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, June 6, 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: May 23, 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

Commissioners
- a. Contract Amendment 1 w/Washington State Military Department for E911 Services

Coroner
- b. Contract w/Titus Funeral Services, Inc. for Rotation Funeral Home Services

Corrections
- c. Invitation to Bid for Inmate Supplies CB 23-12
- d. Subscription Agreement w/International Business Information Technologies, Inc. for Tracking High Liability Areas & Events

Human Services
- e. Agreement w/WA State Department of Social & Health Services on General Terms & Conditions
- f. Contract w/Arc of Tri-Cities for Special Olympics Services

Juvenile
- g. Line Item Transfer, Fund No. 1150, Dept. 171 for Overtime

Office of Public Defense
- h. Superior Court Public Defense Services Agreement w/Catherine Harkins
- i. Amended Superior Court Public Defense Services Agreement w/Christine Bennett

Public Safety
- j. Line Item Transfer, Fund No. 1480; Dept. 121 for Overtime

Public Works

k. Contracts for Road Surfacing Materials With:
    - Interstate Concrete & Asphalt Co.
    - Central Manufacturing, Inc.
    - Central Washington Asphalt, Inc.
    - O.L. Luther Co., Inc.
    - Western Rock Products, LLC

l. Interlocal Agreement w/Benton County Weed District #1 for General Equipment & Services

m. Contract w/Interstate Concrete & Asphalt Co. for Bituminous Surface Treatment Services

Purchasing

n. Declaration of Surplus Property

Scheduled Business

Contract w/Chervenell Construction Co for the Juvenile Justice Progressive Design Project ~ R Blain

Memorandum of Understanding w/Greater Columbia Region Municipalities to Establish an Opioid Abatement Council ~ M Rasmussen & K Sullivan

Amending Bylaws & Rules of Procedure for the Board of Benton County Commissioners ~ Administration & R Brown

Award of Official County Newspaper Discussion ~ Administration

Reorganization of Auditor's Office – 2nd Phase ~ B Chilton
- Line Item Transfer, Fund No. 0010, Dept. 102 for Chief Accountant

Authorizing Sheriff's Office to Apply for Grant Funding – Patrick Leahy Bulletproof Vest Partnership Program

Finance Presentation: General Fund & Public Safety Tax ~ L Ivey

Other Business

Adjournment

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, May 23, 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: Robert Heard, IT Manager; Carlee Nave, HR Manager; Greg Wendt, Community Development Director; Adam Fyall, Sustainable Development Manager; Public Works Manager Matt Mahoney; Clerk Josie Delvin; DPA Ryan Brown; Treasurer Ken Spencer; Michelle Cooke, Planning Manager; Superior Court Judge Joe Burrowes; Tiffany Runge, Superior Court Administrator; Finance Manager Linda Ivey; Deputy Treasurer Kirsten Yniguez.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Approval of Minutes

The Minutes of May 9, 2023 were approved.

Review Agenda

Consent Agenda Item "i" (Human Services Agreement w/WA State Department of Social & Health Services on General Terms and Conditions) was pulled until a later date.

Commissioner Alvarez requested Consent Agenda Item "b" (Award of Official County Newspaper) be pulled for discussion.

Public Comment

Tina Gregory, Kennewick via/WebEx, discussed her concern about government issues.

Consent Agenda

MOTION: Commissioner Delvin moved to approve the consent agenda items "a" through "ss" , pulling "b" (Award of Official County Newspaper) for discussion and "i" (Human Services Agreement w/WA State Department of Social & Health Services on General Terms and Conditions). Commissioner Alvarez seconded and upon vote, the Board approved the following:

Capital

a. Authorization to Advertise and Proceed w/the Justice Center Interior Remodel Project

Commissioners

c. Verizon Wireless HQ Network Real Estate Change of Ownership Form for KGH Property

Coroner

d. Contract w/Mueller's Funeral Home, Inc. for Rotation of Funeral Home Services

Human Resources

e. Line Item Transfer, Fund No. 0010, Dept. No. 105 to 127

Human Services

f. Interlocal Agreement w/Cities of Benton City, Kennewick, Prosser, Richland and West Richland for Administrating Funds Generated Through the Affordable Housing for All Surcharge

g. Interlocal Agreement w/Cities of Benton City, Kennewick, Prosser, Richland and West Richland for Administering Funds Generated Through the Affordable Housing Tax Credit for House Bill 1406

h. Interlocal Agreement w/Cities of Benton City, Kennewick, Prosser, Richland & West Richland for Collection, Administration & Expenditure of Homeless Housing Funds

Information Technology

j. Declaration of Surplus Property

k. Internet Service Agreements w/One World Telecommunications for the Prosser Courthouse & Ziply Fiber for the Justice Center Locations

Juvenile

l. Contract w/Michael Henry Counseling for Services & Treatment to First Time Sex Offenders

Office of Public Defense

m. Superior Court Public Defense Services Agreement w/Michael Vander Sys
n. Superior Court Public Defense Services Agreement w/Katherine Bohnet
o. Amended Superior Court Public Defense Services Agreement w/Brian Hultgrenn
p. Amended Superior Court Public Defense Services Agreement w/Dale Braunger
q. Amended Superior Court Public Defense Services Agreement w/Dennis Hanson
r. Amended Superior Court Public Defense Services Agreement w/Ian Sinclair
s. Amended Superior Court Public Defense Services Agreement w/Karla Kane
t. Amended Superior Court Public Defense Services Agreement w/Nicholas Blount
u. Amended District Court Public Defense Services Agreement w/Eric Scott
v. Amended District Court Public Defense Services Agreement w/Heather Carlson
w. Amended District Court Public Defense Services Agreement w/Janell Felsted
x. Amended District Court Public Defense Services Agreement w/John Gleason
y. Amended District Court Public Defense Services Agreement w/Michelle Alexander
z. Amended District Court Public Defense Services Agreement w/Megan Killgore

aa. Amended District Court Public Defense Services Agreement w/Robert Moser
bb. Amended District Court Public Defense Services Agreement w/Shelley Ajax
cc. Amended Agreement w/Bertha Arteaga for Interpreter Services in District & Superior Courts

Planning

dd. Short Plat Vacation – SPV 2023-001

Prosecuting Attorney

ee. Updated Salary Request Forms for Employees Within the Prosecuting Attorney's Office

Public Safety

ff. BIPIN Law Enforcement Records Management System Citizen Reporting Interface w/Lexis Nexis
gg. Line Item Transfer, Fund No. 1480, Dept. 112 to 115

Public Works

hh. Contract Award to Interstate Concrete & Asphalt Co. for Bituminous Surface Treatment, Crack Seal & Edge Repair Project
ii. Approval of City of West Richland Ordinance Number 05-23 & Revision of Corporate Boundary

Purchasing

jj. Contract w/Apollo Mechanical Contractors for Justice Center Boiler Replacement Project
kk. Purchase of Trailer Mounted Core Drill System From Humboldt Mtg Co.

Sheriff

ll. Memorandum of Understanding w/Pasco Police Department for Funding Reimbursement for Instructors for the Pasco Basic Law Enforcement Academy
mm Memorandum of Understanding w/WA Traffic Safety Commission for Overtime Funding Relating to Drug Recognition Experts
nn. Contract w/Public Safety Psychological Services for As Needed Psychological Evaluations

Workforce Development Council

oo. Appointment of Andrew Cook to the Benton-Franklin Workforce Development Council
pp. Appointment of Geoff Arends to the Benton-Franklin Workforce Development Council
qq. Appointment of Jessica Rusch to the Benton-Franklin Workforce Development Council
rr. Re-Appointment of Lori Mattson to the Benton-Franklin Workforce Development Council
ss. Re-Appointment of Lynn Ramos-Braswell to the Benton-Franklin Workforce Development Council

Public Hearing – Subdivision Vacation – SV 2023-001 Scheline

Michelle Cooke presented the request to vacate storm easement on Lot 11. She said the applicant was proposing to realign the drainage channel to allow for additional useable area to construct a shop.

She indicated that owners of property within 300 feet of the subject parcel and all concerned agencies were notified of the proposed vacation. The Benton County Public Works Department provided comments and conditions of approval for the proposed vacation which include the submission of engineered plans for the relocation of the drainage channel, relocation to be completed, and a signed and stamped letter from the applicant's engineer that the work conforms to the submitted plans prior to the resolution being recorded.

The Planning Division recommended approval based on the information received, subject to the conditions and requirements of the Public Works Department.

John Scheline, applicant, via/WebEx in Kennewick, spoke in favor.

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

MOTION: Commissioner Delvin moved to approve the vacation of the storm easement located on Lot 11 of Cottonwood Creek Number 3, with the condition that the applicant record a storm easement on Lot 11 with the Benton County Auditor and all Benton County Public Works Department requirements as listed in BCCM 1.13 are satisfied. The conditions must be satisfied within 1 year of the date of approval by the Benton County Board of Commissioners or this approval will be null and void. Commissioner Alvarez seconded and upon vote, the motion carried.

Public Hearing - Vacation of a Portion of Right of Way Abutting Olsen and Griffin Road

Matt Mahoney presented the Final Order of vacation of a portion of right of way abutting Olsen and Griffin Road. On April 18, 2023 the Board accepted the Public Works Department's recommendation and intent to vacate and abandon and the County Engineer has examined the county road to be vacated and filed said report.

Mr. Mahoney added that it had never been a county road and not constructed and was now an unusable portion. They requested input on impacts because there are power lines in this area. All parcels would continue to have full utility to their access, and based on the findings, he recommended approval as presented.

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

MOTION: Commissioner Delvin moved to approve the resolution vacating that portion of County right of way abutting Olson Road and Griffin Road, as described in Exhibit A, and retaining an easement in respect to the vacated land for the construction, repair, and maintenance of public utilities and services, which at this time are authorized or are physically located on a portion of the vacated land. Commissioner Alvarez seconded and upon vote, the motion carried.

Hanford Communities Annual Briefing/ECA conference

David Reeploeg, Executive Director, and Mr. Fyall provided a briefing on the Energy Communities Alliance conference in Kentucky. Mr. Fyall commented that Benton County was well represented, but his takeaway was that Washington was falling behind compared to other states with nuclear energy.

Commissioner Delvin said he agreed the state was not as advanced as other states, but as a community, felt they were well positioned but still needed support from the other side of the state.

Commissioner Alvarez said it was educational, but a good opportunity for relationships to be built, and that infrastructure could be just as valuable as the land.

Chairman McKay asked about another facility he heard would be constructed in Washington with Dept. of Energy. Mr. Reeploeg said that Grant County PUD announced they were not ready, so X-energy partnered with Dow Chemical to have it built in Texas, but they were still committed to building another facility in the state with a goal to have it brought on by 2030.

Additionally, he added that good representation sends a powerful message. He agreed that Washington State was behind on new nuclear energy, compared to other states, but the Governor has talked supportively of nuclear energy and there were great opportunities discussed.

The Hanford Communities update included the following:

- Objectives
    - Local government involvement
    - Public awareness
    - Community priorities
    - Technical assistance/monitor conditions at Hanford
- Governing Board/Administrative board
- 2022 Review & 2023 Outlook
    - Cleanup
    - Policy
    - Community Engagement
    - Manhattan Project National Historical Park
- Priorities

Superior Court Reorganization

Judge Burrowes and Tiffany Runge presented a reorganization that included the following:

- Challenges with backlog of trials
    - Prior and Post Covid
- Challenge with employing court reporters – previously employed 5, and were now down to 2
- Using digital recording system (JAVS) - working on reliability, and working with IT to find a solution
- PILOT program to retrofit Courtroom E to get more reliability, improve digital recording, and improve accuracy
- Court Reporter Position 1379 will end – unfilled
- Court Reporter Position 1474 will end – unfilled
- Add Administrative Assistant - Courtroom technology position to manage courtroom system - Grade 9 Bi-County Non-Barg (Benton County only position and expenditures are not part of the MOU with Franklin County)
- Budget Neutral
- If this works, they would be asking for one in the other courtrooms and might be asking it to be a bi-county position

Clerk Josie Delvin said she agreed that JAVS had proven to not be reliable. She said the Clerk's office was responsible for retaining the digital recording and responding to the public records requests. It was the judiciary duty to create an accurate record. This would alleviate the Clerk's duties in the Courtroom, but it was her responsibility to maintain and retain the records and would increase work on retainage. She said she would prefer a court reporter, but understood it was difficult or nearly impossible to find them in this day. She was also concerned about server space because she was required to maintain the record permanently.

Commissioner Alvarez said he was in favor the pilot program. Commissioner Delvin asked about any technology out there and Judge Burrowes said there was FTR Real Time, but it was cost prohibitive.

MOTION: Commissioner Delvin moved to approve the Line Item Transfer for the General Fund, Fund 0010, Dept. 123 to Dept. 138 as presented. Commissioner Alvarez seconded and upon vote, the motion carried.

Other Business

Consent Agenda Item "b" – Award of Official County Newspaper

Commissioner Alvarez said he briefly spoke to the Deputy County Administrator about this last week and had since received phone calls from the City of Prosser and a former Commissioner. He requested to delay a decision until the Deputy County Administrator returned and he could review more information. The Board agreed.

Attorney Internships

Commissioner Alvarez said he had discussed internships for law school students with the PA to work in OPD and the PA's office, and potentially have an agreement with Franklin County to share the interns. He said if the Board was okay with it, he would continue to talk to the PA about this.

Ms. Ivey said there was currently money in the budget for both OPD and the PA's office for legal interns.

Judge Burrowes commented they had interns from two different law schools, and they were free to the Court because they were paid by the colleges.

Pasco Police Academy

Lt. Erik Magnuson thanked the Board for approving the MOU with the Pasco Police Dept. to get some funding back from CJTC for training. He said they had been teaching 23 classes a year on a campus that was built for a much smaller training. The new smaller remote academies were getting more focus and more classes complete and local instructors were teaching about local issues, which improved the learning curve.

WSAC Update

Chairman McKay said there was a county requesting to increase their votes on WSAC based upon on their contribution. Additionally, there was an applicant for the salmon recovery board that did not get his vote because she was opposed to dams.

Health Board Meeting

Chairman McKay said there was a presentation at the meeting from OG Therapy that assisted with teen suicides by doing presentations at schools and they were requesting funding from the Health Board. He asked if it was something the County could contribute to, and Ms. Ivey said that Human Services might be able to help with that program with its budget.

Board Meeting Cancellation

Mr. MacPherson reminded the Board there would not be a meeting on May 30 due to the holiday.

The Board briefly recessed, reconvening at 10:51 a.m.

Executive Session – Review Qualifications of Applicant for Public Employment

The Board went into executive session at 10:51 a.m. for up to five minutes with Judge Burrowes and Tiffany Runge to review the qualifications of an applicant for public employment. Also present were Jerrod MacPherson, Cami McKenzie, and Carlee Nave.

The Board came out at 10:54 a.m. No decisions were made in executive session.

MOTION: Commissioner Delvin moved to approve the Salary Request Form as presented for Sandra Alarcon for Superior Court. Commissioner Alvarez seconded and upon vote, the motion carried.

Executive Session – Review Qualifications of Applicants for Public Employment (2)

The Board went into executive session at 10:55 a.m. for up to 10 minutes to review the qualifications of two separate applicants for public employment. Also present were Jerrod MacPherson, Cami McKenzie, Josie Delvin, and Carlee Nave.

The Board came out at 11:00 a.m. No decisions were made in executive session.

MOTION: Commissioner Delvin moved to approve the Salary Request Form and Vacation Accrual Resolution for Darcy Plowman as presented for the Clerk's Office. Commissioner Alvarez seconded and upon vote, the motion carried.

MOTION: Commissioner Delvin moved to approve the Employment Contract with Charles Dow for OPD Manager as presented. Commissioner Alvarez seconded and upon vote, the motion carried.

Tort Claims

CC 2023-07: Received on May 25, 2023 from John Haugen

Accounts Payable

Check Date: 05/10/2023

P-cards #: 799
Total all funds: $405,798.30

Check Date: 05/19/2023

Warrants #: 245668-245849
Total all funds: $953,966.22

EFT's #: 427-428
Transfers #: 773-787, 790-798, 800-802, 804, 809-827
Total all funds: $53,126.33

Resolutions

2023-370: Authorization to Advertise and Proceed w/the Justice Center Interior Remodel Project
2023-371: Verizon Wireless HQ Network Real Estate Change of Ownership Form for KGH Property
2023-372: Contract w/Mueller's Funeral Home, Inc. for Rotation of Funeral Home Services
2023-373: Line Item Transfer, Fund No. 0010, Dept. No. 105 to 127
2023-374: Interlocal Agreement w/Cities of Benton City, Kennewick, Prosser, Richland and West Richland for Administrating Funds Generated Through the Affordable Housing for All Surcharge
2023-375: Interlocal Agreement w/Cities of Benton City, Kennewick, Prosser, Richland and West Richland for Administering Funds Generated Through the Affordable Housing Tax Credit for House Bill 1406
2023-376: Interlocal Agreement w/Cities of Benton City, Kennewick, Prosser, Richland & West Richland for Collection, Administration & Expenditure of Homeless Housing Funds
2023-377: Declaration of Surplus Property
2023-378: Internet Service Agreements w/One World Telecommunications for the Prosser Courthouse & Ziply Fiber for the Justice Center Locations
2023-379: Contract w/Michael Henry Counseling for Services & Treatment to First Time Sex Offenders
2023-380: Superior Court Public Defense Services Agreement w/Michael Vander Sys
2023-381: Superior Court Public Defense Services Agreement w/Katherine Bohnet
2023-382: Amended Superior Court Public Defense Services Agreement w/Brian Hultgrenn
2023-383: Amended Superior Court Public Defense Services Agreement w/Dale Braunger

2023-384: Amended Superior Court Public Defense Services Agreement w/Dennis Hanson
2023-385: Amended Superior Court Public Defense Services Agreement w/Ian Sinclair
2023-386: Amended Superior Court Public Defense Services Agreement w/Karla Kane
2023-387: Amended Superior Court Public Defense Services Agreement w/Nicholas Blount
2023-388: Amended District Court Public Defense Services Agreement w/Eric Scott
2023-389: Amended District Court Public Defense Services Agreement w/Heather Carlson
2023-390: Amended District Court Public Defense Services Agreement w/Janell Felsted
2023-391: Amended District Court Public Defense Services Agreement w/John Gleason
2023-392: Amended District Court Public Defense Services Agreement w/Michelle Alexander
2023-393: Amended District Court Public Defense Services Agreement w/Megan Killgore
2023-394: Amended District Court Public Defense Services Agreement w/Robert Moser
2023-395: Amended District Court Public Defense Services Agreement w/Shelley Ajax
2023-396: Amended Agreement w/Bertha Arteaga for Interpreter Services in District & Superior Courts
2023-397: Approval of Short Plat Vacation – SPV 2023-001
2023-398: BIPIN Law Enforcement Records Management System Citizen Reporting Interface w/Lexis Nexis
2023-399: Line Item Transfer, Fund No. 1480, Dept. 112 to 115
2023-400: Contract Award to Interstate Concrete & Asphalt Co. for Bituminous Surface Treatment, Crack Seal & Edge Repair Project
2023-401: Approval of City of West Richland Ordinance Number 05-23 & Revision of Corporate Boundary
2023-402: Contract w/Apollo Mechanical Contractors for Justice Center Boiler Replacement Project
2023-403: Purchase of Trailer Mounted Core Drill System From Humboldt Mtg Co.
2023-404: Memorandum of Understanding w/Pasco Police Department for Funding Reimbursement for Instructors for the Pasco Basic Law Enforcement Academy
2023-405: Memorandum of Understanding w/WA Traffic Safety Commission for Overtime Funding Relating to Drug Recognition Experts
2023-406: Contract w/Public Safety Psychological Services for As Needed Psychological Evaluations
2023-407: Appointment of Andrew Cook to the Benton-Franklin Workforce Development Council
2023-408: Appointment of Geoff Arends to the Benton-Franklin Workforce Development Council
2023-409: Appointment of Jessica Rusch to the Benton-Franklin Workforce Development Council
2023-410: Re-Appointment of Lori Mattson to the Benton-Franklin Workforce Development Council
2023-411: Re-Appointment of Lynn Ramos-Braswell to the Benton-Franklin Workforce Development Council
2023-412: Final Order of Vacation of a Portion of County Right of Way Abutting Olsen Rd and Griffin Rd Situated
2023-413: Transfer of Funds Within General Fund Number 0010 Department Number 123 and 138

2023-414: Crediting Darcy Plowman with Total Years of Benton County Service for the Purposes of Vacation Accrual

2023-415: Employment Agreement with Charles Dow - Public Defense Manager

There being no further business before the Board, the meeting adjourned at approximately 11:01 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	E911 Contract E23-003 Amendment 1 Acceptance
Presenter:	
Prepared By:	Carole Cimrhakl, Benton County Emergency Services
Reviewed By:	

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

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

Summary / Background Information

The Washington State Military Department, through the State E-911 Coordinator's Office (SECO), coordinates and facilitates the implementation and operation of 911 emergency communications throughout the state. It is authorized to enter into agreements for statewide services and to reimburse the County for eligible expenses from appropriated excise tax revenue retained in the state E-911 account.

For Benton County to be reimbursed for approved incurred eligible expenses as described in WAC 118-66-050 and E911 policies, Benton County has historically executed an annual Washington State E-911 Contract in support of Southeast Communications (SECOMM). Funds are provided for state-mandated travel, 911 Call Taker training, and for state programs and training that exclusively supports 911 in Benton County.

E-911 Coordinator Professional Development (CPD) Contract E23-003 Amendment 1 provides $8,100 in funding for SECOMM's incurred eligible expenses with Comtech for the set-up and configuration of Benton County Emergency Services Intrado Call Processing Equipment Upgrade.

Fiscal Impact

Washington State Military Department shall reimburse Benton County with a total reimbursement amount not to exceed the total contract award of $8,100. The performance period begins July 1, 2022 through June 30, 2023 with a contract end date of August 15, 2023 to permit contract closeout.

Recommendation

Benton County Emergency Services recommends Benton County accept E-911 CPD Contract E23-003 Amendment 1 in the amount of $8,100 with Washington State Military Department to reimburse the County for approved incurred eligible expenses as described in WAC 118-66-050.

