Jerome Delvin, *District 1*
Michael Alvarez, *District 2*
Will McKay, *District 3*

Jerrod MacPherson
County Administrator
Matt Rasmussen
Deputy County Administrator

Agenda – Board of County Commissioners

To view items in detail, click highlighted areas.

Regular Board of Commissioners Meeting
Tuesday, April 25, 2023 9:00 AM
Benton County Courthouse, Prosser, WA

Notice: Meeting provided in-person, by live-broadcast and telephonically via WebEx (linked below):
https://www.co.benton.wa.us/agenda/commissioners

Call to Order

Pledge of Allegiance

Approval of Minutes: April 18, 2023

Review Agenda

Public Comment

To provide public comment, please come forward (if in-person), call 509-460-4941, or raise your hand in WebEx. Once called upon by the Chairman, state your name and address for the record and keep comments to 3 minutes or less.

Consent Agenda

Auditor

a. 2021 Management Representation Letter to the State Auditor's Office
b. Changing Precinct Boundaries in Conjunction With Redistricting; Rescinding Resolution 2023-291

Board of Equalization

c. Re-appointment of Chuck Wierman to the Board of Equalization

District Court

d. Agreement w/WA State Administrative Office of the Courts for a Therapeutic Court Grant

Juvenile

e. Amendment No. 1 w/Toxicology Services, LLC for Urinalysis Testing; Amening Resolution 2022-004

Office of Public Defense

f. District Court Public Defense Services Agreement w/Eric Scott
g. Superior Court Public Defense Services Agreement w/Rebecca Saitz

Planning

h. Short Plat Vacation – SPV 2022-001

Prosecuting Attorney

i. Line Item Transfer Current Expense No. 0010, Dept. 117 for Overtime

Public Works

j. Line Item Transfer, Fund No. 1010, Dept. 500 to Update Position No. PW1048

Purchasing

k. Contract w/MMEC Architecture & Interiors, LLC for the Design of the Voting/Elections Center Remodel
l. Contract w/Dynamic Laundry Systems, Inc. for Repairs & Maintenance of Laundry Equipment @ the Jail
m. Public Utility & Irrigation Easement and Quit Claim Deed for Public Right-of-Way to City of Kennewick for the Moderate Risk Waste Facility

Sustainable Development

n. Amended Rural County Capital Fund Agreement w/City of West Richland for State Route 224/Red Mountain Transportation Improvement Project

Treasurer

o. Personal Services Contract w/Frontier Title & Escrow Co., Inc. for Foreclosure & Tax Title Sales Documents

Scheduled Business

Memorandum of Agreement w/Benton-Franklin Council of Governments for Economic Recovery Coordination ~ A Fyall

Extension of Temporary Change to Office Hours for the Sheriff's Prosser Office ~ M Rasmussen

Award of Contract to Comprehensive Health Care for the Behavioral Health Recovery Center ~ M Rasmussen

Discussion on Amendment to Contract w/DH for Public Education Campaign ~ M Rasmussen

Line Item Transfer, Fund No. 0010, Dept. (ARPA) for an Office Administrator Position in the Clerk's Office ~ J Delvin & L Ivey

Rapid Broadband Design Study Discussion ~ Commissioner Alvarez

Other Business

Executive Session

Review the Performance of a Public Employee ~ M Mahoney

Adjournment

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, April 18, 2023, 9:00 a.m.
Meeting provided in-person, by Video Live-Broadcast and Telephonically via/WebEx

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

Benton County Employees Present During All or a Portion of the Meeting: Deputy County Administrator Matt Rasmussen; Robert Heard, IT Manager; Carlee Nave, HR Manager; Greg Wendt, Community Development Director; Public Works Manager Matt Mahoney; Clerk Josie Delvin; DPA Ryan Brown; Treasurer Ken Spencer; Finance Manager Linda Ivey; Lorene Roe, Chief Deputy Auditor; PA Eric Eisinger; Kirsten Yniguez, Chief Deputy Treasurer; Auditor Brenda Chilton; Cristina Woods, Public Works.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of April 11, 2023 were approved.

Review Agenda

- Discussion about Health District Board Members

Public Comment

Tina Gregory, Kennewick, discussed a prayer movement, voting in person, pornography in schools, and local action.

Consent Agenda

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

Consent Agenda

Capital Projects

a. Coding Correction Between Central Services Fund, General Fund & Capital Projects Fund for Professional Licenses, Fuel and Software Support

Commissioners

b. Proclaiming the First Week of May 2023 As Public Service Recognition Week
c. 1st Amended Lease Agreement w/City of Prosser for Annex Building In Prosser; Amending Resolution 2021-524

Juvenile

d. Agreement Amendment No. 4 w/nCourt for Online/Web-based Payment; Amend Resolution 2016-172

Prosecuting Attorney

e. Line Item Transfer, Fund No. 0010, Dept. 117 for Temporary Help

Public Works

f. Authorizing to Proceed w/Advertisement & Bid Process for Bituminous Surface Treatment, Crack Seal & Edge Repair
g. Vacation of Right-of-Way in T10 R24, S32 & S31 and Request to Proceed to Public Hearing

Purchasing

h. Contract w/Inland Asphalt Company for Paving The Candy Mountain Trailhead

Public Hearing - Energy Northwest Franchise Renewal

Cristina Woods presented the application for renewal for a franchise order and agreement for a fiber optic cable system and facilities from Energy Northwest. Based upon the information received, the Public Works Department recommended the Board approve as presented.

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

MOTION: Commissioner Delvin moved to approve the Franchise Order and Agreement with Energy Northwest as presented. Commissioner Alvarez seconded and upon vote, the motion carried.

Prosser Economic Development Association Update

Neal Ripplinger, Prosser Economic Development Association, gave a Powerpoint presentation and briefly discussed the following:

- Prosser Leadership Class 2023 – 10 participants
- #ProsserWAJobs – partnership with Prosser Chamber of Commerce
- Capital Budget Request – one through the House and one through the Senate based on community assessment - Historic Downtown Prosser Archway Sign and Monument Sign on exit 80 (The Monument Sign was approved)
    - For City usage and community events
- College and Career fair – with help from Boys & Girls Club and schools

- Mustang Business Plan competition – foster young entrepreneurs
- Business Recruitment, Retention, and Expansion; BRIm Prosser restaurant analysis, hospital groundbreaking
- Vintners Village
- MOU between IAREC (WSU) and Prosser School District – rotation of students going out there to learn - exposing them to the ag industry
- C-5 Summit Summary Washington - Dept. of Commerce – submitted a project for a mixed-use building behind Starbucks and they were one of the chosen projects to go forward – Project Wine Country Square
- Annual Meeting – May 3, 2023
    - Ben-Franklin Transit Hub and improvements; real estate report and new police chief introduction

Line Item Transfer - Reorganization in the Auditor's Office

Brenda Chilton said as a result of two recently vacated positions, the Auditor's Office proposed a reorganization. She said that staffing needs had grown in the Accounting Division and a Budget and Finance Analyst (NB Grade 18) was being added in place of the unfilled Administrative Assistant and Accounting Assistant II positions, to end effective May 1, 2023. This adjustment is budget neutral.

Chairman McKay asked about in-person voting. Ms. Chilton said when she first started, there was only in-person voting, except for some allowed mail-in ballots. Over a number of years, the law was changed to voting by mail.

MOTION: Commissioner Delvin moved to approve the Line Item Transfer within General Fund 0010, Dept. 102 as presented. Commissioner Alvarez seconded and upon vote, the motion carried.

Office of Public Defense Discussion

Jerrod MacPherson, Matt Rasmussen, and Linda Ivey discussed the following recommendations:

- Increase the Wages for the Office of Public Defense Manager and the Chief Staff Defender to be aligned with the Prosecuting Attorney's Office wages
- Approve the Resolution for the Office of Public Defense Manager salary to be 85% of the Prosecuting Attorney's Salary and the Office of Public Defense Chief Staff Defender salary to be 90% of the Public Defense Manager's salary
- Move the Therapeutic Court, Dept. 112, which is presently in the Public Safety Tax Fund, Fund 1480 to the Behavioral Health Fund, Fund 1600. Therapeutic Courts is an allowable expense under the Behavioral Health Fund
- Approve the Resolution for the Therapeutic Courts, Dept.112, line-item transfer to the appropriate budget in the Behavioral Health Fund 1600
- Increase employee salaries and contract attorney rates effective 5/1/2023 to remain competitive in the market and promote new contracts/employees. The increase will be funded by the Public Safety Sales Tax Fund 1480

- Approve the Resolution for the Office of Public Defense, Dept. 136 line-item transfer to the appropriate budget in the Public Safety Sales Tax Fund 1480
- Individual employee salary wage changes and individual contract changes will come before the Board in the near future
- Approve the rate change for Office of Public Defense contracts to align with local area comparables as follows:
    - Superior Court Contract - $152,000
    - District Court Contract - $136,800
- Empower the new OPD Manager to have flexibility to be fluid with the market as to the number of staff attorneys and number of contract attorneys, and shift as needed with market conditions
- Empower the OPD manager flexibility with partial contracts versus a full contract requirement
- All this is being done in an effort to recruit and retain
- There is a current moratorium on reclassifications, however, there would be two positions reclassified but this is a crisis and needed to be addressed

Commissioner Delvin stated that OPD has been an ongoing issue because the State did not fund what they should, and he didn't see leadership from the Courts on fixing this. However, he was concerned about what was going to happen in two years if the Public Safety Tax didn't pass.

Commissioner Alvarez became aware of this after meeting with the PA, and had several meetings with the PA, Sheriff, Admin, and attorneys. He said this was a good place to start, it was a good compensation package and he thanked Admin for their leadership.

Chairman McKay agreed with the Board and asked who the County needed to bug at the state to have this come together. Commissioner Delvin said they needed to push WSAC and lobbyists, as well as Senators and Representatives and explain the issue. Chairman McKay said he would bring this up at the WSAC meeting next month.

MOTION: Commissioner Delvin moved to approve the Resolution for Salaries for the Attorneys within the Prosecuting Attorney's Office and the Office of Public Defense, rescinding Resolution 2022-693 as presented. Commissioner Alvarez seconded and upon vote, the motion carried.

MOTION: Commissioner Delvin moved to approve the Transfer of Funds within the Behavioral Health Fund, Fund 1600, Therapeutic Courts, Department 112, as presented and to approve the Transfer of Funds within the Public Safety Tax Fund, Fund 1480, Therapeutic Courts, Department 112 and the Office of Public Defense, Department 136 as presented. Commissioner Alvarez seconded and upon vote, the motion carried.

MOTION: Commissioner Delvin moved to approve the rate change for the Office of Public Defense Contracts effective 5/1/2023 as follows: Superior Court Contracts in the amount of $152,000.00 and District Court Contracts in the amount of $136,800.00. Commissioner Alvarez seconded and upon vote, the motion carried.

Other Business

Health District Board

Mr. MacPherson said the Board received an email from the Health District asking about the new makeup of the Health Board with two commissioners, and a third being an alternate. The Board of Benton County Commissioners recently adopted a new resolution establishing Commissioner McKay and Commissioners Alvarez on that Board.

The Board discussed this issue and the new law requiring an equal amount of non-elected individuals and elected individuals on the Board and that a Board of eight seemed more manageable. Additionally, they wanted to keep it as is. Mr. MacPherson said he would contact the Health Board to relay that message. It was noted that Franklin County still had not appointed their members to the Health Board.

New Monthly Meeting in Kennewick

The Board discussed when it wanted to start the new monthly meetings in Kennewick and to review the schedule and set a regular week each month. Admin stated they would bring back amended bylaws to address the new regular meeting in Kennewick.

OPD Issue

PA Eric Eisinger expressed gratitude for the leadership on this OPD issue and said he wanted to have good conversations going forward regarding the justice system and said any inquiries regarding that could be directed to him.

Quarterly Bi-County Meetings

Chairman McKay asked the Board if it was still interested in having bi-county meetings and the Board agreed, as long as there were agenda items to discuss.

Executive Session – Review the Qualifications of an Applicant for Public Employment

The Board went into executive session at 9:57 a.m. for up to five minutes with Matt Mahoney to review the qualifications of an applicant for public employment. Also present were Jerrod MacPherson, Matt Rasmussen, Carlee Nave, and Cami McKenzie.

The Board came out at 10:01 a.m. No decisions were made in executive session.

MOTION: Commissioner Delvin moved to approve the salary request form for Brian Byrne as presented. Commissioner Alvarez seconded and upon vote, the motion carried.

Accounts Payable

Check Date: 04/14/2023

Warrants #: 244632-244768
Total all funds: $1,836,363.93

EFT's #: 382-388
Transfers #: 670-671, 674-677, 680, 682
Total all funds: $53,286.93

Resolutions

2023-310:	Coding Correction Between Central Services Fund, General Fund & Capital Projects Fund for Professional Licenses, Fuel and Software Support
2023-311:	Proclaiming the First Week of May 2023 As Public Service Recognition Week
2023-312:	1st Amended Lease Agreement w/City of Prosser for Annex Building In Prosser; Amending Resolution 2021-524
2023-313:	Agreement Amendment No. 4 w/nCourt for Online/Web-based Payment; Amend Resolution 2016-172
2023-314:	Line Item Transfer, Fund No. 0010, Dept. 117 for Temporary Help
2023-315:	Authorizing to Proceed w/Advertisement & Bid Process for Bituminous Surface Treatment, Crack Seal & Edge Repair
2023-316:	Vacation of Right-of-Way in T10 R24, S32 & S31 and Request to Proceed to Public Hearing
2023-317:	Contract w/Inland Asphalt Company for Paving The Candy Mountain Trailhead
2023-318:	Granting a Franchise to Energy Northwest to Place a Fiber Optic Cable System and Facilities in County Road Rights Of Way
2023-319:	Transfer of Funds Within General Fund Number 0010 Department Number 102
2023-320:	Salaries For Attorneys Within The Prosecuting Attorney's Office and the Office Of Public Defense Rescinding Resolution 2022-693
2023-321:	Transfer of Funds Within Behavioral Health Fund Number 1600 Department Number 112
2023-322:	Transfer of Funds Within Public Safety Tax Fund Number 1480 Department Number 112 To 136

There being no further business before the Board, the meeting adjourned at approximately 10:01 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	2021 Management Representation Letter to the State Auditor's Office
Presenter:	
Prepared By:	Aileen Coverdell
Reviewed By:	Brenda Chilton

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

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

Summary / Background Information

As part of our 2021 Financial, Federal Single and Accountability audits of Benton County, we are required by professional standards to provide a signed Management Representation Letter.

The purpose of the letter is to confirm information already obtained in discussions with the State Auditor and to confirm that the County understands the responsibilities with regards to the audit. Representations made in the letter are not a guarantee, but rather constitute a good faith statement to the best of our knowledge and belief.

Attached is the representation letter for the chairman to sign along with attached letters from the Prosecuting Attorney's office and Risk Management providing pending litigation and claims.

Fiscal Impact

There is no fiscal impact.

Recommendation

Signature of the Chairman of the board.

Suggested Motion

Not applicable

Jerome Delvin, *District 1*
Michael Alvarez, *District 2*
Will McKay, *District 3*

BENTON COUNTY EST. 1905 WASHINGTON

Jerrod MacPherson
County Administrator
Matt Rasmussen
Deputy County Administrator

Board of County Commissioners

April 25, 2023

Office of the Washington State Auditor
3200 Capitol Blvd
P.O. Box 40031
Olympia, WA 98504-0031

To the Office of the Washington State Auditor:

We are providing this letter in connection with your audit of Benton County for the period from January 1, 2021 through December 31, 2021. Representations are in relation to matters existing during or subsequent to the audit period up to the date of this letter.

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

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

1. We have provided you with unrestricted access to people you wished to speak with and made available all requested and relevant information of which we are aware, including:
    a. Financial records and related data.
    b. Minutes of the meetings of the governing body or summaries of actions of recent meetings for which minutes have not yet been prepared.
    c. Other internal or external audits, examinations, investigations or studies that might concern the objectives of the audit and the corrective action taken to address significant findings and recommendations.
    d. Communications from regulatory agencies, government representatives or others concerning possible noncompliance, deficiencies in internal control or other matters that might concern the objectives of the audit.
    e. Related party relationships and transactions.
    f. Results of our internal assessment of business risks and risks related to financial reporting, compliance and fraud.

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

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

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

5. We have complied with all material aspects of laws, regulations, contracts and grant agreements, except as disclosed by the attached letters or as discussed with you.

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

7. Except as discussed with you, we have established adequate procedures and controls to provide reasonable assurance of safeguarding public resources and compliance with applicable laws and regulations.

8. Except as reported to you in accordance with RCW 43.09.185, we have no knowledge of any loss of public funds or assets or other illegal activity, or any allegations of fraud or suspected fraud involving management or employees.

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

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

11. We are responsible for taking corrective action on audit findings and have developed a corrective action plan.

12. We acknowledge our responsibility for fair presentation of financial statements and believe financial statements are fairly presented in conformity with generally accepted accounting principles in the United States of America.

13. We acknowledge our responsibility for establishing and maintaining effective internal control over financial reporting.

14. The financial statements include financial information of the primary government and all component units, fiduciary and other activity required by generally accepted accounting principles to be included in the financial reporting entity.

15. The financial statements properly classify all funds and activities.

16. All funds that meet the quantitative criteria in GASB requirements or are otherwise particularly important to financial statement users, are presented as major funds.

17. Capital assets, including infrastructure and intangible assets, are properly capitalized, reported and depreciated as applicable.

18. We have no plans or intentions that may materially affect the reported value or classification of assets, liabilities or net position.

19. Revenues are appropriately classified by fund and account.

20. Expenses have been appropriately classified by fund and account, and allocations have been made on a reasonable basis.

21. Net position components (net investment in capital assets, restricted and unrestricted) and fund balance components (nonspendable, restricted, committed, assigned and unassigned)] are properly classified and, as applicable, approved.

22. Significant assumptions we used in making accounting estimates are reasonable.

23. The following have been properly classified, reported and disclosed in the financial statements, as applicable:

    a. Interfund, internal, and intra-entity activity and balances.

    b. Related-party transactions, including sales, purchases, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties.

    c. Joint ventures and other related organizations.

    d. Guarantees under which the government is contingently liable.

    e. All events occurring subsequent to the fiscal year end through the date of this letter that would require adjustment to, or disclosure in, the financial statements.

    f. Effects of all known actual or possible litigation, claims, assessments, violations of laws, regulations, contracts or grant agreements, and other loss contingencies.

24. As disclosed by the attached, we have accurately disclosed to you all known actual or possible pending or threatened litigation, claims or assessments whose effects should be considered when preparing the financial statements.

25. We acknowledge our responsibility for reporting supplementary information (Schedules 01, 09, 15, 16, 17, 19, 20 & 21) in accordance with applicable requirements and believe supplementary information is fairly presented, in both form and content in accordance with those requirements.

26. We have disclosed to you all significant changes to the methods of measurement and presentation of supplementary information, reasons for any changes and all significant assumptions or interpretations underlying the measurement or presentation.

27. We acknowledge our responsibility for the supplementary information required by generally accepted accounting principles in the United States (RSI) and believe RSI is measured and presented within prescribed guidelines.

28. We have disclosed to you all significant changes in the methods of measurement and presentation of RSI, reasons for any changes and all significant assumptions or interpretations underlying the measurement or presentation of the RSI.

29. We believe the effects of uncorrected financial statement misstatements summarized in the schedule of uncorrected items provided to us by the auditor are not material, both individually and in the aggregate, to each applicable opinion unit.

30. We acknowledge our responsibility not to publish any document containing the audit report with any change in the financial statements, supplementary and other information referenced in the auditor's report. We will contact the auditor if we have any needs for publishing the audit report with different content included.

31. We acknowledge our responsibility for complying, and have complied, with the requirements of 2 CFR § 200 *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*.

32. With regards to your audit of federal grant programs, we have made available all relevant and requested information of which we are aware, including:

    a. All federal awards and related grant agreements (including amendments, if any), contracts with pass-through entities, service organizations and vendors, and correspondence.

    b. All communications from federal awarding agencies, vendors, service organizations or pass-through entities concerning possible noncompliance.

    c. All information regarding corrective actions taken and management decisions or follow-up work performed by federal or pass-through agencies on any findings reported in the past.

    d. All documentation related to the compliance requirements, including information related to federal program financial reports and claims for advances and reimbursements.

    e. Interpretations or other support for any situations where compliance with requirements might be questionable or unclear.

33. Except as reported by the audit, we have identified and complied with all direct and material compliance requirements of federal awards.

34. Management is responsible for establishing effective internal control and has, except as reported by the audit, maintained sufficient control over federal programs to provide reasonable assurance that awards are managed in compliance with laws, regulations, contracts or grant agreements that could have a material effect on each of our federal awards.

35. Federal program financial reports and claims for advances and reimbursements are supported by the accounting records from which the basic financial statements have been prepared and are prepared on a basis consistent with the Schedule of Expenditures of Federal Awards.

36. Copies of federal program reports provided to you are true copies of the reports submitted, or electronically transmitted, to federal agencies or pass-through agencies, as applicable.

37. We are responsible for, and will accurately prepare, the auditee section of the Data Collection Form as required by the Uniform Guidance.

38. We have advised our subrecipients of requirements imposed on them by Federal laws, regulations, contracts or grant agreements as well as any supplemental requirements we impose as a condition of receiving Federal awards.

39. We have monitored the activities of our subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, contracts or grant agreements.

Will McKay
Chairperson,
Board of County Commissioners

Brenda Chilton
Benton County Auditor

Kenneth Spencer
Benton County Treasurer

cc: Board of County Commissioners
Brenda Chilton, Benton County Auditor
Kenneth Spencer, Benton County Treasurer

Attachments:

1. Letter dated April 25,2023, to the Board of County Commissioners from Ryan Brown, Chief Civil Deputy: RE: Letter of Representation and Pending Litigation.
2. Letter dated April 25, 2023, to the Board of County Commissioners from Adam Morash, Risk Manager: RE: Letter of Representation and Claims Update.

BENTON COUNTY WA
Prosecuting Attorney

ERIC EISINGER
PROSECUTING ATTORNEY

RYAN K. BROWN
CHIEF DEPUTY, CIVIL

JULIE E. LONG
CHIEF DEPUTY, CRIMINAL

KRISTIN M. MCROBERTS
ASSISTANT CHIEF DEPUTY-CRIMINAL

GINNY M. BADDLEY
ADMINISTRATOR

CHERYL L. POCHERT
LS SUPERVISOR

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(509) 735-3591

786-5608 Prosser *736-3066 Fax*

DEPUTIES
TERRY J. BLOOR
TIMOTHY A. SKEELS
ANITA I. PETRA
BRENDAN M. SIEFKEN
LAUREL J. HOLLAND
REID W. HAY
STEPHEN J. HALLSTROM
ANNIE CHAU
ANDREW J. CLARK
BRITTNIE E. ROEHM
CLARISSA M. FRALEY
BRANDON L. PANG
ERIC T. ANDREWS
JOSHUA J. LILLY
TY J. ALBERTSON
KARLEY A. WHISMAN
ANA K. SEGOVIA
BROOKE A. AMSTER
TYLER C. GRANDGEORGE
JEREMY M. RISER
CHELSEA E. PARKER
MICHELLE L. MORALES
JEFFREY J. AULTMAN

April 25, 2023

Board of County Commissioners
620 Market Street
Prosser, WA 99350

Re: Letter of Representation

Dear Commissioners:

We have reviewed as to form the enclosed draft Letter of Representation. This letter serves as one of the attachments referenced in paragraphs 5 and 24 thereof and may be attached to your executed Letter of Representation. The second attachment to your Letter of Representation should be a letter from the County's Risk Manager that identifies claims, threatened or filed, pending as of December 31, 2021, and pending as the date of such letter that have not yet resulted in lawsuits. You will need to obtain that directly from him.

If you have any questions or need further information with respect to disclosures of loss contingencies due to asserted, threatened or un-asserted claims, please contact us.

To our knowledge, the following lawsuits seeking monetary relief from Benton County that were pending against the county or its officers or employees acting in their official capacity as of the close of business on December 31, 2021, or arose subsequent to that date and are currently pending:

1. Sleater v. Benton Co., U.S. District Court, Eastern District of Washington, Cause No. 4:17-CV-05033-SAB. Class action lawsuit seeking attorney's fees and damages for alleged violations of civil rights related to incarceration stemming from issuance of warrants for failure to pay legal financial obligations.

2. Teamsters Local 839 v. Benton County, Benton County Superior Court, Cause No. 18-2-00861-9. Appeal of PERC decision regarding overpayment of wages due to payroll coding error. The parties implemented the decision of the Court of Appeals requiring a refund of wages withheld plus interest. This matter has been resolved.

3. Marissa Reyes, et al. v. Brenda Chilton, et al., U.S. District Court, Eastern District of Washington, Cause No. 4:21-CV-005075-SMJ. Lawsuit seeking attorney's fees and damages for alleged violations of civil rights related to rejection of ballot signatures allegedly in violation of Voting Rights Act.

4. Bethany Kangiser, et al. v. Benton County, Benton County Superior Court, Cause No. 21-2-00710-03. Complaint seeking medical expenses and general damages in the amount of $8,100,000 for alleged injuries from motor vehicle accident with Sheriff Deputy's vehicle.

5. Derrick Haney v. Benton County Prosecutor, Yakima County Superior Court, Cause No. 21-2-00665-39. Lawsuit seeking penalties and attorney's fees for alleged unlawful withholding of records, misapplied exemptions, and bad faith in violation of the Public Records Act. This matter has been resolved.

6. Civil Survival Project v. Benton County, et al., King County Superior Court, Cause No. 21-2-03266-1 SEA, Court of Appeals, Cause No. 840151. Lawsuit seeking attorney's fees and refunds of criminal fines paid after criminal statute declared unconstitutional. Dismissed by Superior Court. Plaintiffs have sought direct appeal to Washington Supreme Court.

7. Zachary Fairley v. Pasco Police Department, U.S. District Court, Eastern District of Washington, Cause No. 4:20-CV-05229-SMJ. Lawsuit seeking attorney's fees and damages for alleged illegal search and seizure. This matter has been resolved.

8. Pete Felicijan v. Benton County, et al., Benton County Superior Court, Cause No. 22-2-00102-03. Lawsuit seeking economic damages for alleged injuries in an automobile accident.

9. Steve Caughey, et al. v. Benton County, U.S. District Court, Eastern District of Washington, Cause No. 4:22-CV-05062-SAB. Lawsuit seeking substantial economic damages for six current and former employees of the Benton County Sheriff's Office for alleged outrageous conduct, whistleblower retaliation, defamation, and similar torts.

10. Isaiah Mosses Colley, et al. v. Benton County, et al., U.S. District Court, Eastern District of Washington, Cause No. 4:22-CV-05157-TOR. Lawsuit by six plaintiffs seeking economic damages for alleged violation of civil rights.

11. Eric Hood v. Benton County, Yakima County Superior Court, Cause No. 23-2-00454-39. Lawsuit seeking penalties and attorney's fees for alleged unlawful withholding of public records, failing to conduct an adequate search, misapplied exemptions, and bad faith in violation of the Public Records Act.

Very truly yours,

ERIC EISINGER
Prosecuting Attorney

RYAN K. BROWN
Chief Deputy Prosecuting Attorney
Civil Division

Encl.

cc: Kenneth Spencer
Brenda Chilton
Jerrod MacPherson
Aileen Coverdell
Adam Morasch

Risk Management

7122 W. Okanogan Place; Bldg. A
Kennewick, WA 99336
PHONE (509) 736-3082
co.benton.wa.us

April 25, 2023

Board of Benton County Commissioners
620 Market Street
Prosser WA 99350

RE: Claims Update

Dear Commissioners:

Benton County is insured through the Washington Counties Risk Pool and has a $100,000 deductible. The following claims have been filed against Benton County or its officials acting in their capacity. As of close of business on April 25, 2023, these claims over $50,000 are currently resolved, unresolved or have yet to result in a lawsuit, remaining on Benton County's books due to the statute of limitations.

1. CC2020-08A & 08B, David Goertzen; Medical treatment given when not wanted; $1,000,000; Claim Resolved.

2. CC2020-13, Adam Trujillo; Medical treatment given when not wanted; $150,000; Claim Resolved.

3. CC2020-16, Louis Mendez; Wrongful imprisonment; $3,000,000; Claim Resolved.

4. CC2020-19, Jacob Munoz; Assault and Battery; $325,000; Claim Resolved.

5. CC2021-05, Timothy Nation; Denied Medical Treatment; $3,500,000; Claim Resolved.

6. CC2021-19, Jerry Hatcher; Admin Violations; $4,000,000; Claim Resolved.

7. CC2022-05, Daniel Penselin; Wrongful Imprisonment; $1,094,000; Claim Resolved.

8. CC2022-11, Bryan Hernandez; Wrongful Imprisonment; $3,000,000; Claim Resolved.

9. CC2022-24, Solorio Ricardo; Loss of Property while in jail; $350,000; Claim Resolved.

10. CC2022-25, Edward Bartkowski; Mental and Physical Pain from being in jail; $200,000; Claim Resolved.

11. CC2022-32, Jeremy Smith; Blaming the Corrections Staff for his Illness; $100,000; Claim Resolved.

12. CC2022-36A, Hunter Gregerson; County Failed to deal with Dogs that Attacked Hunter Gregerson and his mother; $1,000,000; Claim Resolved.

