

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	BC 11/29/2022
Subject:	LIT converting 1 FTE Detention Officer to 1 FTE Programs Detention Officer
Presenter:	D. Wheeler & Carlee Nave
Prepared By:	C. Garcia
Reviewed By:	D. Wheeler & Carlee Nave

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

Programs Detention Officer position was created as a result of the Bi-County compensation study with Res #2022-633. The Juvenile department was instructed by HR to complete the recruitment process before returning to the Board for authorization to create the position's line item. Juvenile has now completed the recruitment process and is requesting to convert 1 FTE Detention Officer to 1 FTE Programs Detention Officer.

Fiscal Impact

No supplement required.

Recommendation

Recommend the Board of Benton County Commissioners sign the Line-Item Transfer converting position 51660 from a Detention Officer to a Programs Detention Officer.

Suggested Motion

I move to approve the Line-Item Transfer converting position number 51660 from a Detention Officer, grade 1, to a Programs Detention Officer, grade 2.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN JUVENILE CENTER FUND NUMBER 1150 DEPARTMENT NUMBER 171

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington.

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Crystal Garcia

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Juvenile - Operations Dept Nbr: 171

Fund Name: Juvenile Center Fund Nbr: 1150

TRANSFER FROM: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5271000	51660	Detention Officer	$2,792
5271000	51662	Detention Officer	$7,000
TOTAL			$9,792

TRANSFER TO: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5271000	51660	Programs Detention Officer	$9,792
TOTAL			$9,792

Explanation:

Programs Detention Officer position was created as a result of the bi-County compensation study with Res #2022-633. Department was instructed by HR to complete recruitment process before returning to the Board for authorization to create the position's line item. Converting 1 FTE Detention Officer (Det. Teamsters salary schedule Grade 01) to 1 FTE Programs Detention Officer (Det. Teamsters salary schedule Grade 02). This is only a title change to position #51660. No new positions are being created and position #51662 is not being eliminated, funds are only being used to cover line deficiency for 2022.

Prepared by: Crystal Garcia Date: 11.17.22

Approved ☐ Denied ☐ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	**Benton County:** November 29, 2022 **Franklin County:** December 6, 2022
Subject:	Recognizing Eric Lipp for Service to the Benton-Franklin Counties Juvenile Justice Center
Presenter:	Dave Wheeler, Juvenile Administrator
Prepared By:	Shyanne Palmus, Communications Coordinator
Reviewed By:	Adam Fyall, Sustainable Development Manager; Rosa Garcia, Executive Assistant

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☒ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

The Benton County Board of Commissioners received an email from a citizen in September requesting the recognition of Mr. Eric Lipp for his service to the Benton-Franklin Counties Juvenile Justice Center. Mr. Lipp was an employee of the Juvenile Justice Center for 26 years, with the last 12 years as Detention Services Manager.

Throughout his years of service, Mr. Lipp worked tirelessly to bring meaningful programming to the Benton-Franklin Counties Juvenile Justice Center and has shown endless compassion to improving services, programs, and conditions for youth and staff. Through his steadfast leadership and through the tireless work of the detention staff, the Benton-Franklin Counties Juvenile Court can take pride in the exceptional programming offered to the youth in detention.

Mr. Lipp was diagnosed with an aggressive form of ALS (amyotrophic lateral sclerosis, also known as Lou Gehrig's disease) in November 2020, a nervous system disease that weakens muscles and impacts physical function due to the breakdown of nerve cells, which has prevented him from doing the work he is so passionate about. As such, it is requested that the Board recognize and honor Mr. Eric Lipp's service to the community by designating a classroom in the Benton-Franklin Counties Juvenile Justice Center as the ***Eric Lipp Youth Programs Center.***

Fiscal Impact

N/A

Recommendation

Approve the Resolution as presented.

Suggested Motion

"I move to approve the Resolution and hereby proclaim a classroom in the Benton-Franklin Counties Juvenile Justice Center be named the Eric Lipp Youth Programs Center."

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON; IN THE MATTER OF RECOGNIZING ERIC LIPP FOR HIS SERVICE TO THE BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER

WHEREAS, the Boards of Commissioners of Benton and Franklin Counties hereby recognize Eric Lipp for his commitment to excellence and 26 years of dedicated service to the Benton-Franklin Counties Juvenile Justice Center, the last 12 years as the Detention Services Manager; and

WHEREAS, throughout his years of service, Mr. Lipp worked tirelessly to bring meaningful programming to the Benton-Franklin Counties Juvenile Justice Center and has shown endless compassion to improving services, programs, and conditions for youth and staff; and

WHEREAS, through his steadfast leadership and through the tireless work of the detention staff, the Benton-Franklin Counties Juvenile Court can take pride in the exceptional programming offered to the youth in detention; and

WHEREAS, Mr. Lipp was diagnosed with an aggressive form of ALS (amyotrophic lateral sclerosis, also known as Lou Gehrig's disease) in November 2020, a nervous system disease that weakens muscles and impacts physical function due to the breakdown of nerve cells, which has prevented him from doing the work he is so passionate about; **NOW, THEREFORE**

BE IT RESOLVED, we, the Boards of Commissioners of Benton and Franklin Counties, do hereby recognize and honor Mr. Eric Lipp's service to our community and hereby designate a classroom in the Benton-Franklin Counties Juvenile Justice Center as the

Eric Lipp Youth Programs Center

Dated this 29th day of November, 2022.

BENTON COUNTY BOARD OF COMMISSIONERS

Chairman, Shon Small

Chairman Pro Tem, Will McKay

Member, Jerome Delvin

Constituting the Board of County Commissioners of Benton County, Washington

Attest:

Clerk of the Board

Dated this 6th day of December, 2022.

FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman, Clint Didier

Chairman Pro Tem, Rocky Mullen

Member, Brad Peck

Constituting the Board of County Commissioners of Franklin County, Washington

Attest:

Clerk of the Board

Originals: Benton County Commissioners, Franklin County Commissioners, BFJJC S. Palmus