Suggested Motion

Approve as part of consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING CONTRACT #E23-003 AMENDMENT 1 BETWEEN BENTON COUNTY AND WASHINGTON STATE MILITARY DEPARTMENT FOR E911

WHEREAS, in order for Benton County to be reimbursed for certain approved incurred eligible expenses as described in WAC 118-66-050 and E911 policies, Benton County must enter into a contract with the Washington State Military Department; and

WHEREAS, the Board of Benton County Commissioners have previously accepted and entered into Contract #E23-003 with the Washington State Military Department for reimbursement of those approved incurred eligible expenses, as described in WAC 118-66-050 and the E911 policies, that are necessary to operate Enhanced 911 countywide; and

WHEREAS, the Washington State Military Department has issued Amendment 1 to contract E23-003 in the amount of $8,100 to cover the cost of set-up and configuration by Comtech of the Intrado Call Processing Equipment (CPE) Upgrade; and

WHEREAS, Benton County must enter into a contract with the Washington State Military Department to accept these additional appropriated funds in the form of Amendment 1 to original Contract #E23-003 in the amount of $8,100 for reimbursement of the approved eligible expenses, as described in WAC 118-66-050 and the E911 policies, that are necessary to operate Enhanced 911 countywide; and

WHEREAS, Benton County Emergency Services Executive Board recommends entering into Contract #E23-003 Amendment 1 with the Washington State Military Department for reimbursement of those approved incurred eligible expenses, as described in WAC 118-66-050 and the E911 policies, that are necessary to operate Enhanced 911 countywide; **NOW THEREFORE**

BE IT RESOLVED by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby approves the attached Contract #E23-003 Amendment 1 between Benton County and the Washington State Military Department for reimbursement of those approved incurred eligible expenses, as described in WAC 118-66-050 and the E9l l policies, that are necessary to operate Enhanced 911 countywide; and

BE IT FURTHER RESOLVED the original contract award of $55,141 will be increased by $8,100 for a total contract award of $63,241; and

BE IT FURTHER RESOLVED the attached contract amendment expiration date remains unchanged from August 15, 2023; and

BE IT FURTHER RESOLVED the attached contract amendment performance period remains unchanged from July 1, 2022 and expires June 30, 2023; and

BE IT FURTHER RESOLVED Washington State Military Department shall reimburse Benton

County with a total reimbursement amount not to exceed $8,100 as stated in the attached contract amendment.

Dated this 6th day of June, 2023

Chairman of the Board

Chairman Pro Tem

Commissioner

Constituting the Board of County Commissioners of Benton County, Washington

Attest……
Clerk of the Board

SECO COUNTY Coordinator Professional Development (CPD) Contract SFY 2023

AMENDMENT

1. CONTRACTOR NAME/ADDRESS:	2. CONTRACT NUMBER:	3. AMENDMENT NUMBER:
Benton County Agency (COUNTY) **Post Office Box 190** **Prosser, Washington 99350**	**E23-003**	**1**

4. CONTRACTOR CONTACT, PHONE/EMAIL:	5. MD STAFF CONTACT, PHONE/EMAIL:
Kim Lettrick / 509.628.8595 **k.lettrick@bces.wa.gov**	**Teresa C Lewis / 253.512.7481** **Teresa.lewis@mil.wa.gov**

6. TIN or SSN:	7. CATALOG OF FEDERAL DOMESTIC ASST. (CFDA) #: **NONE**	8. FUNDING SOURCE NAME/AGREEMENT #:
91-6015119		**RCW 38.52.510, .540, .545 & WAC Chapter 118-66**

9. FUNDING AUTHORITY:

Washington State Military Department (DEPARTMENT) and **State 911 Funds**

10. DESCRIPTION/JUSTIFICATION OF AMENDMENT:

This amendment adjusts the funds in the Budget Sheet (ATTACHMENT E) based on updated expenditures, also to include contract modification.

11. AMENDMENT TERMS AND CONDITIONS:

1. Contract expiration date August 15, 2023 remains **unchanged**.
2. Contract performance period of July 1, 2022 through June 30, 2023 remains **unchanged**.
3. **Change** the funding amount **from** $55,141 **to** $63,241; an increase of $8,100 as described on page 2 of this amendment.
4. **Change** original Budget Sheet Attachment E, as described on Page 2 of this Amendment.

This Amendment is incorporated in and made a part of the contract. Except as amended herein, all other terms and conditions of the contract remain in full force and effect. Any reference in the original contract or an Amendment to the "contract" shall mean "contract as amended". The Department and Contractor acknowledge and accept the terms of this Amendment as identified above, effective on the final date of execution below. By signing this Amendment, the signatories warrant they have the authority to execute this Amendment.

IN WITNESS WHEREOF, the parties have executed this amendment:

FOR THE DEPARTMENT:	FOR THE CONTRACTOR:
Signature Date	Signature Date
Regan Anne Hesse, Chief Financial Officer Washington State Military Department	Will McKay, Chairman Benton County Board of Commissioners

Form Date: 10/27/00

Washington State Military Department
Amendment to Contract E23-003

1. **Change the Contract Amount from $55,141 to $63,241; an increase of $8,100.**
   a) On Contract Face Sheet, Box 2. ~~$55,141~~ 63,241
   b) Attachment A, VIII, A. under MILITARY AGREEMENT AGREES TO.
      "…reimburse the COUNTY up to the maximum of ~~$55,141~~ 63,241, or actual cost, whichever…"
   c) Attachment E, Budget Sheet.
2. **Change the original Budget Sheet, Attachment E, with the attached Revised Budget Sheet, Attachment E.**
   a) Original Budget Sheet, Attachment E, with Revised Budget Sheet, Attachment E; an increase of $8,100.
      1. Add CPD6 funding amount of $8,100.

REVISED BUDGET SHEET
SECO COUNTY CPD CONTRACT – SFY 2023
July 1, 2022 – June 30, 2023

	SFY2023 - Original	SFY2023 - Revised
Coordinator Professional Development (CPD)	**$55,141**	**$55,141**
CPD6		**$8,100**
TOTAL CONTRACT NOT TO EXCEED	**$55,141**	**$63,241**

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Personal Services Contract with Titus Funeral Services, Inc. dba/Hillcrest Funerals and Cremation for Rotation Funeral Home Services for the Benton County Coroner's Office
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Jeff Aultman; W. Leach; Purchasing Dept.

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

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

Summary / Background Information

The Benton County Coroner solicited a Request for Proposals from local qualified full-service funeral home establishments for the transportation and removal of deceased persons in Benton County when there is no next-of-kin available, handling of indigent remains, and no pre-arraignment or preference of funeral home.

A total of three (3) companies provided a proposal with the following results:

	Rotation Funeral Home Services
Einan's at Sunset Funeral Home, Richland, WA	$120/per service if moved to different funeral home
Hillcrest Funerals and Cremation, Kennewick, WA	$120/per service if moved to different funeral home
Mueller's Funeral Home, Inc., Kennewick, WA	$120/per service if moved to different funeral home
Prosser Funeral Home & Crematory, Prosser, WA	Did not respond

The Benton County Coroner would like to enter into a contract with each of the funeral home services that provided a proposal to be placed on a monthly rotation schedule to provide services as further outlined in the attached contract and Exhibit A.

Fiscal Impact

Cost: Contract amount not to exceed $10,000 excluding WSST
Fund: Dept 109 – Indigent Burials & Professional Services

Recommendation

Approve the attached Resolution and personal services contract between Benton County and Titus Funeral Services, Inc. dba/Hillcrest Funerals and Cremation and authorize the Chairman to sign said contract with a termination date set for May 31, 2024.

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 PERSONAL SERVICES CONTRACT TO TITUS FUNERAL SERVICES, INC. DBA/HILLCREST FUNERALS AND CREMATION FOR ROTATION FUNERAL HOME SERVICES FOR THE BENTON COUNTY CORONER'S OFFICE

WHEREAS, the Benton County Coroner's Office solicited a Request for Proposals (RFP) from local qualified full-service funeral home establishments for the transportation and removal of deceased persons in Benton County when there is no next-of-kin available, handling of indigent remains, and no pre-arraignment or preference of funeral home; and

WHEREAS, the RFP called for two (2) different services with the first being a Preferred Funeral Home Services Contract, and the second being a proposal for Rotation Funeral Home Services; and

WHEREAS, a total of three (3) companies provided a proposal with the following results:

	Rotation Funeral Home Services
Einan's at Sunset Funeral Home, Richland, WA	$120/per service if moved to different funeral home
Hillcrest Funerals and Cremation, Kennewick, WA	$120/per service if moved to different funeral home
Mueller's Funeral Home, Inc., Kennewick, WA	$120/per service if moved to different funeral home
Prosser Funeral Home & Crematory, Prosser, WA	Did not respond

WHEREAS, the Preferred Funeral Home Services Contract was awarded to Einan's at Sunset Funeral Home, Richland, WA under a different award Resolution; and

WHEREAS, the Benton County Coroner would like to enter into a contract with each of the funeral home services that provided a proposal to be placed on a monthly rotation schedule to provide services as further outlined in the attached contract and Exhibit A; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington concurs with the recommendation and hereby awards a personal services contract to Titus Funeral Services, Inc. dba/Hillcrest Funerals and Cremation, Kennewick, WA for monthly Rotation Funeral Home Services for the removal of deceased person from the place of death within Benton County for a cost as further outlined in the attached contract for an overall contract not to exceed $10,000 excluding WSST; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board to sign the attached personal services contract between Benton County and Titus Funeral Services, Inc. dba/Hillcrest Funerals and Cremation, Kennewick, WA; and

BE IT FURTHER RESOLVED, said contract shall commence upon signature of both parties and shall expire on May 31, 2024.

Dated this 6th day of June, 2023.

_____
Chairman of the Board

_____
Chairman Pro-Tem

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

Attest: _____
Clerk of the Board

Orig: BC Coroner
cc: Auditor, PA, Hillcrest

Prepared by: L. Small

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 **TITUS FUNERAL SERVICES, INC. DBA/HILLCREST FUNERALS AND CREMATION** a corporation organized under the laws of the State of Washington with its principal offices at 9353 W Clearwater Ave., Kennewick, WA 99336-8589 (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. Terms and Conditions (this document)
b. Exhibit A – Proposal for Rotation Funeral Home Services Contract dated March 30, 2023

2. DURATION OF CONTRACT

The term of this Contract shall begin upon signature of both parties and shall expire on May 31, 2024. Upon agreement of both parties this Contract may be extended an additional 12-month period subject to agreement between both parties regarding cost adjustments. 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. **Rotation Funeral Home Service:** A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A – Proposal for Rotation Funeral Home Services Contract, which is attached hereto and incorporated herein by reference.

b. All services performed by the CONTRACTOR set forth in Exhibit A shall be performed on a monthly rotating bases with other

funeral home service participants. If CONTRACTOR is unable to perform said services in a timely matter, the COUNTY will call the next participating funeral home service that is set for the following month rotation to perform the service.

c. 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.

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	John Titus
Address:	9353 W. Clearwater Ave. Kennewick, WA 99336
Phone:	(509) 737-9717
Email:	

b. For COUNTY:

Name:	William Leach, Benton County Coroner
Address:	7122 W Okanogan Pl., Suite C110 Kennewick, WA 99336
Phone:	(509)736-2720
Email:	William.Leach@co.benton.wa.us

5. COMPENSATION

a. For the services performed as further outlined under Section 3.a above, the CONTRACTOR shall be paid in accordance with the rates set forth in Exhibit A – Proposal for Rotation Funeral Home Service Contract.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed ten thousand

dollars and zero cents ($10,000.00)excluding WSST.

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

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

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

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

7. HOLD HARMLESS AND INDEMNIFICATION

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

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

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

b. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract.

CONTRACTOR shall submit a copy of its certificate of coverage from the Washington State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

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

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

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

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

The CONTRACTOR must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Contract and does not exclude liability

pursuant to the indemnification requirement under Section 7. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

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

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

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

e. **Other Insurance Provisions:**

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

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

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

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

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

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

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

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

9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment

to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

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

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

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

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

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

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager to the following address: Benton County Risk Manager, 7122 W. Okanogan Pl., Suite E130, Kennewick, WA 99336.

9. <u>TERMINATION</u>

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

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

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

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

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

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

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

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

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state,

and local laws, rules, and regulations in performing this Contract.

14. DEBARMENT CERTIFICATION

The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any State or Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify the Contact designated as the representative to the County of this Contract if, during the term of this Contract, the Contractor becomes debarred. The County may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term of this Contract.

15. INSPECTION OF BOOKS AND RECORDS

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

16. NONDISCRIMINATION

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

17. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

such use is not agreed to in writing by the CONTRACTOR.

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

18. PATENT/COPYRIGHT INFRINGEMENT

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

19. DISPUTES

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

20. CONFIDENTIALITY

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

21. CHOICE OF LAW, JURISDICTION, AND VENUE

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

its interpretation and performance.

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

22. SUCCESSORS AND ASSIGNS

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

23. SEVERABILITY

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

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

24. ENTIRE AGREEMENT

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

25. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 4 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 4 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed

to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

26. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions (Sections 7 and 18); extended reporting period requirements for professional liability insurance (Section 8(a)); inspection and keeping of records and books (Section 15); litigation hold notice (Section 27); Public Records Act (Section 28); and confidentiality (Section 20).

27. LITIGATION HOLD NOTICE

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

28. PUBLIC RECORDS ACT

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

the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

~ This section 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.

Dated: _____

BENTON COUNTY, WASHINGTON

Will McKay, Chairman
Benton County Commissioner

Approved as to Form:

Jeff Aull/man, Civil DPA

Dated: 5/15/2023

TITUS FUNERAL SERVICES, INC.
DBA/HILLCREST FUNERALS AND CREMATION

Signature

John Blaze TITUS OWNER
Print Name & Title

HILLCREST
FUNERALS AND CREMATION

Benton County Coroner's Office
7122 W Okanogan Pl., Suite C110
Kennewick, WA 99336
Wednesday March 30, 2023

Dear Bill,

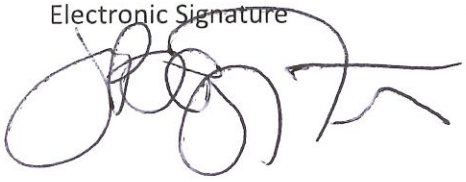
Hillcrest Funerals and Cremation is a Full-Service Funeral Home in Benton County, Washington State. Our Funeral Establishment License number is #548. We welcome the opportunity to be the **"Preferred Funeral Home Service Contract"** and be part of the **"Rotation Funeral Home Service Contract".**

"Rotation Funeral Home Service Contract"
Hillcrest Funerals and Cremation would like to participate in the services of an equally rotation basis when there is no preference of funeral home for the deceased, or when the next of kin is known but cannot be immediately contacted.

Transportation Cost: Removal of deceased person in Benton County will be at $0. if the body stays with us. If the family chooses another Funeral Home, there will be a $120. cost for our Removal service.

Removal Time: If we are going to the location of death, we will be there in 30-45 Minutes.
If we are making the call from another Funeral Home or Coroner's Office in Benton County, we will call for a convenient time for that Funeral Home or Coroner's Office.

J. Blaze Titus
Electronic Signature



COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Invitation to Bid for Inmate Supplies CB 23-12
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	LeeAnn Holt; Chief Guerrero; Procurement

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

Type of Agenda Item:	**Type of Action Needed:** *(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 Corrections Department (BCCD) currently has a contract with Bob Barker 2022-871 utilizing the OMNIA Partners Contract and the County of Sacramento, CA for the purchase of inmate supplies.

Due to continued rising cost, BCCD wishes to solicit bids for the procurement of inmate supplies to see if we can lock in better pricing for hygiene products, inmate uniform and miscellaneous supplies for the Benton County jail.

Fiscal Impact

N/A – There are no financial obligations associated with this request.

Recommendation

Approve the attached Resolution authorizing the solicitation of bids for the procurement of Inmate Supplies CB 23-12 for the Benton County Corrections Department and authorize the Chairman to sign said solicitation.

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 SOLICITATION OF BIDS FOR THE PROCUREMENT OF INMATE SUPPLIES CB 23-12 FOR THE BENTON COUNTY CORRECTIONS DEPARTMENT

IT IS HEREBY RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the attached Invitation for Bids and corresponding documents for the procurement of inmate supplies, including but not limited to, hygiene products, inmate uniforms and miscellaneous supplies for the Benton County Jail shall be prepared and advertised pursuant to the provisions of RCW 36.32.245, as more fully described in the Invitation for Bids - CB 23-12 attached hereto; and

BE IT FURTHER RESOLVED, the bids will be received by the Benton County Corrections Department, 7122 W. Okanogan Pl., Suite B110, Kennewick, WA 99336 until 3:00 PM (PST) on Wednesday, June 28, 2023 and not thereafter, and will be publicly opened by representatives of the Benton County Corrections Department at 9:00 AM (PST) on Thursday, June 29, 2023 at 7122 W. Okanogan Pl., Suite B110, Kennewick, WA 99336, in the Jail Conference Room.

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: BCCD
cc: CB 23-12 file

Prepared by: L. Small

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

Jerrod MacPherson
County Administrator

Matt Rasmussen
Deputy County Administrator

Board of County Commissioners

June 6, 2023

INVITATION FOR BIDS (IFB) – COUNTY BID 23-12

BIDS FOR: INMATE SUPPLIES FOR THE BENTON COUNTY CORRECTIONS DEPARTMENT

DEADLINE FOR BID SUBMITTAL: **WEDNESDAY, JUNE 28, 2023 UNTIL 3:00 P.M.**
BENTON COUNTY CORRECTIONS DEPARTMENT,
7122 W. OKANOGAN PL., SUITE B110, KENNEWICK, WA 99336
NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME.

Benton County (County) is soliciting bids for the purchase of Inmate Supplies for the Benton County Corrections Department (Jail), 7122 W. Okanogan Pl., Suite B110, Kennewick, WA 99336 from any and all potential vendors. The County invites you to submit a bid to provide products and supplies that will meet or exceed the specifications set forth in Exhibit A – **Vendor Bid Form**. Although the County anticipates purchasing the quantity of products provided in Exhibit A, those quantities are only estimates. As such, the County makes no guarantee as to the quantity of products provided in Exhibit A it will purchase over the term of the Agreement. By submitting a bid, Vendor agrees to provide any and all purchases at the same cost per item as provided in Exhibit A for an initial one (1) year term of the Agreement commencing upon signature of both parties. Upon mutual agreement of both parties, the Agreement may be extended by written amendment for a maximum of one (1) additional 12-month period. In the event Vendor offers any of the items listed in Exhibit A at a sale price to that provided in Exhibit A, Vendor shall provide that sale price to the County for said item. Vendor must provide all items listed in Exhibit A to be considered a responsive bidder. Failure to provide a price for any item will result in automatic bid disqualification. Any and all orders for products listed in Exhibit A will occur throughout the term of the Agreement.

BIDDERS' RECEIPT OF THE IFB PACKAGE

a) The below Procurement/Contract Coordinator of the Benton County Corrections Department is the only individual authorized to provide the IFB package to interested companies or individuals. Bidders who are working from an IFB package obtained from any other source may be working from an incomplete set of documents. The County assumes no responsibility for a bid's errors, omissions or misinterpretations resulting from a bidder's use of an incomplete IFB package.

b) Bidders who have received the IFB package from a source other than the Corrections Department Procurement/Contract Coordinator, or who have downloaded the IFB

package from the County's website, are advised to contact Lisa Small of the Benton County Corrections Department at (509) 783-1451 ext. 3880 to provide their company's name, address, telephone number, email, and contact name. This will ensure that the bidder will receive all communication regarding the IFB such as amendments and clarifications.

Your bid should be submitted in the official bid format as provided in Exhibit A and placed in a **SEALED ENVELOPE marked "SEALED BID – Inmate Supplies CB 23-12."** Bids may be mailed, or hand delivered to the Benton County Corrections Department, 7122 W. Okanogan Pl., Suite B110, Kennewick, WA 99336 and must be received by **3:00 PM (PST) Wednesday, June 28, 2023. NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME.** Emailed and faxed bids are not acceptable and will not be considered. The bids will be publicly opened by representatives of the Benton County Corrections Department at 9:00 AM (PST) on Thursday, June 29, 2023 at 7122 W. Okanogan Pl., B110, Kennewick, WA 99336 in the Jail Conference Room.

1. The County reserves the right to reject any or all bids for good cause pursuant to RCW 36.32.245 and to waive informalities in the bidding process.

2. **This document and the materials enclosed herewith constitute an invitation to submit bids only and do not represent an offer by the County. Bids submitted in response hereto shall constitute offers to sell the supplies meeting the County's specifications. If the County does not exercise its option to reject any or all bids pursuant to RCW 36.32.245, the County will enter into a resolution providing notice of the lowest responsible bidder in the form of Exhibit F, accepting the bid of the lowest responsible bidder. Upon entry of the resolution, the lowest responsible bidder shall be required to enter into an Agreement in substantially the same the form of Exhibit D within 10 days of said resolution.**

3. The County is not liable for any costs incurred by bidders prior to issuance of or entering into an Agreement. Costs associated with developing the bid, preparing for oral presentations, and any other expenses incurred by the bidder in responding to this IFB are entirely the responsibility of the bidder, and shall not be reimbursed in any manner by the County.

4. Accuracy for all mathematical and number entries to Exhibit A is the sole responsibility of the bidder. The County will not be responsible for errors made by the bidder to Exhibit A.

5. Bidders shall submit specifications of their bid, showing their compliance with the Jail's requirements on the enclosed Vendor Bid Form, referenced as Exhibit A, or in a format matching the forms provided. All portions thereof must be completed in ink or mechanical means, setting forth all information requested. At a MINIMUM, each of the items listed in the Vendor Bid Form 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 quoted.

6. Bids must be executed by a person or persons legally authorized to execute such documents on behalf of the bidding entity.

7. Price quoted in the bid 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 BID amount. However, in accordance with RCW 39.30.040, the County may take into consideration the tax revenues it may receive from an Agreement pursuant to this request for bid.

8. All deliveries are to be made F.O.B. Benton County Corrections Department, 7122 W. Okanogan Place, Bldg. B, Kennewick, WA between the hours 8:00 a.m. and 4:00 p.m. Monday through Friday, except on regularly observed state or federal holidays, unless otherwise requested by the County. Delivery location will be determined at time of order.