13. CC2022-36B, Christin Gregerson, County Failed to deal with Dogs that Attacked Christin Gregerson and her son; $2,500,000; Claim Resolved.

14. CC2022-40, Solorio Ricardo; Loss of Property while in jail; $100,000; Claim Resolved.

15. CC2023-06B, Bryan Hernandez; Wrongful Imprisonment; $800,000; Unresolved.

Sincerely,

Adam Morasch

Adam Morasch
Risk Manager

CC: Jerrod MacPherson
Ryan Brown
Aileen Coverdell

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Final Precinct Boundaries Adjustments Due To 2020 Census Redistricting Rescinding And Replacing Resolution 2023-291
Presenter:	
Prepared By:	Amanda Hatfield
Reviewed By:	Brenda Chilton

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

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

Following completion of the 2020 census, Washington State, Benton County and the jurisdictions within Benton County submitted to the Benton County Auditor redistricting plans for their respective districts pursuant to 29A.76.010 and 29A.16. Upon completion of the 2020 redistricting process, new precincts were created as well as several preexisting precincts were renumbered due to the City of Kennewick District boundary changes. This action rescinds/replaces 2023-291.

Fiscal Impact

0

Recommendation

As a result of the completion of the 2020 redistricting process, The Benton County Auditor – Election Division and GIS have worked to identify four new precincts and eleven precincts that need modification pursuant to RCW 29A.16 and updates to the Benton County voting precincts have been submitted. This submission rescinds/replaces 2023-291.

Suggested Motion

Approve as part of consent agenda.

B. Chilton, A. Hatfield L. Roe

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF CHANGING PRECINCT BOUNDARIES IN CONJUNCTION WITH REDISTRICTING PURSUANT TO RCW 29A.76 AND 29A.16 WHICH RESCINDS AND REPLACES RESOLUTION 2023-291

WHEREAS, Resolution 2023-291 is rescinded and replaced effective immediately with this resolution; and

WHEREAS, Washington State, Benton County, and jurisdictions within Benton County submitted to the Benton County Auditor redistricting plans for their respective districts pursuant to 29A.76.010; and

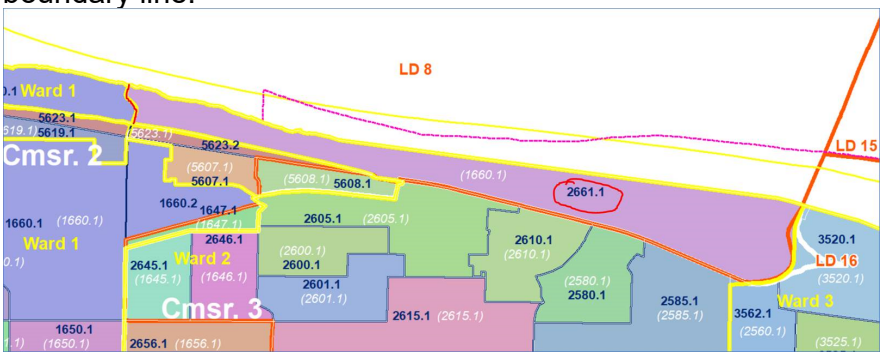
WHEREAS, upon the completion of the 2020 Redistricting process, several new precincts were created as well as several were renumbered due to City of Kennewick Ward District boundary changes; and

WHEREAS, the Benton County Auditor-Election Division, Office of the Secretary of State's GIS office, and Benton County GIS worked to identify precincts that need modification pursuant to RCW 29A.16; **NOW, THEREFORE,**

BE IT RESOLVED the following precinct updates in Benton County based on the rescinding and replacing of Resolution 2023-291 be modified and updated as follows:

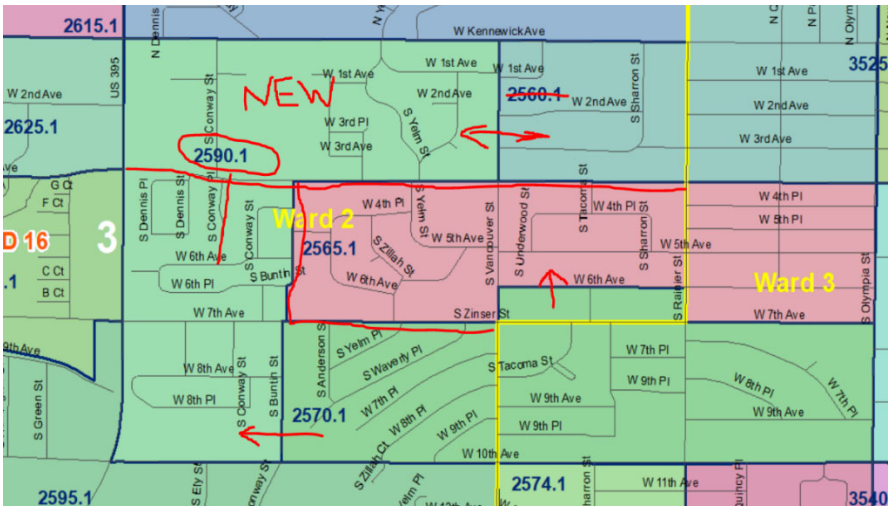
<u>Newly created Benton County Precincts</u>

Precinct 2661 was created out of precinct 1660 along new City of Kennewick ward district boundary line.

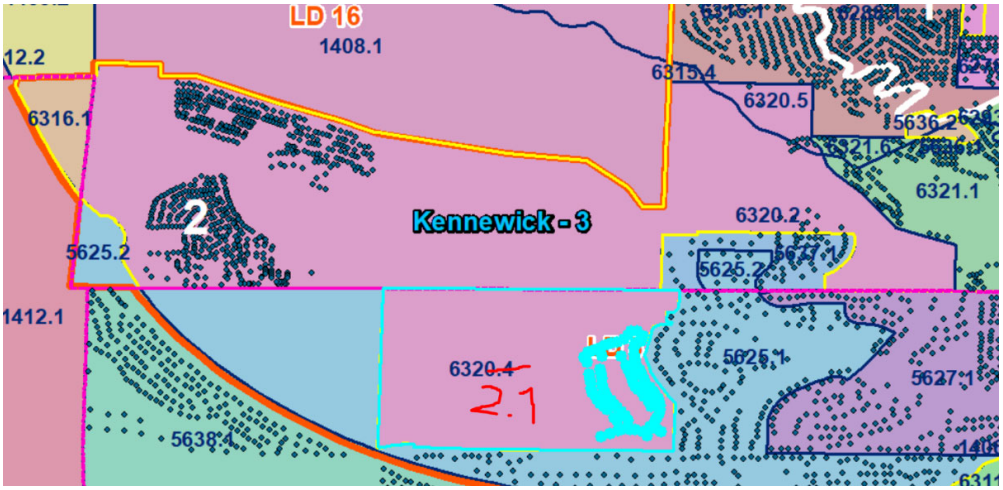


Precinct 2591 was created out of the part of 2590 north of W 4th Ave and the part of 2560 remaining in Ward 2.

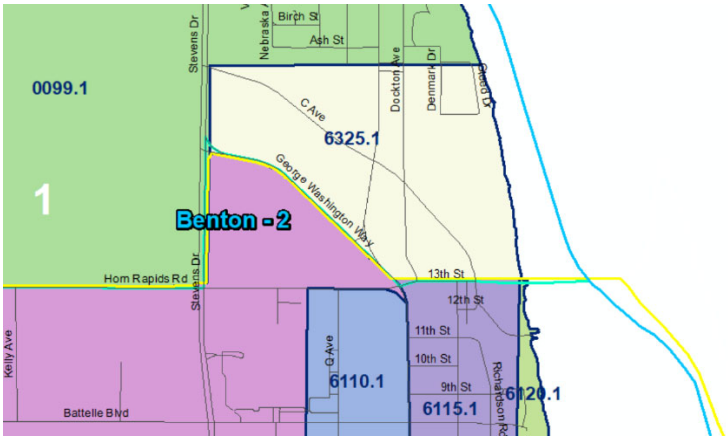
Also added the part of 2570 west of S Vancouver St to 2590, added the part of 2570 north of W 7th Ave to 2565 and added the part of 2570 north of W 7th Ave to 2565.



Precinct 6322 created out of precinct 6320 along Kennewick School District boundary line

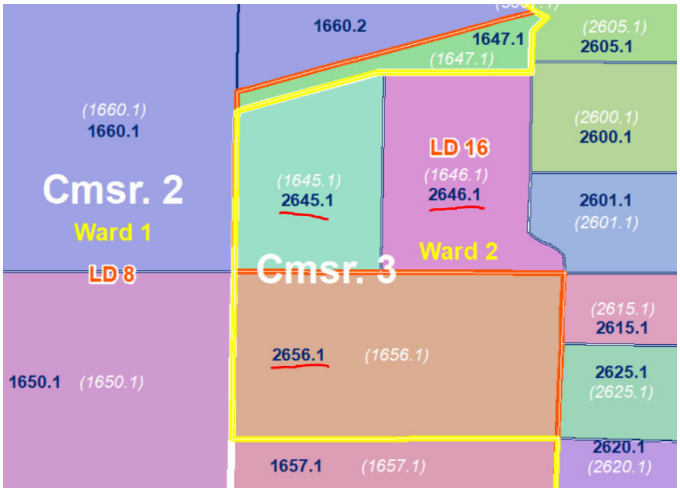


Precinct 6325 created out of Precinct 99 for Richland annexation N of legislative district line

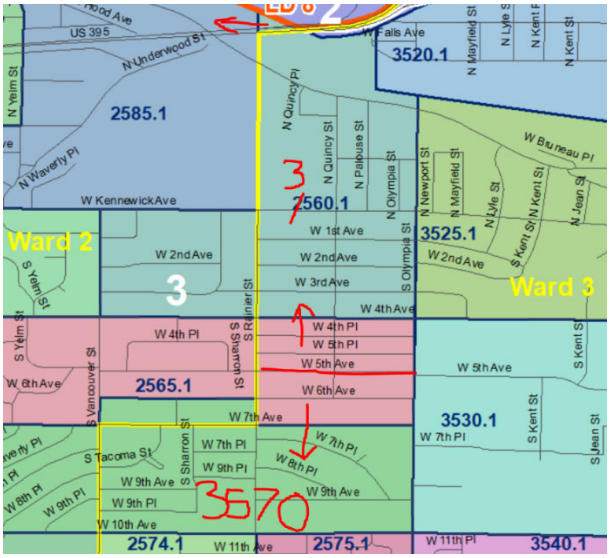


Precincts that were renumbered due to Redistricting changes

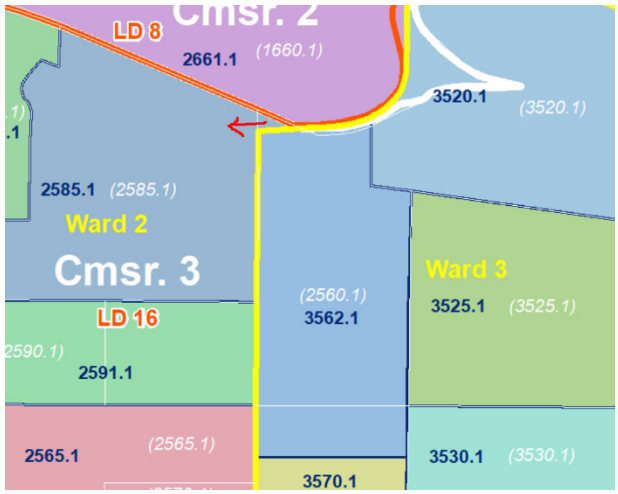
Precinct 1645 becomes Precinct 2645, Precinct 1646 becomes Precinct 2646, Precinct 1656 becomes Precinct 2656 (all displayed on map below)



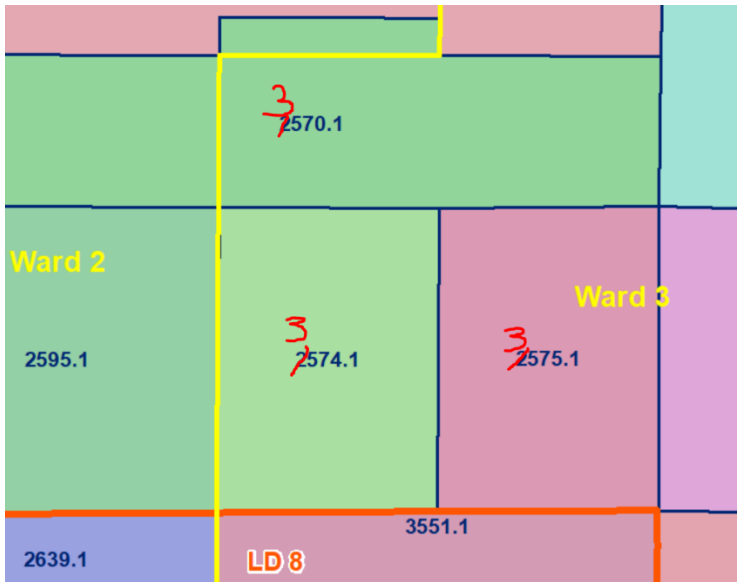
Precinct 2570 becomes Precinct 3570



Precinct 2560 becomes Precinct 3562



Precinct 2574 becomes Precinct 3574 and Precinct 2575 becomes Precinct 3575



<u>Boundary Changes affected due to redistricting or to correct due to over population.</u>

Precinct 2570 W of S Vancouver St moves to Precinct 2590;
Precinct 2570 N of S Zinser St/W 7th Ave moves to Precinct 2565
Precinct 2560 N of US 395 moves to Precinct 2585
Precinct 2565 E of S Rainier St and S of W 5th Ave moves to Precinct 3570 (formerly 2570)
Precinct 2565 E of S Rainier St and N of W 5th Ave moves to Precinct 3562 (formerly 2560)
Precinct 1690 W of S Sherman St (extended) moves to Precinct 1691
Precinct 1690 S of W Hildebrand Blvd and Precinct 1691 E of S Sherman St (extended) move to Precinct 1692
Precinct 6151 E of River Valley Dr/Sedona Cir/River Valley Dr/River Park Dr/Village Pkwy/Eaglewatch Loop/Village Pkwy moves to Precinct 6152
Expanded Precinct 6316 NW of Dallas Rd/Trowbridge Blvd/Sol Duc Ave (extended)
Split Precinct 6321.3 (S of school district line) moves to Precinct 6310

Deleted Precincts

Precinct 1689 merged into Precinct 2636
Precinct 2632 merged into Precinct 2636
Northern section of Precinct 3516 merged into Precinct 3545; southern section of Precinct 3516 merged into Precinct 3560
Precinct 1364 merged into Precinct 1241
Precinct 1090 merged into Precinct 1420
Precinct 1408 merged into Precinct 1409
Precinct 4018 merged into Precinct 4014

Dated this _____day of _____, 2023.

_____
Chairman of the Board

_____
Commissioner

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

Attest: _____
Clerk of the Board

CC B. Chilton, A. Hatfield

L. Roe

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Re-appointment of Chuck Wierman to the Board of Equalization
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:**	
☒ 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

Chuck Wierman's term on the Benton County Board of Equalization is due to expire April 30, 2023. Mr. Wierman has expressed a willingness to be re-appointed for another 3-year term expiring April 30, 2026.

Fiscal Impact

Amount:

Fund:

Recommendation

Re-appoint Mr. Chuck Wierman to the Board of Equalization with term expiring April 30, 2026.

Suggested Motion

Consent Agenda resolution.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF REAPPOINTMENT OF CHUCK WIERMAN TO THE BENTON COUNTY BOARD OF EQUALIZATION

WHEREAS, the term for Chuck Wierman is set to expire on April 30, 2023; and

WHEREAS, Chuck Wierman has expressed an interest and willingness to be re-appointed for an additional three-year term; **NOW, THEREFORE,**

BE IT RESOLVED that Chuck Wierman is hereby re-appointed to the Benton County Board of Equalization effective May 1, 2023 and said term expiring on April 30, 2026.

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: Appointments List, BOE

P. Brown

BENTON COUNTY
BOARD OF EQUALIZATION

P.O. Box 509*Courthouse*Prosser, WA 99350*Phone (509)786-5604 or 736-3089*Fax (509) 786-5625

Commissioners,

Mr. Chuck Wierman expressed his desire to be re-appointed to the Board of Equalization via email on April 7, 2023. I, Peggy Brown, clerk to the Board of Equalization submitted a resolution to the County Commissioners stating his request. Thank you.

Peggy Brown,
Clerk, Benton County BOE
4-12-23

Peggy Brown

From: Chuck Wierman <oldhikerguy51@gmail.com>
Sent: Friday, April 7, 2023 10:08 AM
To: Peggy Brown
Subject: [EXTERNAL] Re: Term Expiration
Attachments: image001.gif

EXTERNAL EMAIL WARNING!!!: This email originated from outside of Benton County. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

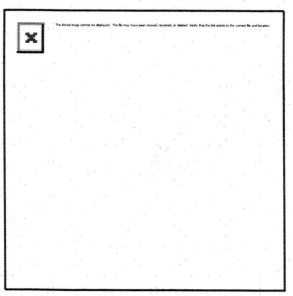
Yes, Peggy. I am interested in continuing to serve on the board.
Chuck

On Thu, Apr 6, 2023, 4:06 PM Peggy Brown <Peggy.Brown@co.benton.wa.us> wrote:

Chuck,

I wanted to inform you that your term on the Benton County BOE is set to expire 4/30/2023. Are you interested in being re-appointed for another 3 year term beginning 5/1/23 – 4/30/26? Let me know at your earliest convenience of your decision.

Thank you.



Peggy Brown

Benton County Commissioners'

Office Support

PO Box 190

Prosser, WA 99350

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Grant Agreement GRT23015 between Washington State Administrative Office of the Courts and Benton County District Court
Presenter:	
Prepared By:	Ryan Washburn, Therapeutic Court Coordinator
Reviewed By:	Amanda Watts, Court Administrator

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

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

Summary / Background Information

Resolution 2022-415 authorized District Court to submit an application to the Administrative Office of the Court (AOC) for a Therapeutic Court grant to help fund the salary and benefits for a new Behavioral Health Specialist/Active Probation Officer, salary for Defense Counsel, staff training, equipment and compliance monitoring costs for a new Therapeutic Court program (Recovery Court).

District Court was awarded a grant in the amount of $150,066 to reimburse for eligible expenses incurred between July 1, 2022 and June 30, 2023.

AOC has confirmed that Benton County Therapeutic Courts may request reimbursement by ratifying (approving by resolution) the grant agreement.

Fiscal Impact

Recovery Court has expended $72,708 that is eligible for reimbursement by the grant and another $42,000 of reimbursable expenses are projected to be spent by the end of the grant cycle on June 30, 2023.

Recommendation

Recommend Board of County Commissioners approve resolution ratifying Grant Agreement GRT23015 between Washington State Administrative Office of the Courts and Benton County District Court.

Suggested Motion

Approve as part of the consent agenda.

Ryan Washburn

From: Eric Andrews
Sent: Thursday, April 13, 2023 11:18 AM
To: Ryan Washburn
Subject: RE: AOC Grant Agreement 23015 Resolution

I approve as to form.

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

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From: Ryan Washburn <Ryan.Washburn@co.benton.wa.us>
Sent: Thursday, April 13, 2023 11:13 AM
To: Eric Andrews <Eric.Andrews@co.benton.wa.us>
Subject: AOC Grant Agreement 23015 Resolution

For your review. Thank you.

Ryan Washburn, MSW
Therapeutic Courts Coordinator
Benton County District Court

Phone: 509-735-8476 ext. 3417
Email:ryan.washburn@co.benton.wa.us

7122 West Okanogan Place, Suite A110
Kennewick, WA 99336

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF RATIFYING GRANT AGREEMENT GRT23015 BETWEEN AOC AND BENTON COUNTY DISTRICT COURT TO SUPPLEMENT FUNDING FOR THE THERAPEUTIC COURTS AND AUTHORIZING THE RECEIPT OF FUNDS FROM THE ADMINISTRATIVE OFFICES OF THE COURTS

WHEREAS, Resolution 2022-415 authorized District Court to submit an application to the Administrative Offices of the Courts (AOC) for a Therapeutic Court grant to help fund the salary and benefits for a new Behavioral Health Specialist/Active Probation Officer, salary for Defense Counsel, staff training, equipment and compliance monitoring costs for a new Therapeutic Court program; and

WHEREAS, the AOC in Grant Agreement GRT23015 awarded Benton County Therapeutic Court a grant in the amount of $150,066 to reimburse for eligible expenses incurred between July 1, 2022 and June 30, 2023; and

WHEREAS, Benton County Therapeutic Courts has expended $72,000 that is eligible for reimbursement and projects another $42,000 of reimbursable expenses by the end of the grant cycle on June 30, 2023; and

WHEREAS, AOC has confirmed that Benton County Therapeutic Courts may request reimbursement by ratifying (approving by resolution) the grant agreement by the Benton County Board of County Commissioners; **NOW THEREFORE**

BE IT RESOLVED that the Board of Benton County Commissioners authorizes the submittal of costs allowed for reimbursement under Grant Agreement GRT23015 to the AOC and the approval for the County to receive said reimbursements from the AOC by ratifying the attached grant agreement with this resolution.

DATED this_____day of_____, 2023.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Commissioner

Constituting the Board of County Commissioners
Of Benton County, Washington

Attest: _____
Clerk of the Board

Cc: District Court
Auditor

Prepared by: R. Washburn

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GRANT AGREEMENT - GRT23015

BETWEEN

WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS

AND

Benton County District Court

THIS AGREEMENT (Agreement) is made by and between, **Washington State Administrative Office of the Courts** (AOC) and Benton County District Court , (Grantee), (collectively as the **Parties** and individually each as a **Party**).

The Parties hereby enter into this Agreement whereby Grantee will perform certain services for, and provide product deliveries to AOC. Grantee is subject to the terms and conditions specified in Attachment A and agrees to the following terms and conditions.

1. SCOPE OF WORK

Grantee must use funding to identify individuals before their court with substance use disorders or other behavioral health needs and engage those individuals with community-based therapeutic interventions within the Grantee's jurisdiction in accordance with the Grantee's grant application, and Statement of Work (Attachment A). This contract constitutes an official award letter.

2. TERM AND PERIOD OF PERFORMANCE

This Agreement's period of performance runs from July 1, 2022 through June 30, 2023, unless otherwise terminated (Term). Notwithstanding the foregoing, this Agreement and all its terms and conditions shall remain in full force and effect until all deliverables are completed or otherwise terminated, and this Agreement is terminated and/or completed.

3. COMPENSATION AND PAYMENT

The awarded amount is **$150,066.00** . Grantee will use the funds for the following cost categories (these amounts need to match what the grantee submitted in their application):

Cost Category	Amount
Personnel salaries & benefits	$ 134,426
Staff equipment & training	$ 5,000
Treatment services	$ 9,640
Other participant services	$ 1,000
Total	$ 150,066

Grantee may vary the amount in any particular category by up to 10%, but any adjustments beyond 10% require the explicit written consent of AOC's Project Manager, and in no case

may the total amount exceed the awarded amount above.

This amount includes expenses necessary or incidental to performing the items under the Statement of Work, including, but not limited to, travel, lodging and per diem related expenses. Grantee will submit an invoice after the completion and acceptance of each deliverable noted above.

This amount will be disbursed in two allotments, one in August 2022 and the second in January 2023 upon receipt of a properly filled out Form A-19.

4. REPORTING

The Grantee must submit quarterly reports to AOC documenting the progress of their therapeutic court program. These reports will provide:

- The number of program participants for the corresponding quarter,
- The services provided to program participants for the corresponding quarter,
- The cost of services provided to program participants for the corresponding quarter,
- Other costs accrued by the Grantee to support the therapeutic court program during the corresponding quarter, and
- Any challenges faced by the Grantee in operating their therapeutic court program during the corresponding quarter.

Reports shall be **submitted to** https://inside.courts.wa.gov/apps/therapeuticgrants/view/dsp_therapeuticgrants.cfm on the following schedule:

Period	Report Due
07/01/22 - 09/16/22	09/30/22
09/17/22-02/14/23	02/28/23
02/15/23-06/30/23	07/15/23 (final report)

Failure to submit a report by the due date may adversely affect the Grantee's eligibility for future funding.

5. BILLING PROCEDURES

Grantee will submit properly prepared Form A-19s via email to AOC Financial Services at payables@courts.wa.gov. Invoices shall be submitted no more than twice during the pendency of the contract. Incorrect or incomplete invoices shall be returned by AOC to Grantee for correction and reissuance, and may result in delays in funding. All Invoices shall provide and itemize, at a minimum, the following:

A. Contract Number GRT23015;

B. Grantee name, address, phone number;

C. Grantee Federal Tax Identification Number;

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D. Description of Services to be provided;

E. Date(s) Services will be provided;

F. Total Invoice Price.

Payment will be considered timely if made by the AOC within thirty (30) calendar days of receipt of a properly prepared invoice. Payment shall be sent to the address designated by the Grantee.

The AOC may, in its sole discretion, terminate the contract or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AOC.

6. SAFEGUARDING OF INFORMATION

The use or disclosure by the Grantee of any information obtained as a result of performance under this contract concerning the AOC or the Court for any purpose not directly connected with the administration of the AOC's, the Court's or the Grantee's responsibilities with respect to services provided under this contract is prohibited except by written consent of the AOC or the Court.

7. CONFLICT OF INTEREST

Grantee warrants that at the date of execution of this Agreement, no organizational conflict of interest exists or is likely to arise in the performance of its obligations under the Subcontract. Grantee warrants that it shall advise AOC immediately if a conflict of interest arises in the future.

8. PROJECT MANAGEMENT

The Project Manager for each of the parties shall be the contact person for all communications regarding the performance of this Contract.

AOC Project Manager	Grantee Project Manager
Stephanie Oyler PO Box 41170 Olympia, WA 98504-1170 Stephanie.Oyler@courts.wa.gov 360-890-0901	**Ryan Washburn** 7122 W Okanogan Pl Ste A110 Kennewick, WA 99336-2601 Ryan.Washburn@co.benton.wa.us (509)735-8476 ext.3417

9. ASSIGNMENT

Grantee agrees that none of the deliverables to be furnished under this Agreement shall be assigned or subcontracted (including to independent consultants) without the prior written permission of AOC.

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10. TERMINATION

A. Termination for Default

The AOC may, by written notice, terminate this contract, in whole or in part, for failure of the Grantee to perform any of the obligations or provisions required by the contract. In the event of default, the Grantee shall be liable for damages as authorized by law, including but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time; Provided, that if (i) it is determined for any reason the Grantee was not in default, or (ii) the Grantee's failure to perform is without Grantee's and/or SubGrantee's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience.

B. Termination for Convenience

Except as otherwise provided in this contract, the AOC may terminate this contract by providing written notice of such termination to the Grantee, specifying the effective date thereof, at least five (5) calendar days prior to such date. If this contract is so terminated, the AOC shall be liable only for payment for services rendered prior to the effective date of termination.

11. DISPUTES

The Parties agree to attempt to resolve any dispute arising under this Agreement first by elevating the matter to appropriate levels of management within each organization. Grantee agrees that pending any decision, appeal or judgment on the settlement of any dispute arising under this Agreement, Grantee shall proceed diligently with the performance of this Agreement.

12. INDEMNIFICATION

The Grantee shall defend, protect, and hold harmless the state of Washington, the AOC, or any employees thereof, from and against all claims, suits or actions arising from the Grantee's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark or trade name through use or reproduction of material of any kind.

13. FORCE MAJEURE

Neither Grantee nor AOC shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except SubGrantees).

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14. REPRESENTATION AND CERTIFICATIONS

Grantee shall complete all required Representations and Certifications as they apply to this Agreement, if any. Grantee further agrees that it will provide additional or annual Representations and Certifications as may be requested by AOC in connection with this Agreement, and also agrees to promptly notify AOC of any changes which modify the information contained in any such Representations and Certifications.

15. COMPLIANCE WITH LAWS

Grantee shall comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this Agreement.

16. INDEPENDENT GRANTEES

Grantee is an independent Grantee in relation to AOC with respect to all matters arising under this Agreement. Nothing herein shall be construed to establish a partnership, joint venture, association or employment relationship between the parties. Neither Party shall be deemed to be an agent of the other or to have any authority to bind or create any obligation, express or implied, on behalf of the other.

17. WHOLE AGREEMENT

This Agreement and the SOW attached hereto contain and embody the entire agreement of the Parties hereto and supersede all prior agreements, negotiations and discussions between the Parties hereto. Any representation, inducement or agreement that is not contained in this Agreement shall not be of any force or effect. Except as otherwise expressly provided in this Agreement, this Agreement may not be modified or changed in whole or in part in any manner other than by an instrument in writing duly signed by both Parties hereto.

18. GOVERNING LAW/VENUE

This Agreement will be governed by and construed and enforced in accordance with the laws of Washington without giving effect to the principles of conflict of laws thereunder.

19. EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts and each counterpart shall constitute one and the same Agreement.

20. WAIVER

No Party shall be deemed to have waived any right hereunder unless such waiver is in writing, and the waiver or failure of either Party to exercise in any respect any right provided for herein shall not be a waiver of any further right hereunder.

21. SEVERABILITY

If any portion of this Agreement is held or determined to be invalid or unenforceable, the remaining provisions shall continue in full force and effect as if this Agreement had been executed within the invalid portion eliminated.

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22. HEADINGS

Any headings used in this Agreement are for purposes of organization only and have no independent legal significance.

In **WITNESS WHEREOF**, the parties hereto have caused this instrument to be signed as of the day and year below written.

Administrative Office of the Courts		**Grantee**	
DocuSigned by: B760CAAF4FE6410...	8/16/2022	DocuSigned by: AAC3C1B289D34D1...	8/15/2022
Signature	*Date*	*Signature*	*Date*
Christopher Stanley		Ryan Washburn	
Name		*Name*	
Director, MSD		Therapeutic Courts Coordinator	
Title		*Title*	

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 04/11/23 BC 04/25/23
Subject:	Cordant Health Solutions Personal Services Contract Amendment No. 1
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

Benton-Franklin Counties Juvenile Justice Center currently contracts with Cordant Health Solutions to provide urinalysis testing for juveniles under the jurisdiction of the Court.

Juvenile Justice Center received a letter dated February 3, 2023 to update "Consent to Assign", in which we learned Cordant Health Solutions had been acquired by Navis Clinical Laboratories, and partner Technical Resource Management, LLC. The delay in execution is a result of procuring Technical Resource Management, LLC d/b/a Cordant Health Solutions W9, and it not being received until March 24, 2023.

The purpose of Amendment No. 1 is to amend Contractor's business name and amend Section 4 ("Contract Representatives"). The term of Amendment No. 1 is backdated to February 1, 2023, so that services are not interrupted.

The term of the Amendment No. 1 will commence on February 1, 2023 and expire on December 31, 2023.

Fiscal Impact

There is no financial obligation to the Benton-Franklin Counties Juvenile Justice Center, and the do not exceed amount of $17,000 shall remain the same.

Recommendation

The Administrator recommends that Personal Services Contract Amendment No. 1 is approved as presented.

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 EXECUTING AMENDMENT NO. 1 BETWEEN BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND TOXICOLOGY SERVICES, LLC DBA CORDANT HEALTH SOLUTIONS, AMENDING BENTON COUNTY RESOLUTION 2022 004 AND FRANKLIN COUNTY RESOLUTION 2021 305

WHEREAS, per Benton County Resolution 2022 004 dated January 4, 2022 and Franklin County Resolution 2021 305 dated December 21, 2021 the Board of Benton County Commissioners and the Board of Franklin County Commissioners entered into an Agreement between Benton-Franklin Counties Juvenile Justice Center and Toxicology Services, LLC dba Cordant Health Solutions, to provide urinalysis testing for juveniles under the jurisdiction of the Court; and

WHEREAS, the purpose of Amendment No. 1 is to amend Contractor's business name to Technical Resource Management, LLC dba Cordant Health Solutions and amend Section 4 ("Contract Representatives") of the original Personal Services Contract; **NOW THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington and by the Board of Franklin County Commissioners, Franklin County, Washington the Boards approve the attached Amendment No. 1, and the do not exceed amount of $17,000 shall remain the same; and

BE IT FURTHER RESOLVED, the term of the attached Amendment No. 1 commences on February 1, 2023 and expires on December 31, 2023; and

BE IT FURTHER RESOLVED, that the Chairs of the boards are authorized to sign Amendment No. 1.

DATED this ____day of _____ 2023

BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chairman of the Board

_____
Commissioner

_____
Commissioner

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this ____day of _____ 2023

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

JUDGES
Hon. Jacqueline 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 SERVICES CONTRACT AMENDMENT NO. 1

This Amendment No. 1 to the Personal Services Contract (the "Amendment") is entered into by and between Regional Toxicology Services, LLC and **BENTON COUNTY** and **FRANKLIN COUNTY**, state of Washington political subdivisions (jointly the "Counties"), for and on behalf of the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency ("Juvenile Justice Center").

In consideration of the mutual benefits and covenants contained herein, and in the parties' existing Personal Service Contract between Regional Toxicology Services, LLC and the Counties, (corresponding to Benton County Resolution No. 2022 004 and executed on January 4, 2022, and Franklin County Resolution No. 2021 305 and executed on December 21, 2021), hereinafter referred to as the "Existing PSC", the parties agree to amend the Contract as follows:

1. Amend the Contractor's name and address to reflect the State of Colorado Business License with the following:

   Technical Resource Management, LLC
   d/b/a Cordant Health Solutions
   PO Box 172775
   Denver, Colorado 80217

2. Section 4 ("Contract Representatives") of the Contract shall be amended in its entirety and shall read as follows:

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

   a. For Contractor: Amanda Gibbs, Vice President
   Technical Resource Management, LLC
   d/b/a Cordant Health Solutions
   12015 E. 46th Avenue, Suite 220
   Denver, CO 80239
   Phone: (928) 440-6288
   Email: agibbs@cordanths.com

b. For Counties: David Wheeler, Administrator
Benton-Franklin Juvenile Justice Center
5606 W. Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 737-2745
Email: David.Wheeler@co.benton.wa.us

Except as expressly provided in this Contract Amendment No. 1, all other terms and conditions of the original Contract and subsequent written contract amendments thereto remain in full force and effect.

This Amendment No. 1 shall be effective February 1, 2023.

Technical Resources Management, LLC d/b/a Cordant Health Solutions	**Benton-Franklin Counties Juvenile Justice Center**
Amanda Gibbs 3/23/2023	3/29/2023
Amanda Gibbs **Vice President** **Date**	**David Wheeler** **Administrator** **Date**
BENTON COUNTY APPROVAL	**FRANKLIN COUNTY APPROVAL**
Approved as to Form: Stephen Hallstrom 03/24/23	Approved as to Form:
Stephen Hallstrom, Deputy Prosecuting Attorney Date	Deputy Prosecuting Attorney Date
By: _____ Name: _____ Title: Chairman, Board of Commissioners	By: _____ Name: _____ Title: Chair, Board of Commissioners
Date: _____	Date: _____
Attest:	Attest:
Clerk of the Board: _____	Clerk of the Board: _____

Cordant
Health Solutions®

February 3, 2023

Benton County and Benton-Franklin Counties Juvenile Justice Center

Address: 5606 W. Canal Place
Suite 106
Kenneth, WA 99336

Attn: Darryl Banks, Administrator

Delivered via email to darryl.banks@co.benton.wa.us

Re: Request for Consent to Assign - Agreement for Professional Services dated January 1, 2023, between Regional Toxicology Services, LLC, d/b/a Cordant Health Solutions and Benton County (the "Agreement")

Dear Mr. Banks:

This letter is being sent to you as Cordant is entering into a transaction with Navis Clinical Laboratories, who is acquiring certain assets of the company pertaining to our clinical laboratory services line of business. The toxicology services that Cordant is performing for Benton County ty are **not** part of the service line being acquired by Navis. As such, I am writing to notify you that we propose to assign the current Agreement and obligations under that Agreement to Technical Resource Management, LLC dba Cordant Health Solutions (the "Assignment"), which is the Cordant legal entity that will be providing the drug testing services to the County.

In accordance with the Agreement, I request your consent to this Assignment. Please sign at the bottom of this letter to acknowledge your consent and return it to Fara Tippit at ftippit@cordanths.com.

Because of the closing schedule, I request that you send the signed consent to us by Friday, February 10, 2023.

If you have any questions regarding the Assignment or this request for consent, please email me at agibbs@cordanths.com or call me at 928.606.6700.

I appreciate your assistance and thank you in advance for your prompt attention to this matter. We look forward to continuing to provide laboratory services to the county under the direction of Cordant's direct bill laboratory services line of business, as has been the case for many years.

Cordant
Health Solutions®

Very truly yours,

Amanda Gibbs, Senior Vice President and General Manager

The undersigned hereby consents to the Assignment:

By: _____

Printed Name: David Wheeler

Title: Juvenile Court Administrator

Date: 2/7/2023

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ **Go to *www.irs.gov/FormW9* for instructions and the latest information.**

Give Form to the requester. Do not send to the IRS.

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Technical Resource Management, LLC

2 Business name/disregarded entity name, if different from above

Cordant Health Solutions

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☑ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ **P**

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

PO Box 172775

Requester's name and address (optional)

6 City, state, and ZIP code

Denver, CO 80217

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			–			–				

or

Employer identification number

3	5	–	2	5	2	3	3	8	3

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here | **Signature of U.S. person ▶** Barry Boyd | **Date ▶** 2/9/2023

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Professional Services Agreement with attorney Eric Scott
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 is legally obligated to provide public defense services in Benton County District Court on adult criminal cases ("Services").

One of the County's employed staff trial public defenders, Jordan Castellano will be on maternity leave from May 1, 2023 through August 31, 2023 and, as a result, will need full coverage for both her existing caseload and new cases assigned to her during this period.

Eric Scott is an attorney engaged in the private practice of law, has direct experience in litigating cases involving persons charged with misdemeanor criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in Benton County District Court by providing coverage for Jordan Castellano's existing and assigned caseload during her leave.

Fiscal Impact

Current Expense; $8,791.67 per month for the period of May 1, 2023 through August 31, 2023 and other allowable case premiums, reimbursements and other fees as provided in the professional services agreement.

Recommendation

Execute professional services agreement with attorney Eric Scott for coverage of Benton County staff trial defender Jordan Castellano during her leave from May 1, 2023 through August 31, 2023 in Benton County District Court.

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 IN BENTON COUNTY DISTRICT COURT WITH ERIC SCOTT TO PROVIDE LEAVE COVERAGE FOR BENTON COUNTY OFFICE OF PUBLIC DEFENSE STAFF ATTORNEY JORDAN CASTELLANO

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court for defendants charged with criminal offenses ("Criminal Cases"); and

WHEREAS, because Benton County employed staff attorney, Jordan Castellano, will be on leave from May 1, 2023 through August 31, 2023 it is necessary to provide coverage Services; and

WHEREAS, attorney Eric Scott is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with misdemeanor criminal offenses and desires to contract with Benton County to provide leave coverage for staff attorney Jordan Castellano's existing and assigned caseload; and

WHEREAS, it is therefore in the best interests of Benton County to award a professional services agreement with Eric Scott for public defense services; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Eric Scott, designated BCDC23ES002-T, for services to be provided in Benton County District Court to defendants charged with criminal offenses, to cover the scheduled leave of Benton County Office of Public Defense staff attorney Jordan Castellano, from May 1, 2023 through August 31, 2023 with compensation of $8,791.67 per month (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

_____
Commissioner

_____
Commissioner

Constituting the Board of County
Commissioners of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, Eric Scott
Copy – Auditor, S Godinez

M Vander Sys

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

CONTRACT # BCDC23ES002-T

CONTRACT SUMMARY			
Contract Type	**Full Caseload**		
Contract Number	**BCDC23ES002-T**	**Contract Holder**	**Eric Scott**
WSBA #	**48913**	**Effective Dates**	**05/01/23 – 08/31/23**
Caseload Cap	**n/a**	**Compensation**	**$8,791.67 per month**
Assigned Court	**District Court**	**Compensation Structure**	**☐ By the case** **☒ Monthly** **☐ Hourly** **☐ By the case but paid monthly**
Compensation Payable To:	**Tri-City Legal, PLLC**		

THIS AGREEMENT is entered into by and between **Eric Scott,** attorney at law, Washington State Bar Association **# 48913** ("Attorney"), **dba Tri-City Legal, 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 (and gross misdemeanor) criminal offenses alleged to have been committed within the County's jurisdictional boundaries ("County Defendants").

B. County has also entered into interlocal agreements with the municipalities within its jurisdictional boundaries ("Cities") to provide public defense services to those municipalities in fulfillment of their legal duties to criminal defendants being prosecuted for misdemeanor (and gross misdemeanor) criminal offenses within their jurisdictional boundaries ("City Defendants").

C. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with criminal offenses, and desires to contract

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with the County to provide legal services to County Defendants and/or City Defendants.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of**, May 1, 2023** and shall continue thereafter through and including**, August 31, 2023**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may 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 **7105 W Hood Pl, Ste A-101, Kennewick, WA 99336.** Attorney's current local office telephone is **509-578-1555**; and Attorney's current office/work e-mail address is **509-591-9355**.

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 professional legal services pursuant to this Agreement. None of the actions or omissions of County or its

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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.

b. 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.

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.

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

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

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

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

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

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 17.b. below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Docket Scheduling Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;
- Docket Scheduling Irregularities do not, in themselves, entitle Attorney to additional compensation;
- County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

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

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

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Court felonies, and with compliance/fail to pay fine cases docketed in Benton County District Court in Prosser.

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

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

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a particular case must be re-tried for any reason whatsoever, including declaration of a mistrial or a hung jury, Attorney shall be entitled to an additional trial per diem for the additional trial but shall not be eligible for any additional credit. However, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessitated, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated

order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated unless other arrangements for appointment of counsel have been made by the Office of Public Defense. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8(b) herein.

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

7. **CASE EQUIVALENTS.**

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

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

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

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

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

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

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

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

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after the second pre-trial hearing but before trial readiness, for any reason including substitution of retained counsel or a conflict of interest, then Attorney shall be entitled to one-half (1/2) of a case equivalent.

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

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

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

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

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

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

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

e. Throughout the term of this Agreement, Attorney shall maintain case appointment records sufficient to provide the following information about each case assigned to Attorney through this Agreement: case name, client name, case number, date of assignment, and charges and date of resolution. On a monthly basis, prior to the 15th day of the month, Attorney shall provide such records to the PDM in a format acceptable by the PDM, including an electronic format if required, for all cases assigned during the preceding month. Within a reasonable time not to exceed 30 days after receipt of Attorney's caseload submission, the PDM or designee shall provide Attorney with a reconciliation report either agreeing to Attorney's reported numbers if they correspond with caseload numbers generated by PDM records, or asking Attorney for additional documentation to substantiate eligibility for individual case credits if Attorney's reported numbers conflict with caseload numbers generated by PDM records. In any case where Attorney is required to provide additional documentation to substantial eligibility for individual case credits (and Attorney will only be requested to do so if JIS records do not support Attorney's claim for credit) Attorney shall provide such substantiation in the form of a copy of the court issued "notice of appointment" or equivalent form, within 30 calendar days from the request. If Attorney does not so provide, then Attorney shall not be eligible to count such disputed cases in Attorney's caseload total and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to the disputed cases. Furthermore, if Attorney neglects to claim credit for any case or cases in any given caseload report and does not send a revised caseload report claiming such credit within 60 days of the original submission thereof, then Attorney similarly shall not be entitled to credit for such case or cases, and hereby waives all contractual and common law rights (including the doctrine of *unjust enrichment*) as pertaining to such omitted case or cases.

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

8. **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

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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.

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 arrange for substitute counsel by: a) contacting the Benton County Office of Public Defense and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County District Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

10. **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

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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 misconduct and a serious and incurable breach of this agreement that shall result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

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

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

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

(iv) Any crime of dishonesty or deception.

11. **COMPENSATION.**

a. Attorney shall be compensated as follows:

i) For the **year 2023, $270.51 per case** as a flat fee

ii) For the **year 2024, $275.64 per case** as a flat fee

For the mutual convenience of the parties, the flat fee shall be payable as a monthly flat fee of **$8,791.67 (2023)** and **$8,958.33 (2024).** Compensation shall be payable in this amount even in years when Attorney's annual caseload falls short of the anticipated caseload maximum as stated in this Agreement.

All compensation shall be payable to **Tri-City Legal, PLLC** since Attorney is a principal of that firm.

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

c. In addition to the stated monthly compensation, Attorney shall receive **$350 per day for each full day of trial** and **$175 for each partial day of trial**, not to include pre-trial motions, separate sentencing proceedings or time waiting for disposition. A full day of trial is defined as actual in-session trial proceedings going beyond four (4) total hours for that trial day. Attorney shall also receive the sum of $150 for each arraignment docket to which Attorney is assigned pursuant to Section 5(b) herein.

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

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

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).

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

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

(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.

13. **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

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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.

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

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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).

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 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.

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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 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.

16. **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 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:

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

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

Notice	Appointments	Compensation	Legal Responsibility for Cases	Cost of Reassignment	Cap on Expenses
Days of Notice Required	Number of Days After Notice Attorney shall	Number of Days After Notice Attorney shall	Number of Days After Notice Contractor is	Financial Responsibility for Reassignment	Cap on Attorney's Financial Responsibility

	Continue to Accept Cases	Continue to Receive Compensation	Responsible for Cases	of Residual Caseload	for Residual Caseload
Less than 30	0	0	0	100% by Attorney	1 month of compensation
30-60 days	0	30	60	50% by each party	1 month of compensation
90 days	60	90	120	25% by Attorney	½ month of compensation

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

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

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 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.

18. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 19.a-d below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney

assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

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

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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.

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.

19. **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.

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

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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.

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.

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 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.

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

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

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

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

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

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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.

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, and shall further comply with the County's policy against sexual harassment.

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.

32. **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

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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
3B4B65EB8B3B1488...
Michael Vander Sys
Public Defense Manager

ATTORNEY

Date 4/11/2023

DocuSigned by:
Eric Scott
A5BA3F43B21B428...
Eric Scott, WSBA **#48913**
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. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

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

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

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

Attorney acknowledgment:

DocuSigned by:
Eric Scott
A9BAC516D21D426...

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:	April 25, 2023
Subject:	Professional Services Agreement with Rebecca Saitz
Presenter:	N/A
Prepared By:	Michael Vander Sys
Reviewed By:	Denise Gerry

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

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

Summary / Background Information

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

Because of caseload needs, OPD is needing to award an additional contract to provide Services.

Rebecca Saitz ("Attorney") is qualified to provide services and interested in contracting with Benton County to do so. The proposed professional services agreement and resolution effectuate an agreement with Attorney for the provision of such Services on the terms contained therein, for the period from 02/13/23 through 12/31/24 at the rate of $200.00 per hour.

Fiscal Impact

Appointments of this case type are estimated to cost Benton County over $100,000 per year. This agreement will be funded out of a line item from Superior Court Administration.

Recommendation

Execute professional services agreement with Rebecca Saitz for public defense services in Benton County Superior Court for Uniform Guardianship Act cases. Approve associated resolution as presented.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY REBECCA SAITZ TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT FOR UNIFORM GUARDIANSHIP ACT CASES

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

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

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

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

BE IT RESOLVED that the proposed professional services agreement with attorney Rebecca Saitz to provide public defense services in Benton County Superior Court for UGA cases, for the time period from 02/13/23 to 12/31/24 with compensation not to exceed $200.00 per hour, plus other allowable expenses, premiums, and fees as detailed, is hereby approved and executed on behalf of Benton County.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Rebecca Saitz
Copy – Auditor, Superior Court, S Godinez

M. Vander Sys

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

CONTRACT # BCSC2324RS001UGA

CONTRACT SUMMARY			
Contract Type	**By the case only**		
Contract Number	**BCSC2324RS001UGA**	**Contract Holder**	**Rebecca Saitz**
WSBA #	**59357**	**Effective Dates**	**February 13, 2023 – December 31, 2024**
Caseload Cap	**n/a**	**Compensation**	**$200 per hour**
Assigned Court	**Superior Court**	**Compensation Structure**	**☐ By the case** **☐ Monthly** **☒Hourly** **☐ By the case but paid monthly**
Compensation Payable To:	**Gravis Law, PLLC**		

THIS AGREEMENT is entered into by and between **Rebecca Saitz,** attorney at law, Washington State Bar Association **# 59357** ("Attorney"), **dba Gravis Law, PLLC** and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court (the "Court").

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

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

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

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **February 13, 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 **503 Knight St., Ste A, Richland, WA 99352.** Attorney's current local office telephone is **509-380-9102**; and Attorney's current office/work e-mail address is **RSaitz@gravislaw.com**.

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

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

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to certain indigent persons who are respondents in actions brought pursuant to Washington's Uniform Guardianship Act, Chapter 11.130, RCW, in the state of Washington and generally exercised by members of the Washington State Bar Association (WSBA). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement. Attorney acknowledges and agrees that he or she independently, solely, and exclusively bears professional responsibility for decisions, actions, and omissions, made in the course of providing professional legal services pursuant to this Agreement. None of the actions or omissions of County or its agents (specifically including County's Public Defense Manager) shall be interpreted as supervising, directing, or otherwise controlling Attorney's exercise of professional discretion.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has

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

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

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

b. 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.

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

d. Attorney acknowledges and recognizes that while the Washington State Standards for Indigent Defense ("SID") as promulgated by the Washington State Supreme Court does not appear to encompass or control UGA Cases, it is possible that the Superior Court may choose to expand the SID to do so in the future. In the event that SID are

expanded to encompass UGA Cases, Attorney agrees to comply with any such standards, including reporting requirements, as stated therein.

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

5. **CONTINUED REPRESENTATION.**

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

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

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

6. **NUMBER OF APPOINTMENTS.**

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

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

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 arrange for substitute counsel by: a) contacting the Benton County OPD and requesting substitute counsel unless a court appearance on the matter is imminent; or b) appearing in court and requesting that Benton County Superior Court assign substitute counsel if the time between discovery of the conflict of interest and the next court appearance is very short. Attorney shall not wait for more than two business days to request substitute counsel under 10a) or 10b) since doing so will have the risk of impairing the rights and quality of representation afforded to the affected client. Under no circumstance shall Attorney ever be required to bear the cost of seeking or compensating conflict counsel.

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

10. **COMPENSATION.** Attorney shall be compensated at the rate of **$200.00 per hour,** billed in 1/10th hour increments, up to an **initial maximum compensation of $2,000.00 (10 hours) per case**. If, in any given case, Attorney reaches the maximum compensation level and still believes that additional work is necessary, then Attorney shall request authorization to exceed the maximum compensation level, by using the administrative process for doing so set out by the Benton County OPD, and any denial of such a request, by the OPD, shall be subject to review by Benton County Superior Court.

All compensation shall be payable to **Gravis Law, PLLC** since Attorney is a principal with that law firm.

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

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

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

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 out-of-pocket expenses or otherwise retain professional services directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

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

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

12. **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.

13. **INSURANCE.**

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

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

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

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

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

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

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

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

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage

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

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

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

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.

15. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In the event of automatic termination or

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termination pursuant to suspension or disbarment, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

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

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

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

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

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

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

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

16. **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, strictly subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the County's PDM, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

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

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

18. **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.

19. **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.

20. **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.

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.

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.

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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.

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 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.

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

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

Date 3/29/2023

DocuSigned by:
Rebecca Saitz
DE04F9A0F9CC4EB...

Rebecca Saitz, WSBA **#59357**

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)

DocuSigned by:
katherine Sierra-Kelly
3E42C741...

Katherine Sierra-Kelly, WSBA **#39635**

I am a principal with signing authority for **Gravis 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.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023	**Memo Date:**	April 14, 2023
Subject:	Short Plat Vacation– SPV 2022-001 - Brad Tapani of Bermuda Development, LLC		
Presenter:	N/A		
Prepared By:	Andrea Watts		
Reviewed By:	N/A		

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

On July 12, 2022, the Board of County Commissioners held a public hearing for the vacation of a 20-foot drainage easement on Lots 1 through 4 of Short Plat 2199. The approval was conditioned upon the recording and development of a new engineered drainage easement to replace the portion to be vacated. The applicant has provided the Benton County Planning Division with a copy of the new drainage easement recorded under Auditor's File Numbers 2022-023471, 2022-023472, 2022-023473, and 2022-023474. Additionally, Harms Engineering, Inc. has provided verification that the new drainage easements have been constructed according to the submitted record drawing. Therefore, the resolution is now ready for signature by the Board.

Fiscal Impact

Amount: None

Fund: None

Recommendation

It is the recommendation of the Planning Division that the Board of County Commissioners sign the resolution vacating the above-mentioned drainage easement as the applicant has complied with the conditions of approval as set forth by the Board.

Suggested Motion

Approved with the Consent Agenda

Return to
Benton County Commissioners
P.O. Box 190
Prosser WA 99350

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING REGARDING THE PROPOSED VACATION OF A TWENTY FOOT DRAINAGE EASEMENT LOCATED ON LOTS 1 THROUGH 4 OF SHORT PLAT 2199 IN SECTION 10, TOWNSHIP 08 NORTH, RANGE 28 EAST, W.M. APPLICANT: BRAD TAPANI OF BERMUDA DEVELOPMENT, LLC, PARCEL NUMBERS 110882012199001, 110882012199002, 110882012199003, AND 110882012199004, FILE NUMBER SPV 2022-001

WHEREAS, the Board of County Commissioners did conduct a public hearing on Tuesday, July 12, 2022, at 9:00 a.m. in the Commissioners Meeting Room, Third Floor, Courthouse, Prosser, Washington; and,

WHEREAS, the signature of the property owners of said application includes all properties affected by these easements; and,

WHEREAS, upon due notice as provided in RCW 58.17.080 and 58.17.090, the hearing before the Board of County Commissioners was held on such petition as indicated above; and,

WHEREAS, the Board of County Commissioners agrees with the summary report from the Benton County Planning Division retained in File No. SPV 2022-001; and,

WHEREAS, the twenty foot drainage easement located on Lots 1-4 was recorded on the face of Short Plat 2199; and,

WHEREAS, it further appears that the vacation of the above-mentioned easements would not unduly jeopardize the health, safety, welfare and public good; **NOW THEREFORE**,

BE IT RESOLVED, that the vacation of the twenty foot (20ft) drainage easement located on Lots 1-4 of Short Plat 2199 in Section 10, Township 08 North, Range 28 East, W.M. is hereby approved.

Dated this 25th day of April 2023.

_____
Chairman of the Board

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners of Benton County Washington.

Attest.....
Clerk of the Board
PLN, BOCC

AW

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0010 DEPARTMENT NUMBER 117

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Commissioner

_____
Commissioner

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Ginny Baddley

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Prosecuting Attorney Dept Nbr: 117

Fund Name: Current Expense Fund Nbr: 0010

TRANSFER FROM: **Dept. 117** TRANSFER TO: **Dept. 117**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5153000	51359	Legal Secretary I	$5,000	5153000	51925	Overtime	$5,000
TOTAL			$5,000	TOTAL			$5,000

Explanation:

This budget adjustment is needed in order to make payroll for non-barg, non-exempt staff where overtime hours are unavoidable.

Prepared by: Ginny Baddley Date: 4/14/23

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Commissioner

_____
Commissioner

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN COUNTY ROAD FUND NUMBER 1010 DEPARTMENT NUMBER 500

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Commissioner

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: S. Berry

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Road Dept Nbr: 500

Fund Name: County Road Fund Nbr: 1010

TRANSFER FROM: **Dept.** TRANSFER TO: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5437000	51048	Engineering Associate I	$131,832	5437000	51048	Engineering Tech III	$131,832
TOTAL			$131,832	TOTAL			$131,832

Explanation:

This LIT is necessary to update position number PW1048, non-bargaining grade 15, from the Engineering Associate I, to position number PW1048, non-bargaining grade 15, Engineering Technical III that was approved by the Benton County Board of Commissioners on 10/4/2022 resolution number 2022-718.

Prepared by: S. Berry Date: 4/18/23

Approved ❑ Denied ❑ Date: _____

_____
Chairman of the Board

_____
Chairman Pro Tem

_____
Commissioner

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Execute Contract with MMEC Architecture & Interiors, LLC for the Design of the Voting/Elections Center Remodel
Presenter:	
Prepared By:	P. Schut
Reviewed By:	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

Benton County recently acquired the former City of Kennewick Fire Station, which is adjacent to the Justice Center Campus.

On March 21, 2023, the Board of County Commissioners directed staff to move forward with converting the old fire station into the new Voting/Elections Center.

The Purchasing Department advertised a Request for Qualifications for Architectural and Engineering services for the design of the Voting/Elections Center Remodel Project.

Benton County received four responses to the request for qualifications for the Voting/Elections Center Remodel Project.

After a review of the qualifications submitted, it was determined that MMEC Architecture & Interiors, LLC, of Kennewick, Washington, was the most qualified firm to provide the necessary services.