9. Delivery of products cited herein must be made within 7 days of order by the County. If product can't be delivered within that period of time for any reason, Vendor must immediately notify **Lisa Small of the Benton County Corrections Department at (509) 783-1451 ext. 3880.**

10. For clarification or correction of any ambiguity, discrepancy, inconsistency, error, or omission discovered in any of the bid documents, bidder should at once notify Lisa Small by telephone at (509) 783-1451 extension 3880 or by e-mail at Lisa.Small@co.benton.wa.us. Written notice of changes or clarification to the specifications will be sent to all known bidders when required. The County shall not be held responsible for verbal interpretations. Questions received less than 7 days prior to bid opening will not be answered.

11. Bids may be withdrawn upon the written request of the submitter received by the County at any time prior to the time set for the bid opening. Notification of withdrawals must be provided by mail or in person to the bid submittal location. Bids shall become the property of Benton County upon receipt.

12. The invitation to bid consists of the following documents:

    Exhibit A – Vendor Bid Form

    Exhibit B – Affidavit of Non-Collusion

    Exhibit C – Anti-Discrimination Certificate

    Exhibit D – "Sample" Vendor Purchasing Agreement

    Exhibit E – "Sample" Certificate of Liability Insurance

    Exhibit F – "Sample" Notice of Lowest Responsible Bidder Resolution

If you are missing any part of these documents, please contact Lisa Small, at the number herein provided.

BENTON COUNTY COMMISSIONERS OFFICE

_____

Will McKay, Chairman
Benton County Commissioner

Date: _____

Approved as to Form:

LeeAnn Holt, Civil DPA

Exhibit A

VENDOR BID FORM

PROJECT IDENTIFICATION: Inmate Supplies for the Benton County Corrections Department (Jail)

THIS BID SUBMITTED TO: Benton County Corrections Department
Attn: Lisa Small
7122 W. Okanogan Pl., Suite B110
Kennewick, WA 99336

1. The undersigned Vendor proposes and agrees that if this bid is accepted it will enter into an Agreement with the County in the form reflected in Exhibit D to this Invitation for Bids to supply all items as specified or indicated in the Agreement for the prices and amounts set forth therein.

2. The Vendor accepts all of the terms and conditions of the Invitation for Bids. This bid will remain open for up to 30 days after the day of submission.

3. In submitting this bid, the Vendor represents, as more fully set forth in Exhibit D to the Invitation for Bids, that:

   a) The Vendor has examined copies of the entire Invitation for Bids, all exhibits thereto, and of the following addenda, if issued. Receipt of addenda is hereby acknowledged:

      Date: Addenda Number:

      _____ _____

      _____ _____

   b) This bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any undisclosed group, association, organization, or corporation; the Vendor has not directly or indirectly induced or solicited any other Vendor to submit a false or sham bid; the Vendor has not solicited or induced any person, firm, or corporation to refrain from bidding; and the Vendor has not sought by collusion to obtain for himself any advantage over any other vendor or over the County.

4. The Vendor will provide the products for the prices and amounts as set forth in paragraph 9 below.

5. The Vendor agrees to supply the products in accordance with the terms and conditions set forth in Exhibit D.

6. The following documents are attached to and must be submitted in order for the bid to be considered:

   (a) Exhibit B - Affidavit of Non-Collusion.

   (b) Exhibit C - Anti-Discrimination Certificate.

7. Communications concerning this bid shall be addressed to the address of the Vendor indicated below:

   _____

   _____

   _____

   _____

   Phone_____Fax_____

8. The terms used in this bid that are defined in Exhibit D have the meanings assigned to them in Exhibit D.

Line Item	Item	Description	Qty per Case/Doz/Bndl	Product Code / Item Number	"Estimated" Qty of Purchase of Each Item A	July 1, 2023 - June 30, 2024 Prices	Price per "Each" Item B	Total "Estimated" Purchase Amount A x B =
1	Toenail clippers no file	all metal, no file			720	0.000	$ -	$ -
2	Fingernail clippers no file	all metal, no file, 2 inch length			720	0.000	$ -	$ -
3	Razor	Clear, Single blade disposable fixed head			25,000	0.000	$ -	$ -
4	Combs	5 inch, black plastic			25,000	0.000	$ -	$ -
5	Toothpaste	0.6 oz., clear, clear plastic tubing			25,000	0.000	$ -	$ -
6	Toothbrush	3.25 inch, 25 tuft or better, individually wrapped			25,000	0.000	$ -	$ -
7	Golf pencil	3" sharpened			20,000	0.000	$ -	$ -
8	Feminine pads	adhesive, extra-long, panty protectors, individually wrapped			15,000	0.000	$ -	$ -
9	Bar soap	1.5 oz. unwrapped - 500/cs			30,000	0.000	$ -	$ -
10	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: small - left breast pocket			20	0.000	$ -	$ -
11	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: medium - left breast pocket			20	0.000	$ -	$ -
12	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: large - left breast pocket			20	0.000	$ -	$ -
13	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: 1x large - left breast pocket			20	0.000	$ -	$ -
14	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: 2x large - left breast pocket			20	0.000	$ -	$ -
15	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: 3x large - left breast pocket			20	0.000	$ -	$ -
16	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: 4x large - left breast pocket			20	0.000	$ -	$ -
17	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: 5x large - left breast pocket			20	0.000	$ -	$ -
18	Inmate Uniform Shirt - crew neck "BCC" screened on back - 2" WHITE	size: 6x large - left breast pocket			20	0.000	$ -	$ -
19	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: small			20	0.000	$ -	$ -
20	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: medium			20	0.000	$ -	$ -
21	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: large			20	0.000	$ -	$ -

Line Item	Item	Description	Qty per Case/Doz/Bndl	Product Code / Item Number	"Estimated" Qty of Purchase of Each Item A	July 1, 2023 - June 30, 2024 Prices	Price per "Each" Item B	Total "Estimated" Purchase Amount A x B =
22	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: 1x large			20	0.000	$ -	$ -
23	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: 2x large			20	0.000	$ -	$ -
24	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: 3x large			20	0.000	$ -	$ -
25	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: 4x large			20	0.000	$ -	$ -
26	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: 5x large			20	0.000	$ -	$ -
27	Inmate Uniform Pant "BCC" screened on one leg - 2" WHITE	size: 6x large			20	0.000	$ -	$ -
28	Towels	White Bath Towel - Budget Grade, 5.0 lbs. per dz 20'' x 40''			1,000	0.000	$ -	$ -
29	Sandals	EVA Clogs - Orange			100	0.000	$ -	$ -
30	Sandals	EVA Sandals - Orange			100	0.000	$ -	$ -
31	Flip Flops	V-Strap Thongs - Black			40	0.000	$ -	$ -
32	Laundry Bag	24 x 30 Slip-lock Laundry Nets			20	0.000	$ -	$ -

Total Bid Proposal	$ -

Exhibit A, cont.

BASE BID AMOUNT

LUMP SUM (excluding sales tax) $_____

LUMP SUM (excluding sales tax), in words _____

SUBMITTED ON _____, 2023

The Vendor by whom this bid is submitted and by whom the Agreement will be entered into, in case this bid is accepted, is a Corporation, Partnership, or Individual doing business at:

_____

(STREET)

_____

(CITY) (STATE) (ZIP)

The undersigned hereby certifies and represents to signing this bid on behalf of the Vendor and admits the undersigned is authorized to do so by said Vendor.

_____

Legal Name of Vendor

_____

Signature of Authorized Person

_____

Print Name of Authorized Person

_____

Title of Authorized Person

Exhibit B

AFFIDAVIT OF NON-COLLUSION

STATE OF WASHINGTON
County of Benton

_____, (Authorized Official of the Vendor), being first duly sworn, certifies that the bid above submitted is a genuine bid and not a sham or collusive bid or a bid made in the interest or on behalf of any person not therein named; and it is further certified that the said Vendor has not directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the request for which this bid is submitted. Vendor expressly certifies it has not induced or solicited any Vendor on the above work or supplies to put in a sham bid, or any other person or corporation to refrain from submitting a bid; and that said Vendor has not in any manner sought by collusion to secure an advantage over other Vendor or Vendors.

_____
(Vendor's Name)

_____
(Signature of Vendor's Authorized Official)

_____
(Print Name and Title)

SUBSCRIBED and SWORN to before me this _____ day of _____, 2023.

_____

NOTARY PUBLIC in and for the State of _____,

residing at _____

Exhibit C

ANTI-DISCRIMINATION CERTIFICATE

STATE OF WASHINGTON
County of Benton

The Vendor hereby stipulates that no person shall be discriminated against in the bidding of the supplies and/or materials herein. Further, Vendor hereby agrees to comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

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

Any such discrimination shall be deemed a violation of this bid and shall render this bid subject to forfeiture.

_____

(Company Name)

_____

(Vendor's Signature)

_____

(Typed Name and Title)

SUBSCRIBED and SWORN to before me this _____ day of _____, 2023.

_____

NOTARY PUBLIC in and for the State of _____,

residing at _____

Exhibit D

"SAMPLE" VENDOR PURCHASING AGREEMENT

This Agreement 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 of Vendor and Vendor's legal form, i.e., "Inc" or "LLC" if applicable]**, (hereinafter "Vendor) with its principal offices at **[Vendor's address]**, (hereinafter "Vendor").

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

1. Scope. Vendor agrees to furnish to the County the products as listed in Exhibit A, for ***[Inmate Supplies CB 23-12]*** in accordance with its bid dated _____ and to supply the product strictly in accordance with the specifications and requirements set forth therein. The County anticipates purchase of the items listed in Exhibit A but does not guarantee any specific minimum quantity. Vendor agrees to provide any and all purchases at the same cost per item as provided in Exhibit A for the term of the Agreement. In the event the Vendor offers any of the items listed on Exhibit A at a sale price to that provided in Exhibit A attached hereto, the Vendor shall automatically provide that sale price to the County for said item. Vendor further agrees if it is unable to provide any of the products listed herein during the course of this Agreement it will provide a reasonable substitute of said products to the County at the same price. What constitutes a reasonable substitute of any product provided herein is to be determined at the sole discretion of the County.

2. Delivery. All deliveries are to be made F.O.B. Benton County Corrections Department, 7122 W. Okanogan Pl., Suite B110, Kennewick, WA between the hours 8:00 a.m. and 4:00 p.m. Monday through Friday, except on regularly observed state or federal holidays, unless otherwise requested by the County. Destination will be determined at time of order. Delivery of products cited herein by Vendor must be made within seven (7) days of order by the County. If product can't be delivered within that period of time for any reason, Vendor must immediately notify the County's above Agreement representative.

3. Invoicing and Compensation. County will compensate Vendor for the purchase of goods at the price set forth in Exhibit A with an overall Agreement amount not to exceed $_____. A purchase order is required for each order. The Vendor will supply the quantities of product requested by the County during the term of this Agreement. The Vendor may submit invoices to the County not more than once per month during the course of this Agreement. Invoices shall cover the products supplied to the County during the billing period. The County shall pay the Vendor for products provided in the month following the actual delivery of products and will remit payment within thirty (30) days from the date of receipt.

4. Term. This Agreement shall commence July 1, 2023 and shall continue until June 30, 2024. Upon mutual agreement of both parties this Agreement may be extended for a twelve (12) month period subject to agreement between both parties regarding cost adjustments.

5. Designated Representative. Each party to this Agreement shall designate a representative who is authorized to receive notice pursuant to this Agreement. Each party is responsible for keeping current its designated representative and contact information and may change the same upon providing written notice to the other party. The parties' representatives are as follows:

a. For Vendor: [Insert name and address]

b. For County: Lisa Small
7122 W. Okanogan Pl., Suite B110
Kennewick, WA 99336
509-783-1451 Ext. 3880
Lisa.Small@co.benton.wa.us

6. Notice. Except as otherwise required by law, a notice required under this Agreement shall be given to the other party via (1) personal delivery, (2) an overnight delivery service of recognized standing, (3) certified or registered mail, return receipt requested; properly addressed, with postage or service charges prepaid, or (4) by facsimile with the original to follow immediately by regular mail. Notice personally delivered shall be deemed served at the time of delivery. Notice via overnight delivery service shall be deemed served one (1) business day after deposit thereof with said delivery service. Notice given by certified or registered mail shall be served given three (3) days after the deposit thereof with the United States Postal Service. Notice by facsimile shall be deemed served at the beginning of the next working day.

7. Insurance.

a. Workers Compensation: Vendor 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 Vendor and employees of any subvendor or sub-subvendor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Vendor shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to commencement of work. Except as prohibited by law, Vendor 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 Vendor, subvendor, or sub-subvendor 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, Vendor shall indemnify the County. Indemnity shall include all fines, payment of benefits to Vendor or subvendor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to County by Vendor pursuant to the indemnity agreement may be deducted from any payments owed by County to Vendor for performance of this Contract.

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

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

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

The Vender will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 8. Vendor'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.

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

$500,000 Each Accident
$500,000 Policy Limit for Disease
$500,000 Each Employee for Disease

c. Automobile Liability: The Vendor 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 Vendor has no owned autos, hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars ($1,000,000) per accident for Bodily Injury and Property Damage to protect Vendor from claims which may arise from the performance of this Contract, whether such operations be by the Vendor or by anyone directly or indirectly employed by the Vendor.

d. Other Insurance Provisions:

1. The Vendor's liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents. Vendor'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 Vendor's insurance policies.

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

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

4. The Vendor'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 Vendor shall include all subvendors as insureds under its policies or shall furnish separate certificates and endorsements for each subvendor. All coverage for subvendors 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.

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

8. Vendor 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 VENDOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then Vendor 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 Vendor enter into such a waiver of subrogation on a pre-loss basis.

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

e. <u>Verification of Coverage and Acceptability of Insurers</u>:

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

1. All insurance to be maintained by the Vendor, other than Professional Liability, Auto Liability and Workmen's Compensation, shall specifically include the County, 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 written prior notice to the County. Any insurance or self-insurance maintained by the County, its elected and appointed officials, employees and agents shall be excess of the Vendor's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the County's Designated Representative referenced herein.

3. All written notices under this Section 7 and notice of cancellation or change of required insurance coverages shall be mailed to the County's Designated Representative referenced herein.

4. The Vendor 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 Pl., Suite E330, Kennewick, WA 99336.

8. Indemnity. The Vendor agrees to indemnify and hold harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages arising out of any act or omission of the Vendor, its officers, agents and employees. This includes negligence on the part of the Vendor and its officers, agents and employees due to violation of any code or regulation. It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

9. Termination. The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, such termination is in the best interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Vendor shall be entitled to payment for actual products received by County at the prices set forth herein prior to termination. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will not be obligated to make payments for purchases for amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

10. Entire Agreement. The Vendor's bid for ***[Inmate Supplies CB 23-12]***, and corresponding documents, all of which are on file in the office of the Benton County Corrections Department, shall constitute a part of this Agreement and are by this reference incorporated and made a part of this Agreement as though fully set forth. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded. Each party expressly covenants and agrees to carry out and fully perform each provision of these documents upon their part to be performed.

11. Modification. No amendment or modification shall be made to this Agreement, unless set forth in a written amendment signed by both parties. Work under such amendment shall not proceed until said amendment is duly executed by the parties.

12. Binding Effect. The County, to the extent permitted by law, and the Vendor each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Agreement and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Agreement.

13. Assignment. The Vendor shall perform the terms of this Agreement using only its bona fide employees or agents, and the obligations and duties of the Vendor under this Agreement shall not be assigned, delegated, or subcontracted without the prior express written consent of the County.

14. Waiver. The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Agreement 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 Agreement at a later time. All waivers of any provision(s) of this Agreement shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

15. Governing Law. This Agreement 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 Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

16. Severability. If any term of this Agreement is invalid, illegal, or unenforceable in whole or in part, the validity of the remainder of this Agreement shall not in any way be affected thereby. All terms, which by their context are clearly intended to survive the termination and/or expiration of this Agreement, shall so survive. If any provision of this Agreement conflicts with a controlling Federal or Washington State law, said provision, insofar as it conflicts, shall be deemed modified to conform to such law.

17. Debarment Certification. Vendor, by signing below, certifies that Vendor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any State or Federal department or agency from participating in transactions ("Debarred"). Vendor also agrees to include this certification requirement in any and all subcontracts it enters. Vendor shall immediately notify the County, during the Term if Vendor becomes debarred.

18. Authority. The signatories to this Agreement hereby warrant, represent, and covenant that they have the authority to enter into this Agreement and have all rights related to it.

19. Signatures in Counterpart. The Parties agree that this Agreement can be signed in counterpart. The Parties further agree that a copy of the fully executed Agreement shall have the same force and effect as the original.

~ This section was intentionally left blank ~

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly constituted legal representatives and it is effective July 1, 2023.

BENTON COUNTY, WASHINGTON

_____
Will McKay, Chairman Date
Benton County Commissioner

[VENDOR'S BUSINESS NAME]

_____
Name/Title Date

Approved as to Form:

By: _____
LeeAnn Holt, Civil DPA

Exhibit E

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 Stop Gap GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] 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	 $ 500,000 $ 500,000 $ 500,000

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. Commercial General Liability policy shall be primary, and not contributory, with any other insurance maintained by the County.

CERTIFICATE HOLDER

Benton County
7122 W. Okanogan Place, Bldg B
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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Exhibit F

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF PROVIDING NOTICE OF THE LOWEST RESPONSIBLE BIDDER FOR THE PURCHASE OF INMATE SUPPLIES (CB 23-12)

WHEREAS, the Board of Benton County Commissioners solicited bids for the procurement of inmate supplies per Resolution 2023-xxx; and

WHEREAS, representatives of the Benton County Corrections Department received and opened **[number of bids]** on **[date]** as provided in the invitation to bid; and

WHEREAS, the bids were from the following Bidders:
[list bidder's, bid amount]; and

WHEREAS, the representatives of the Benton County Corrections Department reviewed the bid proposals and recommend awarding the vendor purchasing agreement to **[vendor's business name]; NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby has deemed **[vendor's business name]** to be the lowest responsible bidder for the purchase of inmate supplies and shall be required to enter into an Agreement in the form of Exhibit D with Benton County in accordance with the Inmate Supplies Invitation for Bid CB 23-12 within ten (10) days of this notice.

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

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Subscription Agreement between Benton County and International Business Information Technologies, Inc. dba/LEFTA Systems
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Jeff Aultman; Chief Guerrero; Purchasing Dept.

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

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

Summary / Background Information

International Business Information Technologies, Inc. dba / LEFTA System is a public safety software that provides law enforcement software for mission critical processes which improves productivity, academy training, field training, employee training records management, profiling, use of force, internal affairs, employee conduct tracking and early warning indications, employee vehicle damage, and much more. The LEFTA System is currently being used by local, state and federal levels of law enforcement agencies across the nation.

The Chief of Corrections recommends entering into an agreement with LEFTA Systems for the purpose of tracking high liability areas and events within the Corrections Department.

Fiscal Impact

Cost: $8,475 excluding WSST with an annual increase not to exceed 3%.

Funding: Dept 120.53503 – Computer Software.

Recommendation

Approve the Resolution and Subscription Agreement between Benton County and International Business Information Technologies, Inc. dba/LEFTA Systems and authorize the Chairman to sign the attached agreement. Said agreement shall commence on the date of signed agreement and shall automatically renew for successive 12-months periods unless either party provides a 90 days' notice prior to renewal.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A SUBSCRIPTION AGREEMENT BETWEEN BENTON COUNTY AND INTERNATIONAL BUSINESS INFORMATION TECHNOLOGIES, INC. DBA/LEFTA SYSTEMS FOR THE BENTON COUNTY CORRECTIONS DEPARTMENT

WHEREAS, International Business Information Technologies, Inc. dba/ LEFTA Systems was founded by law enforcement officers who have been working to build better software for law enforcement agencies and their employees; and

WHEREAS, LEFTA Systems is a public safety software that provides law enforcement software for mission critical processes which improves productivity, academy training, field training, employee training records management, profiling, use of force, internal affairs, employee conduct tracking and early warning indications, employee vehicle damage, and much more. The LEFTA System is currently being used by local, state and federal levels of law enforcement agencies across the nation; and

WHEREAS, the Chief of Corrections recommends entering into an agreement with LEFTA Systems for the purpose of tracking high liability areas and events within the Corrections Department for an annual agreement amount of $8,475.00 excluding WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington concurs with the recommendation and hereby awards the subscription agreement to International Business Information Technologies, Inc. dba/ LEFTA Systems for an annual subscription agreement amount not to exceed $8,475.00 excluding WSST, with an annual increase not to exceed 3%; and

BE IT FURTHER RESOLVED, the initial term shall commence on the date of the signed agreement and shall automatically renew for successive 12-month periods unless either party provides a written notice of nonrenewal at least 90 days prior to the expiration of the then-current initial or renewal terms.

Dated this _____ day of _____, 2023.

_____
Chairman of the Board

_____
Chairman Pro-Tem

Attest ……
Clerk of the Board

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

Orig: BCCD
CC: Auditor; PA, LEFTA Systems

L. Small

LEFTA SYSTEMS

International Business Information Technologies, Inc. d.b.a. **LEFTA Systems**
10950-60 San Jose Blvd., Suite 101
Jacksonville, FL 32223
(800) 405-3109 – Toll Free

Agreement No.: 03302023-WABCCD-02

Customer					
Agency:	Benton County, by and for Benton County Corrections Department				
Address:	7122 W. Okanogan Pl., Suite B110				
City:	Kennewick	**State:**	WA	**Zip:**	99336
Attn:	Lieutenant Joshua Combs Phone (509) 440-2379 Email: Joshua.Combs@co.benton.wa.us				

Info	
Date:	03/30/2023
Valid Until:	6/30/2023
Account Manager:	Matt Jarvis
Payment Term:	Net 30

Qty	Description	List Price	Total
1	Annual SHIELD Suite subscription base: 1. ATRAX - Academy 2. LEFTA – FTO Software (Corrections) 3. METR – Training Records Software 4. FACTS – Use of Force 5. INTERNAL AFFAIRS 6. PASS – Field Investigation Card/Bias-Based Profiling 7. VIPR – Vehicle Pursuits 8. V-DOC – Vehicle Incident Documentation 9. EMCOT – Employee Conduct Tracking Annual license fee includes IT support, free updates, and hosting.	$4,000	$4,000
85	Annual per user license fee.	$35	$2,975
1	Hosting on Microsoft Azure Government for up to 50 GB of storage.	Included	Included
1	Customization of applications.	Included	Included
1	Active Directory annual subscription fee	$500	$500
Unlimited	Virtual live training sessions for administrators.	Included	Included
Optional	Additional LEFTA FTO applications are available @ $1,000 each (i.e., Communications, Patrol, Courts, etc.)	$1,000	Optional

1	Command Center: Customizable business analytics providing interactive visualizations and business intelligence capabilities.	$1,000	$1,000
		TOTAL:	**$8,475**

Terms and Conditions

This **TERMS and CONDITIONS AGREEMENT** ("**Agreement**") is made and entered into as of the effective date shown in the proposal, by and between **Client** and **International Business Information Technologies, Inc.**, a Florida corporation doing business as LEFTA Systems ("**LEFTA Systems**").