The Director of Operations & Capital Programs recommends executing a contract with MMEC Architecture & Interiors, LLC. A Professional Services Contract has been prepared, reviewed, and approved as to form by our departmental Deputy Prosecuting Attorney and signed by MMEC Architecture & Interiors, LLC.

The Contract will commence on the last date signed and will expire on March 31, 2025.

Fiscal Impact

Amount: $387,475.00 (Basic Services $209,475.00 + Optional Supplemental Services $178,000.00)

Fund: Capital Projects Fund

Recommendation

It is recommended by the Director of Operations and Capital Programs that the Board approve and sign the Contract with MMEC Architecture & Interiors, LLC. for the Voting/Elections Center Remodel.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE CHAIRMAN TO SIGN THE CONTRACT WITH MMEC ARCHITECTURE & INTERIORS, LLC, KENNEWICK, WASHINGTON, FOR THE DESIGN OF THE VOTING/ELECTION CENTER REMODEL

WHEREAS, Benton County recently acquired the former City of Kennewick Fire Station, which is adjacent to the Justice Center Campus; and

WHEREAS, on March 21, 2023, the Board of County Commissioners directed staff to move forward with converting the old fire station into the new Voting/Elections Center; and

WHEREAS, the Purchasing Department advertised a Request for Qualifications for Architectural and Engineering services for the design of the Voting/Elections Center Remodel Project; and

WHEREAS, Benton County received four responses to the request for qualifications for the Voting/Elections Center Remodel Project; and

WHEREAS, after a review of the qualifications submitted, it was determined that MMEC Architecture & Interiors, LLC, of Kennewick, Washington, was the most qualified firm to provide the necessary services; and

WHEREAS, a Professional Services Contract has been prepared, reviewed, and approved as to form by our departmental Deputy Prosecuting Attorney and signed by MMEC Architecture & Interiors, LLC; and

WHEREAS, the contract in the amount of $387,475.00 (Basic Services $209,475.00 + Optional Supplemental Services $178,000.00), excluding Washington State Sales Tax, has been executed by MMEC Architecture & Interiors, LLC; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners concurs with the Director of Operations & Capital Programs and hereby authorizes the Chairman to sign the Professional Services Contract for the design of the Voting/Elections Center Remodel with MMEC Architecture & Interiors, LLC, of Kennewick, Washington, for a total amount not to exceed $387,475.00 excluding WSST; and

BE IT FURTHER RESOLVED, the Director of Operations and Capital Programs is hereby authorized to proceed with the Voting/Elections Center Remodel according to the terms of the contract; and

BE IT FURTHER RESOLVED, the term of the Professional Services Contract commences on the last date signed and expires on March 31, 2025.

Dated this 25th day of April 2023.

_____
Chairman

_____
Chairman Pro-Tem

_____
Commissioner

Attest:_____
Clerk of the Board

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

Orig.: Procurement
cc: Auditor, PA, MMEC

P. Schut

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BENTON COUNTY
ARCHITECTURAL/ENGINEERING
PROFESSIONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **MMEC ARCHITECTURE & INTERIORS, LLC**, a Limited Liability Company organized under the laws of the State of Washington with its principal offices at 7601 W. Clearwater Ave., STE 450 Kennewick, WA 99336 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A – Scope of Work and Fee Schedule

2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed and shall expire on March 31, 2025. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

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

a. Provide Architectural and Engineering Services for Benton County Elections Center Remodel design, all in accordance with Exhibit A attached hereto; subject to the following requirements and limitations:

i. The CONTRACTOR agrees to provide its own labor and materials as included costs in the fees payable consistent with Exhibit A and Section 5 below. Unless otherwise provided for in a work order, no materials, labor, or facilities will

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be furnished by the COUNTY.

ii. The CONTRACTOR shall review the COUNTY's scope of work, budget and schedule and reach an understanding with the COUNTY of the project requirements. Based on the approved project requirements, the CONTRACTOR shall develop a design. Upon COUNTY's approval of the design, CONTRACTOR shall prepare construction documents indicating requirements for construction of the project and shall coordinate its services with any consulting services the COUNTY provides. The Contractor shall assist the COUNTY in filing documents required for the approval of government authorities in obtaining proposals and in awarding contracts for construction. During the construction phase, CONTRACTOR shall act as the COUNTY's representative to the extent set forth in this Contract. CONTRACTOR will visit the construction site at intervals appropriate the stage of construction to become generally familiar with the progress and quality of the work. CONTRACTOR will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work. Based on the CONTRACTOR's observations and evaluations of the construction, CONTRACTOR shall certify amount the amounts due to the construction contractor. CONTRACTOR shall promptly review and approve or take appropriate action upon construction contractor's submittals for the limited purpose of checking with the conformance of information given and the design concept expressed in the contract documents. CONTRACTOR shall be responsible for producing all contract documents and correspondence related to construction or improvement projects for which CONTRACTOR is responsible. CONTRACTOR shall oversee, manage and direct all facets of project in a manner consistent with the standards expected of similarly situated architects on construction or improvement projects within the State of Washington. CONTRACTOR shall generate all necessary documentation and contracts associated with construction or improvement projects for which CONTRACTOR is responsible subject, when appropriate, to review by COUNTY's legal counsel, and shall amend or modify such documents and contracts at the direction of COUNTY's legal counsel or COUNTY's representative. These documents and contracts include, but are not limited to: request for proposals/request for competitive bids to include posting the legal advertisements; Notices to Proceed; AIA standard form contracts; Change Orders; approval of all Progress Payments;

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Letter of Substantial Completion. The CONTRACTOR shall forward all original documents to the COUNTY at COUNTY's request, and shall retain all records related to any given project for the appropriate Washington State Retention Schedule as promulgated by the Washington State Archivist.

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

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Heidi Pierce
Address:	7601 W. Clearwater Ave., Suite 450 Kennewick, WA 99336
Phone:	(509) 624-6800
Email:	heidi@mmecarchitecture.com

b. For COUNTY:

Name:	Robert Blain
Address:	7122 W. Okanogan Place #E330 Kennewick, WA 99336
Phone:	(509) 736-2704
Email:	procurement@co.benton.wa.us

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5. COMPENSATION

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

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed three hundred eighty-seven thousand four hundred seventy-five dollars and zero cents ($387,475.00), excluding W.S.S.T.

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

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

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

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

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

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6. AMENDMENTS AND CHANGES IN WORK

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

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this

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section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

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

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

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

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

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

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

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

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

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

e. **Other Insurance Provisions:**

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

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

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

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

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. All liability insurance required under this Contract, except for professional liability under Section 8(a), shall be written on an

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Occurrence Policy form.

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

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

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

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

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

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2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTY's Contract Representative referenced in Section 4.

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

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

9. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

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

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

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completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors,

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employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it

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agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

b. All design work done by the CONTRACTOR shall be done on AutoCAD Civil 3D 2015 or higher, or other systems mutually agreed upon, an electronic copy of which shall be submitted to the COUNTY upon request and/or at the expiration of the Contract. Should a construction project result from the work of the CONTRACTOR, the record drawings from the CONTRACTOR shall be transposed onto the electronic design drawings and submitted to the COUNTY.

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

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

19. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent

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jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

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

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24. NOTICES

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records

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

- This section left blank intentionally -

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

Date:_____	Date: 4/17/2023
BENTON COUNTY, WASHINGTON	**MMEC ARCHITECTURE & INTERIORS, LLC**
	Heidi Pierce
Chairman Benton County Commissioner	Signature
	Principal
Approved as to Form:	Title:
DocuSigned by: Eric Andrews 94F7673BB8A1486...	Heidi Pierce
Eric Andrews, Civil Deputy Prosecuting Attorney	PRINTED NAME

MMEC
ARCHITECTURE ▪ INTERIORS

April 13, 2023

Paul Schut
Procurement & Contract Coordinator, Benton County Purchasing Department
7122 W. Okanogan Place, Bldg. A
Kennewick, WA 99336

RE: Benton Count Elections Center Fee Proposal

Delivery via email: paul.schut@co.benton.wa.us, Robert.blain@co.benton.wa.us

Dear Paul,

Thank you for the opportunity to work with Benton County on the design of the Elections Center. We are excited to continue working with you on this campus. Our proposal is based on the RFQ description and an estimated construction cost of $2,200,000.00 for an estimated area of modernization at 5,700 sf. We understand that the scope will be better defined through the course of design and that adjustments may be made to the budget. With modifications to the scope, adjustments to our agreement will be considered.

Basic Services

Our basic services fee is established per Exhibit A, A/E Fee Calculator

We will include the following in Basic Services:

- Architecture and Interior Design services
- Basic Civil, Structural, Mechanical and Electrical Engineering Services
- Hardware Consulting
- Post Bid Conformed Drawings
- NREC Application

Sub Total Basic A/E Services **$209,475**

Basic Services do not include the following, or the supplementary services on the next page:

Topographic Surveys	(owner provided)
Hazmat Survey	(owner provided)
Building Envelope Consultant	(owner provided)
Jurisdictional Fees	(owner provided)
Special Inspections	(owner provided)
Commissioning	(owner provided)

Additional Electrical Engineering Exclusions:

- Telecommunications, Sound and Low Voltage Systems (see Supplementary Basic Services in Exhibit A)
- A/V systems. Basic services include design of limited pathways and cabling based on owner provided layouts
- Security systems related to cameras, access control, intrusion detection and lockdowns. Basic services include design of limited pathways and cabling based on owner provided layouts

Supplementary Services

Fees for Supplementary Services are as listed in Exhibit A.

Sub Total Supplementary Services	**$178,000**
Total Fee	**$387,475**

We are looking forward to being part of the development and incorporation of the Voting Center into the Benton County campus.

Sincerely,

Heidi Pierce

Heidi Pierce, AIA

Benton County Elections Center
Exhibit A

Benton County
Elections Center A/E Fee
Calculator April 11, 2023

					MACC
Modernization	5,700 SF		$350.00	= **$**	**1,995,000**
		TOTAL MACC		$	1,995,000
Architectural and Engineering Services					
Modernization		@	10.50%	= $	209,475
Total Fee				**$**	**209,475**

Included in Basic Services

Architecture and Interior Design (does not include CA)	inc.
Structural, Mechanical and Electrical Engineering	inc. (Coffman, MSI)
Basic Services Civil Engineering	inc. (Knutzen Engineering)
Hardware Consultant	inc. (MMEC)
NREC review	inc. (MMEC)

Supplemental Basic Services

Construction Administration	$	50,000	(allowance)
Landscape Architecture	$	30,000	(allowance)
Telecom/AV consulting	$	20,000	
Low Voltage, Data, Security consulting	$	15,000	
Detailed Cost Estimating	$	20,000	
Energy Conservation Report (ELCCA) (Optional)	$	10,000	(allowance)
Record Drawings	$	8,000	
Furniture Package/Bidding	$	15,000	
Reimbursable Expenses	$	10,000	(allowance)
Other Basic Services	**$**	**178,000**	

Additional Services Consultants:

Topographic Survey (By Owner)	not inc.
Hazmat Survey & Coordination Consultant	not inc.
Building Envelope Consultant	not inc.
City of Kennewick Plan Review	not inc.
Special Inspections	not inc.
Commissioning	not inc.

TOTAL **$** **387,475**

BILLING RATES - January 1, 2023

MMEC ARCHITECTURE ▪ INTERIORS

1 N. Monroe, Suite 200 ▪ Spokane, WA 99201 ▪ P: (509) 624-6800

7601 W. Clearwater Ave., Suite 450 ▪ Kennewick, WA 99336 ▪ P: (509) 396-7278

Principal Architect/Principal Interior Designer	$225/hr.
Project Manager III	$135/hr.
Project Manager II	$110/hr.
Project Manager I	$85/hr.

Reimbursable Expenses:

- Consulting Engineers - Invoice plus 10%
- Out of pocket expenses (printing, postage, etc.) – Invoice plus 5%

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Awarding a Public Works Contract with Dynamic Laundry Systems, Inc. for Repairs and Maintenance of Laundry Equipment in the Benton County Jail
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Jeff Aultman; Chief Guerrero; Jeff Jones

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 Purchasing Department solicited a total of 37 vendors who are listed on the MRSC Small Works Roster to provide quarterly inspections and as-needed repair and maintenance services for the laundry equipment located in the Benton County Jail with the following results:

Dynamic Laundry Systems, Inc., Kirkland, WA - DYNAMLSO66BO	
Exhibit A – Prevailing Wage Labor Rate:	
8am to 5pm weekdays:	$120 per hour
Saturday, Sunday and 5pm - 8am weekdays:	$240 per hour
Call Out/Truck/Mileage Fees:	$440 per trip
Parts – Cost Plus Markup:	40%

Western State Design, Inc., Hayward, CA - WESTED991M6	
Exhibit A – Prevailing Wage Labor Rate:	
8am to 5pm weekdays:	$185 per hour
Saturday, Sunday and 5pm - 8am weekdays:	$277.50 per hour
Call Out/Truck/Mileage Fees:	$735 per trip
Parts – Cost Plus Markup:	30%

The Purchasing Department reviewed the proposals and recommends awarding the public works contract to Dynamic Laundry Systems, Inc., Kirkland, WA as the lowest responsive bidder, to provide quarterly inspections and as-needed repair and maintenance services for the laundry equipment located in the Benton County Jail, for a contract amount not to exceed $50,000.00, including WSST.

Fiscal Impact

Contract amount not to exceed: $50,000 excluding WSST
Fund: Current Expense; Dept 110

Recommendation

Approve the attached Resolution and Public Works Contract between Benton County and Dynamic Laundry Systems, Inc. for a contract commencing upon signature of both parties and terminating on April 30, 2024. Upon mutual agreement of both parties, this Contract may be extended by written amendment for a maximum of one additional 12-month period.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC WORKS CONTRACT TO DYNAMIC LAUNDRY SYSTEMS, INC. TO PROVIDE QUARTERLY INSPECTIONS AND AS-NEEDED REPAIR AND MAINTENANCE SERVICES FOR THE LAUNDRY EQUIPMENT LOCATED IN THE BENTON COUNTY JAIL

WHEREAS, per Resolution 2021-233, the County-wide Procurement, Leasing, and Contracting Policy allows for Public Works Unit Priced Contracts to be competitively bid in which public works are anticipated on a recurring basis to meet the business or operational needs of the County, under which the contractor agrees to a fixed period indefinite quantity of delivery of work, at a defined unit price for each category of work; and

WHEREAS, the Purchasing Department solicited a total of 37 vendors who are listed on the MRSC Small Works Roster under main-category – Facility Construction, Repair, and Maintenance and Sub-Category Laundry Hook-Ups/Drains to provide quarterly inspections and as-needed repair and maintenance services for the laundry equipment located in the Benton County Jail, with the following results:

Dynamic Laundry Systems, Inc. Kirkland, WA - DYNAMLSO66BO		**Western State Design, Inc., Hayward, CA - WESTED991M6**	
Exhibit A – Prevailing Wage Labor Rate:		Exhibit A – Prevailing Wage Labor Rate:	
8am to 5pm weekdays:	$120 per hour	8am to 5pm weekdays:	$185 per hour
Saturday, Sunday and 5pm - 8am weekdays:	$240 per hour	Saturday, Sunday and 5pm - 8am weekdays:	$277.50 per hour
Call Out/Truck/Mileage Fees:	$440 per trip	Call Out/Truck/Mileage Fees:	$735 per trip
Parts – Cost Plus Markup:	40%	Parts – Cost Plus Markup:	30%

WHEREAS, the Purchasing Department reviewed the proposals and recommends awarding the public works contract to Dynamic Laundry Systems, Inc., Kirkland, WA as the lowest responsive bidder, to provide quarterly inspections and as-needed repair and maintenance services for the laundry equipment located in the Benton County Jail, for a contract amount not to exceed $50,000.00, excluding WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington concurs with the recommendation and hereby awards the public works contract to Dynamic Laundry Systems, Inc., Kirkland, WA, as the lowest responsive bidder, to provide quarterly inspections and as-needed repair and maintenance services for the laundry equipment located in the Benton County Jail, for a contract amount not to exceed $50,000.00, excluding WSST; and

BE IT FURTHER RESOLVED, said contract shall begin upon signature of both parties and shall terminate on April 30, 2024. Upon mutual agreement of both parties, this Contract may be extended by written amendment for a maximum of one additional 12-month period.

Dated this 25th day of April, 2023.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest.....
Clerk of the Board

_____
Commissioner

Constituting the Board of Commissioners
of Benton County, Washington.

Orig: Facilities
cc: Auditor, PA, Purchasing Dept. Dynamic

Prepared by: L. Small

BENTON COUNTY
PUBLIC WORKS CONTRACT

TERMS AND CONDITIONS

THIS Contract is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **DYNAMIC LAUNDRY SYSTEMS, INC.**, a corporation organized under the laws of the State of Washington with its principal offices at 12910 NE 125th Way, Bldg. B-3, Kirkland, WA 98034 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A – Proposal Form dated April 11, 2023
b. Exhibit B – Washington State Prevailing Wage Rates for Public Works Contracts.
c. Exhibit C – Request for Proposal / Equipment List

2. DURATION OF CONTRACT

The initial term of this Contract shall begin upon signature of both parties and shall terminate April 30, 2024. The COUNTY further reserves the right to renew the Contract for an additional year without advertising. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR agrees to provide quarterly inspections and as-needed repair and maintenance services in accordance with the Request for Proposal and CONTRACTOR'S Proposal Form, attached hereto as Exhibits A and Exhibit C, respectively, and incorporated herein by reference, for laundry equipment for the Benton County Jail located at 7122 W. Okanogan Pl. Ste, B110, Kennewick, WA 99336. Quarterly inspections of the equipment must be performed at regular intervals during the calendar year with appropriate dates and times to be determined by the parties.

b. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and shall coordinate with COUNTY to complete the work in conjunction with the other contractor. In the event that the requested work requires, under State or local law, the issuance of a building or other permit, CONTRACTOR shall be responsible for procuring such permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process but may not charge any additional processing or other fees that it does not actually incur.

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

d. With respect to as-needed repair and maintenance services provided by the CONTRACTOR under this contract, the COUNTY does not guarantee utilization of this contract. The COUNTY may award contracts to other vendors for similar products or services. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the COUNTY.

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

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

g. Each of the CONTRACTOR'S employees or subcontractors who will be working onsite at the Jail facility are required to submit a Benton County Background Check Authorization and Release form and be approved to work on the site by COUNTY, as further outlined in Section 29.

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Fran Peterson
Address:	12910 NE 125th Way Bldg. B-3 Kirkland, WA 98034
Phone:	(425) 823-4300
Email:	fran@dynamicss.com

b. For COUNTY:

Name:	Jeff Jones, Facilities Manager
Address:	7122 W. Okanogan Pl., Bldg. A Kennewick, WA 99336
Phone:	509-736-3118
Email:	Jeff.Jones@co.benton.wa.us

5. COMPENSATION

a. The CONTRACTOR shall be paid for performing quarterly inspections and as-needed repair and

maintenance services for laundry equipment in the Benton County Jail in accordance with Section 3.a. of this Contract at the rates set forth in Exhibit A. All necessary parts shall be reimbursed at actual cost plus 40% markup. CONTRACTOR shall submit copies of invoices showing actual cost of the parts with all invoices being billed to the COUNTY for parts.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed fifty thousand dollars and zero cents ($50,000.00), excluding W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. The CONTRACTOR shall inform the COUNTY promptly in writing if the CONTRACTOR's cumulative accounts receivable attributable to the COUNTY, pursuant to this Contract, reaches eighty percent (80%) of the maximum total amount payable so that budgeting and approval of additional amounts may be obtained (if appropriate). Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract.

c. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov/ and then forward a copy of the statement to COUNTY'S Contract Representative. At the end of the Contract term, CONTRACTOR shall submit an Affidavit of Wages Paid via https://secureaccess.wa.gov/ and then forward a copy of the affidavit to COUNTY'S Contract Representative. No final payment will be made until the affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with https://secureaccess.wa.gov.

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

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

6. INVOICING

a. The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service and shall also reference the work order provided to COUNTY as required in Section 3.c. of this Contract.

b. The hourly rate for Labor shall be the full cost for the work to perform routine maintenance and as needed repairs in accordance with Exhibit A. Travel time to and from site to perform maintenance and repair shall also be in accordance with the travel rate outlined in Exhibit A.

c. Before or at the time that the CONTRACTOR submits its first invoice, the CONTRACTOR and any subcontractors and sub-subcontractors employed by the CONTRACTOR for the work contemplated by this Contract shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov and then forward a copy of the statement to the COUNTY's Contract Representative.

d. The CONTRACTOR shall not be paid for work rendered under this Contract until all required parties

have executed and submitted a Statement of Intent to Pay Prevailing Wages in accordance with this section and the work has been performed to the satisfaction of the COUNTY. The COUNTY shall only be liable to pay for invoiced amounts that are detailed and supported as described in this section. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY and will remit payment for the accepted work, less any retainage or other legally withheld funds, within thirty (30) days after receiving the invoice.

e. For each invoiced and approved payment due to the CONTRACTOR under this section, the COUNTY shall withhold from the earned portion of the payment (*i.e*. that portion excluding sales tax or other tax) five percent (5%) as a contract retainage, pursuant to RCW 60.28.011 and in accordance with chapter 60.28 RCW. Within ten (10) days following the execution of this Contract, the CONTRACTOR shall submit written notice to the COUNTY stating the method it has elected pursuant to RCW 60.28.011(4) for the holding of moneys retained by the COUNTY. If such written election is not received by the COUNTY, then the COUNTY may choose any method allowed by RCW 60.28.011(4)(a)-(c) for holding the retained moneys.

7. AMENDMENTS AND CHANGES IN WORK

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

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

8. HOLD HARMLESS AND INDEMNIFICATION

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

b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under workers

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

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

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

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

$1,000,000 Each Occurrence

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

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

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

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

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

d. **Other Insurance Provisions**:

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

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

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

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

5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.

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

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

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

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

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

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the County's Contract Representative referenced in Section 4.

3. All written notices under this Section 9 and notice of cancellation or change of required

insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

10. PERFORMANCE AND PAYMENT BONDS

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to one hundred percent (100%) of the contract sum as security for the performance by the contractor of this Contract and payment of all the persons performing labor and supplying materials pursuant to this Contract. PROVIDED that the CONTRACTOR may elect, in lieu of the bonds, to allow the COUNTY to retain ten percent (10%) of the contract amount for the term of the contract and released after receipt of the affidavit of wages paid. Proof of the performance and payment bonds, or written notification of the CONTRACTOR'S desire to elect the alternative to the bonds (described above), must be received by COUNTY within ten (10) days following the execution of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. INSPECTION OF BOOKS AND RECORDS

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

14. CHOICE OF LAW AND JURISDICTION

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

15. SUCCESSORS AND ASSIGNS

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

16. TERMINATION

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

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

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

18. NONDISCRIMINATION

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

19. DISPUTES

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

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

21. VERIFICATION OF SUBCONTRACTOR RESPONSIBILITY CRITERIA

If written consent is obtained to subcontract pursuant to Section 20., CONTRACTOR shall then verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses a contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

22. ENTIRE AGREEMENT

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

23. NOTICES

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

24. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal,

or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

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

25. LITIGATION HOLD NOTICE

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

26. PUBLIC RECORDS ACT

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

27. SURVIVABILITY

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

28. CONFIDENTIALITY

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

29. SECURITY BACKGROUND CHECK

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

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

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

- This section was intentionally left blank –

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

Date:_____

BENTON COUNTY

Will McKay, Chairman
Benton County Commissioners

Approved as to Form:

Jeff Aultman, Civil Deputy Prosecuting Attorney

Date: 04/14/23

DYNAMIC LAUNDRY SYSTEMS, INC.

Signature Francesca Peterson

Office Manager / Sales Coor.
Title

JEFF AULTMAN
PRINTED NAME

Exhibit A

REQUEST FOR PROPOSAL
Quarterly Inspections and As-Needed Maintenance and Repair Services for Laundry Equipment Services

PROPOSAL FOR

Project Identification: Benton County Jail Laundry Equipment
As-Needed Repair Services

Proposal Submitted To: Lisa Small
Benton County Purchasing Department
7122 W. Okanogan Pl, Ste. B110
Kennewick, WA 99336
Lisa.Small@co.benton.wa.us

Proposal should not include any taxes or L&I Fees.

1. Prevailing Wage labor rate.
   a. (8am to 5pm weekdays): $ 120 per hour
   b. (Saturday, Sunday and 5pm – 8am weekdays): $ 240 per hour
2. Call Out/Truck/Mileage Fees: $ 440 per trip
3. Parts – Cost plus 40 % Markup

Submitted on 11th of April, 2023

The undersigned hereby certifies and represents to signing this proposal on behalf of the Contract and is authorized to do so.

Dynamic Laundry Systems Contractor's License # DYNAMLS 01616BO
Legal Name of Organization

Signature of Authorized Person

Francesca Peterson
Printed Name of Authorized Person

Office Manager
Title

DYNALAU-01 SSHIMONO

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/4/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Shannon Shimono	
PLC Insurance Services 19401 40th Ave W, Suite 440 Lynnwood, WA 98036	PHONE (A/C, No, Ext): (425) 275-0571	FAX (A/C, No):
	E-MAIL ADDRESS: shannon@plcins.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Mutual of Enumclaw Insurance	14761
INSURED Dynamic Laundry Systems, Inc. DBA: Dynamic Sales & Service 12910 NE 125th Way Bldg B-3 Kirkland, WA 98034	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR	X		CPP0016895 08	10/3/2022	10/3/2023	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
	X Stop Gap Emplrs Liab						MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:						WA STOP GAP	$ 1,000,000
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO	X		CPP0016895 08	10/3/2022	10/3/2023	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 2,000,000
	X EXCESS LIAB CLAIMS-MADE			UMC0003721 08	10/3/2022	10/3/2023	AGGREGATE	$ 2,000,000
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Quarterly preventative maintenance services at Benton County Jail Benton County, its officers, officials, employees and agents are included as Primary and non-contributory Additional Insured, per attached GL & Auto forms, when required by written contract. Waiver of Subrogation applies.

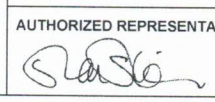
CERTIFICATE HOLDER

Benton County Facilities
7122 W. Okanogan Pl
Building A
Kennewick, WA 99336

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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COMMERCIAL GENERAL LIABILITY
CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

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COMMERCIAL GENERAL LIABILITY
CG 20 33 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
   a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
   b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

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2. "Bodily injury" or "property damage" occurring after:
   a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
   b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

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COMMERCIAL AUTO
EA 99 11 03 18

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL BUSINESS AUTO ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

The following changes revise **SECTION I – COVERED AUTOS**

Paragraph **C.1.** is deleted and replaced with the following:

1. Trailers

a. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads; or

b. "Trailers" designed primarily for travel on public roads when:

(1) Pulled by an owned private passenger auto specifically described in Item Three of the Declarations as a covered "auto" for Liability Coverage under this Coverage Form; and

(2) Not used for business, farming or ranching purposes.

Private passenger auto means a motor vehicle of the private passenger, station wagon, pickup or van type designed for use on public highways and subject to motor vehicle registration.

The following is added:

D. Temporary Substitute Autos – Physical Damage

If Physical Damage Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:

1. Breakdown;

2. Repair;

3. Servicing;

4. "Loss"; or

5. Destruction.

The coverage that applies is the same as the coverage provided for the vehicle being replaced.

Physical Damage Coverage is extended to the temporary substitute auto for the lesser of the following number of days:

1. The number of days reasonably required to repair or replace the covered "auto" that is out of service; or

2. 30 days.

The following changes revise **SECTION II – LIABILITY COVERAGE**

The following is added to Paragraph **A.1.**:

d. Blanket Additional Insured

Any person or organization that you are required to include as an additional insured on this Coverage Form in a written contract or agreement that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period is an "insured" for Liability Coverage, but only for damages to which this insurance applies.

A person's or organization's status as an additional insured under this endorsement ends when your contract or agreement with such person or organization ends.

The Limits of Insurance applicable to the Additional Insured are those specified in the written contract or agreement but not more than the Limits of Insurance specified in the Declarations of this policy. The Limits of Insurance applicable to the Additional Insured are inclusive of and not in addition to the Limits of Insurance shown in the declarations for the Named Insured.

This Coverage does not apply to lessors of leased "autos".

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e. Broadened Named Insured

Any business entity newly acquired or formed by you during the policy period provided you own 51% or more of the business entity and the business is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of 180 days following acquisition or formation of the business entity or until the end of the policy period, whichever comes first.

f. Employee Hired Auto

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

Paragraphs **A.2.a.(2)** and **A.2.a.(4)** are deleted and replaced with the following:

2. Coverage Extensions

a. Supplementary Payments

(2) Up to $5,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

Paragraph **B.5.** is deleted and replaced with the following:

5. Fellow Employee

"Bodily Injury" to:

a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business. This exclusion does not apply to an "insured" who occupies a position as an officer, manager or supervisor.; or

b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph **a.** above.

The following changes revise **SECTION III – PHYSICAL DAMAGE COVERAGE**

This coverage applies only for a covered "auto" for which Physical Damage Coverage is provided for on this policy.

Paragraph **A.2.** is deleted and replaced with the following:

A. COVERAGE

2. Towing

We will pay up to $200 for a covered "auto" for towing and labor costs incurred each time the covered "auto" is disabled. However, the labor must be performed at the place of disablement.

This coverage is excess over

a. any limit shown in the Declarations for towing and labor costs; and

b. any other collectible insurance.

This coverage applies only for an "auto" covered on this policy for

c. Comprehensive or Specified Causes of Loss Coverage; and

d. Collision Coverage.

The following is added to Paragraph **A.3**

Glass Repair – Waiver of Deductible

No deductible will apply to glass breakage if such glass is repaired in a manner acceptable to us rather than replaced.

Paragraph **A.4.a.** is deleted and replaced with the following:

4. Coverage Extensions

a. Limited Rental Reimbursement or Travel Expense

We will pay up to $75 per day to a maximum of $2,250 for rental reimbursement expenses for the rental of an "auto" or other transportation expense incurred by you because of "loss" to a covered "auto" which is covered by Comprehensive, Specified Causes of Loss, or Collision coverage under this policy. No deductible applies to this coverage.

(1) We will pay only for those expenses incurred as a result of a covered "loss" occurring during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

(a) The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you; or

(b) 30 days.

(2) Our payment under this Coverage Extension (**4.a.**) is limited to the lesser of the necessary and actual expenses incurred or the maximum amount shown, $2,250.

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(3) Coverage under this Coverage Extension (**4.a.**) does not apply while there are spare or reserve "autos" available to you for your operations.

(4) If a covered "auto" is described or designated as a covered "auto" on endorsement **EA 99 01**, the coverage provided by this extension is excess over coverage provided by endorsement **EA 99 01**.

The following is added to paragraph **A.4.**

c. Tapes, Records and Discs

We will pay for "loss" to tapes, records, compact discs, or other similar devices used with audio, visual or data electronic devices.

(1) We will pay only if the tapes, records, compact discs, or other similar devices:

(a) Are your property or that of a family member; or

(b) Are the property of an "employee" using a covered "auto" in your business affairs at the time of the "loss"; and

(c) Are in a covered "auto" which sustains other covered "loss" under Comprehensive or Collision coverage at the time of the "loss" to tapes, records, compact discs, or other similar devices.

(2) The most we will pay for "loss" under this Coverage Extension (**4.c.**) is $200.

(3) Physical Damage Coverage provisions apply to this coverage, except that any deductible applicable to Comprehensive or Collision coverage does not apply to this Coverage Extension (**4.c.**).

d. Audio, Visual and Data Electronic Equipment

(1) Coverage

(a) We will pay with respect to a covered "auto" described in the Schedule for "loss" to any electronic equipment that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto".

(b) We will pay with respect to a covered "auto" described in the Schedule for "loss" to any accessories used with the electronic equipment described in Paragraph **(1)(a)** above. However, this does not include tapes, records or discs.

(2) Exclusions

The exclusions that apply to Physical Damage Coverage, except for the exclusion relating to Audio, Visual and Data Electronic Equipment, also apply to coverage provided by this extension. In addition, the following exclusions apply:

We will not pay, under this extension, for either any electronic equipment or accessories used with such electronic equipment that is:

(a) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or

(b) An integral part of the same unit housing any sound reproducing equipment designed solely for the reproduction of sound if the sound reproducing equipment is permanently installed in the covered "auto" in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

(3) Limit of Insurance

With respect to coverage under this extension the Limit of Insurance provision of Physical Damage Coverage is replaced by the following:

(a) The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of:

(i) The actual cash value of the damaged or stolen property as of the time of the "loss";

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(ii) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or

(iii) $500.

(b) An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".

(c) If a repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

(4) Deductible

No deductible applies to this coverage.

The insurance provided by this extension is excess over any other collectible insurance.

e. Custom Signs and Decorations

Physical Damage coverage on a covered "auto" may be extended to "loss" to custom signs and decorations including custom murals, paintings or other decals or graphics.

Our limit of liability for loss to custom signs and decorations shall be the least of:

(1) Actual cash value of the stolen or damaged property;

(2) Amount necessary to repair or replace the property; or

(3) $500.

f. Personal Effects Coverage

(1) Physical Damage Coverage on a covered "auto" may be extended to "loss" to your "personal effects" or, if you are an individual, the "personal effects" of a family member, that are in the covered "auto" at the time of the "loss".

(2) "Personal effects" as used in this extension means tangible property that is worn or carried by the "insured". "Personal effects" does not include tools, jewelry, money, securities, radar or laser detectors, or tapes, records, discs or similar audio, visual or data electronic equipment.

(3) The most we will pay for any one "loss" under this coverage extension is $500.

No deductible applies to this extension.

The insurance provided by this extension is excess over any other collectible insurance.

g. Camper Bodies

In the event of a "loss" to a detached "camper," physical damage coverage will apply as if it were part of the covered "auto" on which it is rated.

h. Contents of a Travel Trailer, Camper or Motor Home

When a Travel Trailer, "Camper" or Motor Home is a scheduled auto for physical damage coverage, we will pay up to $1,000 for "loss" to personal property belonging to you or a family member that is within the Travel Trailer, "Camper" or Motor Home. We will pay up to $250 for "loss" to personal property belonging to you or a family member that is outside the Travel Trailer, "Camper" or Motor Home.

(1) We will not pay for "loss" to:

(a) Articles carried or held for sale, storage or repairs, or for later delivery; goods kept to show or sell; or theatrical wardrobes.

(b) Business, store of office furniture or equipment.

(c) Records or accounts, money, bullion, deeds, contracts, evidences of debt, securities, tokens or tickets, stamps in current use or manuscripts.

(d) Animals, private passenger "autos," motorcycles, aircrafts, boats or any other motorized vehicles or their equipment, furnishings or appurtenances.

(e) Equipment or accessories while your Travel Trailer, "Camper" or Motor Home is leased or rented to any organization or any person other than you or a family member.

(2) The maximum we will pay for "loss" is the lesser of:

(a) The actual cash value of the personal property at the time of "loss";

(b) The cost of repairing the damage; or

(c) The cost of replacing the damaged personal property with other personal property of like kind, condition, quality and value.

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i. Vacation Expense Allowance

We will pay you $50 per day to a maximum of $500 for extra expenses when a Travel Trailer, "Camper" or Motor Home is a scheduled auto for physical damage coverage, and the Travel Trailer, "Camper" or Motor Home:

(1) Is damaged or destroyed and is uninhabitable; and

(2) While being used for vacation purposes within the policy period.

Extra expenses must by supported by receipts or other valid evidence.

The following is added to Paragraph **A.**:

5. Extra Expense – Broadened Coverage

We will pay for the direct expense of returning a stolen covered "auto" to you. We will pay only for those covered "autos" for which you carry Comprehensive or Specified Causes of Loss Coverage. This coverage will only apply to vehicles recovered inside the 48 contiguous United States. This coverage does not apply to an "auto" we deem a total "loss".

6. Auto Loan/Lease Gap Coverage

In the event of a covered total "loss" to a covered "auto" described or designated in the Schedule or in the Declarations, we will pay up to $2,000 for any unpaid amount due on the lease or loan for a covered "auto" less:

a. The Amount paid under the Physical Damage Coverage section **A.1.** of the policy; and

b. Any:

(1) Overdue lease/loan payments at the time of the "loss";

(2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

(3) Security deposits not returned by the Lessor;

(4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

(5) Carry-over balances from previous loans or leases.

7. Hired Auto Physical Damage Coverage

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss or Collision Coverages are provided under this coverage form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire of like kind and use, subject to the following:

a. The most we will pay for any one "loss" is $50,000 or the actual cash value or the cost to repair and replace, whichever is less, minus a deductible;

b. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage;

c. Hired Auto Physical Damage coverage is excess over any other collectible insurance; and

d. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

If a limit for Hired Auto Physical Damage is indicated in the Declarations, then that limit replaces, and is not in addition to, the $50,000 limit indicated above.

The following is added to Paragraph **B.3.a.**:

Airbag Coverage – Accidental Deployment

However, this exclusion does not apply to the unintended inflation of an airbag if the inflation is caused by mechanical or electrical breakdown.

The following is added to Paragraph **C.2.**

New Vehicle Replacement Cost

If, however, a "loss" occurs to your covered "auto" within 180 days of your purchase of the "auto" and, we deem the covered "auto" to be a total "loss" and it has not been previously titled under the motor vehicle law of any state, we will pay at your option:

a. the cost to replace the covered "auto" with a new "auto" of like make, model and year; or

b. an amount equal to the original purchase price you paid to acquire the vehicle, including taxes, but excluding any extended warranties and licensing fees.

This coverage applies only to a covered "auto" of the private passenger, light truck or medium truck type (20,000 lbs. or less gross vehicle weight).

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The following changes revise **SECTION IV – BUSINESS AUTO CONDITIONS**

The following is added to Paragraph **A.2.a.**:

Amended Duties in the Event of an Accident, Claim, Lawsuit or Loss

However, this duty is only required when the "accident" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) A member, if you are a limited liability company; or

(4) An executive officer or insurance manager, if you are a corporation.

The following is added to Paragraph **A.**:

6. Blanket Waiver of Subrogation

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract executed prior to any "accident" because of payments we make for damages under this coverage form.

The following is added to Paragraph **B.2.**:

Unintentional Failure to Disclose Hazards

Any unintentional failure to disclose all exposures or hazards existing as of the effective date of the Business Auto Coverage Form or at any time during the policy period will not invalidate or adversely affect the coverage for such exposure or hazard. However, you must report the undisclosed exposure or hazard to us as soon as reasonably possible after its discovery.

Paragraph **B.5.b.** is deleted and replaced with the following:

a. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

The following is added to Paragraph **B.5.**

d. To the extent required by an "insured contract", this insurance is primary on behalf of the additional insured, and any other insurance maintained by the additional insured is excess and not contributory with this insurance. If the "insured contract" does not require this provision, then Paragraph **a.** above will apply.

The following changes revise **SECTION V – DEFINITIONS**

The following is added:

Q. "Camper" means a portable dwelling unit without axles or wheels that has been manufactured for attachment on the bed of a pickup truck to be used for casual travel or camping.

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Exhibit B

State of Washington
Department of Labor & Industries

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

Washington State Prevailing Wage

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

Journey Level Prevailing Wage Rates for the Effective Date: 4/14/2023

County	Trade	Job Classification	Wage	Holiday	Overtime	Note	*Risk Class
Benton	Electricians - Inside	Cable Splicer	$79.12	5A	11F		View
Benton	Electricians - Inside	Journey Level	$76.43	5A	11F		View
Benton	Electricians - Inside	Welder	$81.81	5A	11F		View
Benton	Plumbers & Pipefitters	Journey Level	$88.41	6Z	1Q		View
Benton	Refrigeration & Air Conditioning Mechanics	Journey Level	$88.41	6Z	1Q		View

Exhibit C

REQUEST FOR PROPOSAL
Quarterly Inspections and As-Needed Maintenance and Repair Services
for Laundry Equipment at
Benton County Jail, Kennewick, Washington

OWNER: Benton County

ISSUED BY: Lisa Small (509) 783-1451 Ext. 3880

SUBMIT TO: Lisa Small
Benton County Purchasing Department
7122 W. Okanogan Pl. Ste. B110
Kennewick, WA 99336
Lisa.Small@co.benton.wa.us

1. **PROPOSALS DUE BY: Thursday, April 13, 2023 @ 3:00 PM**

2. **WALKTHROUGH: Thursday, April 6, 2023 @ 11:00 AM PST**

A walk-through is scheduled for Thursday, April 6, 2023 at 11:00am PST located at the Benton County Jail, 7122 W Okanogan Pl., Ste. B110, Kennewick, WA 99336. The walk-through will begin in the lobby of the Jail. This meeting is designed to clarify information related to this procurement and provide an opportunity for prospective Bidders to ask questions. A tour of the laundry facility area will be conducted. Bidders are encouraged to review this RFP document prior to the walk-through and to submit any questions in regard to this proposal content in writing at this time.

3. **REQUEST FOR PROPOSAL:**

Benton County is soliciting proposals for quarterly preventive maintenance services and as-needed repair services for three (3) commercial washers and three (3) commercial dryers for the Benton County Jail. Under this plan, the equipment will be inspected quarterly, and as-needed repairs made when necessary. County will also contact the Contractor on an as-needed basis for troubleshooting and repair of equipment.

Unless otherwise stated, the Bidder shall furnish all labor, supervision, materials, tools, construction equipment, transportation, and other items of work necessary to complete the specified work.

4. **THIS REQUEST FOR PROPOSAL CONSIST OF THIS DOCUMENT AND THE FOLLOWING EXHIBITS:**
   Exhibit A: Proposal Form
   Exhibit B: “Sample” Public Works Contract between Owner and Bidder
   Exhibit C: “Sample” Certificate of Insurance

Bidder shall complete the proposal in its entirety and submit the required documents along with their proposal.

5. PROPOSAL FORM:

Price quoted in the proposal shall be exclusive of Federal Taxes. Any Washington State Sales Tax included in the sales price will not be considered a part of the net proposal amount. However, in accordance with RCW 39.30.040, the county may take into consideration the tax revenues that may result from a sale pursuant to this RFP. Your proposal must be submitted on the official proposal form (Exhibit A) or in identical format. Proposals may be mailed, hand delivered, or emailed to the following:

Lisa Small
Benton County Purchasing Department
7122 W Okanogan Pl., Ste. B110
Kennewick, WA 99336
Lisa.Small@co.benton.wa.us

Benton County reserves the right to reject all proposals and discontinue the process if it determines that such course of action is in the best interests of the County. If this course of action is not taken, then award will be made to the lowest responsible Bidder meeting the criteria set forth in RCW 39.04.350(1).

This document and the materials enclosed herewith constitute a request for proposals only and do not represent an offer by Benton County. Proposals submitted in response hereto shall constitute offers to sell the services meeting Benton County specifications. Only upon the County's acceptance of such offer, as provided herein, shall any contractual commitment be created.

The successful Bidder shall be required to sign documents necessary to enter a contract in the form of (Exhibit B) with Benton County within ten (10) days, starting the next calendar day after acceptance of the Bidder's proposal by written notice by the County.

Bidder shall submit specifications of its proposal, showing its compliance with the County's requirements on the attached Proposal form (Exhibit A). At a minimum, each of the items listed in the specifications should be addressed. Any additional features promoted by the Bidder should emphasize the benefits, but also address the impact of such features on the price quotes.

Should any discrepancies or omissions be found in the proposal, or questions as to their meaning, Bidder should at once notify Lisa Small, by telephone at (509) 783-1451 ext. 3880 or by email at Lisa.Small@co.benton.wa.us . Written notice of changes or clarification to this Request for Proposal will be sent to all Bidders when required. The County shall not be held responsible for verbal interpretations.

6. CERTIFICATE OF INSURANCE:

All Bidders are required to submit a certificate of insurance showing proof of the required insurance outlined in (Exhibit B), Section 9 and the "sample" Certificate of Insurance attached hereto and

referenced as (Exhibit C). The Bidder shall obtain and maintain said insurance continuously throughout the term of its Contract if the bid is accepted.

7. SECURITY BACKGROUND CHECK:

The successful Bidder, its employees, subcontractors, and employees who will be working onsite will be required to complete in full the Security Background Check, which is further outline in Exhibit B "Sample" Public Works Contract between Owner and Bidder in Section 29.

8. LICENSES:

All Bidders shall have a current contractor's license for the state of Washington and any special license, if applicable, for work to be performed.

9. PERFORMANCE AND PAYMENT BOND:

A Performance Bond and Payment Bond for the full contract amount will be required prior to execution of the Contract. See Sample Public Works Contract for additional information on bond requirements. In accordance with RCW 39.08.010 the Contractor may elect to have additional retainage withheld from amounts due to them in lieu of payment and performance bonds.

For bonding purposes, the County intends to set the contract amount at $50,000.

10. RETAINAGE:

Retainage will be 5% for work completed and released when the project is complete, and all appropriate releases have been received from the State.

11. PREVAILING WAGES:

Prevailing wages are required to be paid by the Contractor for work on this project in accordance with Washington State Department of Labor and Industry requirements. Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid shall be submitted directly to the County's representative. The Contractor shall submit a Statement of Intent to Pay Prevailing Wages at the beginning of the contract. No payment under this Contract will be made until the Intent form has been submitted. An Affidavit of Wages Paid shall be submitted at the end of the contract. Approval and certification of those forms by the industrial statistician is based on the information provided on the forms and does not constitute approval of the classifications of labor reported. The County requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with https://secureaccess.wa.gov/.

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

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

> The Department of Labor & Industries prevailing wage rate website is http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm
>
> The publication date to use is the Bid due date.
>
> The public works project is located in Benton County.

A copy of the prevailing wage rates, the benefit code key and the supplement are available for viewing at the Purchasing Department, 7122 W Okanogan Place; STE E330, Kennewick, WA 99336 Monday through Friday, between 8:00 am & noon and between 1:00 pm & 5:00 pm except holidays.

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

12. BID PROTEST:

Prior to bid opening, parties with a potential economic interest in the outcome of a bid may submit a formal written protest to any condition known or that should reasonably have been known prior to bid opening. This includes, but is not limited to, conditions and information stated or provided in the solicitation documents, conditions occurring as a result of distribution of the solicitation documents, conditions occurring during the solicitation process, conditions occurring during any pre-bid meetings or conferences, and related matters prior to bid opening. The official named in the bid document must receive such written protest at least two (2) full business days (the equivalent of 16 business hours) prior to the bid submittal deadline. After that time, interested parties shall be considered to have waived their right to protest such issues.

After bid opening and prior to award, only bidders that submitted a bid, subcontractors, or others that can show substantial economic interest in the bid award and who are aggrieved, are eligible to protest. After bid opening, protests are limited to issues related to bid opening, evaluation of bids, and intention to award decisions, and are further limited to those items that were not known or could not have been reasonably known prior to bid opening.

Protests must be received within 2 (2) full business days (the equivalent of 16 business hours) after the bid opening. Any party planning to protest must file written notice of such intention with the official named in the bid document for that purpose. If no notice is received by that official within the 2 business days, all eligible protesters will be considered to have waived their right to protest. Notice of intention must stipulate (1) name, address, and phone number of the aggrieved person; (2) the bid number and title for under which the protest is submitted; (3) the grounds for protest; (4) any evidence supporting the aggrieved parties position.

After the two business days have passed from bid opening date/time, the County may, in the Agency's determination, suspend the award decision to allow consideration of the protest before award is made, or declare its intent to award and wait a minimum of 16 business hours (2 business days as defined above) before entering into a contract.

13. BIDDER QUALIFICATIONS:

A minimum of five (5) years in the installation and repair of industrial grade laundry equipment is required to qualify as a Bidder.

14. PERSONNEL:

The Bidder shall use trained personnel in their direct employment. These individuals must be trained to keep all equipment included in this proposal properly maintained.

_____

Authorized Signature and Title for Contractor

Attachment No. 1 – Equipment List

Identified below is a list of Benton County Laundry Equipment that shall be inspected quarterly and maintained as needed, in accordance with the requirements in the Request for Proposal and (Exhibit A) Proposal Form.

Benton County Laundry Equipment:

Equipment Type	Manufacturer	Model
Washing Machine #1	Alliance Laundry System	IP100PHN2001U01 Serial #1305009251
Washing Machine #2	Alliance Laundry System	SCT100NN0VN140B000 Serial #1806000285
Washing Machine #3	Alliance Laundry System	UW100PVNU60001 Serial #3030208985
Industrial Dryer #1	ADC – American Dryer Corp	120ES
Industrial Dryer #2	ADC – American Dryer Corp	120ES
Industrial Dryer #3	ADC – American Dryer Corp	120ES

Exhibit A

REQUEST FOR PROPOSAL
Quarterly Inspections and As-Needed Maintenance and Repair Services
for Laundry Equipment Services

PROPOSAL FOR

Project Identification: Benton County Jail Laundry Equipment
As-Needed Repair Services

Proposal Submitted To: Lisa Small
Benton County Purchasing Department
7122 W. Okanogan Pl, Ste. B110
Kennewick, WA 99336
Lisa.Small@co.benton.wa.us

Proposal should not include any taxes or L&I Fees.

1. Prevailing Wage labor rate.

    a. (8am to 5pm weekdays): $_____

    b. (Saturday, Sunday and 5pm – 8am weekdays): $_____

2. Call Out/Truck/Mileage Fees: $_____

3. Parts – Cost plus _____% Markup

Submitted on _____ of _____, 2023

The undersigned hereby certifies and represents to signing this proposal on behalf of the Contract and is authorized to do so.

_____ Contractor's License #_____
Legal Name of Organization

_____
Signature of Authorized Person

_____ _____
Printed Name of Authorized Person Title

Exhibit B

BENTON COUNTY
PUBLIC WORKS CONTRACT

TERMS AND CONDITIONS

THIS Contract is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and <<**NAME**>>, a corporation organized under the laws of the State of Washington with its principal offices at <<address>> (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A – Proposal Form dated xx/xx/xxxx
b. Exhibit B – Washington State Prevailing Wage Rates for Public Works Contracts.
c. Exhibit C – Request for Proposal / Equipment List

2. DURATION OF CONTRACT

The initial term of this Contract shall begin upon signature of both parties and shall terminate March 31, 2024. The COUNTY further reserves the right to renew the Contract for an additional year without advertising. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR agrees to provide quarterly inspections and as-needed repair and maintenance services in accordance with the Request for Proposal and CONTRACTOR'S Proposal Form, attached hereto as Exhibits A and Exhibit C, respectively, and incorporated herein by reference, for laundry equipment for the Benton County Jail located at 7122 W. Okanogan Pl. Ste, B110, Kennewick, WA 99336. Quarterly inspections of the equipment must be performed at regular intervals during the calendar year with appropriate dates and times to be determined by the parties.

b. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and shall coordinate with COUNTY to complete the work in conjunction with the other contractor. In the event that the requested work requires, under State or local law, the issuance of a building or other permit, CONTRACTOR shall be responsible for procuring such permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process but may not charge any additional processing or other fees that it does not actually incur.

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

SAMPLE

d. With respect to as-needed repair and maintenance services provided by the CONTRACTOR under this contract, the COUNTY does not guarantee utilization of this contract. The COUNTY may award contracts to other vendors for similar products or services. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the COUNTY.

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

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

g. The CONTRACTOR agrees to submit a COVID-19 Safety Plan in compliance with the Washington State Stay Home, Stay Healthy Proclamation before work can begin.

h. Each of the CONTRACTOR'S employees or subcontractors who will be working onsite at the Jail facility are required to submit a Benton County Background Check Authorization and Release form and be approved to work on the site by COUNTY, as further outlined in Section 29.

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	<<Name>>
Address:	<<Street>>
	<<City, State, Zip Code>>
Phone:	<<Phone>>
Email:	<<E-mail>>

b. For COUNTY:

Name:	Jeff Jones, Facilities Manager
Address:	7122 W. Okanogan Pl., Bldg. A
	Kennewick, WA 99336
Phone:	509-736-3118
Email:	Jeff.Jones@co.benton.wa.us

SAMPLE

5. COMPENSATION

a. The CONTRACTOR shall be paid for performing quarterly inspections and as-needed repair and maintenance services for laundry equipment in the Benton County Jail in accordance with Section 3.a. of this Contract at the rates set forth in Exhibit A. All necessary parts shall be reimbursed at actual cost plus _____% markup. CONTRACTOR shall submit copies of invoices showing actual cost of the parts with all invoices being billed to the COUNTY for parts.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed fifty thousand dollars and zero cents ($50,000.00), excluding W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. The CONTRACTOR shall inform the COUNTY promptly in writing if the CONTRACTOR's cumulative accounts receivable attributable to the COUNTY, pursuant to this Contract, reaches eighty percent (80%) of the maximum total amount payable so that budgeting and approval of additional amounts may be obtained (if appropriate). Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract.

c. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov/ and then forward a copy of the statement to COUNTY'S Contract Representative. At the end of the Contract term, CONTRACTOR shall submit an Affidavit of Wages Paid via https://secureaccess.wa.gov/ and then forward a copy of the affidavit to COUNTY'S Contract Representative. No final payment will be made until the affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with https://secureaccess.wa.gov.

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

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

6. INVOICING

a. The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service and shall also reference the work order provided to COUNTY as required in Section 3.c. of this Contract.

b. The hourly rate for Labor shall be the full cost for the work to perform routine maintenance and as needed repairs in accordance with Exhibit A. Travel time to and from site to perform maintenance and repair shall also be in accordance with the travel rate outlined in Exhibit A.

c. Before or at the time that the CONTRACTOR submits its first invoice, the CONTRACTOR and any subcontractors and sub-subcontractors employed by the CONTRACTOR for the work contemplated by this Contract shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov and then forward a copy of the statement to the COUNTY's Contract

SAMPLE

Representative.

d. The CONTRACTOR shall not be paid for work rendered under this Contract until all required parties have executed and submitted a Statement of Intent to Pay Prevailing Wages in accordance with this section and the work has been performed to the satisfaction of the COUNTY. The COUNTY shall only be liable to pay for invoiced amounts that are detailed and supported as described in this section. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY and will remit payment for the accepted work, less any retainage or other legally withheld funds, within thirty (30) days after receiving the invoice.

e. For each invoiced and approved payment due to the CONTRACTOR under this section, the COUNTY shall withhold from the earned portion of the payment (*i.e*. that portion excluding sales tax or other tax) five percent (5%) as a contract retainage, pursuant to RCW 60.28.011 and in accordance with chapter 60.28 RCW. Within ten (10) days following the execution of this Contract, the CONTRACTOR shall submit written notice to the COUNTY stating the method it has elected pursuant to RCW 60.28.011(4) for the holding of moneys retained by the COUNTY. If such written election is not received by the COUNTY, then the COUNTY may choose any method allowed by RCW 60.28.011(4)(a)-(c) for holding the retained moneys.

7. AMENDMENTS AND CHANGES IN WORK

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

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

8. HOLD HARMLESS AND INDEMNIFICATION

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

b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of

them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 8 shall survive termination and expiration of this Contract.**

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

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

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

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

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

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

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

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

d. **Other Insurance Provisions**:

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

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

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

SAMPLE

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

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

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.

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

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

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

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

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

SAMPLE

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the County's Contract Representative referenced in Section 4.

3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

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

10. PERFORMANCE AND PAYMENT BONDS

The CONTRACTOR shall furnish Benton County with a Performance Bond and Labor and Materials Payment Bond with sufficient sureties acceptable to Benton County, in an amount equal to one hundred percent (100%) of the contract sum as security for the performance by the contractor of this Contract and payment of all the persons performing labor and supplying materials pursuant to this Contract. PROVIDED that the CONTRACTOR may elect, in lieu of the bonds, to allow the COUNTY to retain ten percent (10%) of the contract amount for the term of the contract and released after receipt of the affidavit of wages paid. Proof of the performance and payment bonds, or written notification of the CONTRACTOR'S desire to elect the alternative to the bonds (described above), must be received by COUNTY within ten (10) days following the execution of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. INSPECTION OF BOOKS AND RECORDS

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

14. CHOICE OF LAW AND JURISDICTION

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

15. SUCCESSORS AND ASSIGNS

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

16. TERMINATION

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

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

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

SAMPLE

ambiguities contained therein. If CONTRACTOR believes the schedule contains any such ambiguities or inaccuracies, then the CONTRACTOR is responsible for contacting the Washington State Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this Contract and relevant law to pay prevailing wages.

18. NONDISCRIMINATION

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

19. DISPUTES

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

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

21. VERIFICATION OF SUBCONTRACTOR RESPONSIBILITY CRITERIA

If written consent is obtained to subcontract pursuant to Section 20., CONTRACTOR shall then verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses a contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

22. ENTIRE AGREEMENT

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

23. NOTICES

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

SAMPLE

immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

24. SEVERABILITY

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

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

25. LITIGATION HOLD NOTICE

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

26. PUBLIC RECORDS ACT

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

27. SURVIVABILITY

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

28. CONFIDENTIALITY

SAMPLE

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

29. SECURITY BACKGROUND CHECK

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

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

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

- This section was intentionally left blank –

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

Date:_____	Date:_____
BENTON COUNTY	**COMPANY NAME>**
Will McKay, Chairman Benton County Commissioners	Signature
Approved as to Form:	Title
Civil Deputy Prosecuting Attorney	PRINTED NAME

SAMPLE

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
Month/Date/Year

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
Insurance Agency 1234 Anywhere Street Hometown, WA 99999	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Insurance Company	
INSURER B : Insurance Company (if applicable)	
INSURER C : Insurance Company (if applicable)	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Named Insured
P.O. Box 7890
Somewhere, WA 00000

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC	X	X	Enter Policy #	Effect Date	Expir. Date	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG [ ]	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS	X		Enter Policy #	Effect Date	Expir. Date	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) [ ]	$ 1,000,000 $ $ $ $
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $	X		Enter Policy # (if required)	Effect Date	Expir. Date	EACH OCCURRENCE AGGREGATE [ ]	$ $ $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? Y / N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		Enter Policy #/WA Stop Gap	Effect Date	Expir. Date	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Benton County, its officers, officials, employees and agents are added as Additional Insureds with respect to the Project.