1. Subscription of Software; Grant of Limited, Non-Exclusive License. LEFTA Systems agrees during the Term of this Agreement to provide Client services and grants to Client a nonexclusive, nontransferable, right and license to use, execute and display the software programs as described in the proposal, in object code and source code form, and the associated users' information and other documentation made available on-line by LEFTA Systems. The employees, agents, and contractors of Client may use the Software solely for Client's internal purposes (and not for the benefit of any third party) in accordance with the terms of this Agreement.

1.1. License Restrictions.

1.1.1 Except for the limited license rights specifically granted to Client pursuant to this Agreement, LEFTA Systems owns and shall retain all rights, title, and interests in and to the Software, including all derivatives thereof. For the avoidance of doubt, pursuant to this Agreement, Client shall not cause or permit the disclosure, renting, leasing, sublicensing, loaning or selling, dissemination or other distribution of the Software by any means or in any form to anyone outside of the Client organization in a manner or for a purpose inconsistent with this Agreement, and shall not permit or allow any Person to use the Software via a timesharing, service bureau, application service provider or similar arrangement.

1.1.2 Client shall not, and shall not permit others to, copy, alter, translate, decompile, decipher, disassemble, reverse engineer, or reverse assemble the Software or any components thereof, or attempt to do any of the foregoing. Client shall not permit any Person to take any action to reverse engineer, reverse compile, or otherwise attempt to derive source code from any object code copy of the Software.

1.2. Price; Payment; Additional Services. Client shall pay LEFTA Systems, the fees set forth in the signed proposal. All invoices issued are paid net 30-days from the due date on the invoice. All fees paid to LEFTA Systems are fully earned and non-refundable. Client shall be solely responsible for the payment of all sales and use taxes assessed by any governmental authority with respect to the transactions contemplated by this Agreement. Annual fees can include a cost of living or consumer price index increase not to exceed 3%.

1.3. Billing Cycle. Regardless of the actual commencement date, the annual invoice(s) will be prorated to either the 1st or the 15th of the month to match LEFTA Systems billing cycles.

1.4. Late Fees: All invoices shall be paid net 30-days from the date on the invoice. If the invoice approaches 60-days past due, the agency is subject to a 1.5% increase over the invoice to be processed as a late fee.

1.5. **Term of Agreement.** The initial term shall be 12 months commencing on the date of the signed Proposal and shall automatically renew for successive 12 months periods unless this Agreement is terminated pursuant to the provisions of Section 1.6.

1.6. **Termination of Agreement.** Either party may prevent the renewal of this Agreement by providing written notice of nonrenewal at least 90 days prior to the expiration of the then-current initial or renewal Term.

1.6.1 Either party may terminate this Agreement at any time if the other party breaches this Agreement and, if such breach is capable of being cured, fails to cure such breach within 30 days after receiving written notice from the non-breaching party describing such breach in reasonable detail.

1.6.2 **Fees Nonrefundable upon Cancellation.** If prior to the expiration of the Term, Client terminates the Agreement any amount paid by Client to LEFTA Systems under this Agreement is nonrefundable, provided that Client's termination is not based on LEFTA System's breach of 1.6.1.

1.6.3 Upon request by Client at any time upon termination of this agreement, LEFTA Systems shall promptly return to Client all or any part of the Client Data in CSV or the client can download their reports using any of the report export features which LEFTA Systems routinely stores such data and erase or destroy all or any part of the Client Data in LEFTA Systems possession, in each case to the extent so requested by Client. All other attached documents, images, and other datasets added to LEFTA Systems can be downloaded by the client in reports using any of our report export.

2. **Confidentiality.** During the performance of services and Client's use of the Software under this Agreement it may be necessary for a party to provide the other with certain information considered to be proprietary or confidential by the disclosing party. Each party shall protect the other's confidential information with the same degree of care normally used to protect its own similar confidential information, but in no event less than that degree of care that a prudent businessperson would use to protect such information. For the avoidance of doubt, Client shall not share, show, or display LEFTA Systems software features with other vendors that may have similar software. The obligations of each party to protect confidential information received from the other party shall not apply to Public Records laws within Client's authority and information that is officially known or becomes officially known through no act or failure to act on the part of the recipient. The provisions of Section 2 shall survive the termination of this Agreement for any reason.

3. **Indemnification.** Client shall indemnify, defend and hold harmless LEFTA Systems and its affiliates and their respective officers, directors, managers, equity owners, employees, agents and representatives (collectively, the "**Indemnified Parties**") from and against all losses, damages, liabilities, claims, actions, causes of action, demands, lawsuits, proceedings, judgments, interest, awards, costs and expenses (including, without limitation, court costs and reasonable attorneys' fees and expenses, at trial and on appeal) caused by Client's sole negligence , arising out of, its use of the Software by Client, Client's affiliates, or any of their respective officers, directors, managers, employees, agents or representatives.

4. Miscellaneous.

4.1. **Entire Agreement; Amendment.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all prior agreements or understandings, whether written or oral, between the parties with respect to the subject matter hereof, and may not be amended, modified, altered, or supplemented except by a written agreement signed by both parties.

4.2. **Technical Support.** Annual license fee includes unlimited technical support Monday – Friday 8:00 AM – 8:00 PM EST, excluding holidays. This includes a built-in support request function within each software application, a direct email support option and access to a toll-free telephone number to reach support.

4.2.1 All application updates and/or bug fixes are included.

4.3. **Hosting.** The annual license fee includes Client's software application hosted on Microsoft Azure Government servers. Client shall be entitled to the amount of data listed on the proposal without additional charge. Additional storage fees shall be billed to and payable by Client.

4.4. **Implementation and Training**. Client needs to provide LEFTA Systems with the contact information of a primary "Project Manager" who is responsible for managing the project timeline on the Client side. The overall time allotted to complete the implementation and training is 13-weeks beginning after the initial project kick- off meeting. After kick-off meeting, the Client will receive a login to the customization site which must be completed and submitted to LEFTA Systems within four (4) weeks of the kick-off meeting. Once received, LEFTA Systems will configure selected application(s) and train the Client within the remaining nine (9) weeks. Client may prioritize applications they wish to implement first; however, this does not change the allowed time of 13-weeks. If Client delays or chooses to postpone the completion of individual applications during the initial submission, an additional fee of $500 per application will be charged to customize them later.

During the project timeline, it is the Client's responsibility that LEFTA Systems will have continued access to Client's project manager for any follow-up questions. Client must ensure they are available within the 13-week timeframe for training, failure to do so may result in additional fees and/or reallocation of resources.

5. Insurance.

a. **Professional Liability Insurance**: Prior to the start of work under this Agreement, LEFTA Systems shall secure and maintain at its own expense Professional Liability Insurance appropriate to LEFTA Systems' scope of work as defined in this Agreement, subject to limits of not less than four million dollars ($4,000,000) per 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 acts and omissions and loss mitigation arising out of the scope of the LEFTA Systems' services as defined in this Agreement. Coverage shall not exclude hazards related to the work rendered as part of the Agreement or within the scope of LEFTA Systems services as defined by this Agreement. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Agreement. LEFTA Systems 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 Agreement.

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

b. **Commercial General Liability and Employers Liability Insurance**: Prior to the start of work under this Agreement, LEFTA Systems shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the Client from claims for wrongful death, bodily injury, personal injury, and property damage that may arise from any actions or inactions under this Agreement by LEFTA Systems or by anyone directly employed by or contracting with LEFTA Systems. 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 Client as an Additional Insured and have an endorsement that specifically states that LEFTA Systems commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the Client.

LEFTA Systems must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Agreement and does not exclude liability pursuant to the indemnification requirement under Section 1. LEFTA Systems 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.

c. **Cyber Liability**: LEFTA Systems shall maintain cyber liability insurance for not less than two million dollars ($2,000,000) per occurrence and an annual aggregate of four million dollars ($4,000,000) 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 Client and for claims involving any professional services for which LEFTA Systems is engaged with Client for such length of time as necessary to cover any and all claims.

d. **Other Insurance Provisions:**

1. LEFTA Systems liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the Client or its elected and appointed officers, officials, employees, or agents. LEFTA Systems 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 Client shall be excess and not contributory to LEFTA Systems insurance policies.

2. LEFTA Systems liability insurance policies shall contain no special limitations on the scope of protection afforded to the Client as an additional insured.

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

4. LEFTA Systems 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. LEFTA Systems 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 Agreement are not intended to be an indication of exposure nor are they limitations on indemnification. If LEFTA Systems maintains higher limits than the minimums required in this Agreement, the Client shall be entitled to coverage for the higher limits maintained by LEFTA Systems.

7. LEFTA Systems 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. LEFTA Systems 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 Agreement. All liability insurance required under this Agreement, except for professional liability under Section 5(a), shall be written on an Acord form.

8. LEFTA Systems hereby agrees to waive subrogation with respect to each insurance policy maintained under this Agreement. When required by an insurer, or if a policy condition does not permit LEFTA Systems to enter into a pre-loss agreement to waive subrogation without an endorsement, then LEFTA Systems 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 LEFTA Systems enter into such a waiver of subrogation on a pre-loss basis.

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

e. Verification of Coverage and Acceptability of Insurers:

All insurance required under this Agreement shall be issued by companies AM Best rating for Lloyd's, with A for financial strength and 1+ for Credit Rating. 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 LEFTA Systems, other than Professional Liability, shall specifically include the Client as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the Client. Any insurance or self-insurance maintained by the Client and its elected or appointed officials, employees, and agents shall be excess of LEFTA Systems insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsement attached, must be provided to the Client representative referenced in Page 1.

3. All written notices under this Section 5 and notice of cancellation or change of required insurance coverages shall be mailed to the Client's representative referenced in Page 1.

4. LEFTA Systems or its broker shall provide a copy of any and all insurance policies specified in this Agreement upon request of the Benton County Risk Manager to the following address: Benton County Risk Manager, 7122 W. Okanogan Pl., Suite E310, Kennewick, WA 99336.

Accepted and Agreed By:

LEFTA Systems

Signature:
PRINT Name: Matthew Jarvis
Title: Regional Account manager
Date: 05/25/2023

BENTON COUNTY, WASHINGTON

Signature: _____
PRINT Name: Will McKay, Chairman
Title: Benton County Commissioner
Date: _____

Approved as to Form:

Jeff Aultman, Civil DPA

ALL CONTENT CONTAINED IN THIS PROPOSAL IS STRICTLY CONFIDENTIAL

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	DSHS and County Agreement on General Terms and Conditions
Presenter:	Kyle Sullivan
Prepared By:	Kyle Sullivan
Reviewed By:	Kyle Sullivan

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

Type of Agenda Item:

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

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

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

Summary / Background Information

DSHS sends their General Terms and Conditions (GT&C) as a separate document for approval. This document governs work to be performed under any program agreement between DSHS and the County. These GT&C become a part of the binding terms set forth in those contracts. Each subsequent contract that the County enters into with DSHS will have additional terms and conditions that will address the particulars of the services or funding involved. The original document was approved by Eric Andrews while he was still employed with the County. DSHS sent this revised GT&C after the Governor rescinded his executive order requiring COVID-19 vaccination as a condition of employment with state agencies. DSHS removed section 32, which required COVID-19 vaccinations for any county employee doing work at a DSHS owned or operated facility. This was discussed with Ryan Brown and he indicated the approval of the document is not affected by the removal of section 32.

Fiscal Impact

There is no impact to current expense.

Recommendation

Sign the DSHS and County agreement on General Terms and Conditions

Suggested Motion

Consent Agenda

RESOLUTION

Benton County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

IN THE MATTER OF EXECUTING THE WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES (DSHS) AND COUNTY AGREEMENT ON GENERAL TERMS AND CONDITIONS

WHEREAS, Pursuant to RCW 36.01.010 and RCW 36.32.120, the legislative authority of each county is authorized to enter into contracts on behalf of the County and have the care of county property and management of county funds and business; and

WHEREAS, the Board of County Commissioners constitutes the legislative authority of Benton County and these General Terms and Conditions govern work to be performed under any program agreement between DSHS and the County; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed DSHS and County Agreement on General Terms and Conditions; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign, on behalf of Benton County, the DSHS and County Agreement on General Terms and Conditions, effective July 1, 2023 through June 30, 2029.

Dated this 6th day of June, 2023.

_____
Chair of the Board

_____
Chair Pro Tem

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

Attest: _____
Clerk of the Board

cc: Human Services; Benton County Commissioners K. Sullivan

Washington State Department of Social & Health Services

Transforming lives

DSHS and COUNTY AGREEMENT ON GENERAL TERMS AND CONDITIONS

DSHS Contract Number
2383-48404

These General Terms and Conditions are between the state of Washington Department of Social and Health Services (DSHS) and the County identified below. These General Terms and Conditions govern work to be performed under any Program Agreement between the parties. These General Terms and Conditions supersede and replace any previously executed General Terms and Conditions as of the start date below.

County Contract Number

TERM OF AGREEMENT: The term of this Agreement on General Terms and Conditions shall start and end on the following dates, unless terminated sooner as provided herein.

START DATE: July 1, 2023 **END DATE:** June 30, 2029

COUNTY NAME	DSHS INDEX NUMBER
Benton County	1122

COUNTY ADDRESS
Commissioners Office
7122 West Okanogan Place Building A
Kennewick, WA 99336

COUNTY TELEPHONE	COUNTY FAX

DSHS CENTRAL CONTRACT SERVICES ADDRESS	DSHS CENTRAL CONTRACT SERVICES TELEPHONE
Central Contracts and Legal Services P.O. Box 45811 Olympia, WA 98504-5811	(360) 664-6055

By their signatures below, the parties agree to this Agreement on General Terms and Conditions.

COUNTY SIGNATURE(S)	DATE(S)	PRINTED NAME(S) AND TITLE(S)	TELEPHONE NUMBER (INCLUDE AREA CODE)

DSHS SIGNATURE	DATE	PRINTED NAME AND TITLE	TELEPHONE NUMBER (INCLUDE AREA CODE)
		William Taplin Chief of Contracts	(360) 664-6046

1. **Definitions.** The words and phrases listed below, as used in the Agreement, shall each have the following definitions:

a. "Agreement" means this Department of Social and Health Services and County Agreement on General Terms and Conditions and any exhibits and other documents attached or incorporated by reference. Unless plainly inconsistent with context, the term "Agreement" includes and refers to all such agreements collectively.

b. "CCLS Chief" means the manager, or successor, of Central Contracts and Legal Services or successor section or office.

c. "Central Contracts and Legal Services (CCLS)" means the DSHS central headquarters contracting office, or successor section or office.

d. "CFR" means the Code of Federal Regulations. All references in this Agreement and any Program Agreement to CFR chapters or sections shall include any successor, amended, or replacement regulation.

e. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.

f. "County" or "the County" means the political subdivision of the state of Washington named above performing services pursuant to this Agreement and any Program Agreement.

g. "County Representative" means an individual in the position of County Manager, County Administrator, County Executive, or other similar position which reports to the highest governing body responsible for the subject matter of the Agreement or applicable Program Agreement(s).

h. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.

i. "DSHS" or "the department" or "the Department" means the Department of Social and Health Services of the state of Washington.

j. "DSHS Representative" means any DSHS employee who has been delegated contract-signing authority by the DSHS Secretary or his/her/their designee.

k. "General Terms and Conditions" means the contractual provisions contained within this Agreement, which govern the contractual relationship between DSHS and the County, under the Program Agreements subsidiary to and incorporating therein by reference this Agreement.

l. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, or any financial identifiers.

m. "Program Agreement" or "County Program Agreement" means a written agreement

between DSHS and the County containing special terms and conditions, including a statement of work to be performed by the County and payment to be made by DSHS.

n. "RCW" means the Revised Code of Washington. All references in this Agreement and any Program Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at http://apps.leg.wa.gov/rcw/.

o. "Secretary" means the individual appointed by the Governor, State of Washington, as the head of DSHS, or his/her/their designee.

p. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.

q. "Subcontract" means a separate contract between the County and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the County shall perform pursuant to any Program Agreement.

r. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g., FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

s. "USC" means the United States Code. All references in this Agreement and any Program Agreement to USC chapters or sections shall include any successor, amended, or replacement statute.

t. "WAC" means the Washington Administrative Code. All references in this Agreement and any Program Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at http://apps.leg.wa.gov/wac/.

2. **Amendment.** This Agreement, or any term or condition thereof, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.

3. **Assignment.** Other than the use of subcontractors pursuant to Paragraph 22 herein, the County shall not assign rights or obligations derived from this Agreement or any Program Agreement to a third party without the prior, written consent of the CCLS Chief and the written assumption of the County's obligations by the third party.

4. **Billing Limitations.**

a. DSHS shall pay the County only for authorized services provided in accordance with

this Agreement.

b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.

c. The County shall not bill and DSHS shall not pay for services performed under this Agreement, if the County has charged or will charge another agency of the state of Washington or any other party for the same service

5. Compliance with Applicable Law and Washington State Requirements.

a. **Applicable Law.** Throughout the performance of this Agreement and any agreement that incorporates or is an extension of this Agreement, County and DSHS shall comply with all federal, state, and local laws, regulations, and executive orders to the extent they are applicable to this Agreement.

b. **Civil Rights and Nondiscrimination.** County and DSHS shall comply with all federal and state civil rights and nondiscrimination laws, regulations, and executive orders to the extent they are applicable to this Agreement, including, but not limited to, and as amended, Titles VI and VII of the Civil Rights Act of 1964; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act (ADA); Executive Order 11246; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and Chapter 49.60 of the Revised Code of Washington, Washington's Law Against Discrimination. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

In the event of the of noncompliance or refusal to comply with any applicable nondiscrimination laws, regulations, and executive orders, this Agreement may be rescinded, canceled, or terminated in whole or in part.

c. **Certification Regarding Russian Government Contracts and/or Investments.** County shall abide by the requirements of Governor Jay Inslee's Directive 22-03 and all subsequent amendments. The County, by signature to this Agreement, certifies that the County is not presently an agency of the Russian government, an entity which is Russian-state owned to any extent, or an entity sanctioned by the United States government in response to Russia's invasion of Ukraine. The County also agrees to include the above certification in any and all Subcontracts into which it enters. The County shall immediately notify DSHS if, during the term of this Agreement, County does not comply with this certification. DSHS may immediately terminate this Agreement by providing County written notice if County does not comply with this certification during the term hereof.

6. Confidentiality.

a. Neither the County nor DSHS shall use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Agreement for any purpose that is not directly connected with performance of the services contemplated hereunder, except:

(1) as provided by law; or,

(2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.

b. The County shall protect and maintain all Confidential Information gained by reason of this Agreement against unauthorized use, access, disclosure, modification or loss. This duty requires the County to employ reasonable security measures, which include restricting access to the Confidential Information by:

(1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.

(2) Physically Securing any computers, documents, or other media containing the Confidential Information.

(3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:

(a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.

(b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.

(c) Verifying after transmittal that the fax was received by the intended recipient.

(4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:

(a) Use a Trusted System.

(b) Encrypt the Confidential Information, including:

i. Encrypting email and/or email attachments which contain the Confidential Information.

ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

Note: If the DSHS Data Security Requirements Exhibit is attached to this contract, this item, 6.b.(4), is superseded by the language contained in the Exhibit.

(5) Send paper documents containing Confidential Information via a Trusted System.

(6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.

c. Upon request by DSHS, at the end of the Agreement term, or when no longer needed, Confidential Information shall be returned to DSHS or County shall certify in writing that they employed a DSHS approved method to destroy the information. County may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Agreement. Should County be required to retain records either by law or pursuant to grant or contract terms, County will provide written

notice that identifies the records it must retain as well as the source of the retention requirements and the schedule it must honor. Upon expiration of the required retention schedule, County will then return the records to DSHS or destroy the records using a DSHS approved destruction records and provide certification of their destruction.

d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.

e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. County must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

7. **County Certification Regarding Ethics.** By signing this Agreement, the County certifies that the County is in compliance with Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement and any Program Agreement.

8. **Debarment Certification.** The County, by signature to this Agreement, certifies that the County is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement or any Program Agreement by any federal department or agency. The County also agrees to include the above requirement in all subcontracts into which it enters.

9. **Disputes.**

Both DSHS and the County ("Parties") agree to work in good faith to resolve all conflicts at the lowest level possible. However, if the Parties are not able to promptly and efficiently resolve, through direct informal contact, any dispute concerning the interpretation, application, or implementation of any section of the Agreement or applicable Program Agreement(s), either Party may reduce its description of the dispute in writing, and deliver it to the other Party for consideration. Once received, the assigned managers or designees of each Party will work to informally and amicably resolve the issue within five (5) business days. If the managers or designees are unable to come to a mutually acceptable decision within five (5) business days, they may agree to issue an extension to allow for more time.

If the dispute cannot be resolved by the managers or designees, the issue will be referred through each Agency's respective operational protocols, to the Secretary of DSHS ("Secretary") and the County Representative or their deputy or designated delegate. Both Parties will be responsible for submitting all relevant documentation, along with a short statement as to how they believe the dispute should be settled, to the Secretary and the County Representative.

Upon receipt of the referral and relevant documentation, the Secretary and County Representative will confer to consider the potential options for resolution, and to arrive at a decision within fifteen (15) business days. The Secretary and County Representative may appoint a review team, a facilitator, or both, to assist in the resolution of the dispute. If the Secretary and County Representative are unable to come to a mutually acceptable

decision within fifteen (15) days, they may agree to issue an extension to allow for more time.

Both Parties agree that, the existence of a dispute notwithstanding, the Parties will continue without delay to carry out all respective responsibilities under the Agreement or applicable Program Agreement(s) that are not affected by the dispute.