CERTIFICATE HOLDER

Benton County
P.O. Box 190
Prosser, WA 99350

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Granting a Public Utility and Irrigation Easement and Quit Claim Deed for public right of way to City of Kennewick at the Moderate Risk Waste Facility
Presenter:	
Prepared By:	D. Hope
Reviewed By:	Robert Blain & Procurement

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*
No signature, since it is a conveyance and not a contract

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 construction of the Moderate Risk Waste Facility is now complete and in order to obtain final occupancy, the City of Kennewick required that the County grant a permanent easement for public utilities and irrigation and Quit Claim Deed of approximately 30' for public right of way. The County contracted with HLA Engineering and Land Surveying, Inc. to survey the land and prepare the Easement and Quit Claim Deed.

The Public Utility and Irrigation Easement and a Quit Claim Deed has been prepared By HLA Engineering and Land Surveying and reviewed by our departmental Deputy Prosecuting Attorney. There is no PA signature block on the documents since this is a conveyance and not a contract.

The City of Kennewick also requires that the Owner of the property obtain signatures of the Utility Companies on a Petition for Public Utility Company Approval form. The required Utility companies have signed the same.

Fiscal Impact

Amount: None

Fund: N/A

Recommendation

The Director of Operations and Capital Programs recommends the Board approve the Public Utility and Irrigation Easement Quit Claim Deed and Petition for Public Utility Company Approval form for public right-of-way and sign said documents.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF GRANTING A PUBLIC UTILITY AND IRRIGATION EASEMENT AND QUIT CLAIM DEED FOR PUBLIC RIGHT-OF-WAY ON THE COUNTY OWNED PROPERTY AT 1709 S. ELY ST, KENNEWICK, WA TO THE CITY OF KENNEWICK

WHEREAS, the construction of the Moderate Risk Waste Facility is now complete and in order to obtain final occupancy, the City of Kennewick required that the County grant a permanent easement for utilities and irrigation across the property and a Quit Claim Deed for approximately 30' right-of-way; and

WHEREAS, the County contracted with HLA Engineering and Land Surveying, Inc. to survey the land and prepare the Public Utility and Irrigation Easement and Quit Claim Deed for public right of way; and

WHEREAS, the Public Utility and Irrigation Easement and Quit Claim Deed for 30' public right of way has been reviewed and approved as to form by the departmental Deputy Prosecuting Attorney; and

WHEREAS, the City of Kennewick also requires the owner of the property to obtain signatures of the affected utility companies on a Petition for Public Utility Company Approval Form. All required utility companies have signed the same; and

WHEREAS, the Director of Operations and Capital Programs recommends the Board approve said Easement Quit Claim Deed and Petition for Public Utility Company Approval Form; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with the Director of Operations and Capital Programs' recommendation and authorizes the Board of County Commissioners to sign the Public Utility and Irrigation Easement, Quit Claim Deed and Petition for Public Utility Company Approval Form for public right-of-way, attached hereto, on the County owned property at 1709 S. Ely St., Kennewick, Washington to the City of Kennewick.

Dated this 25th day of April 2023.

_____
Chairman

_____
Chairman Pro-Tem

_____
Commissioner

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Purchasing Dept. D. Hope

Danica Hope

From: Reid Hay
Sent: Thursday, March 23, 2023 2:54 PM
To: Danica Hope; Riley Ollero
Cc: Robert Blain
Subject: RE: [EXTERNAL] MRWF Easement - Task Order 2023-01

Danica,

I have reviewed the proposed quit claim deed, and it is approved as to form.

Thank you,
-- Reid

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

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

From: Danica Hope <Danica.Hope@co.benton.wa.us>
Sent: Tuesday, March 21, 2023 11:12 AM
To: Reid Hay <Reid.Hay@co.benton.wa.us>; Riley Ollero <Riley.Ollero@co.benton.wa.us>
Cc: Robert Blain <Robert.Blain@co.benton.wa.us>
Subject: RE: [EXTERNAL] MRWF Easement - Task Order 2023-01

Reid,
I have prepared the attached Quit Claim Deed taking in your comments below. Please review and let me know if you would like any additional language or if you can approve as to form.

Also, attached is the easement as I am unable to ascertain if you have reviewed or not. Please let me know if this document meets with your approval.

Thank you,

DANICA HOPE
Procurement & Contract Coordinator
Benton County Purchasing Department
7122 W. Okanogan Pl. #E330
Kennewick, WA 99336

509-783-1310 Ext. 5665

Return to:
City Clerk's Office
City of Kennewick
PO Box 6108
Kennewick, WA 99336

PUBLIC UTILITY AND IRRIGATION EASEMENT

Grantor(s): BENTON COUNTY
Legal Description (abbreviated) Tract 46, The Highlands Plat "C"
Additional Legal(s) on Exhibit A, page(s) 3
Assessor's Tax Parcel ID No(s).: 111892020046002

THE GRANTOR(S), **BENTON COUNTY**, for and in consideration of mutual interest, convey(s) and grant(s) to THE GRANTEE, **THE CITY OF KENNEWICK**, a Washington municipal corporation, its successors and assigns, a permanent easement over, under and across the real property described in Exhibit A and depicted in Exhibit A-1 herewith attached and made a part hereof, situated in Benton County, State of Washington.

DATED THIS _____ day of _____, 20____.

Said easement is for the following purposes:

Grantee shall have the right to enter the property to inspect, design, construct, reconstruct, operate, maintain, repair, replace, and remove utility and irrigation lines, and may remove landscaping and other obstructions which interfere with the Grantee's designated use of the Easement. Grantor shall not construct buildings, structures or plant trees on the Easement, but may make use of the Easement for any purposes that do not interfere with Grantee's rights provided.

The covenants herein contained shall run with the land and are binding upon all subsequent owners thereof.

DATED THIS _____ day of April, 2023.

GRANTOR:

BENTON COUNTY

By: _____
Chairman

By: _____
Chairman, Pro-Tem

By: _____
Commissioner

STATE OF WASHINGTON)
)ss.
COUNTY OF BENTON)

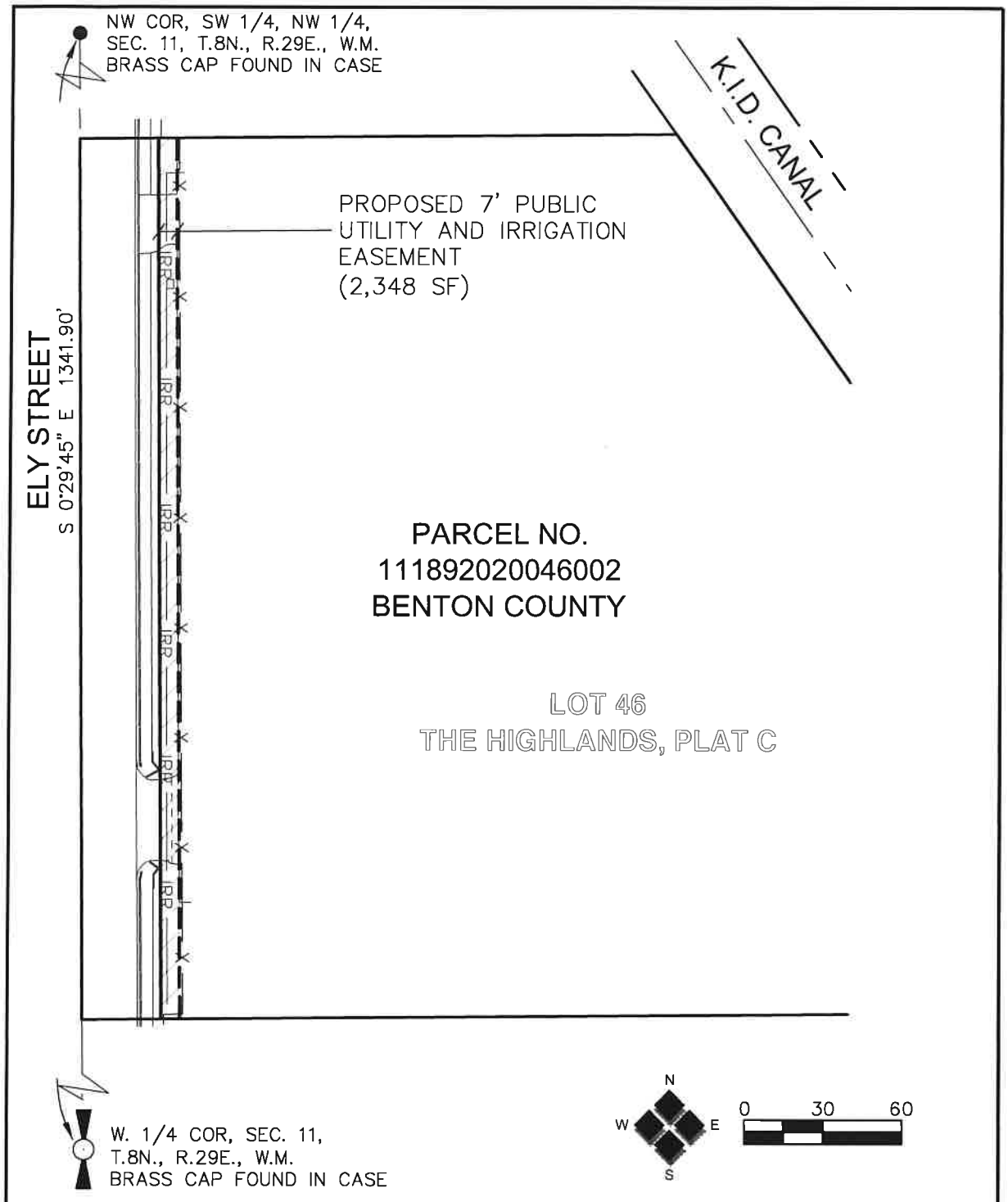
I certify that on this _____ day of April, 2023, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Jerome Delvin**, Chairman Pro-Tem, **Michael Alvarez**, Commissioner and **Will McKay**, Chairman, of the Board of Benton County Commissioners the corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

_____
Notary Public in and for the State of Washington
residing at _____
My Commission Expires:_____

Exhibit A

The East 7.00 feet of the West 37.00 feet of that portion of Tract 46, THE HIGHLANDS PLAT "C", according to the recorded plat thereof, Benton County, Washington, lying South of and above the Kennewick Irrigation District canal.



HLA
Engineering and Land Surveying, Inc.
2803 River Road
Yakima, WA 98902
509.966.7000
Fax 509.965.3800
www.hlacivil.com

BENTON COUNTY EASEMENT EXHIBIT

CITY OF KENNEWICK,
BENTON COUNTY, WASHINGTON

When recorded return to:
City of Kennewick
Attn: City Clerk's Office
P.O. Box 6108
Kennewick, WA 99336

QUIT CLAIM DEED

THE GRANTOR(S) **BENTON COUNTY**, for and in consideration of mutual benefits and for no monetary consideration, hereby conveys and quit claims to the **CITY OF KENNEWICK**, a Washington municipal corporation, a perpetual easement for road purposes and public travel over, on, though, and across the following described real estate, situated in the County of Benton, State of Washington to the same extent and purpose as if the easement rights herein granted had been acquired under the eminent domain statute of the State of Washington, reserving in Grantor fee title to the real estate described herein, subject to the full exercise and enjoyment of the public uses for which the easement is granted together with all after acquired title of the grantor(s) herein:

See attached Exhibit A and Exhibit A-1

Abbreviated Legal: Tract 46, The Highlands Plat "C"
Tax Parcel Number(s): 111892020046002

Dated this _____ day of April 2023

GRANTOR:
Benton County

By: _____ By: _____
Chairman Chairman, Pro-Tem

By: _____
Commissioner

STATE OF WASHINGTON)
)ss.
COUNTY OF BENTON)

This record was acknowledged before me on this _____ day of April, 2023 by **Jerome Delvin**, Chairman Pro-Tem, **Michael Alvarez**, Commissioner and **Will McKay**, Chairman consisting of The Board of Benton County Commissioners the corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said document.

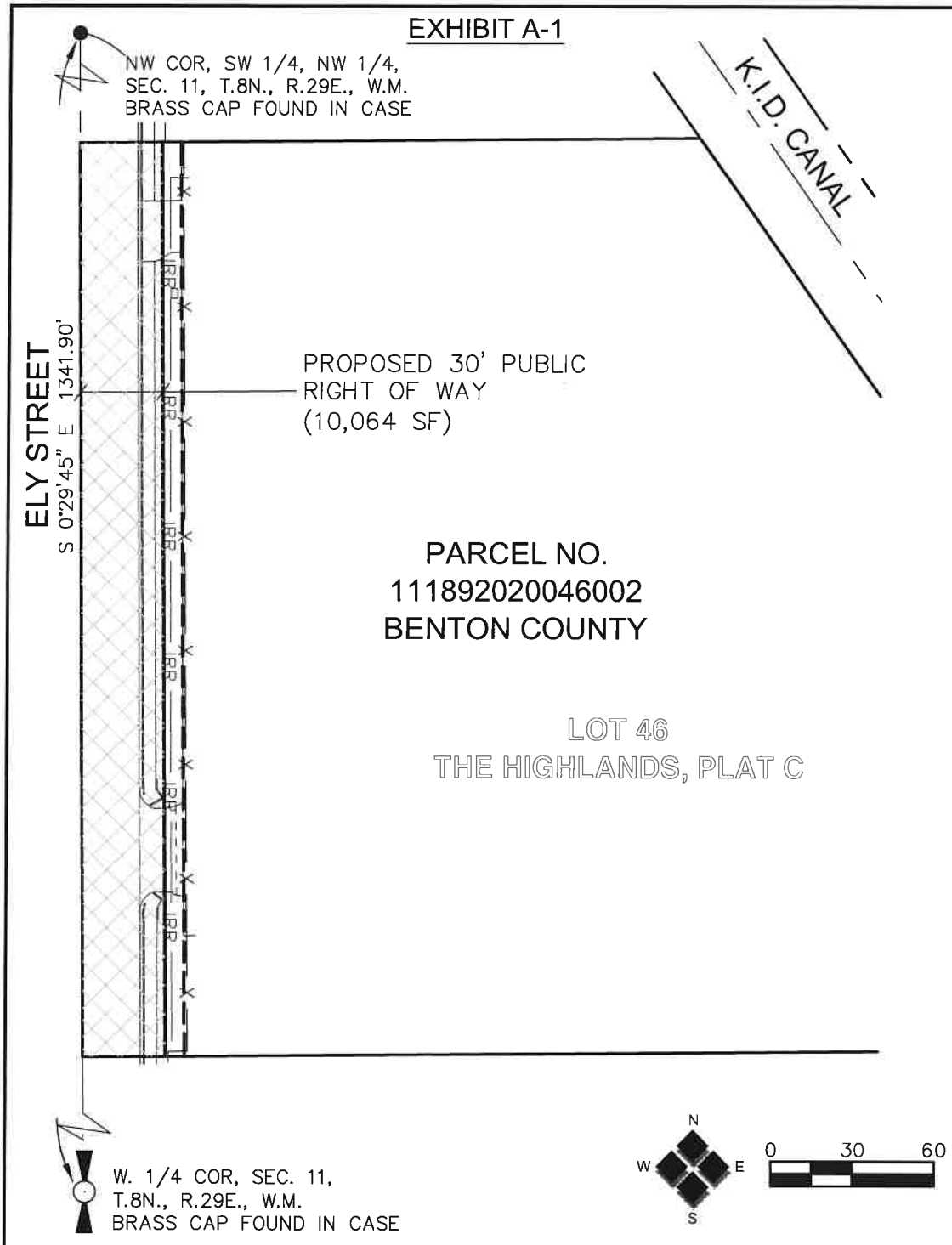
Witness my hand and official seal hereto affixed the day and yar first above written.

_____
Notary Public in and for the State of Washington
Residing at _____
My Commission Expires: _____

Exhibit A

The West 30.00 feet of that portion of Tract 46, THE HIGHLANDS PLAT "C", according to the recorded plat thereof, Benton County, Washington, lying South of and above the Kennewick Irrigation District canal.

EXHIBIT A-1



HLA
Engineering and Land Surveying, Inc.
2803 River Road
Yakima, WA 98902
509.966.7000
Fax 509.965.3800
www.hlacivil.com

BENTON COUNTY RIGHT OF WAY AND EASEMENT EXHIBIT

CITY OF KENNEWICK,
BENTON COUNTY, WASHINGTON

Date: 3/24/2023

MUNICIPAL SERVICES DEPARTMENT
City of Kennewick
PO Box 6108
Kennewick, WA 99336 FAX: 585-4451

Petition for Public Utility Company Approval for Granting a Utility Easement

We, the undersigned utilities, have no objection to the City of Kennewick granting of a:

7' Width (2,348 SF Total) — Size of Easement

Utility — Type of Easement

Tax parcel identification number 111892020046002

Legal description The East 7.00 feet of the West 37.00 feet of that portion of Tract 46, THE HIGHLANDS PLAT "C", according to the recorded plat therof, Benton County, Washington, lying South of and above Kennewick Irrigation District Canal

Physical Address (if applicable) 1709 S Ely St, Kennewick, WA 99336

Please sign approval on the designated line below. **Signatures are to be obtained by petitioner.**

3-29-23

Benton County P.U.D. No. 1 East of SR395 – Rick Sunford **Fax:** (509) 586-6876 **Ph:** (509) 582-1271 Sunfordr@bentonpud.org
West of SR395 – Dave Smith **Fax:** (509) 586-6876 **Ph:**: (509) 582-1231 smithd@bentonpud.org
Center of SR39 to Limits – Chad Brooks **Fax:** (509) 582-1233 **Ph:**: (509) 582-1241 brooksc@bentonpud.org

Homero Gonzalez Phone:509-736-3734

Ziply Fiber **pany** Greg Goodwin Fax: (509) 736-6680 **Phone:** 736-3720 gregory.l.goodwin@ftr.com
Homero.gonzalez@ziply.com
Alternate Gary Taylor **Fax:** (509) 736-6689 **Phone:** (509) 736-3722 gary.k.taylor@ftr.com

Ryan Sams Digitally signed by Ryan Sams Date: 2023.03.29 14:35:28 -07'00'

Charter Communications Dean Kelley **Fax:** (509) 735-3795 **Ph:** (509) 222-2665 **Cell:** 727-6006 dean.kelley@charter.com

Walter A Nelson

Cascade Natural Gas Company Glenn Helton **Fax**: (509) 735-9141 **Phone:** (509) 460-6687 glenn.helton@cngc.com
Arnie Garza **Fax**: (509) 735-9141 **Phone**: (509) 736-5563 arnie.garza@cngc.com

(Obtain only the signature from the irrigation company that serves the property)

Irrigation District CID: Joel Teeley **Fax** (509) 586-0485 **Phone**: (509) 586-6118 jteeley@columbiairrigation.com

Chris D. Sittman 3/28/2023 csittman@kid.org 509-873-1123

Irrigation District KID: Jason McShane **Fax** (509) 586-7763 **Phone**: (509) 586-9111 jmcshane@kid.org
Ben Woodard **Fax** (509) 586-7763 **Phone**: (509) 586-9111 bwoodard@kid.org

City of Kennewick Utility Coordinator, Public Works Dept, 1010 Chemical Drive Fernando Garcia
FAX: (509) 585-4451 **Phone:** (509) 585-4481 **(Return to Sherry Hummel– she will obtain this signature)**

Owner's Applicant's Name (Please Print)

Signature

Address

Phone

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	25 April 2023
Subject:	Amending a Rural County Capital Fund Agreement – West Richland (SR 224 Project)
Presenters:	Adam J. Fyall
Prepared By:	AJF
Reviewed By:	AJF

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

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

Summary & Background

The attached agreement amends the original agreement for the State Route 224 / Red Mountain Transportation Improvement Project by adding $600,000.00 in funding due to cost increases. A tracked changes version of the agreement is attached so that the changes can be easily seen.

The Prosecutor has approved the amended agreement for form.

West Richland will be signing the amended agreement on the evening of April 18.

Fiscal Impact

This amendment to the agreement will add up to $600,000.00 to the project, to be paid from the Rural County Capital Fund. This brings the total project amount to $1,918,000.00, and the funds are available in the City's allocation.

Attachments

- Resolution
- Amended agreement with tracked changes
- Amended agreement, clean (signature) version

Recommendation

Staff recommends authorization of the agreement.

# # #

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE RURAL COUNTY CAPITAL FUND, A FIRST AMENDED AND RESTATED DISBURSEMENT AGREEMENT WITH THE CITY OF WEST RICHLAND FOR THE "STATE ROUTE 224 / RED MOUNTAIN TRANSPORTATION IMPROVEMENT" PROJECT

WHEREAS, RCW 82.14.370, adopted by the Washington State Legislature in 1997, authorizes certain qualified counties like Benton County to impose a "sales and use tax for public facilities", the revenue from which is intended to support "economic development activities" through the construction of "public facilities" by the cities, ports, and the County itself for the purposes of job creation and tax revenue generation; and,

WHEREAS, Benton County has established the "Rural County Capital Fund" for said economic development activities, and has reserved a portion of the Fund for disbursement to cities and ports within the County who request County participation with qualified capital development projects; and,

WHEREAS, the City of West Richland submitted an application for disbursement of funds to be used toward development of a project within the city known as "State Route 224 / Red Mountain Transportation Improvements" which the County determined to be qualified; and,

WHEREAS, the City and the County executed a Disbursement Agreement for the project on June 8, 2021 (Res 2021-453) in an amount not to exceed $1,318,000.00; and,

WHEREAS, as the project has progressed, unforeseen labor and materials costs have been encountered; and,

WHEREAS, the City has requested more funds for the project, such funds are available within the City's Rural County Capital Fund allocation, and the County has determined that the request for supplement is appropriate; and,

WHEREAS, the City and the County have mutually agreed to terms on a *First Amended and Restated Disbursement Agreement for use of Rural County Capital Funds,* with the addition of up to $600,000.00 in additional Rural County Capital Funds being available to the City for the project; **NOW THEREFORE**,

(CONTINUED NEXT PAGE)

BE IT RESOLVED, by the Board of County Commissioners that the Chairman is hereby authorized to sign the *First Amended and Restated Disbursement Agreement for use of Rural County Capital Funds* with the City of West Richland for the disbursement of up to $1,918,000.00 for development of the "State Route 224 / Red Mountain Transportation Improvements" project; with said *Agreement* terminating on June 30, 2024.

Dated this _____ day of _____, 2023.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Commissioner

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

orig: Sustainable Development
cc: City of West Richland, Auditor

Prepared by: A.J. Fyall

FIRST AMENDED AND RESTATED DISBURSEMENT AGREEMENT

FOR USE OF RURAL COUNTY CAPITAL FUNDS

This First Amended and Restated Disbursement Agreement (hereinafter, "Agreement"), ~~among and~~ between Benton County (hereinafter "County"), and the City of West Richland (hereinafter "City"), shall be effective upon execution by both parties.

WHEREAS, the County has previously agreed to distribute certain funds received from the State of Washington that it has deposited in its Rural County Capital Fund (hereinafter "Fund") after April 1, 2016 for the financing of certain "public facilities [projects] serving economic development purposes" as contemplated by State statute (RCW 82.14.370) and in conformance with County policy (Resolution 2017-103, adopted January 31, 2017); and

WHEREAS, the County and the City are authorized, including under Chapters 39.33 and 39.34 of the Revised Code of Washington, to contract with each other and other public agencies in order to effectively and efficiently operate, administer, and carry out their programs and public projects; and

WHEREAS, the State Route 224 (hereinafter "SR 224") / Red Mountain Transportation Improvement Project secured $24.5 million as part of the State's 2015 Connecting Washington Transportation Program to reconstruct SR 224 from Bombing Range Road to Red Mountain Road to increase capacity and improve traffic operations with the addition of vehicle and bicycle lanes, along with intersection improvements, transit facilities, and pedestrian facilities; and

WHEREAS, the City and Washington State Department of Transportation have secured an additional $1.5 million in local and federal funds to fully fund the $26 million SR 224 / Red Mountain Transportation Improvement Project; and

WHEREAS, the City has secured an additional $279,000 in local funds to construct sanitary sewer infrastructure improvements within the SR 224 / Red Mountain Transportation Improvement Project limits; and

WHEREAS, the City desires to also undertake water infrastructure improvements within the SR 224 / Red Mountain Transportation Improvement Project limits specifically between North 62nd Avenue and Red Mountain Road so that development of commercial and industrial zoned property along SR 224 (Van Giesen Street), which has been limited because of inadequate infrastructure, can continue; and

WHEREAS, the water infrastructure improvements that the City seeks funding to accomplish consists of the installation of approximately 7,467 linear feet of 12" water main, 734 linear feet of 6"-10" water mains, approximately 17 fire hydrants, restoration of asphalt pavement and

restoration of roadside ditches, all within the area depicted in **Exhibit A** (Vicinity Map), hereinafter referred to as the "Project"; and

WHEREAS, the Project will catalyze increased private investment in existing businesses and vacant commercially and industrially zoned properties along SR 224 (Van Giesen Street) that can support manufacturing, processing, retail, and other purposes; increase sales tax revenue; and create a significantly increased number of family wage jobs; and

WHEREAS, specific companies have expressed desire to purchase and develop some of the underlying land along the SR 224 (Van Giesen Street) corridor if the infrastructure can be brought to City standards; and

WHEREAS, regional economic data included in the City's Comprehensive Plan states West Richland can support approximately 2,117 new commercial and industrial jobs along the SR 224 (Van Giesen Street) corridor with the necessary infrastructure in place; and

WHEREAS, the City ~~has~~ originally requested $1,318,000.00 for the Project from that portion of the Fund allocated to it by the County to be reimbursed to the City by the County, and a Disbursement Agreement was executed on June 8, 2021 (Resolution 2021-453) in the requested amount; and

WHEREAS, due to increased labor costs, and increased material costs for water main piping, associated valves, fire hydrants, and fittings, the City has requested an additional $600,000.00, bringing the new not-to-exceed total to $1,918,000.00; and

WHEREAS, the requested funding amount is currently available within the City's Fund allocation;

NOW THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the County and the City mutually agree to the following:

1. Based on the City's request for reimbursement from the Fund, the County agrees to reimburse the City for up to $1,~~318~~918,000.00 of qualified direct costs incurred by the City for the Project between the date of ~~the~~ execution of the original Disbursement~~of this~~ Agreement (June 8, 2021) and June 30, 2024; contingent upon: (i) such funds being less than the amount of the Fund allocated to the City, and (ii) that each reimbursement is consistent with the County's Rural County Capital Fund Disbursement Policy.

2. The City and the County acknowledge and agree that the June 30, 2024 completion date may be amended by mutual consent at a later time if problems arise regarding the Project schedule, and both parties understand that neither party is obligated to agree to any amendment.

3. The City represents that the use of revenues from the Fund for the Project is consistent with RCW 82.14.370.

4. The City agrees to use all funds allocated by this Agreement solely for the purpose of financing the Project and warrants that all expenditures by the City for which it seeks reimbursement will comply with RCW 82.14.370.

5. The parties agree that funds will be disbursed only as reimbursement for actual, direct costs incurred by the City in connection with the Project.

6. The City shall invoice the County every ninety (90) days after the effective date of this Agreement, identifying all Project costs incurred by the City during the prior quarter that are eligible for and for which reimbursement is sought. All invoices shall be mailed to the County at the following address:

    Benton County Commissioners Office
    ATTN: Sustainable Development Manager
    7122 West Okanogan Place
    Kennewick, Washington 99336

7. All approved reimbursement payments will be made via check mailed directly to the City at the following address:

    City of West Richland
    ATTN: Finance Director
    3100 Belmont Blvd
    West Richland, Washington 99353

8. The City shall not hold the County liable for any delay in disbursements, but the County agrees to use its best efforts to make appropriate disbursement payments to the City in a reasonably timely fashion.

9. The City shall be responsible for establishing policies for implementing this Agreement, monitoring progress of the Project, and monitoring the fulfillment of the Parties' responsibilities under the Agreement. In addition to other responsibilities set forth in this Agreement, the City is responsible for following applicable bid and prevailing wage law policies and procedures when awarding bids for the Project contemplated by this Agreement.

10. The City agrees to provide the County with a quarterly report along with each invoice outlining the status of the Project, including a spreadsheet detailing all costs being reimbursed by the County.

11. If Rural County Capital Funds are applied by the City toward non-eligible expenditures, the County may cease all disbursements and the City shall repay to the County all monies inappropriately expended.

12. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection by the parties during the term of this Agreement and for three years after its termination. This Agreement shall be filed by the City with the Benton County Auditor.

13. It is not the intention that a separate legal entity be established with respect to the Project, nor is the joint acquisition, holding, or disposing of real or personal property anticipated.

14. The City agrees to indemnify the County from and against any claims, actions, losses, costs, penalties, damages, attorneys' fees, and all other liabilities and costs of defense of any nature arising out of the County's agreement to disburse funds under this Agreement.

15. The City shall not have the right to assign the rights under this Agreement nor to terminate its obligations hereunder without first securing the written consent of the County.

16. The County's obligation to disburse funds under this Agreement only extends to direct Project costs incurred prior to June 30, 2024. After that date, the County's rights under this Agreement shall continue, but the County may use the funds previously allocated under this Agreement for any purpose allowable under state law.

17. This Agreement contains the entire, complete, and integrated statement of each and every term agreed to by and between the City and the County, and this Agreement supersedes any and all prior written and unwritten agreements and understandings pertaining to the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date signed below.

BENTON COUNTY	**CITY OF WEST RICHLAND**
_____	_____
~~Jerome Delvin~~Will McKay, Chairman	Brent Gerry, Mayor
Date: _____	Date: _____
ATTEST:	ATTEST:
_____	_____
Cami McKenzie, Clerk to the Board	Stephanie Haug, City Clerk

APPROVED AS TO FORM:

Chief Deputy Prosecuting Attorney

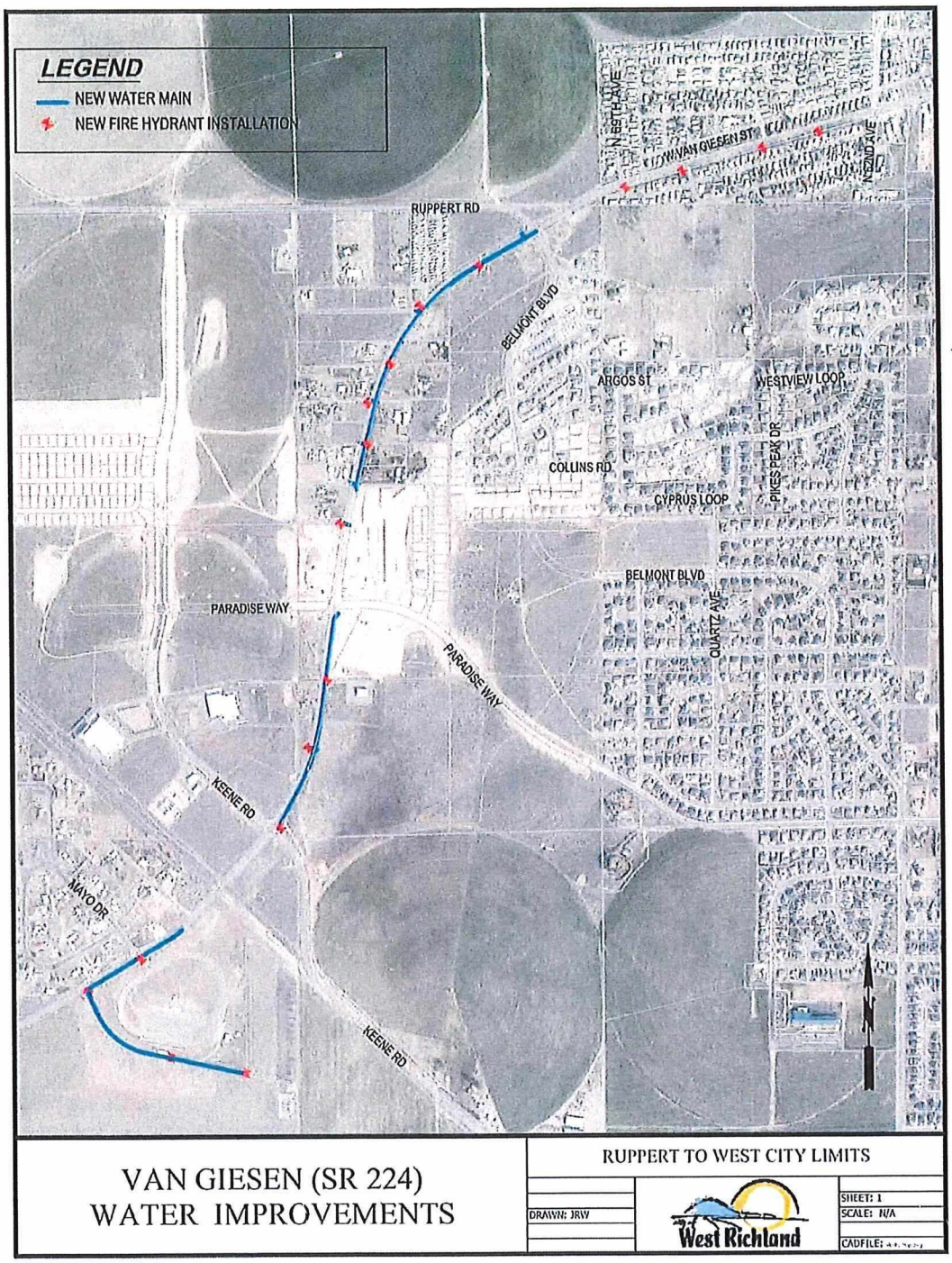
APPROVED AS TO FORM:

~~Bronson Brown~~Jennifer Foltz, City Attorney

EXHIBIT A

VICINITY MAP

The Project's water main and fire hydrant locations are depicted here.
Some of the water main is already completed and/or funded from other sources.


LEGEND
NEW WATER MAIN
NEW FIRE HYDRANT INSTALLATION
N. 68TH AVE
VAN GIESEN ST
N. 62ND AVE
RUPPERT RD
BELMONT BLVD
ARGOS ST
WESTVIEW LOOP
PIKES PEAK DR
COLLINS RD
CYPRUS LOOP
BELMONT BLVD
QUARTZ AVE
PARADISE WAY
PARADISE WAY
KEENE RD
MAYO DR
KEENE RD
VAN GIESEN (SR 224)
WATER IMPROVEMENTS
RUPPERT TO WEST CITY LIMITS
DRAWN: JRW
West Richland
SHEET: 1
SCALE: N/A
CADFILE:

FIRST AMENDED AND RESTATED DISBURSEMENT AGREEMENT

FOR USE OF RURAL COUNTY CAPITAL FUNDS

This First Amended and Restated Disbursement Agreement (hereinafter, "Agreement"), between Benton County (hereinafter "County"), and the City of West Richland (hereinafter "City"), shall be effective upon execution by both parties.

WHEREAS, the County has previously agreed to distribute certain funds received from the State of Washington that it has deposited in its Rural County Capital Fund (hereinafter "Fund") after April 1, 2016 for the financing of certain "public facilities [projects] serving economic development purposes" as contemplated by State statute (RCW 82.14.370) and in conformance with County policy (Resolution 2017-103, adopted January 31, 2017); and

WHEREAS, the County and the City are authorized, including under Chapters 39.33 and 39.34 of the Revised Code of Washington, to contract with each other and other public agencies in order to effectively and efficiently operate, administer, and carry out their programs and public projects; and

WHEREAS, the State Route 224 (hereinafter "SR 224") / Red Mountain Transportation Improvement Project secured $24.5 million as part of the State's 2015 Connecting Washington Transportation Program to reconstruct SR 224 from Bombing Range Road to Red Mountain Road to increase capacity and improve traffic operations with the addition of vehicle and bicycle lanes, along with intersection improvements, transit facilities, and pedestrian facilities; and

WHEREAS, the City and Washington State Department of Transportation have secured an additional $1.5 million in local and federal funds to fully fund the $26 million SR 224 / Red Mountain Transportation Improvement Project; and

WHEREAS, the City has secured an additional $279,000 in local funds to construct sanitary sewer infrastructure improvements within the SR 224 / Red Mountain Transportation Improvement Project limits; and

WHEREAS, the City desires to also undertake water infrastructure improvements within the SR 224 / Red Mountain Transportation Improvement Project limits specifically between North 62nd Avenue and Red Mountain Road so that development of commercial and industrial zoned property along SR 224 (Van Giesen Street), which has been limited because of inadequate infrastructure, can continue; and

WHEREAS, the water infrastructure improvements that the City seeks funding to accomplish consists of the installation of approximately 7,467 linear feet of 12" water main, 734 linear feet of 6"-10" water mains, approximately 17 fire hydrants, restoration of asphalt pavement and restoration of roadside ditches, all within the area depicted in **Exhibit A** (Vicinity Map), hereinafter referred to as the "Project"; and

WHEREAS, the Project will catalyze increased private investment in existing businesses and vacant commercially and industrially zoned properties along SR 224 (Van Giesen Street) that can support manufacturing, processing, retail, and other purposes; increase sales tax revenue; and create a significantly increased number of family wage jobs; and

WHEREAS, specific companies have expressed desire to purchase and develop some of the underlying land along the SR 224 (Van Giesen Street) corridor if the infrastructure can be brought to City standards; and

WHEREAS, regional economic data included in the City's Comprehensive Plan states West Richland can support approximately 2,117 new commercial and industrial jobs along the SR 224 (Van Giesen Street) corridor with the necessary infrastructure in place; and

WHEREAS, the City originally requested $1,318,000.00 for the Project from that portion of the Fund allocated to it by the County to be reimbursed to the City by the County, and a Disbursement Agreement was executed on June 8, 2021 (Resolution 2021-453) in the requested amount; and

WHEREAS, due to increased labor costs and increased material costs for water main piping, associated valves, fire hydrants, and fittings, the City has requested an additional $600,000.00 from the Fund (bringing the new not-to-exceed total to $1,918,000.00) and an amendment to its initial agreement with the County; and

WHEREAS, the requested funding amount is currently available within the City's Fund allocation;

NOW THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the County and the City mutually agree to the following:

1. Based on the City's request for reimbursement from the Fund, the County agrees to reimburse the City for up to $1,918,000.00 of qualified direct costs incurred by the City for the Project between the date of execution of the original Disbursement Agreement (June 8, 2021) and June 30, 2024; contingent upon: (i) such funds being less than the amount of the Fund allocated to the City, and (ii) that each reimbursement is consistent with the County's Rural County Capital Fund Disbursement Policy.

2. The City and the County acknowledge and agree that the June 30, 2024 completion date may be amended by mutual consent at a later time if problems arise regarding the Project schedule, and both parties understand that neither party is obligated to agree to any amendment.

3. The City represents that the use of revenues from the Fund for the Project is consistent with RCW 82.14.370.

4. The City agrees to use all funds allocated by this Agreement solely for the purpose of financing the Project and warrants that all expenditures by the City for which it seeks reimbursement will comply with RCW 82.14.370.

5. The parties agree that funds will be disbursed only as reimbursement for actual, direct costs incurred by the City in connection with the Project.

6. The City shall invoice the County every ninety (90) days after the effective date of this Agreement, identifying all Project costs incurred by the City during the prior quarter that are eligible for and for which reimbursement is sought. All invoices shall be mailed to the County at the following address:

   Benton County Commissioners Office
   ATTN: Sustainable Development Manager
   7122 West Okanogan Place
   Kennewick, Washington 99336

7. All approved reimbursement payments will be made via check mailed directly to the City at the following address:

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   ATTN: Finance Director
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   West Richland, Washington 99353

8. The City shall not hold the County liable for any delay in disbursements, but the County agrees to use its best efforts to make appropriate disbursement payments to the City in a reasonably timely fashion.

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11. If Rural County Capital Funds are applied by the City toward non-eligible expenditures, the County may cease all disbursements and the City shall repay to the County all monies inappropriately expended.

12. The records and documents with respect to all matters covered by this Agreement shall be subject to inspection by the parties during the term of this Agreement and for three years after its termination. This Agreement shall be filed by the City with the Benton County Auditor.

13. It is not the intention that a separate legal entity be established with respect to the Project, nor is the joint acquisition, holding, or disposing of real or personal property anticipated.

14. The City agrees to indemnify the County from and against any claims, actions, losses, costs, penalties, damages, attorneys' fees, and all other liabilities and costs of defense of any nature arising out of the County's agreement to disburse funds under this Agreement.

15. The City shall not have the right to assign the rights under this Agreement nor to terminate its obligations hereunder without first securing the written consent of the County.

16. The County's obligation to disburse funds under this Agreement only extends to direct Project costs incurred prior to June 30, 2024. After that date, the County's rights under this Agreement shall continue, but the County may use the funds previously allocated under this Agreement for any purpose allowable under state law.

17. This Agreement contains the entire, complete, and integrated statement of each and every term agreed to by and between the City and the County, and this Agreement supersedes any and all prior written and unwritten agreements and understandings pertaining to the Project, including but not limited to the Disbursement Agreement executed by the County on June 8, 2021.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date signed below.

BENTON COUNTY

Will McKay, Chairman

Date: _____

ATTEST:

Cami McKenzie, Clerk to the Board

APPROVED AS TO FORM:

Chief Deputy Prosecuting Attorney

CITY OF WEST RICHLAND

Brent Gerry, Mayor

Date: 4/18/23

ATTEST:

Stephanie Haug, City Clerk

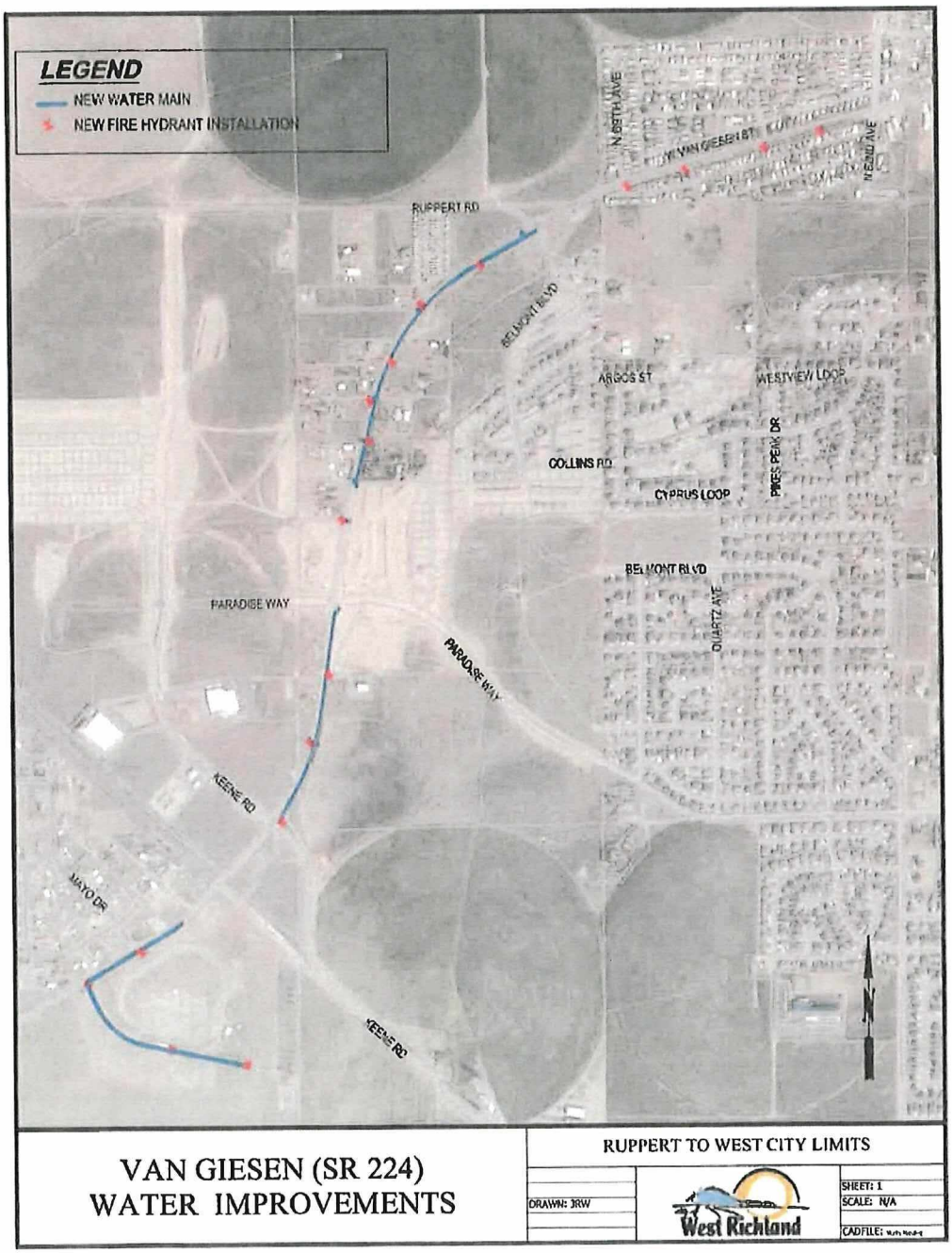
APPROVED AS TO FORM:

Jessica Foltz, City Attorney

EXHIBIT A

VICINITY MAP

The Project's water main and fire hydrant locations are depicted here. Some of the water main is already completed and/or funded from other sources.



COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25th, 2023
Subject:	Personal Services Contract with Frontier Title & Escrow Co. Inc.
Presenter:	
Prepared By:	Veronica Bivins
Reviewed By:	Kirsten Yniguez

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 Treasurer has the responsibility to conduct the sale of Foreclosure Properties and is required, pursuant to RCW 84.64.050, to order title searches of all properties to be sold to determine the legal description of the property and the record title holder. Additionally, in partnership with Commissioners' Office whom manages County Property, it may be the desire that tax title properties have information/vesting documents prepared prior to the sale of such properties. The Benton County Treasurer would like to contract with Frontier Title & Escrow Company to perform services of producing Title Reports and informational/vesting documents for Foreclosure and Tax Title Sales, respectively.

Fiscal Impact

Amount: Not to exceed $25,000 including W.S.S.T., and is guaranteed for 2023 and 2024

Fund: Treasurer's O & M (0112101)

Recommendation

Pass Resolution, Execute Contract

Suggested Motion

N/A – Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF APPROVAL OF A TWO-YEAR CONTRACT WITH FRONTIER TITLE AND ESCROW COMPANY FOR PREPARATION OF TITLE REPORTS AND INFORMATIONAL/VESTING DOCUMENTS FOR THE 2023 AND 2024 TAX FORECLOSURE AND TAX TITLE SALES

WHEREAS, pursuant to RCW 84.64.050, the County Treasurer is required to order a title search of all properties to be sold to determine the legal description of the property and the record title holder; and

WHEREAS, the Board of Benton County Commissioners (B.O.C.C.) approved Resolution 2020-991 stating that all service contracts must be awarded by the B.O.C.C.; and

WHEREAS, the Treasurer has determined that, through direct negotiation with Frontier Title & Escrow Co., Inc., Frontier Title will provide the County with the highest quality services at the lowest cost; and

WHEREAS, the duration of the attached Personal Services Contract will be for the 2023 and 2024 years, ending on December 31, 2024, with a total amount that shall not exceed $25,000 including W.S.S.T.; and

WHEREAS, the Deputy Prosecuting Attorney for the Treasurer's Office has reviewed and approved the contract as to form; **NOW THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners approves the attached Professional Services Contract with Frontier Title & Escrow Co. Inc. for 2023 and 2024, expiring on December 31, 2024.

Dated this _____ day of _____, 2023.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners of Benton County, Washington

Attest.....
Clerk of the Board

Orig: Treasurer
cc: Auditor, Prosecuting Attorney

Prepared by: V.Bivins

BENTON COUNTY
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **Frontier Title & Escrow Co., Inc.**, a corporation organized under the laws of the State of Washington with its principal offices at **6921 Crosswind Blvd, Kennewick WA 99336** (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. "Exhibit A" Requirements for Title Reports; and
b. "Exhibit B" Proposal Form

2. DURATION OF CONTRACT

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

3. SERVICES PROVIDED

a. The CONTRACTOR shall provide title reports for all properties included in the County's Tax Foreclosure Case. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Requirements for Title Reports", which is attached hereto and incorporated herein by reference.

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

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

d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties set forth in Exhibit A, "Requirements for Title Reports".

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Tamara L Davis
Address:	6921 Crosswind Boulevard Kennewick WA 99336
Phone:	(509) 783-8828
Email:	tami@frontiertitle.biz

b. For COUNTY:

Name:	Raquel McCrory or Alexis Cole
Address:	7122 W. Okanogan Pl, Ste E110 Kennewick, WA 99336
Phone:	(509) 783-8505
Email:	raquel.mccrory@co.benton.wa.us alexis.cole@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rates set forth in Exhibit B, "Proposal Form", which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed **$25,000.00,**

including W.S.S.T.

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

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

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

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

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

anyone directly employed by or contracting with CONTRACTOR. The minimum commercial general liability insurance limits shall be as follows:

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

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

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

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

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

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

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

e. **Other Insurance Provisions:**

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

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

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

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

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

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an

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

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.

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

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

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

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

1. All insurance to be maintained by the CONTRACTOR, other

than Auto Liability and Workers' Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY and its elected or appointed officials, employees, and agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTY's Contract Representative referenced in Section 4.

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

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

9. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving thirty (30) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

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

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

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

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

19. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of

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

20. CHOICE OF LAW, JURISDICTION, AND VENUE

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

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

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

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

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

23. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of

their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

24. NOTICES

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

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR

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

- This section left blank intentionally -

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

Dated: _____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: 4-14-23

FOR: FRONTIER TITLE CO., INC

Tamara A Davis
Signature

Manager
Title:

TAMARA L. DAVIS
Print Name

"EXHIBIT A"

BENTON COUNTY TREASURER'S OFFICE
REQUIREMENTS FOR TITLE REPORTS (Tax Certificates)

General Requirements:

1. Parcel Numbers and legal narrative as maintained by the Benton County Assessor's Office of the properties involved in the Year 2021 and 2022 Tax Foreclosure Case will be made available by Benton County to the Title Company providing the Title Reports as soon as the Foreclosure Court Case has been filed (typically the beginning of June).

2. The title reports must be delivered to the County Treasurer's Office within 6 weeks of the parcel list being provided by the County. 50% of the reports need to be received no later than 5:00 p.m. (PDT), the end of the third week, and the remaining 50% by 5:00 p.m. (PDT), the end of the sixth week. Title reports will be delivered to the County Treasurer's Office, as they are completed, by submitting one original along with one by electronic submission via email to the designated Treasurer's Office staff member.

3. The County Treasurer's Office reserves the right to cancel and/or eliminate on a daily basis, any unneeded reports requested without there being any cost or charge to the Office, provided the County Treasurer's staff cancels the request on any parcel(s) prior to the commencement of the title search on that property. Any and all cancellations will be made in writing by e-mail to the title company's designated staff member.

4. When a title search reveals that the owner is a governmental agency or entity which would normally be tax-exempt (such as a city or town, Benton County, State of Washington, the United States or other municipal corporations as defined by state law), or property is in a current or active bankruptcy case, the title search shall be halted immediately and the fact reported, in writing, to the Benton County Treasurer. A copy of the vesting document shall also be provided.

5. The cost for services must be a flat fee per parcel, which can be made part of the minimum bid collected by the County Treasurer through the foreclosure costs.

6. Contractor must provide to the County the following items:
   a. Proof of bond insurance.
   b. A copy of the Certificate of Authority from the State of Washington

7. Only one invoice will be accepted for all title reports provided by the contractor and must be received by the County no later than 60 days after the completion of the last title report. The invoice must include the date of service; total parcels charged; fee charged; any cancellation fees; sales tax; total due. In addition, a

summarized attachment will be required. The summary must note the day the title report was completed, the parcel number applicable and the individual fee charged.

Title Report Specifications

Documents are to be in the following order:

- Cover Sheet
- Title Search
- Legal Documents
- Recorded Liens
- Court documents

Each title report shall provide the County Treasurer's Office with the following information and must be listed on the title search:

1. Determine the record title holder(s) and note any discrepancy, which may exist between the record titleholder and the record owner maintained by the County Assessor's data for the tax rolls.

2. A copy of **all recorded** documents showing how the present owner acquired title, his or her address and copies of any subsequent documents affecting same, e.g. RECs, PAC&Ds, SAC&Ds, partial deed releases, etc. and they must be listed in the narrative.

3. Copies of all recorded documents for all interests if still unsatisfied or unreleased of record, e.g., mortgages, Deeds of Trust, liens, Quit Claim Deeds given in the nature of a mortgage, etc.; encumbrances or liens of record upon the property, including those of contract vendors and purchasers, together with the excise tax affidavit number and/or recording number, if any, or each document by which each such interest or lien was acquired, to include all Federal, State and City tax liens and any judgments in a court of record.

   a. Judgments shall be listed on the reports in the same manner as on a standard commitment for title insurance or Report for Court Proceedings, e.g.:

      Judgment No. _____
      Date: _____
      Case No.: _____
      Plaintiff: _____
      Defendant: _____
      Entered: _____
      Attorney for Plaintiff: _____
      Amount: _____

4. If title was acquired through court action, such as divorce, probate, judgment, etc., copies of any court order filed with the Court for giving notice of that acquisition are required.

5. Determine and specify the complete legal description and note any discrepancy, which may exist between that and the legal narrative maintained by the County Assessor's data for the tax rolls.

6. All documents which show a person or entity as having an interest in the subject parcel(s) even though, in the opinion of the contractor, there is no basis for concluding that such person(s) or entity have valid claims to interests in such parcels (such person(s) or entities may appear as grantor or grantee on a deed, seller on a Real Estate Contract or assignment thereof grantee on a Deed of Trust, mortgagor on a mortgage, etc) please provide the current address of the person or entity. Copies of the applicable documents used to record the liens, including copies of each case number(s) or Auditor's file number(s), volume and page and the Real Estate Excise Tax Affidavit number.

7. Copies of documents filed by the Health District or any Government Agency determining property contamination and clean-up requirements.

8. Copies of any recorded Public Nuisance Abatements that constitute a lien on the property.

9. Copies of recorded documents from any entity that would constitute a lien for services such as water, garbage, irrigation, housing rehabilitation loans, etc.

   In addition, any oil and/or mineral rights, leases, timber rights or restrictions upon the property, which are disclosed by the last conveyance of record, must be provided within the report.

   Note: Legible copies of each document shall be attached to and listed on title reports and must be verified for accuracy.

10. The title report should show any recorded Homestead and any recorded Declarations of Abandonment of Homestead for the applicable property.

11. The title report shall include an identification of all causes of action affecting the property, including bankruptcy.

12. The title report shall include any and all municipal local improvement district assessments.

13. The title report shall include any and all irrigation district assessments for all Irrigation Districts.

14. Please provide a situs (property address) location for property, which has

not been given a specific location. These property locations are generally open, undeveloped properties, and therefore, do not have a street or road address.

Other Requirements:

1. Both the Benton County Treasurer's Office and those having real interest(s) in the properties to be foreclosed on rely on the contractor to ensure that the service is performed efficiently and accurately to provide complete information without fraud or favoritism in the title reports. If title reports are found to be in error, the Treasurer's Office shall be reimbursed for any and all costs and liabilities incurred due to such error(s) in the title reports.

2. Time is of the essence in this project. All timeframes stated in the Requirements for Title Reports are critical to the timely conclusion of the Tax Foreclosure Case. Should delivery not be completed on or before the times stipulated, it is mutually agreed by both parties that delays negatively impact the public and the operations of the Treasurer's Office. Reduction in the title report cost of 10% per calendar day for each and every day for each report that exceeds the delivery time set for the contractor is the nearest measure of damage for each delay that can be fixed at this time. Therefore, the County Treasurer and the contractor hereby establish a reduction in cost of each report 10% of the original fee per calendar day for each day of the delay for each report as liquidated damages and not as a penalty or forfeiture for the breach of agreement to complete delivery by the title company within the time period defined herein after the order is given to the contractor to proceed with title reports.

   Example – If there are 50 parcels on the Parcel List provided by the County, 25 Title Reports would need to be completed by the end of the third week, and the remainder would need to be completed by the end of the sixth week. If only 20 Title Reports have been completed by the end of the third week, the 10% reduction would apply to 5 Title Reports, per day, over the three weeks. The same would apply to the remaining reports at the end of the sixth week.

3. Should the contractor be obstructed or delayed in completing delivery or by any default, act or omission of the Treasurer's Office, or by strikes, fires, declared public emergencies, natural disaster, or by the inability to obtain information or labor due to Federal Government restrictions, then the time of completion shall be extended for such periods as may be agreed upon by both parties. Should there be insufficient time to grant such extensions prior to the completion of the contract, the County Treasurer, may, at the time of acceptance of the work, waive liquidated damages which may have accrued for failure to complete the work on time, due to any of the above, after hearing evidence as to the reasons for such delay and making a finding as to the cause of the same. Any applicable extensions will be granted in writing by the Benton County Treasurer.