The final decision will be put in writing and will be signed by both the Secretary and County Representative. If the Agreement is active at the time of resolution and amendment of the Agreement is warranted for ongoing clarity, the Parties will execute an amendment to incorporate the final decision into the Agreement. If this dispute process is used, the resolution decision will be final and binding as to the matter reviewed and the dispute shall be settled in accordance with the terms of the decision. Notwithstanding the foregoing, each Party reserves the right to litigate issues *de novo* in court.

10. **Entire Agreement.** This Agreement and any Program Agreement, including all documents attached to or incorporated by reference into either, shall contain all the terms and conditions to be agreed upon by the parties. Upon execution of any Program Agreement, this Agreement shall be considered incorporated into that Program Agreement by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement or any Program Agreement shall be deemed to exist or bind the parties.

11. **E-Signature and Records.** An electronic signature or electronic record of this Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such other ancillary agreement for all purposes.

12. **Governing Law and Venue.** The laws of the state of Washington govern this Agreement. In the event of a lawsuit by the County against DSHS involving this Agreement or a Program Agreement, venue shall be proper only in Thurston County, Washington. In the event of a lawsuit by DSHS against the County involving this Agreement or a Program Agreement, venue shall be proper only as provided in RCW 36.01.050.

13. **Responsibility.** Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of any Program Agreement. No party to this Agreement or any Program Agreement shall be responsible for the acts and/or omissions of entities or individuals not party to this Agreement and any Program Agreement. DSHS and the County shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that such cooperation may not be feasible in all circumstances. DSHS and the County agree to notify the attorneys of record in any tort lawsuit where both are parties if either DSHS or the County enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible thereafter, and the notice may be either written or oral.

14. **Independent Status.** For purposes of this Agreement and any Program Agreement, the County acknowledges that the County is not an officer, employee, or agent of DSHS or the state of Washington. The County shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the state of Washington. The County shall not claim for itself or its employees any rights, privileges, or benefits which would accrue to an employee of the state of Washington. The County shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or

contributions on behalf of the County or the County's employees.

15. **Inspection.** Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, any Program Agreement, and applicable laws and regulations. During the term of any Program Agreement and for one (1) year following termination or expiration of the Program Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement, any Program Agreement, and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.

16. **Insurance.** DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable. The County certifies that it is self-insured, is a member of a risk pool, or maintains insurance coverage as required in any Program Agreements. The County shall pay for losses for which it is found liable.

17. **Maintenance of Records.**

During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:

a. Document performance of all acts required by law, regulation, or this Agreement;

b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the County's invoices to DSHS and all expenditures made by the County to perform as required by this Agreement.

18. **Operation of General Terms and Conditions.** These General Terms and Conditions shall be incorporated by reference into each Program Agreement between the County and DSHS in effect on or after the start date of this Agreement. These General Terms and Conditions govern and apply only to work performed under Program Agreements between the parties.

19. **Order of Precedence.** In the event of an inconsistency in this Agreement and any Program Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:

a. Applicable federal and state of Washington statutes and regulations;

b. This Agreement;

c. The Program Agreement(s).

20. **Ownership of Material.** Material created by the County and paid for by DSHS as a part of any Program Agreement shall be owned by DSHS and shall be "work made for hire" as defined by 17 USC§ 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the County uses to perform a Program

Agreement but is not created for or paid for by DSHS is owned by the County and is not "work made for hire"; however, DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS, provided that such license shall be limited to the extent which the County has a right to grant such a license.

21. **Severability.** The provisions of this Agreement and any Program Agreement are severable. If any court holds invalid any provision of this Agreement or a Program Agreement, including any provision of any document incorporated herein or therein by reference, that invalidity shall not affect the other provisions this Agreement or that Program Agreement.

22. **Subcontracting.** Unless otherwise specified therein, the County may subcontract services to be provided under a specific Program contract into which this Agreement is incorporated or attached. If DSHS, the County, and a subcontractor of the County are found by a jury or other trier of fact to be jointly and severally liable for personal injury damages arising from any act or omission under this Agreement or any Program Agreement, then DSHS shall be responsible for its proportionate share, and the County shall be responsible for its proportionate share. Should a subcontractor to the County pursuant to a Program Agreement be unable to satisfy its joint and several liability, DSHS and the County shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the trier of fact. Nothing in this section shall be construed as creating a right or remedy of any kind or nature in any person or party other than DSHS and the County. This provision shall not apply in the event of a settlement by either DSHS or the County.

23. **Subrecipients.**

a. General. If the County is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the County will:

(1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

(2) Maintain internal controls that provide reasonable assurance that the County is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

(3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;

(4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the County and its Subcontractors who are subrecipients;

(5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and

(6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of

the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39.

b. Single Audit Act Compliance. If the County is a subrecipient and expends $750,000 or more in federal awards from all sources in any fiscal year, the County will procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the County will:

(1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;

(2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.

c. Overpayments. If it is determined by DSHS, or during the course of a required audit, that the County has been paid unallowable costs under this or any Program Agreement, DSHS may require the County to reimburse DSHS in accordance with 2 CFR Part 200.

24. Survivability. The terms and conditions contained in this Agreement or any Program Agreement which, by their sense and context, are intended to survive the expiration of a particular Program Agreement shall survive. Surviving terms include, but are not limited to: Confidentiality (Section 6), Disputes (Section 9), Responsibility (Section 13), Inspection (Section 15), Maintenance of Records (Section 17), Ownership of Material (Section 20), Subcontracting (Section 22), Termination for Default (Section 27), Termination Procedure (Section 28), and Title to Property (Section 30).

25. Termination Due to Change in Funding, Contract Renegotiation or Suspension.

If the funds DSHS relied upon to establish any Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this Agreement but prior to the normal completion of any Program Agreement:

a. At DSHS's discretion, the Program Agreement may be renegotiated under the revised funding conditions.

b. Upon no less than fifteen (15) calendar days advance written notice to County, DSHS may suspend County's performance of any Program Agreement when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow the County's performance to be resumed prior to the normal completion date of the Program Agreement. For purposes of this sub-section, "written notice" may include email.

(1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of

performance.

(2) When DSHS determines that the funding insufficiency is resolved, it will give the County written notice to resume performance. Upon the receipt of this notice, the County will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption.

(3) If the County's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the Program Agreement by giving written notice to the County. The parties agree that the Program Agreement will be terminated retroactive to the effective date of suspension. DSHS shall be liable only for payment in accordance with the terms of the Program Agreement for services rendered through the retroactive date of termination.

c. DSHS may terminate the Program Agreement by providing at least fifteen (15) calendar days advance written notice to the County. DSHS shall be liable only for payment in accordance with the terms of the Program Agreement for services rendered through the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

26. Termination for Convenience. The CCLS Chief may terminate this Agreement or any Program Agreement in whole or in part for convenience by giving the County at least thirty (30) calendar days' written notice addressed to the County at the address shown on the cover page of the applicable agreement. The County may terminate this Agreement and any Program Agreement for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contracts and Legal Services, PO Box 45811, Olympia, Washington 98504-5811.

27. Termination for Default.

a. The CCLS Chief may terminate this Agreement or any Program Agreement for default, in whole or in part, by written notice to the County, effective on the date stated in the written notice, if DSHS has a reasonable basis to believe that the County has:

(1) Failed to meet or maintain any requirement for contracting with DSHS;

(2) Failed to perform under any provision of this Agreement or any Program Agreement;

(3) Violated any law, regulation, rule, or ordinance applicable to this Agreement or any Program Agreement; or

(4) Otherwise breached any provision or condition of this Agreement or any Program Agreement.

b. Before the CCLS Chief may terminate this Agreement or any Program Agreement for default, DSHS shall provide the County with written notice of the County's noncompliance with the agreement and provide the County a reasonable opportunity to correct the County's noncompliance. If the County does not correct the County's noncompliance within the period of time specified in the written notice of noncompliance, the CCLS Chief may then terminate the agreement. The CCLS Chief

may terminate the agreement for default without such written notice and without opportunity for correction if DSHS has a reasonable basis to believe that a Client's health or safety is in jeopardyThe County may terminate this Agreement or any Program Agreement for default, in whole or in part, by written notice to DSHS, if the County has a reasonable basis to believe that DSHS has:

(1) Failed to meet or maintain any requirement for contracting with the County;

(2) Failed to perform under any provision of this Agreement or any Program Agreement;

(3) Violated any law, regulation, rule, or ordinance applicable to this Agreement or any Program Agreement; and/or

(4) Otherwise breached any provision or condition of this Agreement or any Program Agreement.

c. Before the County may terminate this Agreement or any Program Agreement for default, the County shall provide DSHS with written notice of DSHS' noncompliance with the agreement and provide DSHS a reasonable opportunity to correct DSHS' noncompliance. If DSHS does not correct DSHS' noncompliance within the period of time specified in the written notice of noncompliance, the County may then terminate the agreement.

28. **Termination Procedure.** The following provisions apply in the event this Agreement or any Program Agreement is terminated:

a. The County shall cease to perform any services required by the Program Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.

b. The County shall promptly deliver to the DSHS contact person (or to his/her/their successor) listed on the first page of the Program Agreement, all DSHS assets (property) in the County's possession, including any material created under the Program Agreement. Upon failure to return DSHS property within fifteen (15) working days of the Program Agreement termination, the County shall be charged with all reasonable costs of recovery, including transportation. The County shall take reasonable steps to protect and preserve any property of DSHS that is in the possession of the County pending return to DSHS.

c. DSHS shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DSHS may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DSHS.

d. If the CCLS Chief terminates any Program Agreement for default, DSHS may withhold a sum from the final payment to the County that DSHS determines is necessary to protect DSHS against loss or additional liability occasioned by the alleged default. DSHS shall be entitled to all remedies available at law, in equity, or under the Program Agreement. If it is later determined that the County was not in default, or if the County terminated the Program Agreement for default, the County shall be entitled to all remedies available at

law, in equity, or under the Program Agreement.

29. **Treatment of Client Property.** Unless otherwise provided in the applicable Program Agreement, the County shall ensure that any adult client receiving services from the County under a Program Agreement has unrestricted access to the client's personal property. The County shall not interfere with any adult client's ownership, possession, or use of the client's property. The County shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or completion of the Program Agreement, the County shall promptly release to the client and/or the client's guardian or custodian all of the client's personal property. This section does not prohibit the County from implementing such lawful and reasonable policies, procedures and practices as the County deems necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting clients' access to, or possession or use of, lawful or unlawful weapons and drugs).

30. **Title to Property.** Title to all property purchased or furnished by DSHS for use by the County during the term of a Program Agreement shall remain with DSHS. Title to all property purchased or furnished by the County for which the County is entitled to reimbursement by DSHS under a Program Agreement shall pass to and vest in DSHS. The County shall take reasonable steps to protect and maintain all DSHS property in its possession against loss or damage and shall return DSHS property to DSHS upon termination or expiration of the Program Agreement pursuant to which it was purchased or furnished, reasonable wear and tear excepted.

31. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. No waiver shall be construed to be a modification of the terms and conditions of this Agreement unless amended as set forth in Section 2, Amendment. Only the CCLS Chief or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

By their signatures below, the parties agree to the terms and conditions of this Amendment and all documents incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Amendment shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized to sign this Amendment.

For Benton County:

Chair Date

Attest:

Clerk of the Board

Approved as to Content:	**Approved as to Form:**
Dept. of Human Services	Benton Co Prosecutor's Office

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6th, 2023
Subject:	#PSC-23/24/ARC-SO-DD-00
Presenter:	N/A
Prepared By:	Paxton Pederson
Reviewed By:	Kyle Sullivan

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

Type of Agenda Item:

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

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

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

Summary / Background Information

Benton County Human Services, on behalf of Benton County, would like to re-contract with the ARC of Tri-Cities to provide staff for the local office of the Special Olympics, as well as any supplies needed. Staff will manage registration for local Special Olympics activities, provide administration duties for required state reporting, and recruit coaches, among other activities.

Fiscal Impact

There is no impact to current expense. All revenues and expenditures are from the Fund 0108-101 Human Services Budget; for a maximum consideration of $29,400

Recommendation

Sign the Personal Services Contract

Suggested Motion

Consent Agenda

RESOLUTION

Benton County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING PERSONAL SERVICES CONTRACT #PSC-23/24-ARC-SO-DD-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND THE ARC OF TRI-CITIES

WHEREAS, Benton County Department of Human Services currently contracts with the Arc of Tri-Cities to provide staff and supplies to have a Special Olympics office locally and host games, provide team registration, and coaching for individuals with disabilities; and

WHEREAS, Benton County Department of Human Services would like to re-contract with Arc of Tri-Cities for a term commencing on July 1, 2023 and expiring on June 30, 2024; **NOW, THEREFORE**

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

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign on behalf of Benton County, Agreement #PSC-23/24-ARC-SO-DD-00 with Arc of Tri-Cities to provide Special Olympics activities for those with disabilities locally in our community for a consideration amount of twenty-nine thousand four hundred dollars and no cents ($29,400.00); and

BE IT FURTHER RESOLVED, the term of the attached Agreement commences on July 1, 2023 and shall expire on June 30, 2024.

Dated this . . .day of . . . . . , 2023

_____
Chair

_____
Commissioner

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

Attest: _____
Clerk of the Board

cc: Human Services; Benton County Commissioners

P. Pederson

BENTON COUNTY
PERSONAL SERVICES CONTRACT
#PSC-23/24-ARC-SO-DD-00

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and ARC OF TRI-CITIES, a Not-For-Profit corporation organized under the laws of the State of Washington with its principal offices at 1455 Fowler Street, Richland, WA 99352 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

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

a. Exhibit A - Scope of Work

2. DURATION OF CONTRACT

The term of this Contract shall begin on July 1, 2023 and shall expire on June 30, 2024. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall provide staff for the local Special Olympics office and supplies needed. Staff will manage registration for local special Olympics activities, provide administration duties for required state reporting, and recruit coaches among other activities. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Scope of Work", which is attached hereto and incorporated herein by reference.

b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material,

labor, or facilities will be furnished by the COUNTY.

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

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

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

4. CONTRACT REPRESENTATIVES

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

a. For CONTRACTOR:

Name:	Cindy O'Neill
Address:	1455 Fowler Street Richland, WA 99352
Phone:	509.783.1131
Email:	cindyo@arcoftricities.com

b. For COUNTY:

Name:	Kyle Sullivan
Address:	7102 W. Okanogan Place, Ste. 201 Kennewick, WA 99301
Phone:	509-737-3909
Email:	kyle.sullivan@co.benton.wa.us

5. COMPENSATION

a. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed twenty-nine thousand four hundred dollars and no cents ($29,400.00).

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

c. The CONTRACTOR may, submit invoices to the COUNTY once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

d. The CONTRACTOR shall submit county issued invoice and supporting documentation to the COUNTY by the twentieth (20th) of the following month, services were provided.

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

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

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

6. AMENDMENTS AND CHANGES IN WORK

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

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by

both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

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

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

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or

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

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

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

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

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

CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

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

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

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

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

The CONTRACTOR must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 7. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that

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

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

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

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

e. **Other Insurance Provisions:**

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

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

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

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought,

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

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

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

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

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

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

withholding or set-off will be released to CONTRACTOR.

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

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

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

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

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

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

9. TERMINATION

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

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

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

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

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

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

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

11. DEBARMENT

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN JUVENILE CENTER FUND NUMBER 1150 DEPARTMENT NUMBER 171

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Crystal Garcia

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Juvenile - Operations Dept Nbr: 171

Fund Name: Juvenile Center Fund Nbr: 1150

TRANSFER FROM: **Dept.** 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
5271000	51595	Detention Manager	$56,000	5271000	51925	Overtime	$100,000
5271000	51618	Detention Officer	$4,000				
5271000	51620	Detention Officer	$4,000				
5271000	51629	Detention Officer	$6,000				
5271000	51648	Detention Supervisor	$26,000				
5271000	51661	Detention Officer	$4,000				
TOTAL			$100,000	TOTAL			$100,000

Explanation:

This budget adjustment is necessary to cover unavoidable overtime costs due to employee's being out on leave.

Prepared by: Crystal Garcia Date: 5.15.2023

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Member

_____
Member

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Professional Services Agreement with Catherine Harkins – Superior Court
Presenter:	
Prepared By:	Denise Gerry
Reviewed By:	Katherine Bohnet

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

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

Summary / Background Information

Benton County provides public defense services in Benton County Superior Court by way of a combination of staff trial attorneys and contract attorneys. After a Request for Qualifications process was held, OPD reviewed and evaluated the applications, and now proposes that Catherine Harkins be awarded a Benton County Superior Court professional services agreement.

Proposed resolution and professional services agreement is attached for Board review and execution.

Fiscal Impact

Current Expense - $1,085.72 per case and other allowable case premiums, reimbursements, and other fees as provided in the professional services agreement.

Recommendation

Approve resolution as proposed, execute proposed professional services agreement with Catherine Harkins.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING AND EXECUTING A PROFESSIONAL SERVICES AGREEMENT WITH CATHERINE HARKINS TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO DEFENDANTS CHARGED WITH CRIMINAL OFFENSES

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

WHEREAS, Benton County provides for representation on Criminal Cases by a combination of staff trial attorneys and contract attorneys; and

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

WHEREAS, after a Request for Qualifications ("RFQ") was held and applications reviewed, it was deemed appropriate to award an agreement to attorney Catherine Harkins for public defense services on Criminal Cases in Benton County Superior Court; **NOW, THEREFORE**

BE IT RESOLVED that the professional services agreement with attorney Catherine Harkins, designated BCSC2324CH001, for services to be provided in Benton County Superior Court to defendants charged with criminal offenses, commencing April 1, 2023 and expiring December 31, 2024, with a per case compensation in the amount of $1,085.72 per case, 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 Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, Catherine Harkins K Bohnet
Copy – Auditor, Superior Court, S Godinez

DocuSign Envelope ID: 4BE4CF65-F5A6-4B56-AA64-F1C087DE3F88

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

CONTRACT # BCSC2324CH001

CONTRACT SUMMARY			
Contract Type	**Conflict & Overflow**		
Contract Number	**BCSC2324CH002**	**Contract Holder**	**Catherine Harkins**
WSBA #	**38113**	**Effective Dates**	**April 1, 2023 – December 31, 2024**
Caseload Cap	**27**	**Compensation**	**$1,085.72 per case**
Assigned Court	**Superior Court**	**Compensation Structure**	**☒ By the case** **☐ Monthly** **☐ Hourly** **☐ By the case but paid monthly**
Compensation Payable To:	**Quantum Legal PLLC**		

THIS AGREEMENT is entered into by and between **Catherine Harkins,** attorney at law, Washington State Bar Association #**38113** ("Attorney"), **dba Quantum Legal, PLLC** and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

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

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

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

C. Attorney has previously been appointed to 25 cases. Attorney will continue representation on those cases and will be additionally compensated as stated below for those cases.

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

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1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **April 1, 2023,** and shall continue thereafter through and including **December 31, 2024**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement, County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at **Quantum Legal, PLLC**; Attorney's current local office telephone is **509-783-5551**; and Attorney's current office/work e-mail address is **catherine@qtmlegal.com**.

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

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

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

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

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

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

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.

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

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- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.

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

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

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

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

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

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

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

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

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

6. **CONTINUED REPRESENTATION.**

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

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. Attorney agrees to continued representation on all cases until the case is resolved, regardless of the duration of the case and regardless of when the contract expires.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **25 total cases.**

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

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Specifically, the following types of appointments shall count as a case:

Type of Matter	**Treatment**
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case
Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's

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continued representation of such person following their later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

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

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

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

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

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

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

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if County is timely

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notified, County may elect, at its sole discretion, to terminate this Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

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

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

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

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$1,085.72 per case.**

All compensation shall be payable to **Quantum Legal PLLC** since Attorney is a principal with that law firm.

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$1,085.72
Unusually complex or laborious cases	Up to $1,600.00 (At the discretion of the Public Defense Manager)
Material witness matters	$300.00
Provision representation during preliminary appearance dockets to cover for a Staff Defender's unavailability	$450.00 (Monday) $400.00 (Tuesday, Friday) $575.00 (Wednesday, Thursday)
DOSA or SSOSA review on Attorney's own	$300.00 per year that reviews continue

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case	
Post-sentencing matter on Attorney's own case	$300.00

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive **$450.00 per day for each full day of trial and $225.00 for each partial day of trial**, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $450.00 if the matter was scheduled for a jury trial or $225.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within

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sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to

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Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2022 is due by March 15, 2022. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of **$95 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours**. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be

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reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of

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another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

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

17. **INSURANCE.**

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

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

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney

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is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

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

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

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

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

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

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

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

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

19. **TERMINATION.**

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

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

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

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

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

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

20. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or

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the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the PDM, the Superior Court Administrator, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

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

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

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

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct

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negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

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

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

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

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

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

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

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

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

23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement,

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Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect

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any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

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

31. **DISPUTE RESOLUTION.**

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

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

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree

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

32. **NOTICES.**

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

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

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

34. **PUBLIC DEFENSE MANAGER** Attorney acknowledges that the County has employed the PDM to coordinate, monitor, and evaluate the performances and compliance of

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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 their designees), and to promptly comply with reasonable requests from the PDM (and/or his/her designees), to allow for the effective monitoring and evaluation of Attorney's performance under this Agreement.

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

SIGNATURES APPEAR ON FOLLOWING PAGE

DocuSign Envelope ID: 4BE4CF65-F5A6-4B56-AA64-F1C087DE3F88

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:
Katherine Bohnet
B81E39B0BEAC43E...

Katherine Bohnet
Interim Public Defense Manager

ATTORNEY

Date 5/16/2023

DocuSigned by:
3829C43D2A0A4D6...

Catherine Harkins, WSBA #**38113**
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 their obligations pursuant to this Agreement and in complying with Washington State public defense laws, rules, and standards.

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EXHIBIT A

PERFORMANCE STANDARDS MONITORING

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

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

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

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

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

Attorney acknowledgment:

DocuSigned by:

3329C43B2A8A4D6...

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:	June 6, 2023
Subject:	Amendment of Superior Court Professional Service Agreement with Christine Bennett
Presenter:	
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 criminal cases ("Services").

Due to market demand, the Benton County Office of Public Defense needs to raise compensation for contract defenders. The Benton County Board of County Commissioners recently authorized additional funding to make the agreements more competitive in the market.

The new rate will be $1,085.72 per case. The following agreement with Christine Bennett will need to be amended to reflect the new compensation.

Fiscal Impact

Current expense – $1,085.72 per case with a total case load of 100.

Recommendation

Execute resolution approving amendment of superior court professional services agreement with Christine Bennett.

Suggested Motion

Approve with consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE PROFESSIONAL SERVICES AGREEMENT WITH CHRISTINE BENNETT, RESOLUTION 2023-021, FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT TO PROVIDE FOR INCREASED COMPENSATION

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

WHEREAS, County has been contracting with attorney Christine Bennett ("Attorney") on criminal cases; and

WHEREAS, it has become necessary to modify the agreement with Attorney for increased compensation to meet market demand; and

WHEREAS, it is therefore in the best interests of Benton County to amend the professional services agreement with Attorney per agreement #BCSC2324CB001; **NOW, THEREFORE**

BE IT RESOLVED that the amended professional services agreement with attorney Christine Bennett, previously executed through resolution 2023-021, is hereby amended and approved, to provide for modifying compensation terms, effective May 1, 2023 through December 31, 2024, specifically increasing the compensation to $1,085.72 per case, plus other allowable case premiums, reimbursements, and other fees as associated in the professional services agreement.

Dated this _____ day of _____ 20 _____

_____
Chairman

_____
Commissioner

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

Attest: _____
Clerk of the Board

cc: Originals – OPD, Christine Bennett
Copy – Auditor, Superior Court, S. Godinez

K Bohnet

DocuSign Envelope ID: 55E3EE14-0576-4675-9CE1-0C697DB2BDCE

2nd AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT CONTRACT #BCSC2324CB001

THIS AGREEMENT, previously entered into by and between **Christine Bennett,** attorney at law, Washington State Bar Association **#41305** ("Attorney"), and **BENTON COUNTY,** a State of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court, by and through Resolution **#2023-021**,

IS HEREBY AMENDED AS FOLLOWS:

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$1,085.72 per case.**

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$1,085.72
Unusually complex or laborious cases	Up to $1,600.00 (At the discretion of the Public Defense Manager)
Material witness matters	$300.00
Provision representation during preliminary appearance dockets to cover for a Staff Defender's unavailability	$450.00 (Monday) $400.00 (Tuesday, Friday) $575.00 (Wednesday, Thursday)
DOSA or SSOSA review on Attorney's own case	$300.00 per year that reviews continue
Post-sentencing matter on Attorney's own case	$300.00

This amendment shall take effect **May 1, 2023** through **December 1, 2024**.

DocuSign Envelope ID: 55E3EE14-0576-4675-9CE1-0C697DB2BDCE

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:
Katherine Bohnet
B81E29B9BEAC43F...

Katherine Bohnet
Interim Public Defense Manager

ATTORNEY

Date 5/17/2023

DocuSigned by:
Christine Bennett
AF9191E2B921403...

Christine Bennett, WSBA **#41305**

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN PUBLIC SAFETY TAX FUNDS FUND NUMBER 1480 DEPARTMENT NUMBER 121

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

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Commissioner

_____
Commissioner

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: Katie Gillies

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Sheriff Patrol Dept Nbr: 121

Fund Name: Public Safety Tax Funds Fund Nbr: 1480

TRANSFER FROM: **Dept. 12**1 TRANSFER TO: **Dept.** 121

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5212100	51952	Deputy	$36,000	5212100	51925	Overtime	$36,000
TOTAL			$36,000	TOTAL			$36,000

Explanation:

Moving Funds from deputy lines to cover current excess in overtime due to staffing shortages, homicides, SWAT and SIU Investigations.

Prepared by: Katie Gillies Date: 5/23/23

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Commissioner

_____
Commissioner

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Awarding and executing supply contracts for supplying Road Surfacing Materials
Presenter:	
Prepared By:	D. Hope
Reviewed By:	Purchasing

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

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

Summary / Background Information

Throughout the year the Public Works Department needs surfacing materials for road maintenance projects. A Request for Bids was issued for supplying materials from July 1, 2023 to June 30, 2024 and five (5) vendors responded. Per RCW 36.32.256:

Competitive bids—Multiple awards for road maintenance materials.

A county when calling for competitive bids for the procurement of road maintenance materials may award to multiple bidders for the same commodity when the bid specifications provide for the factors of haul distance to be included in the determination of which vendor is truly the lowest price to the county. The county may re-advertise for additional bidders and vendors if it deems it necessary in the public interest.

Therefore, contracts have been prepared with all five (5) vendors. The Prosecuting Attorney's office has approved as to form and the 5 vendors have signed their respective contracts.

Fiscal Impact

Amount: Not to exceed $200,000.00 for all 5 contracts combined, excluding WSST

Fund: Road Fund

Recommendation

It is recommended the Board award and authorize the Chairman to execute contracts with Interstate Concrete and Asphalt Company d/b/a American Rock Products of Pasco, WA, Central Manufacturing, Inc. of Benton City, WA, Central Washington Asphalt Inc. of Benton City, WA, O. L. Luther Co., Inc. of Granger, WA, and Western Rock Products, LLC of Lewiston, Idaho for the business of supplying Benton County with road surfacing materials from July 1, 2023 to June 30, 2024.

Suggested Motion

Approve as a part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING AND AUTHORIZING THE CHAIRMAN TO SIGN CONTRACTS TO SUPPLY ROAD SURFACING MATERIALS FOR THE PUBLIC WORKS DEPARTMENT PROJECTS WITH INTERSTATE CONCRETE AND ASPHALT COMPANY d/b/a AMERICAN ROCK PRODUCTS OF PASCO, WA, CENTRAL MANUFACTURING, INC. OF BENTON CITY, WA, CENTRAL WASHINGTON ASPHALT INC. OF BENTON CITY, WA, O.L. LUTHER CO., INC. OF GRANGER, WA AND WESTERN ROCK PRODUCTS, LLC OF LEWISTON, IDAHO

WHEREAS, throughout the year the County needs road surfacing materials for maintenance of County roads; and

WHEREAS, the Public Works Department issued a "Request for Bids" for materials through June 30, 2024; and

WHEREAS, Interstate Concrete and Asphalt Company d/b/a American Rock Products of Pasco, WA, Central Manufacturing, Inc. of Benton City, WA, Central Washington Asphalt Inc. of Benton City, WA, O. L. Luther Co., Inc. of Granger, WA and Western Rock Products, LLC of Lewiston, Idaho responded; and

WHEREAS, the Public Works Department has prepared a contract with each vendor and our departmental assigned Deputy Prosecuting Attorney has approved as to form said contracts; and

WHEREAS, the Supply Contracts have been executed by each vendor; **NOW THEREFORE,**

BE IT RESOLVED, that the business of supplying Benton County with Surfacing Materials be awarded to Interstate Concrete and Asphalt Company d/b/a American Rock Products of Pasco, WA, Central Manufacturing, Inc. of Benton City, WA, Central Washington Asphalt Inc. of Benton City, WA, O. L. Luther Co., Inc. of Granger, WA and Western Rock Products, LLC of Lewiston, Idaho; and

BE IT FURTHER RESOLVED, the Chairman of the Board of Benton County Commissioners is hereby authorized to sign a separate Supply Contract for Road Surfacing Materials with Interstate Concrete and Asphalt Company d/b/a American Rock Products of Pasco, WA, Central Manufacturing, Inc. of Benton City, WA, Central Washington Asphalt Inc. of Benton City, WA, O. L. Luther Co., Inc. of Granger, WA and Western Rock Products, LLC of Lewiston Idaho; and

BE IT FURTHER RESOLVED, per RCW 36.32.256, the Public Works Department will select the company to obtain surfacing material from based on total cost, which may include material bid price, cost to the County to transport the material to the jobsite, and availability of materials needed; and

BE IT FURTHER RESOLVED, the total expenditure for all contracts combined will not exceed $200,000.00 excluding Washington State Sales Tax; and

BE IT FURTHER RESOLVED, the Supply Contracts begin on July 1, 2023 and expire on June 30, 2024.

Dated this 6th day of June 2023.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Commissioner

Attest:_____
Clerk of the Board

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

Orig.: Purchasing
cc: Auditor, PA

D. Hope

DocuSign Envelope ID: 8C89ED48-CB4E-427F-A626-D2B3949C3803

SUPPLY CONTRACT
ROAD SURFACING MATERIALS
July 1, 2023 to June 30, 2024

THIS AGREEMENT, made and entered into this_____day of_____, 2023, between the COUNTY OF BENTON, State of Washington, acting through the Board of County Commissioners, under and by virtue of RCW 36, hereinafter called "the County", and INTERSTATE CONCRETE AND ASPHALT COMPANY d/b/a AMERICAN ROCK PRODUCTS, hereinafter called "the Vendor".

WITNESSETH:

That, in consideration of the payments, covenants, and agreements hereinafter mentioned and attached, and made a part of this agreement, to be made and performed by the parties hereto; the parties hereto covenant and agree as follows:

I. The Vendor shall provide to the County, and the County shall obtain from the Vendor those surfacing material products described and set forth in the "Request for Bids" and "Proposal", copies of which are attached hereto as Appendix A and by reference incorporated herein.

II. The County shall pay the Vendor for those products obtained pursuant hereto those prices set forth in Vendor's proposal (Appendix A), PROVIDED, however, that should any prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The County shall have the right to verify the prices charged to the Vendor for such products at the time of their delivery to the County by contacting the Vendor's major supplier.

III. Orders will be placed based on the location of the job and the location of the vendor's mixing plant facility and/or aggregate stockpiles, which will determine the cost to the County for hauling, in addition to the material cost. A vendor other than the low bidder may be used depending upon the availability of the product required by the County.

IV. 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.

V. The Vendor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature 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 Vendor or its sub-vendors or their property upon or in the proximity of the property of the County. PROVIDED, that the Vendor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

In any and all claims against the County, its officers, officials, employees and agents by any employee of the Vendor, sub-vendor, 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 Vendor or sub-vendor under Workers Compensation acts, disability benefit acts, or other

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employee benefit acts, it being clearly agreed and understood by the parties hereto that the Vendor expressly waives any immunity the Vendor might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the Vendor 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 Vendor makes with any sub-vendor or agent performing work hereunder. Vendor's obligations under this Section V. shall survive termination and expiration of this Contract.**

The vendor'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 Vendor, the Vendor's employees, agents or sub-vendors.

VI. 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.

VII. Upon thirty (30) days prior notice in writing to the Vendor, the County may terminate this contract for any reason. Upon termination, the County will make payment in full in accordance with the terms of this contract.

VIII. This agreement begins July 1, 2023 and expires June 30, 2024.

IN WITNESS WHEREOF, the said Vendor has executed this agreement, and the Board of County Commissioners of Benton County, Washington, has caused this instrument to be executed by and in the name of the County the day and year first above written.

VENDOR: INTERSTATE CONCRETE & ASPHALT COMPANY d/b/a AMERICAN ROCK PRODUCTS

DocuSigned by:
by: Wade Blagg
D5C94131F02F4EF...

Title: GM

Date: 5/18/2023

COUNTY OF BENTON:

by:_____
Chairman,
Board of Benton County Commissioners

ATTEST:

_____
Clerk of the Board

Date_____

APPROVED AS TO FORM:

DocuSigned by:
LeeAnn Holt
D9A9308B67BB475...
LeeAnn Holt, Deputy Prosecuting Attorney

Date 5/16/2023

DocuSign Envelope ID: 98F2FC37-0016-4750-9283-4F019B78627E

APPENDIX A

OFFICE OF THE BENTON COUNTY ENGINEER
BENTON COUNTY, WASHINGTON

REQUEST FOR BIDS

BIDS FOR:	CB23-11 FURNISHING ROAD SURFACING MATERIALS.
BIDS RECEIVED:	THURSDAY, APRIL 27, 2023, AT 11:00 A.M., AT THE BENTON COUNTY PUBLIC SERVICES BUILDING, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON 99338. **NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME.**
BIDS OPENED:	THURSDAY, APRIL 27, 2023, AT 11:00 A.M., IN THE PUBLIC SERVICES BUILDING CONFERENCE ROOM, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON.

1. INSTRUCTIONS:

Please state hereon, in the columns provided in the Proposal, the lowest price at which you will provide the articles specified. If you cannot supply one of the products requested in the proposal, please put N/A in the bid price line. Unsigned bids will not be considered.

The proposal shall be placed in a sealed envelope marked **"BIDS – ROAD SURFACING MATERIALS"** and delivered to Benton County Public Services Building at the location, date and time stated above. Bids shall be considered final at the time and date for receiving bids. The County will not accept any changes for any reason, including bidding errors. Use of the enclosed bid proposal is required. Only bids submitted on the official form will be considered. The bid shall not contain any unauthorized additions, deletions, alternate bids or conditions.

2. AWARD OF CONTRACT

The right is reserved by the Board of Benton County Commissioners to reject any or all quotes, to waive informalities in the bidding, and to make award of the business based on a fair appraisal of the competitive values offered and delivery time. The Board will not be bound necessarily by the low quote.

> "NOTE: This document and the materials enclosed herewith constitute an invitation to submit bids only and does not represent an offer by Benton County or the Benton County Engineer. Proposals submitted in response hereto shall constitute offers to contract with Benton County. Only upon the County's acceptance of such offer by award as provided herein, shall any contractual relations be created."

Should any discrepancies or omissions be found in the bid specifications, or doubt as to its meaning, bidder shall at once notify Danica Hope by telephone (509)783-1310 ext. 5665 or by email at procurement@co.benton.wa.us. Written instructions or addenda as required will be sent to all interested parties. All addenda issued shall be incorporated into the contract. The County shall not be held responsible for oral interpretations. Questions received less than forty-eight (48) hours before bid opening cannot be answered.

3. EXECUTION OF CONTRACT:

Successful bidder will be required to enter into a formal contract substantially similar to Exhibit A attached.

DocuSign Envelope ID: 98F2FC37-0016-4750-9283-4F019B78627E

4. PROPOSED PURCHASE:

Conforming to the requirements of the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, 2023 edition, the purchase contemplated is set forth as follows:

Furnishing HOT MIX ASPHALT (HMA), ASPHALT FOR TACK COAT, COLD MIX, CRUSHED SURFACING BASE COURSE, CRUSHED SURFACING TOP COURSE and CRUSHER REJECTS (FINES) as required by the Benton County Public Works Department during the period from July 1, 2023, through June 30, 2024.

The prices listed shall be the bidder's current bid prices. If prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The notice shall include verifiable justification for price increases.

The County will give the vendors advanced notice of estimated quantities needed and will endeavor to place orders 48 hours prior to required delivery, except in emergencies.

The County may not be able to take continuous production depending on truck availability and travel distance. Every effort will be made to cooperate with vendor's scheduling requirements.

Pursuant to RCW 36.32.256, the County reserves the right to award the contract to more than one bidder, and to purchase material from a vendor other than the lowest bidder based upon the overall cost to the County. To determine the overall cost of a product to the County, the County will take its employees' hourly rate plus the hourly rate of the vehicle used to haul, times the anticipated haul time to and from the project site plus the cost of the material. This calculation shall be used to compare each vendor on each project. The lowest overall cost to the County will determine which vendor to purchase the product from for each project.

Address list of bidder's facilities:

2580 Hagen Road, Richland

97100 E. Locust Grove, Kennewick (Hospital Quarry)

51102 E. Kennedy Rd, Richland (Kiona Quarry)

5. TAX PROVISIONS:

Washington State sales taxes will not be considered a part of the unit price. State sales tax will be added as a separate item on the invoice for each purchase.

Approved as to form:

DocuSigned by:
Reid Hay
7D2675FA0905430...

Reid Hay, Deputy Prosecuting Attorney

Date 3/29/2023

DocuSign Envelope ID: 98F2FC37-0016-4750-9283-4F019B78627E

PROPOSAL

ROAD SURFACING MATERIALS

VENDOR NAME: American Rock Products

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	DESCRIPTION	PRICE PER TON/GAL. F.O.B. AT VENDOR'S PLANT
1	HMA CLASS 3/8"	$ N/A /Ton
2	HMA CLASS 1/2"	$ N/A /Ton
3a	ASPHALT FOR TACK COAT (CSS-1)	$ N/A /Ton
3b	ASPHALT FOR TACK COAT (CSS-1)	$ N/A /Gal.
4	COLD MIX	$ N/A /Ton
5	CRUSHED SURFACING BASE COURSE	$ 11.15 /Ton
6	CRUSHED SURFACING TOP COURSE	$ 11.40 /Ton
7	CRUSHER REJECTS (FINES) Kiona Only	$ 5.10 /Ton

ASSURANCE OF NON-DISCRIMINATION

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

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

DocuSign Envelope ID: 98F2FC37-0016-4750-9283-4F019B78627E

NON-COLLUSION DECLARATION

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

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

CONTRACTOR'S REGISTRATION NO. AMERIRP821DR

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. 602 991 003

DATED this 26th day of April, 2023.

VENDOR NAME: American Rock Products

John Mattson

SIGNATURE OF AUTHORIZED OFFICIAL

John Mattson / Pasco Manager

PRINT NAME AND TITLE

ADDRESS OF BIDDER: 11919 Harris Road Pasco WA 99301

TELEPHONE NO.: (509) 547 2380 EMAIL: John.Mattson@AmericanRockProducts.com

~PROPOSAL MUST BE SIGNED~

DocuSign Envelope ID: D6C0A905-20BE-41BD-B701-45E87456B517

SUPPLY CONTRACT
ROAD SURFACING MATERIALS
July 1, 2023 to June 30, 2024

THIS AGREEMENT, made and entered into this_____day of_____, 2023, between the COUNTY OF BENTON, State of Washington, acting through the Board of County Commissioners, under and by virtue of RCW 36, hereinafter called "the County", and CENTRAL MANUFACTURING, INC., hereinafter called "the Vendor".

WITNESSETH:

That, in consideration of the payments, covenants, and agreements hereinafter mentioned and attached, and made a part of this agreement, to be made and performed by the parties hereto; the parties hereto covenant and agree as follows:

I. The Vendor shall provide to the County, and the County shall obtain from the Vendor those surfacing material products described and set forth in the "Request for Bids" and "Proposal", copies of which are attached hereto as Appendix A and by reference incorporated herein.

II. The County shall pay the Vendor for those products obtained pursuant hereto those prices set forth in Vendor's proposal (Appendix A), PROVIDED, however, that should any prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The County shall have the right to verify the prices charged to the Vendor for such products at the time of their delivery to the County by contacting the Vendor's major supplier.

III. Orders will be placed based on the location of the job and the location of the vendor's mixing plant facility and/or aggregate stockpiles, which will determine the cost to the County for hauling, in addition to the material cost. A vendor other than the low bidder may be used depending upon the availability of the product required by the County.

IV. 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.

V. The Vendor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature 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 Vendor or its sub-vendors or their property upon or in the proximity of the property of the County. PROVIDED, that the Vendor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

In any and all claims against the County, its officers, officials, employees and agents by any employee of the Vendor, sub-vendor, 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 Vendor or sub-vendor under Workers Compensation acts, disability benefit acts, or other

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employee benefit acts, it being clearly agreed and understood by the parties hereto that the Vendor expressly waives any immunity the Vendor might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the Vendor 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 Vendor makes with any sub-vendor or agent performing work hereunder. Vendor's obligations under this Section V. shall survive termination and expiration of this Contract.**

The vendor'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 Vendor, the Vendor's employees, agents or sub-vendors.

VI. 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.

VII. Upon thirty (30) days prior notice in writing to the Vendor, the County may terminate this contract for any reason. Upon termination, the County will make payment in full in accordance with the terms of this contract.

VIII. This agreement begins July 1, 2023 and expires June 30, 2024.

IN WITNESS WHEREOF, the said Vendor has executed this agreement, and the Board of County Commissioners of Benton County, Washington, has caused this instrument to be executed by and in the name of the County the day and year first above written.

VENDOR: CENTRAL MANUFACTURING, INC.

DocuSigned by:

by:_____
DB9DFC8FC7F049C...

Title: Regional Manager

Date: 5/22/2023

COUNTY OF BENTON:

by:_____
Chairman,
Board of Benton County Commissioners

ATTEST:

_____
Clerk of the Board

Date_____

APPROVED AS TO FORM:

DocuSigned by:

_____
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LeeAnn Holt, Deputy Prosecuting Attorney

Date 5/22/2023

DocuSign Envelope ID: D6C0A905-20BE-41BD-B701-45E87456B517

APPENDIX A

OFFICE OF THE BENTON COUNTY ENGINEER
BENTON COUNTY, WASHINGTON

REQUEST FOR BIDS

BIDS FOR: CB23-11 FURNISHING ROAD SURFACING MATERIALS.

BIDS RECEIVED: THURSDAY, APRIL 27, 2023, AT 11:00 A.M., AT THE BENTON COUNTY PUBLIC SERVICES BUILDING, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON 99338. **NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME.**

BIDS OPENED: THURSDAY, APRIL 27, 2023, AT 11:00 A.M., IN THE PUBLIC SERVICES BUILDING CONFERENCE ROOM, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON.

1. INSTRUCTIONS:

Please state hereon, in the columns provided in the Proposal, the lowest price at which you will provide the articles specified. If you cannot supply one of the products requested in the proposal, please put N/A in the bid price line. Unsigned bids will not be considered.

The proposal shall be placed in a sealed envelope marked **"BIDS – ROAD SURFACING MATERIALS"** and delivered to Benton County Public Services Building at the location, date and time stated above. Bids shall be considered final at the time and date for receiving bids. The County will not accept any changes for any reason, including bidding errors. Use of the enclosed bid proposal is required. Only bids submitted on the official form will be considered. The bid shall not contain any unauthorized additions, deletions, alternate bids or conditions.

2. AWARD OF CONTRACT

The right is reserved by the Board of Benton County Commissioners to reject any or all quotes, to waive informalities in the bidding, and to make award of the business based on a fair appraisal of the competitive values offered and delivery time. The Board will not be bound necessarily by the low quote.

> "NOTE: This document and the materials enclosed herewith constitute an invitation to submit bids only and does not represent an offer by Benton County or the Benton County Engineer. Proposals submitted in response hereto shall constitute offers to contract with Benton County. Only upon the County's acceptance of such offer by award as provided herein, shall any contractual relations be created."