4. Error Resolution:
    a. It is expected that the contractor will deliver title reports free of errors.
    b. In the event minor errors are discovered, the contractor will be contacted and errors will be corrected within 1 to 2 business days by the contractor at no cost to the County. Errors may include typographical errors, incorrect/incomplete legal descriptions, misspelled names, incorrect parcel numbers, missing documents, missing bankruptcies, incorrect documents for a specific recording or missing documentation on Estate filing.
    c. If it is determined that the number of title reports found to be in error is excessive or interferes with the County's ability to reasonably conduct business in a normal fashion, an adjustment to the cost of the title reports found to be in error will be made.

5. The contractor must be licensed and bonded to serve as a Title Company within the State of Washington. Proof of bond from the insurance agency and a copy of the State Certificate of Authority must be submitted.

6. The contractor, by signature on the Proposal Form, certifies that he/she is not, and will not, during the time of his/her services, be in violation of any applicable State, Federal or local law including, but not limited to, labor employment standards and employment discrimination laws; and will not sub-contract to another title company, unless approved by the County Treasurer or his designee.

7. There will be no change or addition to any ensuing agreement, which shall be valid or binding upon either party when executed, between the contractor and Benton County, unless such change or addition is in writing and also executed by both parties.

8. As a part of any ensuing agreements with Benton County, each party shall defend, indemnify and hold harmless the other party, its officers, agents and employees, from all liability, loss or damage, including costs of defenses they may suffer as a result of claims, demands, actions, damages, costs or judgments which result from the auctions performed by the indemnifying party, its agents, employees, or subcontractors.

9. The contractor, by signature on the Proposal Form, agrees that any ensuing agreement for services shall be governed by the laws of the State of Washington. Any action, suit, or judicial proceeding for the enforcement of any agreement shall be brought in the Superior Court for the State of Washington in Benton County, Washington

10. The contractor shall represent that he/she is an independent contractor and neither the contractor nor any employee of the contractor is an employee of Benton County. Neither the Contractor nor any employee of the contractor is entitled to any benefits that Benton County provides its employees. The contractor is solely responsible for payment for any statutory workers compensation or employer's liability insurance as required by state law.

11. The contractor will not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 U.S.C. et seq.) or any other applicable state, federal or local law, rule or regulation.

12. Either party may terminate any ensuing agreements for Professional Services upon sixty days written notice, sent by certified mail, to the other party.

13. The title reports are considered public record and will be disclosed during the foreclosure auction.

"EXHIBIT B"

BENTON COUNTY TREASURER'S OFFICE
PROPOSAL FORM
2023-2024 TITLE REPORTS (TAX CERTIFICATES)

Benton County Treasurer
PO Box 630
Prosser, WA 99350

The undersigned hereby certifies that the attached specifications and requirements have been read for REQUIREMENTS FOR TITLE REPORTS and submits for your consideration the following:

Contractor: Frontier Title & Escrow Co.

Contractor Address: 6921 Crosswind Blvd.
Kennewick, WA. 99336

Telephone Number: 509-783-8828

Fax Number: 509-783-6239

Washington State License Number: 601366835

Name of Agent for Bond Coverage: Berkley Assurance Company

Report Cost..... $ 195.00

State Sales Tax..... $ 16.97

TOTAL Per Report..... $ 211.97

Note: The Benton County Treasurer reserves the right to reject any or all proposals. Special attention will be directed to the qualifications of the vendors when considering awarding this proposal, pursuant to policy set forth under Benton County Resolution 2020-991.

Packets must include this Proposal Form, proof of bond from insurance agency and a copy of the Washington State Certificate of Authority.

3-15-23
Date

Tamara L Davis
Signature of Contractor

TAMARA L. DAVIS
Printed Name of Contractor

Order No. **Sample**

Frontier Title & Escrow Company of the Tri-Cities, Inc.

6921 West Grandridge Boulevard
Kennewick, Washington 99336
Telephone No. (509) 783-8828
Fax No. (509) 783-6239

Tax Foreclosure Certificate

To: Benton County Treasurer

Liability: $_____
Premium: $195.00
Tax: $16.97

This certificate is offered solely for the use of the addressee for the purpose of determining necessary parties defendant in an action to foreclose General Property Taxes. The liability of the Company under this Certificate shall be limited to the amount of actual loss sustained by the addressee due to reliance on any incorrect information in the certificate. No liability is assumed by the company for loss or damage that may arise from any other use of this certificate.

Vesting:

John Doe and Jane Doe, husband and wife

Description:

Lot __, Block __, Subdivision, according to the Plat thereof of recorded in Volume __ of Plats, Page __, records of Benton County, Washington.

Subject to:

A. Rights of parties in possession and claims that may be asserted under unrecorded instruments, if any.

B. General Property taxes the Company having made no search thereof.

C. Agreements, if any, which appear in the public record related to future assessments or obligations not yet of record.

D. Covenants, Conditions and Restrictions affecting title, if any appear in the public record.

E. Easements prior to January 1, 2003, if any, which appear in the public records or as shown on any recorded plat.

F. Any reservations of minerals and mineral rights, including leases of said rights appearing in the public records.

G. Additional Exceptions as shown on Exhibit A.

Date: **Effective Date @ 8:00 a.m.**

Exceptions:

1. Exceptions and Reservations as contained in Deed:
   From: _____
   Recorded: _____
   Recording No.: _____
   As Follows: _____

2. Easement, including the terms and provisions contained in document:

   Recorded: _____
   Recording No.: _____
   In Favor of: _____
   For: _____
   Affects: _____

3. Dedication and/or notes contained on the face of said plat, a copy of which is hereto attached.

4. Easement provisions contained on the face of said plat, a copy of which is hereto attached.

5. Covenants, Conditions, Restrictions and/or easements in declaration:

   Recorded: _____
   Recording No.: _____

   A copy of which is hereto attached.

6. Agreement and the terms and provisions thereof

   Between: _____
   And: _____
   Dated: _____
   Recorded: _____
   Recording No.: _____
   Purpose: _____

7. Deed of Trust and the terms and conditions thereof:

   Grantor: _____
   Trustee: _____
   Beneficiary: _____
   Original Amount: $_____
   Dated: _____
   Recorded: _____
   Recording No.: _____

8. Delinquent General Taxes for the years 20_, 20_, 20_, and 20_, in the respective sums of $_____, $_____, $_____, and $_____, plus interest and penalties.
   Affects: Said Premises
   Tax Account No.: x-xxxx-xxx-xxxx-xxx

9. Claim / Notice of Lien:

   Claimant: _____
   Against: _____
   Amount: $_____, plus attorney's fees, costs, and interest
   Recorded: _____
   Recording No.: _____

10. Judgment:

    In Favor of: _____
    Against: _____
    Amount: $_____, together with interest, costs and attorney fees, if any
    Filed: _____
    Judgment No.: _____
    Cause No.: _____
    Atty for Creditor: _____

Parties to be Notified:

a. _____

b. _____

c. _____

d. _____

Notes:

NOTE A: **Common address purported to be:**

XXXX Sample Street
City, WA Zip

NOTE B: **Abbreviated legal description as follows:**

Lot __, Block __, Subdivision

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	25 April 2023
Subject:	MOA with Franklin County and Council of Governments regarding ARPA funds
Presenter:	Adam J. Fyall
Prepared By:	AJF
Reviewed By:	AJF

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

Type of Agenda Item:

- ☐ 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 Contracts

Summary

The Board will consider execution of a memorandum of agreement ("MOA") with Franklin County and the Benton-Franklin Council of Governments ("COG") for the use of American Rescue Plan Act ("ARPA") funds.

Background

Last year, the COG approached Benton and Franklin Counties regarding financial assistance with the COG's efforts to conduct economic recovery research, assessment, planning, and assistance in the Tri-Cities as our communities winds its way out of the Covid-19 pandemic. The COG calls this activity its **Economic Recovery Coordination** program. The Counties agreed at that time to assist the COG with up to $400,000 of ARPA funds, which are intended for these types of Covid-19 recovery purposes. The split would be $250k Benton / $150k Franklin, following the traditional and generally-followed split on similar projects based on population. The assistance will be meted-out for about two years, with the MOA being considered today ending in mid-2025.

ARPA funds must be designated by the Counties by December 31, 2024; and must be fully expended by the Counties by December 31, 2026. The MOA meets with those deadlines.

The MOA is approved for form by the Franklin County Prosecutor, and is *not* approved for form by the Benton County Prosecutor, who has raised a concern about reconciling ARPA rules with the state statute RCW 43.09.210.

The COG will consider and likely sign the MOA at their meeting of April 21.

Franklin County will consider and likely sign the MOA at their meeting of April 25, concurrent with the Benton County meeting. Staff's plan is to take the signed original from Prosser directly to Pasco for final execution.

Fiscal Impact
Up to $250,000 to be paid from the County's ARPA allocation, to be matched with up to $150,000 from Franklin County.

Recommendation
Staff recommends entering into the MOA.

Motion
"I move for the County to enter into the memorandum of agreement with Franklin County and the Benton-Franklin Council of Governments, and that the Chairman to be authorized to sign said agreement."

# # #

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON AND FRANKLIN COUNTY, WASHINGTON: A MEMORANDUM OF AGREEMENT BY AND BETWEEN THE COUNTIES AND THE BENTON-FRANKLIN COUNCIL OF GOVERNMENTS FOR ECONOMIC RECOVERY COORDINATION

WHEREAS, the American Rescue Plan Act ("ARPA") was signed into law on March 11, 2021, providing federal funding relief for workers, industries, and state and local governments; and,

WHEREAS, Benton County and Franklin County ("Counties") have received ARPA funds, and will use portions of said funds to assist with funding economic recovery and resiliency efforts in the greater Tri-Cities community owing to unexpected and severe financial hardships resulting from the Covid-19 pandemic; and,

WHEREAS, the Benton-Franklin Council of Governments ("Council") is an economic development partner of the Counties and is well-positioned to assist the Counties with the types of near and long-term recovery and resiliency efforts that are needed at this time; and,

WHEREAS, it is in the best interests of the Counties and the community for the Counties to contract with the Council for assistance with providing research, facilitation, and implementation of solutions for the community as described in the *Memorandum of Agreement for Support of Economic Recovery Coordination* developed by all three parties;

NOW THEREFORE, BE IT RESOLVED that the Board of Benton County Commissioners and the Board of Franklin County Commissioners approve the *Memorandum of Agreement for Support of Economic Recovery Coordination* between and among the Counties and the Benton-Franklin Council of Governments, and authorize the respective Chairmen to sign said Agreement. The Council shall be reimbursed for up to $400,000 (up to $250,000 by Benton County, and up to $150,000 by Franklin County) for its direct costs associated with implementing the economic recovery coordination services. The agreement shall expire on December 31, 2025.

Dated this . . . . . day of . . . . . , 2023.

_____

Chairman of the Board

Dated this . . . . . day of . . . . . , 2023.

_____

Chairman of the Board

Chairman Pro-Tem

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

Attest: .....
Clerk of the Board

Chairman Pro-Tem

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

Attest: .....
Clerk of the Board

cc: Benton County Prosecutor
Franklin County Prosecutor
Benton-Franklin Council of Governments

MEMORANDUM OF AGREEMENT
between and among
the BENTON-FRANKLIN COUNCIL OF GOVERNMENTS
and BENTON COUNTY, WASHINGTON,
and FRANKLIN COUNTY, WASHINGTON,
for
SUPPORT OF ECONOMIC RECOVERY COORDINATION

I.

This Memorandum of Agreement is made by, between, and among the Benton-Franklin Council of Governments, a regional agency known as a "conference" established in 1966 pursuant to Chapter 36.64.080 of the Revised Code of Washington and hereinafter referred to as the "Council," Benton County, and Franklin County; the two counties hereinafter referred to together as "Counties," and the three entities being collectively referred to as the "Parties."

II.

Once signed by the Parties, this document will serve as an Agreement outlining the cooperative effort by the Parties that will allow the Counties to provide the Council with grant funding to be used solely to meet the continued salary and benefits cost of the Council's existing **Economic Recovery Coordination "ERC" services** through the end of 2024.

III.

The Council is performing ERC services as a part of its economic development mission per its designation as an "economic development district" by the United States Department of Commerce – Economic Development Administration (hereinafter "EDA"). The Council received a Coronavirus Aid Relief & Economic Security Act (hereinafter "CARES Act") Economic Recovery Grant from the EDA in 2020 to establish and fill the ERC position. The EDA grant provided two years' worth of position funding. The Council has found value in providing ERC services and has continued to fund staff time for these activities from Council funds, but needs further funds to maintain ERC services through the end of 2024. The primary responsibilities of the **Economic Recovery Coordination** include:

- Research and identification of recovery and development projects for member organizations.
- Provision of technical assistance to member organizations, businesses, and other stakeholders.
- Assistance with coronavirus recovery planning efforts.
- Identification of grant-eligible projects for local impacted communities.
- Facilitation of disaster-generated economic development projects that align with EDA plans and funding opportunities.

IV.

The Counties are in receipt of federal economic stimulus funds through the American Rescue Plan Act (hereinafter "ARPA"). ARPA is a successor to the CARES Act and builds upon many of the CARES Act measures and goals related to economic recovery and long-term resiliency. The ERC helps further those goals and is a permissible use of ARPA funds. These include responding to the public health and negative economic impacts of the pandemic. The Counties find value for the local economy in the Council's

Economic Recovery Coordination services and wish to assist with funding the staffing required by use of ARPA funds through the end of calendar year 2024.

V.

The Counties agree to provide grant funding to the Council to help it meet expenses of the salary and benefits of the ERC position through the end of 2024 up to the following amounts:

- Benton County shall provide funding in an amount not to exceed $250,000, payable from its ARPA funds.
- Franklin County shall provide funding in the amount of $150,000, payable from its ARPA funds.

The Council shall invoice Benton County for 62.5% and will invoice Franklin County for 37.5% of ERC costs. Invoices will include direct staff salary costs for ERC services and the Council's federally determined Indirect Cost Allocation Plan (ICAP) rate covering the benefits and overhead. Each of the two Counties shall receive separate invoices for the amount due from such county under this Agreement as stipulated below. Payments are the responsibilities of each County independently and shall be remitted to the Council by the Counties within thirty (30) days of receipt of invoice:

- Benton and Franklin Counties shall each receive invoices for their percentage of the ERC expenses incurred subsequent to the date of this Agreement as of the following dates: June 30, 2023; December 31, 2023; June 30, 2024; December 31, 2024; and June 30, 2025.

VI.

If at any time it is determined that the use of the grant funds under this Agreement in any way not consistent with ARPA or other federal or state law or the Council as a recipient of said funds utilizes the funds for anything other than the salary and benefits of staff providing ERC services, the Council must return the full amount of any grant funds received under this Agreement to the respective Counties and forego any receipt of future funds authorized under this Agreement.

VII.

Federal requirements prohibit recipients such as the Counties from contracting with or purchasing from parties suspended or debarred from doing business with the federal government. As such, the Council may not be suspended or debarred at any time during the term of this Agreement, and the Council must provide written certification to this effect to the Counties before any grant funds are disbursed. If at any time during the term of this Agreement, the Council is suspended or debarred, the Council must return all federal funds granted under this Agreement to the Counties, and the Agreement shall be immediately terminated.

VIII.

The Council shall submit reports to each County's respective board of commissioners in written and verbal form. Council staff shall work with County staffs as to the specifics of the written reports. The due dates of these reports shall be June 30, 2023; December 31, 2023; June 30, 2024; December 31, 2024; and June 30, 2025. The accompanying verbal presentations will be arranged with each County's staff individually, with the target timeframes being June and December of 2023, 2024, and 2025 respectively.

IX.

The designated contacts for the purposes of administration of this Memorandum of Agreement shall be:

Council of Governments:	Benton County:	Franklin County:
Michelle Holt	Adam J. Fyall	Duane Davidson
Executive Director	Sustainable Development Manager	County Administrator
587 Stevens Drive	7122 W Okanogan Place	1016 North Fourth Avenue
Richland WA 99352	Kennewick WA 99336	Pasco WA 99301
509-943-9185	509-736-3053	509-545-3535
mholt@bfcog.us	adam.fyall@co.benton.wa.us	ddavidson@franklincountywa.gov

X.

This Agreement may be modified only by written amendment signed by all Parties.

XI.

The Council shall indemnify, hold harmless, and defend the Counties, their elected officials, employees, and agents from all claims, lawsuits, or any liability whatsoever, including costs and attorney's fees, for property loss or damage, bodily injury, sickness or death, personal and advertising injury, and any other tort loss, related to or arising from the Council's actions and activities related to implementation of the Project.

The Council's responsibilities under this indemnification provision include investigating, adjusting, and defending any alleged loss. Provided, the Council shall have no obligation to indemnify the Counties to the extent that the alleged loss is caused by the sole negligence of either or both of the Counties, their elected officials, employees, or agents.

XII.

It is not the intention of this Agreement to create a separate legal entity for the purposes of proceeding with the Project.

XIII.

This Memorandum of Agreement shall become effective when signed by all Parties and shall terminate on December 31, 2025. Any of the Parties may terminate this Agreement before the term date by notifying the other Parties in writing to be effective thirty (30) days from such notice unless otherwise agreed upon.

Remainder of this page intentionally left blank.

This Memorandum of Agreement is executed by the persons signing below, who warrant that they have the authority to execute this Agreement on behalf of their respective Party.

BENTON-FRANKLIN COUNCIL OF GOVERNMENTS

_____
Michelle Holt, Executive Director

Date: _____

BENTON COUNTY

_____
Will McKay, Chairman

Date: _____

Attest:

_____
Cami McKenzie, Clerk to the Board

Date: _____

Approved as to Form:

_____
Deputy Prosecuting Attorney

FRANKLIN COUNTY

_____
Clint Didier, Chairman

Date: _____

Attest:

_____
Karin Milham, Clerk to the Board

Date: _____

Approved as to Form:

_____
Chief Civil Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Temporary change to office hours for the Benton County Sheriff's Prosser Office
Presenter:	Matt Rasmussen
Prepared By:	Matt Rasmussen, Katie Gillies
Reviewed By:	Jerrod MacPherson

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

At the January 10 Board of County Commissioners meeting, the Benton County Sheriff indicated that their office was experiencing staffing issues that made maintaining full office hours at their Prosser location challenging. The Board directed staff to work with the Sheriff to see if, and how, a temporary change to their office hours could be accommodated. On January 31, 2023, the Board modified the hours for the Sheriff's Prosser office via Resolution 2023-106. The Resolution expires on April 28, 2023.

The Sheriff's Office has hired a new employee who will be assigned to Prosser; however, they have not completed the required training program yet. Additionally, there remain open clerical positions in the Sheriff's Office which impacts the ability to train new employees quickly.

The Prosser office sees minimal traffic, typically three or less visitors per day. Those visitors can be assisted remotely from the Kennewick office or accommodated on one of the days that the office will remain open. The Sheriff has formally requested that their hours be temporarily reduced to Monday, Wednesday and Friday from 9:00AM to 3:00PM with a one-hour closure during the lunch hour. The change would be effective April 28th, 2023 through June 30, 2023.

Staff has prepared the necessary documents to make a temporary adjustment to the Benton County Sheriff's Office hours for their Prosser office.

Fiscal Impact

No fiscal impact.

Recommendation

Staff recommends that the Board approve the temporary adjustment in office hours for the Benton County Sheriff's Prosser office.

Suggested Motion

I move to approve the Resolution changing the hours for the transaction of business for the Benton County Sheriff's Prosser office.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF TEMPORARILY CHANGING THE HOURS FOR THE TRANSACTION OF BUSINESS FOR THE BENTON COUNTY SHERIFF'S PROSSER OFFICE

WHEREAS, the Benton County Sheriff's Office has offices located in both Kennewick and Prosser; and

WHEREAS, Resolution 2022-842 sets the minimum days and hours each County office must be open;

and

WHEREAS, the Board of County Commissioners modified the hours for the Sheriff's Prosser office via Resolution 2023-106 which expires April 28, 2023; and

WHEREAS, continued training of new staff and unfilled clerical positions continues to make maintaining full hours at the Sheriff's Prosser office challenging; and

WHEREAS, the Prosser office sees minimal daily traffic and many of the contacts with the public can be handled remotely or during more limited hours; and

WHEREAS, a temporary reduction in office hours will assist the Sheriff's Office with their staffing issue with minimal public impact; **NOW THEREFORE,**

BE IT RESOLVED, by the Board of County Commissioners of Benton County, Washington that the office hours for the Benton County Sheriff's Prosser Office be changed to Monday, Wednesday and Friday between the hours of 9:00AM and 3:00PM with a one (1) hour closure between noon and 1:00PM; and

BE IT FURTHER RESOLVED, that this reduction in office hours shall be effective during the period beginning April 28, 2023 and ending at close of business June 30, 2023.

Dated this 25th day of April, 2023.

_____
Chairman of the Board

_____
Member

_____
Member

Attest.....
Clerk of the Board

Constituting the Board of Commissioners
of Benton County, Washington

Orig: Sheriff
Commissioners

K Gillies

BENTON COUNTY SHERIFF'S OFFICE

7122 W. OKANOGAN PLACE, BLDG. A
KENNEWICK, WA 99336

(509) 735-6555

www.co.benton.wa.us

SHERIFF TOM CROSKREY

COMMITTED TO OUR COMMUNITY

April 12, 2023

Benton County Board of County Commissioners,

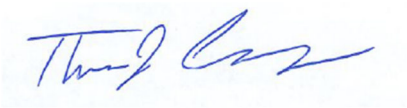
I am requesting an extension on the temporary change in hours for our office located in Prosser. On April 3, 2023, we were able to hire a public disclosure clerk that will be assigned to the Prosser Officer. We immediately began training the new clerk, but typically our training program last 4-6 weeks and we are still working on filling vacancies in the clerical division.

Due to the necessary training and not having all positions filled within the clerical division, the Prosser office will need to remain on a modified schedule. The Prosser office usually has less than three (3) in person visits per day so the schedule change should have a minimal effect on the Prosser community and most of the office contacts can be handled remotely or during more limited hours.

I am requesting the Benton County Sheriffs Prosser Office maintain the modified schedule of being open Monday, Wednesday, and Friday between the hours of 9:00AM and 3:00PM with a one (1) hour closure between Noon and 1:00PM. The reduction in hours will remain in effect during the period beginning May 1, 2023 and ending at close of business June 30, 2023.

Thank you for your consideration in this matter.

Sincerely,



Sheriff Tom Croskrey

Benton County Sheriff's Office

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Award of proposal for Behavioral Health Crisis Recovery Center
Presenter:	Matt Rasmussen
Prepared By:	Matt Rasmussen
Reviewed By:	N/A

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

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

Summary / Background Information

The County issued a request for proposals in December 2022 to find operators for the proposed Behavioral Health Crisis Recovery Center. The initial request received only one proposal so the County issued a second round of requests with slight amendments from the initial proposal. The second round received two proposals.

Comprehensive Healthcare – Yakima Wa

Aristo Healthcare Services – Seattle Wa

The Benton Franklin Behavioral Health Advisory Committee reviewed both proposals and conducted interviews with both firms on April 10, 2023. After discussing the written proposals and the interviews at its regular meeting on April 13. 2023, the Committee voted to recommend that the proposal be awarded to Comprehensive Healthcare.

Once the proposal is awarded, staff will enter into contract negotiations and return to the Board at a later date for approval of contracts.

Fiscal Impact

To be determined through contract negotiations

Recommendation

Staff recommends that the proposal be awarded to Comprehensive Healthcare of Yakima Washington.

Suggested Motion

I move to award the proposal for the Behavioral Health Crisis Recovery Center to Comprehensive Healthcare of Yakima Washington

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING THE PROPOSAL FOR THE BEHAVIORAL HEALTH CRISIS RECOVERY CENTER TO COMPREHENSIVE HEALTHCARE OF YAKIMA WASHINGTON

WHEREAS, Benton County issued a Request for Proposals to solicit a provider to operate the planned behavioral health crisis recovery center in Benton County; and

WHEREAS, the County received two proposals in response to its solicitation, one from Comprehensive Healthcare of Yakima Washington and one from Aristo Healthcare Services of Seattle Washington; and

WHEREAS, the Benton Franklin Behavioral Health Advisory Committee reviewed the proposals and conducted interviews with both firms on April 10, 2023; and

WHEREAS, the Benton Franklin Behavioral Health Advisory Committee, at its April 13, 2023, meeting unanimously voted to recommend that the Board of County Commissioners award the proposal to Comprehensive Healthcare of Yakima Washington; **NOW THEREFORE,**

BE IT RESOLVED, the Board of County Commissioners hereby awards the proposal for the Behavioral Health Crisis Recovery Center; and

BE IT FURTHER RESOLVED, that staff is hereby directed to enter into contract negotiations with Comprehensive Healthcare for the various services needed to operate the Recovery Center and return to the Board at a later date for contract approvals.

Dated this 25th day of April, 2023.

_____
Chairman of the Board

_____
Commissioner

_____
Commissioner

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....
Clerk of the Board

Orig: Commissioners **M Rasmussen**

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	4/25/2023
Subject:	American Rescue Plan (ARPA) / Clerk's Office
Presenter:	Josie Delvin / Linda Ivey
Prepared By:	Linda Ivey
Reviewed By:	Matt Rasmussen

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 American Rescue Plan Grant (ARPA) was received in May 2021. The Clerk's Office requests funds for an Office Administrator position. The ARPA grant allows for hiring additional court staff or attorneys to increase speed of case resolution.

Fiscal Impact

All Expenses are in the General Fund, Department 139, which is specifically setup for the ARPA Grant expenditures. Funding for expenses end with the conclusion of the ARPA Grant, December 31, 2024.

Recommendation

Recommend the Board of County Commissioners approve the Transfer of Funds within the General Fund, Fund 0010, Cares/ARPA Department 139, for the Clerk's Office as presented.

Suggested Motion

Move to approve the Transfer of Funds within the General Fund, Fund 0010, Cares/ARPA, Department 139, for the Clerk's Office as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN GENERAL FUND NUMBER 0010, DEPARTMENT NUMBER 139

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

_____
Commissioner

_____
Commissioner

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: Linda Ivey

EXHIBIT "A"

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Cares/ARPA Dept Nbr: 139

Fund Name: General Fund Nbr: 0010

TRANSFER FROM:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5131000	54103	Professional Services	$192,300
TOTAL			$192,300

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5123000	51725	Office Administrator	$138,000
5123000	52102	Social Security	$10,600
5123000	52103	Medical Insurance	$29,000
5123000	52104	Retirement	$14,400
5123000	52119	Paid Family Leave Act	$300
TOTAL			$192,300

Explanation:

The American Rescue Plan (ARPA) allows for hiring additional court staff or attorneys to increase speed of case resolution to expedite case resolution as an eligible ARPA use of funds. The LIT appropriation is an Office Administrator position, position 1725, Grade 20 Non-Barg. Office Administrator is an existing job classification and description. The Position will be filled at a Grade 18 Non-Barg pursuant to Resolution 2014-372. Position ends with the conclusion of the ARPA funding December 31, 2024.

Prepared by: Linda Ivey Date: 19-Apr-2023

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Commissioner

_____
Commissioner

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	April 25, 2023
Subject:	Rapid Broadband Design Study
Presenter:	Commissioner Alvarez
Prepared By:	M Flores
Reviewed By:	M Rasmussen

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 Commissioner Michael Alvarez was contacted by Michelle Holt, Executive Director of the Benton-Franklin Council of Governments (BFCOG), regarding an opportunity for the County to receive a Free Rapid Design Study to support Broadband planning. BFCOG is facilitating the completion of broadband plans that will position organizations within Benton and Franklin counties to apply for upcoming funding opportunities. Having these Rapid Design Studies would provide some valuable information supporting future broadband activities.

Should the County be willing to make this request, we'd have to contact Connie Rivera at connie.rivera@commerce.wa.gov to indicate we are requesting a Rapid Design Study through the Washington State Broadband Office. The Washington State Broadband Office has a consulting firm to produce a Rapid Design Study for each County. They require an email request from a County Commissioner to initiate this plan. The plan does not in any way obligate the entire County. The plan would provide a Broadband Map and excel workbook with cost tabs to estimate the needs and cost scenarios to bring broadband service to the County. Scenarios include all fiber build-out, all wireless build-out, and a couple of hybrid options.

The information from this Rapid Design Study, combined with the Broadband Action Plan and the Digital Equity Plan, will position local governments and organizations to apply for part of the $1.2B in IIJA funding the State receives. These plans do not obligate any local government or organization to apply for or execute any elements of these plans.

Fiscal Impact

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Recommendation

na

Suggested Motion

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