Should any discrepancies or omissions be found in the bid specifications, or doubt as to its meaning, bidder shall at once notify Danica Hope by telephone (509)783-1310 ext. 5665 or by email at procurement@co.benton.wa.us. Written instructions or addenda as required will be sent to all interested parties. All addenda issued shall be incorporated into the contract. The County shall not be held responsible for oral interpretations. Questions received less than forty-eight (48) hours before bid opening cannot be answered.

3. EXECUTION OF CONTRACT:

Successful bidder will be required to enter into a formal contract substantially similar to Exhibit A attached.

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4. PROPOSED PURCHASE:

Conforming to the requirements of the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, 2023 edition, the purchase contemplated is set forth as follows:

Furnishing HOT MIX ASPHALT (HMA), ASPHALT FOR TACK COAT, COLD MIX, CRUSHED SURFACING BASE COURSE, CRUSHED SURFACING TOP COURSE and CRUSHER REJECTS (FINES) as required by the Benton County Public Works Department during the period from July 1, 2023, through June 30, 2024.

The prices listed shall be the bidder's current bid prices. If prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The notice shall include verifiable justification for price increases.

The County will give the vendors advanced notice of estimated quantities needed and will endeavor to place orders 48 hours prior to required delivery, except in emergencies.

The County may not be able to take continuous production depending on truck availability and travel distance. Every effort will be made to cooperate with vendor's scheduling requirements.

Pursuant to RCW 36.32.256, the County reserves the right to award the contract to more than one bidder, and to purchase material from a vendor other than the lowest bidder based upon the overall cost to the County. To determine the overall cost of a product to the County, the County will take its employees' hourly rate plus the hourly rate of the vehicle used to haul, times the anticipated haul time to and from the project site plus the cost of the material. This calculation shall be used to compare each vendor on each project. The lowest overall cost to the County will determine which vendor to purchase the product from for each project.

Address list of bidder's facilities:

16004 E. Field Road

Benton City, WA 99320

5. TAX PROVISIONS:

Washington State sales taxes will not be considered a part of the unit price. State sales tax will be added as a separate item on the invoice for each purchase.

Approved as to form:

DocuSigned by:
Reid Hay
7D2675FA9905430...

Reid Hay, Deputy Prosecuting Attorney

Date 3/29/2023

DocuSign Envelope ID: D6C0A905-20BE-41BD-B701-45E87456B517

PROPOSAL

ROAD SURFACING MATERIALS

VENDOR NAME: Central Manufacturing, Inc.

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	DESCRIPTION	PRICE PER TON/GAL. F.O.B. AT VENDOR'S PLANT
1	HMA CLASS 3/8"	$ 82.00 /Ton
2	HMA CLASS 1/2"	$ 79.00 /Ton
3a	ASPHALT FOR TACK COAT (CSS-1)	$ 1,000.00 /Ton
3b	ASPHALT FOR TACK COAT (CSS-1)	$ 10.00 /Gal.
4	COLD MIX	$ 150.00 /Ton
5	CRUSHED SURFACING BASE COURSE	$ N/A /Ton
6	CRUSHED SURFACING TOP COURSE	$ N/A /Ton
7	CRUSHER REJECTS (FINES)	$ N/A /Ton

ASSURANCE OF NON-DISCRIMINATION

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

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

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NON-COLLUSION DECLARATION

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

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

CONTRACTOR'S REGISTRATION NO. CENTRWA181PG

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. 511964-003

DATED this 27th day of April, 2023.

VENDOR NAME: Central Washington Asphalt, Inc.

SIGNATURE OF AUTHORIZED OFFICIAL

Darren Bender Regional Manager
PRINT NAME AND TITLE

ADDRESS OF BIDDER: PO Box 5159 Benton City, WA 99320

TELEPHONE NO.: (509) 588-5214 EMAIL: benderd@cwainc.us

~PROPOSAL MUST BE SIGNED~

DocuSign Envelope ID: D6C0A905-20BE-41BD-B701-45E87456B517

SUPPLY CONTRACT
ROAD SURFACING MATERIALS
July 1, 2023 to June 30, 2024

THIS AGREEMENT, made and entered into this_____day of_____, 2023, between the COUNTY OF BENTON, State of Washington, acting through the Board of County Commissioners, under and by virtue of RCW 36, hereinafter called "the County", and CENTRAL WASHINGTON ASPHALT INC., hereinafter called "the Vendor".

WITNESSETH:

That, in consideration of the payments, covenants, and agreements hereinafter mentioned and attached, and made a part of this agreement, to be made and performed by the parties hereto; the parties hereto covenant and agree as follows:

I. The Vendor shall provide to the County, and the County shall obtain from the Vendor those surfacing material products described and set forth in the "Request for Bids" and "Proposal", copies of which are attached hereto as Appendix A and by reference incorporated herein.

II. The County shall pay the Vendor for those products obtained pursuant hereto those prices set forth in Vendor's proposal (Appendix A), PROVIDED, however, that should any prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The County shall have the right to verify the prices charged to the Vendor for such products at the time of their delivery to the County by contacting the Vendor's major supplier.

III. Orders will be placed based on the location of the job and the location of the vendor's mixing plant facility and/or aggregate stockpiles, which will determine the cost to the County for hauling, in addition to the material cost. A vendor other than the low bidder may be used depending upon the availability of the product required by the County.

IV. 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.

V. The Vendor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature 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 Vendor or its sub-vendors or their property upon or in the proximity of the property of the County. PROVIDED, that the Vendor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

In any and all claims against the County, its officers, officials, employees and agents by any employee of the Vendor, sub-vendor, 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 Vendor or sub-vendor under Workers Compensation acts, disability benefit acts, or other

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employee benefit acts, it being clearly agreed and understood by the parties hereto that the Vendor expressly waives any immunity the Vendor might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the Vendor 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 Vendor makes with any sub-vendor or agent performing work hereunder. Vendor's obligations under this Section V. shall survive termination and expiration of this Contract.**

The vendor'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 Vendor, the Vendor's employees, agents or sub-vendors.

VI. 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.

VII. Upon thirty (30) days prior notice in writing to the Vendor, the County may terminate this contract for any reason. Upon termination, the County will make payment in full in accordance with the terms of this contract.

VIII. This agreement begins July 1, 2023 and expires June 30, 2024.

IN WITNESS WHEREOF, the said Vendor has executed this agreement, and the Board of County Commissioners of Benton County, Washington, has caused this instrument to be executed by and in the name of the County the day and year first above written.

VENDOR: CENTRAL WASHINGTON ASPHALT, INC.

DocuSigned by:

by:_____
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Title: Regional Manager

Date: 5/22/2023

COUNTY OF BENTON:

by:_____
Chairman,
Board of Benton County Commissioners

ATTEST:

_____
Clerk of the Board

Date_____

APPROVED AS TO FORM:

DocuSigned by:

_____
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LeeAnn Holt, Deputy Prosecuting Attorney

Date 5/22/2023

DocuSign Envelope ID: D6C0A905-20BE-41BD-B701-45E87456B517

APPENDIX A

OFFICE OF THE BENTON COUNTY ENGINEER
BENTON COUNTY, WASHINGTON

REQUEST FOR BIDS

BIDS FOR: CB23-11 FURNISHING ROAD SURFACING MATERIALS.

BIDS RECEIVED: THURSDAY, APRIL 27, 2023, AT 11:00 A.M., AT THE BENTON COUNTY PUBLIC SERVICES BUILDING, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON 99338. **NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME.**

BIDS OPENED: THURSDAY, APRIL 27, 2023, AT 11:00 A.M., IN THE PUBLIC SERVICES BUILDING CONFERENCE ROOM, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON.

1. INSTRUCTIONS:

Please state hereon, in the columns provided in the Proposal, the lowest price at which you will provide the articles specified. If you cannot supply one of the products requested in the proposal, please put N/A in the bid price line. Unsigned bids will not be considered.

The proposal shall be placed in a sealed envelope marked **"BIDS – ROAD SURFACING MATERIALS"** and delivered to Benton County Public Services Building at the location, date and time stated above. Bids shall be considered final at the time and date for receiving bids. The County will not accept any changes for any reason, including bidding errors. Use of the enclosed bid proposal is required. Only bids submitted on the official form will be considered. The bid shall not contain any unauthorized additions, deletions, alternate bids or conditions.

2. AWARD OF CONTRACT

The right is reserved by the Board of Benton County Commissioners to reject any or all quotes, to waive informalities in the bidding, and to make award of the business based on a fair appraisal of the competitive values offered and delivery time. The Board will not be bound necessarily by the low quote.

> "NOTE: This document and the materials enclosed herewith constitute an invitation to submit bids only and does not represent an offer by Benton County or the Benton County Engineer. Proposals submitted in response hereto shall constitute offers to contract with Benton County. Only upon the County's acceptance of such offer by award as provided herein, shall any contractual relations be created."

Should any discrepancies or omissions be found in the bid specifications, or doubt as to its meaning, bidder shall at once notify Danica Hope by telephone (509)783-1310 ext. 5665 or by email at procurement@co.benton.wa.us. Written instructions or addenda as required will be sent to all interested parties. All addenda issued shall be incorporated into the contract. The County shall not be held responsible for oral interpretations. Questions received less than forty-eight (48) hours before bid opening cannot be answered.

3. EXECUTION OF CONTRACT:

Successful bidder will be required to enter into a formal contract substantially similar to Exhibit A attached.

DocuSign Envelope ID: D6C0A905-20BE-41BD-B701-45E87456B517

4. PROPOSED PURCHASE:

Conforming to the requirements of the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, 2023 edition, the purchase contemplated is set forth as follows:

Furnishing HOT MIX ASPHALT (HMA), ASPHALT FOR TACK COAT, COLD MIX, CRUSHED SURFACING BASE COURSE, CRUSHED SURFACING TOP COURSE and CRUSHER REJECTS (FINES) as required by the Benton County Public Works Department during the period from July 1, 2023, through June 30, 2024.

The prices listed shall be the bidder's current bid prices. If prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The notice shall include verifiable justification for price increases.

The County will give the vendors advanced notice of estimated quantities needed and will endeavor to place orders 48 hours prior to required delivery, except in emergencies.

The County may not be able to take continuous production depending on truck availability and travel distance. Every effort will be made to cooperate with vendor's scheduling requirements.

Pursuant to RCW 36.32.256, the County reserves the right to award the contract to more than one bidder, and to purchase material from a vendor other than the lowest bidder based upon the overall cost to the County. To determine the overall cost of a product to the County, the County will take its employees' hourly rate plus the hourly rate of the vehicle used to haul, times the anticipated haul time to and from the project site plus the cost of the material. This calculation shall be used to compare each vendor on each project. The lowest overall cost to the County will determine which vendor to purchase the product from for each project.

Address list of bidder's facilities:

16004 E. Field Road

Benton City, WA 99320

5. TAX PROVISIONS:

Washington State sales taxes will not be considered a part of the unit price. State sales tax will be added as a separate item on the invoice for each purchase.

Approved as to form:

DocuSigned by:
Reid Hay
7D2675FA0905430...

Reid Hay, Deputy Prosecuting Attorney

Date 3/29/2023

DocuSign Envelope ID: D6C0A905-20BE-41BD-B701-45E87456B517

PROPOSAL

ROAD SURFACING MATERIALS

VENDOR NAME: Central Washington Asphalt, Inc.

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	DESCRIPTION	PRICE PER TON/GAL. F.O.B. AT VENDOR'S PLANT
1	HMA CLASS 3/8"	$ N/A /Ton
2	HMA CLASS 1/2"	$ N/A /Ton
3a	ASPHALT FOR TACK COAT (CSS-1)	$ N/A /Ton
3b	ASPHALT FOR TACK COAT (CSS-1)	$ N/A /Gal.
4	COLD MIX	$ N/A /Ton
5	CRUSHED SURFACING BASE COURSE	$ 10.00 /Ton
6	CRUSHED SURFACING TOP COURSE	$ 10.00 /Ton
7	CRUSHER REJECTS (FINES)	$ 3.00 /Ton

ASSURANCE OF NON-DISCRIMINATION

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

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

DocuSign Envelope ID: D6C0A905-20BE-41BD-B701-45E87456B517

NON-COLLUSION DECLARATION

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

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

CONTRACTOR'S REGISTRATION NO. CENTRWA181PG

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. 511964-003

DATED this 27th day of April, 2023.

VENDOR NAME: Central Washington Asphalt, Inc.

SIGNATURE OF AUTHORIZED OFFICIAL

Darren Bender Regional Manager
PRINT NAME AND TITLE

ADDRESS OF BIDDER: 16004 E. Field Road Benton City, WA 99320

TELEPHONE NO.: (509) 588-5214 EMAIL: benderd@cwainc.us

~PROPOSAL MUST BE SIGNED~

SUPPLY CONTRACT
ROAD SURFACING MATERIALS
July 1, 2023 to June 30, 2024

THIS AGREEMENT, made and entered into this_____day of_____, 2023, between the COUNTY OF BENTON, State of Washington, acting through the Board of County Commissioners, under and by virtue of RCW 36, hereinafter called "the County", and O.L. Luther Co. Inc., hereinafter called "the Vendor".

WITNESSETH:

That, in consideration of the payments, covenants, and agreements hereinafter mentioned and attached, and made a part of this agreement, to be made and performed by the parties hereto; the parties hereto covenant and agree as follows:

I. The Vendor shall provide to the County, and the County shall obtain from the Vendor those surfacing material products described and set forth in the "Request for Bids" and "Proposal", copies of which are attached hereto as Appendix A and by reference incorporated herein.

II. The County shall pay the Vendor for those products obtained pursuant hereto those prices set forth in Vendor's proposal (Appendix A), PROVIDED, however, that should any prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The County shall have the right to verify the prices charged to the Vendor for such products at the time of their delivery to the County by contacting the Vendor's major supplier.

III. Orders will be placed based on the location of the job and the location of the vendor's mixing plant facility and/or aggregate stockpiles, which will determine the cost to the County for hauling, in addition to the material cost. A vendor other than the low bidder may be used depending upon the availability of the product required by the County.

IV. 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.

V. The Vendor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature 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 Vendor or its sub-vendors or their property upon or in the proximity of the property of the County. PROVIDED, that the Vendor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

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

The vendor'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 Vendor, the Vendor's employees, agents or sub-vendors.

VI. 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.

VII. Upon thirty (30) days prior notice in writing to the Vendor, the County may terminate this contract for any reason. Upon termination, the County will make payment in full in accordance with the terms of this contract.

VIII. This agreement begins July 1, 2023 and expires June 30, 2024.

IN WITNESS WHEREOF, the said Vendor has executed this agreement, and the Board of County Commissioners of Benton County, Washington, has caused this instrument to be executed by and in the name of the County the day and year first above written.

VENDOR: O.L. LUTHER CO INC.

by: Arnold Luther

Title: Pres

Date: 5-4-23

COUNTY OF BENTON:

by:_____
Chairman,
Board of Benton County Commissioners

ATTEST:

_____
Clerk of the Board

Date_____

APPROVED AS TO FORM:

LeeAnn Holt

LeeAnn Holt, Deputy Prosecuting Attorney

Date 5/16/23

APPENDIX A

OFFICE OF THE BENTON COUNTY ENGINEER
BENTON COUNTY, WASHINGTON

REQUEST FOR BIDS

BIDS FOR: CB23-11 FURNISHING ROAD SURFACING MATERIALS.

BIDS RECEIVED: THURSDAY, APRIL 27, 2023, AT 11:00 A.M., AT THE BENTON COUNTY PUBLIC SERVICES BUILDING, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON 99338. **NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME.**

BIDS OPENED: THURSDAY, APRIL 27, 2023, AT 11:00 A.M., IN THE PUBLIC SERVICES BUILDING CONFERENCE ROOM, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON.

1. INSTRUCTIONS:

Please state hereon, in the columns provided in the Proposal, the lowest price at which you will provide the articles specified. If you cannot supply one of the products requested in the proposal, please put N/A in the bid price line. Unsigned bids will not be considered.

The proposal shall be placed in a sealed envelope marked **"BIDS – ROAD SURFACING MATERIALS"** and delivered to Benton County Public Services Building at the location, date and time stated above. Bids shall be considered final at the time and date for receiving bids. The County will not accept any changes for any reason, including bidding errors. Use of the enclosed bid proposal is required. Only bids submitted on the official form will be considered. The bid shall not contain any unauthorized additions, deletions, alternate bids or conditions.

2. AWARD OF CONTRACT

The right is reserved by the Board of Benton County Commissioners to reject any or all quotes, to waive informalities in the bidding, and to make award of the business based on a fair appraisal of the competitive values offered and delivery time. The Board will not be bound necessarily by the low quote.

> "NOTE: This document and the materials enclosed herewith constitute an invitation to submit bids only and does not represent an offer by Benton County or the Benton County Engineer. Proposals submitted in response hereto shall constitute offers to contract with Benton County. Only upon the County's acceptance of such offer by award as provided herein, shall any contractual relations be created."

Should any discrepancies or omissions be found in the bid specifications, or doubt as to its meaning, bidder shall at once notify Danica Hope by telephone (509)783-1310 ext. 5665 or by email at procurement@co.benton.wa.us. Written instructions or addenda as required will be sent to all interested parties. All addenda issued shall be incorporated into the contract. The County shall not be held responsible for oral interpretations. Questions received less than forty-eight (48) hours before bid opening cannot be answered.

3. EXECUTION OF CONTRACT:

Successful bidder will be required to enter into a formal contract substantially similar to Exhibit A attached.

4. PROPOSED PURCHASE:

Conforming to the requirements of the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, 2023 edition, the purchase contemplated is set forth as follows:

Furnishing HOT MIX ASPHALT (HMA), ASPHALT FOR TACK COAT, COLD MIX, CRUSHED SURFACING BASE COURSE, CRUSHED SURFACING TOP COURSE and CRUSHER REJECTS (FINES) as required by the Benton County Public Works Department during the period from July 1, 2023, through June 30, 2024.

The prices listed shall be the bidder's current bid prices. If prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The notice shall include verifiable justification for price increases.

The County will give the vendors advanced notice of estimated quantities needed and will endeavor to place orders 48 hours prior to required delivery, except in emergencies.

The County may not be able to take continuous production depending on truck availability and travel distance. Every effort will be made to cooperate with vendor's scheduling requirements.

Pursuant to RCW 36.32.256, the County reserves the right to award the contract to more than one bidder, and to purchase material from a vendor other than the lowest bidder based upon the overall cost to the County. To determine the overall cost of a product to the County, the County will take its employees' hourly rate plus the hourly rate of the vehicle used to haul, times the anticipated haul time to and from the project site plus the cost of the material. This calculation shall be used to compare each vendor on each project. The lowest overall cost to the County will determine which vendor to purchase the product from for each project.

Address list of bidder's facilities:

710 Luther Rd Granger, WA 98932

5. TAX PROVISIONS:

Washington State sales taxes will not be considered a part of the unit price. State sales tax will be added as a separate item on the invoice for each purchase.

Approved as to form:

_____

Reid Hay, Deputy Prosecuting Attorney

Date_____

PROPOSAL

ROAD SURFACING MATERIALS

VENDOR NAME: O L Luther Co. Inc

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	DESCRIPTION	PRICE PER TON/GAL. F.O.B. AT VENDOR'S PLANT
1	HMA CLASS 3/8"	$ 112.00 /Ton
2	HMA CLASS 1/2"	$ 112.00 /Ton
3a	ASPHALT FOR TACK COAT (CSS-1)	$ N/A /Ton
3b	ASPHALT FOR TACK COAT (CSS-1)	$ 15.00 /Gal.
4	COLD MIX	$ N/A /Ton
5	CRUSHED SURFACING BASE COURSE	$ N/A /Ton
6	CRUSHED SURFACING TOP COURSE	$ N/A /Ton
7	CRUSHER REJECTS (FINES)	$ N/A /Ton

ASSURANCE OF NON-DISCRIMINATION

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

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

NON-COLLUSION DECLARATION

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

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

CONTRACTOR'S REGISTRATION

NO. OLLUTI*215BH
UBI 600 299 117

CONTRACTOR'S EMPLOYMENT SECURITY

DEPARTMENT NO. 247808006

DATED this 19 day of April, 2023.

VENDOR NAME: O L Luther Co Inc.

Arnold Luther

SIGNATURE OF AUTHORIZED OFFICIAL

Arnold Luther / Pres

PRINT NAME AND TITLE

ADDRESS OF BIDDER: 710 Luther Rd Granger, WA 98932

TELEPHONE NO.: (509) 837-2527 EMAIL:

~PROPOSAL MUST BE SIGNED~

DocuSign Envelope ID: FFEEDE8A-995C-408D-BE22-08B8685BD799

SUPPLY CONTRACT
ROAD SURFACING MATERIALS
July 1, 2023 to June 30, 2024

THIS AGREEMENT, made and entered into this_____day of_____, 2023, between the COUNTY OF BENTON, State of Washington, acting through the Board of County Commissioners, under and by virtue of RCW 36, hereinafter called "the County", and WESTERN ROCK PRODUCTS, LLC, hereinafter called "the Vendor".

WITNESSETH:

That, in consideration of the payments, covenants, and agreements hereinafter mentioned and attached, and made a part of this agreement, to be made and performed by the parties hereto; the parties hereto covenant and agree as follows:

I. The Vendor shall provide to the County, and the County shall obtain from the Vendor those surfacing material products described and set forth in the "Request for Bids" and "Proposal", copies of which are attached hereto as Appendix A and by reference incorporated herein.

II. The County shall pay the Vendor for those products obtained pursuant hereto those prices set forth in Vendor's proposal (Appendix A), PROVIDED, however, that should any prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The County shall have the right to verify the prices charged to the Vendor for such products at the time of their delivery to the County by contacting the Vendor's major supplier.

III. Orders will be placed based on the location of the job and the location of the vendor's mixing plant facility and/or aggregate stockpiles, which will determine the cost to the County for hauling, in addition to the material cost. A vendor other than the low bidder may be used depending upon the availability of the product required by the County.

IV. 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.

V. The Vendor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature 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 Vendor or its sub-vendors or their property upon or in the proximity of the property of the County. PROVIDED, that the Vendor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

In any and all claims against the County, its officers, officials, employees and agents by any employee of the Vendor, sub-vendor, 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 Vendor or sub-vendor under Workers Compensation acts, disability benefit acts, or other

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employee benefit acts, it being clearly agreed and understood by the parties hereto that the Vendor expressly waives any immunity the Vendor might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the Vendor 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 Vendor makes with any sub-vendor or agent performing work hereunder. Vendor's obligations under this Section V. shall survive termination and expiration of this Contract.**

The vendor'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 Vendor, the Vendor's employees, agents or sub-vendors.

VI. 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.

VII. Upon thirty (30) days prior notice in writing to the Vendor, the County may terminate this contract for any reason. Upon termination, the County will make payment in full in accordance with the terms of this contract.

VIII. This agreement begins July 1, 2023 and expires June 30, 2024.

IN WITNESS WHEREOF, the said Vendor has executed this agreement, and the Board of County Commissioners of Benton County, Washington, has caused this instrument to be executed by and in the name of the County the day and year first above written.

VENDOR: WESTERN ROCK PRODUCTS, LLC

DocuSigned by:
by: Leighton Lunceford
B7DF22954C9B412...

Title: Sales

Date: 5/8/2023

COUNTY OF BENTON:

by:_____
Chairman,
Board of Benton County Commissioners

ATTEST:

_____
Clerk of the Board

Date_____

APPROVED AS TO FORM:

DocuSigned by:
LeeAnn Holt
D9A9308B67BB475...
LeeAnn Holt, Deputy Prosecuting Attorney

Date 5/8/2023

DocuSign Envelope ID: 98F2FC37-0016-4750-9283-4F019B78627E

APPENDIX A

OFFICE OF THE BENTON COUNTY ENGINEER
BENTON COUNTY, WASHINGTON

REQUEST FOR BIDS

BIDS FOR:	CB23-11 FURNISHING ROAD SURFACING MATERIALS.
BIDS RECEIVED:	THURSDAY, APRIL 27, 2023, AT 11:00 A.M., AT THE BENTON COUNTY PUBLIC SERVICES BUILDING, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON 99338. **NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME.**
BIDS OPENED:	THURSDAY, APRIL 27, 2023, AT 11:00 A.M., IN THE PUBLIC SERVICES BUILDING CONFERENCE ROOM, 102206 E. WISER PARKWAY, KENNEWICK, WASHINGTON.

1. INSTRUCTIONS:

Please state hereon, in the columns provided in the Proposal, the lowest price at which you will provide the articles specified. If you cannot supply one of the products requested in the proposal, please put N/A in the bid price line. Unsigned bids will not be considered.

The proposal shall be placed in a sealed envelope marked **"BIDS – ROAD SURFACING MATERIALS"** and delivered to Benton County Public Services Building at the location, date and time stated above. Bids shall be considered final at the time and date for receiving bids. The County will not accept any changes for any reason, including bidding errors. Use of the enclosed bid proposal is required. Only bids submitted on the official form will be considered. The bid shall not contain any unauthorized additions, deletions, alternate bids or conditions.

2. AWARD OF CONTRACT

The right is reserved by the Board of Benton County Commissioners to reject any or all quotes, to waive informalities in the bidding, and to make award of the business based on a fair appraisal of the competitive values offered and delivery time. The Board will not be bound necessarily by the low quote.

> "NOTE: This document and the materials enclosed herewith constitute an invitation to submit bids only and does not represent an offer by Benton County or the Benton County Engineer. Proposals submitted in response hereto shall constitute offers to contract with Benton County. Only upon the County's acceptance of such offer by award as provided herein, shall any contractual relations be created."

Should any discrepancies or omissions be found in the bid specifications, or doubt as to its meaning, bidder shall at once notify Danica Hope by telephone (509)783-1310 ext. 5665 or by email at procurement@co.benton.wa.us. Written instructions or addenda as required will be sent to all interested parties. All addenda issued shall be incorporated into the contract. The County shall not be held responsible for oral interpretations. Questions received less than forty-eight (48) hours before bid opening cannot be answered.

3. EXECUTION OF CONTRACT:

Successful bidder will be required to enter into a formal contract substantially similar to Exhibit A attached.

DocuSign Envelope ID: 98F2FC37-0016-4750-9283-4F019B78627E

4. PROPOSED PURCHASE:

Conforming to the requirements of the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction, 2023 edition, the purchase contemplated is set forth as follows:

Furnishing HOT MIX ASPHALT (HMA), ASPHALT FOR TACK COAT, COLD MIX, CRUSHED SURFACING BASE COURSE, CRUSHED SURFACING TOP COURSE and CRUSHER REJECTS (FINES) as required by the Benton County Public Works Department during the period from July 1, 2023, through June 30, 2024.

The prices listed shall be the bidder's current bid prices. If prices increase or decrease during the contract period, the vendor shall notify the Benton County Engineer in writing at least thirty (30) days prior to the effective change date. The notice shall include verifiable justification for price increases.

The County will give the vendors advanced notice of estimated quantities needed and will endeavor to place orders 48 hours prior to required delivery, except in emergencies.

The County may not be able to take continuous production depending on truck availability and travel distance. Every effort will be made to cooperate with vendor's scheduling requirements.

Pursuant to RCW 36.32.256, the County reserves the right to award the contract to more than one bidder, and to purchase material from a vendor other than the lowest bidder based upon the overall cost to the County. To determine the overall cost of a product to the County, the County will take its employees' hourly rate plus the hourly rate of the vehicle used to haul, times the anticipated haul time to and from the project site plus the cost of the material. This calculation shall be used to compare each vendor on each project. The lowest overall cost to the County will determine which vendor to purchase the product from for each project.

Address list of bidder's facilities:

Locust Grove Road Kennewick, Wa 99338

5. TAX PROVISIONS:

Washington State sales taxes will not be considered a part of the unit price. State sales tax will be added as a separate item on the invoice for each purchase.

Approved as to form:

DocuSigned by:
Reid Hay
7D2675FA0905430...

Reid Hay, Deputy Prosecuting Attorney

Date 3/29/2023

DocuSign Envelope ID: 98F2FC37-0016-4750-9283-4F019B78627E

PROPOSAL

ROAD SURFACING MATERIALS

VENDOR NAME: Western Rock Products

The undersigned hereby certifies that he/she has read the requirements and thoroughly understands the same and proposes as follows:

ITEM NO.	DESCRIPTION	PRICE PER TON/GAL. F.O.B. AT VENDOR'S PLANT
1	HMA CLASS 3/8"	$ N/A /Ton
2	HMA CLASS 1/2"	$ N/A /Ton
3a	ASPHALT FOR TACK COAT (CSS-1)	$ N/A /Ton
3b	ASPHALT FOR TACK COAT (CSS-1)	$ N/A /Gal.
4	COLD MIX	$ N/A /Ton
5	CRUSHED SURFACING BASE COURSE	$ $9.00 /Ton
6	CRUSHED SURFACING TOP COURSE	$ $9.00 /Ton
7	CRUSHER REJECTS (FINES)	$ N/A /Ton

ASSURANCE OF NON-DISCRIMINATION

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

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

DocuSign Envelope ID: 98F2FC37-0016-4750-9283-4F019B78627E

NON-COLLUSION DECLARATION

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

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

CONTRACTOR'S REGISTRATION NO. WESTERP791QK

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. 0002882191

DATED this 26 day of April, 2023.

VENDOR NAME: Western Rock Products

SIGNATURE OF AUTHORIZED OFFICIAL

Case Stedham, President
PRINT NAME AND TITLE

ADDRESS OF BIDDER: 3900 Industrial Way Lewiston, Id 83501

TELEPHONE NO.: (208) 743-4278 EMAIL: Office@wcilewiston.com

~PROPOSAL MUST BE SIGNED~

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Executing an Interlocal Cooperative Agreement with the Benton County Weed District #1 for General Equipment and Services
Presenter:	N/A
Prepared By:	D. Hope
Reviewed By:	Matt Mahoney & Procurement

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

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

Summary / Background Information

There is a desire to be able to share equipment and services with other public agencies when the need arises. Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment. Such an Interlocal has been prepared with the Benton County Weed District #1, has been reviewed and approved as to form by our Departmental Deputy Prosecuting Attorney, and signed by the Benton County Weed District #1.

Fiscal Impact

Amount: N/A

Fund: N/A

Recommendation

The County Engineer recommends the Board approve the proposed Interlocal Agreement for General Equipment and/or Services with the Benton County Weed District #1.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:

IN THE MATTER OF APPROVING AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE BENTON COUNTY WEED DISTRICT #1 AND BENTON COUNTY FOR GENERAL EQUIPMENT AND/OR SERVICES

WHEREAS, Chapters 36.01 and 36.32 RCW allows the Board to enter into agreements on behalf of Benton County; and

WHEREAS, Chapter 39.34 RCW allows public agencies in Washington State to enter into interlocal cooperative agreements for the joint use of services, personnel, materials, and equipment; and

WHEREAS, the Benton County Weed District #1 and Benton County desire to enter into an agreement for the sharing of services and equipment; and

WHEREAS, a proposed Interlocal, reviewed and approved as to form by the Benton County Prosecuting Attorney's Office, was signed by the Benton County Weed District #1; and

WHEREAS, the County Engineer recommends that the Board approve of and sign the proposed Agreement with the Benton County Weed District#1, finding such to be beneficial to Benton County; **NOW, THEREFORE,**

BE IT RESOLVED that the Board of County Commissioners concurs with the recommendation of the County Engineer and hereby approves of the proposed Interlocal Cooperative Agreement Between Benton County Weed District #1 and Benton County for General Equipment and/or Services; and

BE IT FURTHER RESOLVED that the Board of County Commissioners hereby authorizes the Chairman to sign said Agreement with the Benton County Weed District #1 on behalf of Benton County; and

BE IT FURTHER RESOLVED the Interlocal shall be effective on the last date signed and shall continue until terminated in writing by either party in accordance with Article VIII of the Interlocal Cooperative Agreement.

Dated this 6th day of June 2023.

_____
Chairman of the Board

_____
Chairman ProTem

_____
Commissioner

Constituting the Board of Commissioners
of Benton County, Washington

Attest._____
Clerk of the Board

Original: Procurement D. Hope

DocuSign Envelope ID: 7C70C590-D191-46FE-B72A-1A3C6CA5DFAC

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON AND BENTON COUNTY WEED DISTRICT NO. 1 FOR GENERAL EQUIPMENT AND/OR SERVICES THROUGH DEPARTMENT OF PUBLIC WORKS

THIS AGREEMENT is made and entered into by and between Benton County (Hereinafter "Benton") with its principal offices located at 620 Market Street, Prosser, Washington 99350, by and for the Benton County Public Works Department and the Benton County Weed District No. 1 (Hereinafter "Weed District No. 1"), with its principal offices located at 1121 Dudley Avenue, Prosser, Washington 99350, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

ARTICLE I
PURPOSE

1.01 ***PURPOSE.*** The purpose of this Agreement is to set forth the terms and conditions under which the Benton County Weed District No. 1 and Benton County may provide equipment and/or services to the other party; services rendered shall be with the coordination of both governing parties.

ARTICLE II
ADMINISTRATION AND ORGANIZATION

2.01 ***ADMINISTRATOR.*** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

2.02 Benton's representative shall be the Public Works Manager, or his/her authorized designee. The Public Works Manager shall be the signing authority for Benton for all task assignments pursuant to this Agreement.

2.03 The Weed District No. 1's representative shall be the Coordinator or his/her authorized designee.

2.04 This Agreement is entered into pursuant to RCW 39.34 as an interlocal agreement between the parties. Each party shall be solely responsible for all costs, materials, supplies and services necessary for their performance under the terms of this Agreement. All property and materials secured by each party in the performance of this Agreement shall remain the sole property of that party. All funding incident to the fulfillment of this Interlocal Agreement, shall be borne by each party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incident to this Interlocal Cooperation Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement.

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A copy of this Interlocal Agreement shall be filed with the Benton County Auditor or posted on the Benton County Weed District No. 1's website as provided by RCW 39.34.

ARTICLE III
DURATION AND RENEWAL OF AGREEMENT

3.01 ***DURATION AND RENEWAL***. This Agreement shall be effective when executed by both parties' authorized representatives and shall continue unless terminated in writing by either party.

3.02 ***SCOPE OF WORK.*** This Agreement shall provide for the use of labor, equipment and materials of one agency to perform work for the other agency. The exact scope of each task shall be defined through individual written task orders approved by both agencies as a supplement attached hereto and incorporated herein to this Agreement by reference.

ARTICLE IV
COMPENSATION

4.01 ***COMPENSATION***. The Weed District No. 1 hereby agrees to reimburse Benton for the costs of the work performed by Benton, based on the actual cost of labor; equipment rental; engineering; and/or materials used in the maintenance work involved; plus all costs for fringe benefits to labor, including, but not limited to: social security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. In addition thereto, indirect costs shall be added for overhead expenses for accounting, billing, and administrative services at the county's indirect rate used to bill administration. A certified statement of the costs shall be provided within thirty (30) days of service or equipment rental. The amount invoiced shall be paid to the Benton County Public Works Department within thirty (30) days of billing.

Benton hereby agrees to reimburse the Weed District No. 1 for the costs of the work performed by the Weed District No. 1, based on the actual cost of labor; equipment rental; engineering; and/or materials used in the maintenance work involved; plus all costs for fringe benefits to labor, including, but not limited to: social security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. In addition thereto, indirect costs shall be added for overhead expenses for accounting, billing, and administrative services at the Weed District No. 1's indirect rate used to bill administration. A certified statement of the costs shall be provided within thirty (30) days of service or equipment rental. The amount invoiced shall be paid to the Weed District No. 1 within thirty (30) days of billing.

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ARTICLE V
PERFORMANCE OF AGREEMENT

5.01 ***COMPLIANCE WITH ALL LAWS***. Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.

5.02 ***COMPLIANCE WITH STANDARDS AND SPECIFICATIONS***. All work shall be completed per the standards and specifications of the party owning the respective property. If there is no local standard or specification for the work to be performed, the acting party shall comply with WSDOT standards and specifications. If there is no WSDOT standard or specification, the acting party may complete the work as it would to its own property.

5.03 ***MAINTENANCE AND AUDIT OF RECORDS***. Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subjected to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other materials for the applicable retention period under federal and Washington law.

5.04 ***ON-SITE INSPECTIONS***. Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement, and in compliance with federal, state, and local laws, rules, regulations, and ordinances.

5.05 ***TREATMENT OF ASSETS AND PROPERTY***. No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

5.06 ***IMPROPER INFLUENCE***. Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

5.07 ***CONFLICT OF INTEREST***. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

5.08 ***ASSIGNMENT AND SUBCONTRACTING***. No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties' authorized representatives.

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5.09 ***NOTICE***. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to the Weed District No. 1 shall be to the Benton County Weed District No. 1's Coordinator, 1121 Dudley Avenue, Prosser, Washington 99350.

Notice to Benton for all purposes under this Agreement shall be to: Benton County Public Works Manager, 102206 Wiser Parkway, Kennewick, Washington 99338, and the Benton County Commissioners, 620 Market Street, Prosser, Washington 99350.

ARTICLE VI
INDEMNIFICATION

6.01 ***INDEMNIFICATION.*** Benton agrees to and shall defend, indemnify, and hold harmless the Weed District No. 1, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the Weed District No. 1, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of Benton, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the Weed District No. 1, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the Weed District No. 1 by reason of entering into this Agreement, except as expressly provided herein.

The Weed District No. 1 agrees to and shall defend, indemnify, and hold harmless Benton, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon Benton, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the Weed District No. 1, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of Benton, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to Benton by reason of entering into this Agreement, except as expressly provided herein.

ARTICLE VII
DISPUTES

7.01 ***TIME.*** Time is of the essence of this Agreement.

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7.02 ***GOVERNING LAW AND VENUE***. In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, the Weed District No. 1's Coordinator and the County Administrator shall first meet in a good faith attempt to resolve such dispute. In the event they are unable to resolve such dispute, either individually or with the assistance of a mediator, the dispute shall be resolved by arbitration pursuant to RCW 7.04A; with venue being placed in Benton County, Washington; with all parties waiving the right of a jury trial upon *de novo* appeal, if any; and the substantially prevailing party being awarded its attorney fees and costs as additional award and judgment against the other.

ARTICLE VIII
TERMINATION

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

ARTICLE IX
GENERAL PROVISIONS

9.01 ***CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS***. The Agreement may be changed, modified, amended, or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence, or omission and shall not constitute a waiver as to any other term or condition, or future act, occurrence, or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

Task assignments, insofar as they are considered changes, modifications, or amendments, shall be exempt from adoption by resolution of Benton's legislative authority, instead being adopted by signature of Benton County's Public Works Manager, per Item 2.02.

9.02 ***ASSIGNMENT***. Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract, or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

9.03 ***SEVERABILITY***. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

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9.04 ***ENTIRE AGREEMENT***. This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference will be attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

9.05 ***FILING***. This Agreement shall be filed pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____ , 2023.

APPROVED:

BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY, WASHINGTON

_____
Chair

_____
Chair Pro Tem

_____
Commissioner

APPROVED:

BENTON COUNTY WEED BOARD NO.1
BOARD OF DIRECTORS

_____
Chair

_____
Vice Chair

Absent
_____
Member

ATTEST:

By: _____
Clerk of the Board

APPROVED AS TO FORM:

By: DocuSigned by: _____
D9A9368B07BB475...
Deputy Prosecuting Attorney

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Execute contract with Interstate Concrete & Asphalt Co. d/b/a American Rock Products for C.E. 2137 SMP – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair
Presenter:	
Prepared By:	D. Hope
Reviewed By:	Procurement

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

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

Summary / Background Information

By Resolution 2023-400 dated May 23, 2023, an award was made to Interstate Concrete & Asphalt Co. d/b/a American Rock Products for the C.E. 2137 SMP – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair. As directed a contract has been prepared; and reviewed and approved as to form by our departmental assigned Deputy Prosecuting Attorney from the Civil Division; and has been executed by Interstate Concrete & Asphalt co. d/b/a American Rock Products.

Fiscal Impact

Amount: $5,085,590.00

Fund: Road Fund

Recommendation

It is recommended by the County Engineer that the Board authorize the Chairman to sign the contract with Interstate Concrete & Asphalt Co. d/b/a American Rock Products of Wapato Washington for C.E. 2137 SMP – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair Project.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS RE: AUTHORIZING THE CHAIRMAN TO SIGN THE CONTRACT WITH INTERSTATE CONCRETE AND ASPHALT CO. d/b/a AMERICAN ROCK PRODUCTS OF WAPATO, WASHINGTON FOR C.E. 2137 SMP – 2023 BITUMINOUS SURFACE TREATMENT, CRACK SEAL AND EDGE REPAIR

WHEREAS, by Resolution 2023-400 dated May 23, 2023, an award was made to Interstate Concrete & Asphalt Co. d/b/a American Rock Products, Wapato, Washington and as directed, staff has prepared a contract for Board approval; and

WHEREAS, our departmental assigned Deputy Prosecuting Attorney from the Civil Division has reviewed and approved as to form said contract; and

WHEREAS, the contract in the amount of $5,085,590.00 has been executed by Interstate Concrete & Asphalt Co. d/b/a American Rock Products; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract awarded May 23, 2023 to Interstate Concrete & Asphalt Co. d/b/a American Rock Products, in the amount of $5,085,590.00 plus any necessary Change Orders in accordance with Section 3.8 of the Benton County Procurement, Leasing and Contracting Policy per Resolution 2021-233 or any future amendments to said policy; and

BE IT FURTHER RESOLVED, that the County Engineer is hereby authorized to proceed with C.E. 2137 SMP – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair project according to the terms of the contract; and

BE IT FURTHER RESOLVED, the C.E. 2137 SMP – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair project shall be completed in its entirety within forty-five (45) working days as described in the contract documents.

Dated this 6th day of June 2023.

_____
Chairman

_____
Chairman Pro-Tem

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

Attest:_____
Clerk of the Board

Orig.: Procurement D. Hope
cc: Auditor, PA, Procurement, American Rock

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CONTRACT

THIS CONTRACT, made and entered into this 6 day of June, 2023, between the **COUNTY OF BENTON, STATE OF WASHINGTON**, (hereinafter "the County") acting through the Board of County Commissioners, under and by virtue of RCW 36, as amended, and **INTERSTATE CONCRETE & ASPHALT CO. d/b/a AMERICAN ROCK PRODUCTS**, (hereinafter "the Contractor").

WITNESSETH:

That in consideration of the terms and conditions contained herein and in the Contract Documents attached hereto and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall furnish all tools, materials, and equipment, and shall do all work described in and in accordance with the attached plans and specifications entitled "**Contract Provisions and Plans, C.E. 2137 S.M.P. – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair**," and as described in and in accordance with the State of Washington 2023 Standard Specifications for Road, Bridge, and Municipal Construction adopted by the County, (hereinafter collectively referred to as "the Contract Documents") which are by this reference incorporated herein and made part hereof, and shall perform any changes to the work in accord with the Contract Documents.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by the County.

II. The County hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same in accord with the attached plans and specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices at the time and in the manner and upon the conditions provided for in this contract. The County further agrees to employ the Contractor to perform any alterations in or additions to the work covered by this contract and every part thereof and any force account work that may be ordered and to pay for the same under the terms of this contract and the attached plans and specifications.

III. The Contractor, for himself, and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

IV. The County agrees to pay to the Contractor, as full and complete compensation for materials and work provided in accordance with the Contract Documents, the sum of five million eighty five thousand five hundred ninety dollars $5,085,590.00, payable as provided in the Contract Documents.

V. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

VI. The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorney fees thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractors acts, errors or omissions in the performance of this Contract. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the

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sole negligence of the County, its officers, officials, employees, or agents.

VII. The Contractor specifically waives the Contractor's immunity under Title 51 RCW (Industrial Insurance statute), and acknowledges that his waiver of immunity was mutually and expressly negotiated by the parties, and expressly agrees that Contractor's promise to indemnify and hold harmless applies to all claims filed by and/or injuries to the Contractor's own employees.

IN WITNESS WHEREOF, the said Contractor has executed this instrument, and the Board of County Commissioners of Benton County, Washington has caused this instrument to be executed by and in the name of the said Board of County Commissioners the day and year first above written.

Executed by the Contractor: Interstate Concrete & Asphalt Co. d/b/a American Rock Products

DocuSigned by:
Jeffrey Kyle Hopkins
B549E805DACB472...

Signature

Construction Manager

Title

5/30/2023

Date

COUNTY OF BENTON

Chairman, Board of Commissioners

Attest:

Clerk of the Board

Date

APPROVED AS TO FORM:

DocuSigned by:
LeeAnn Holt
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LeeAnn Holt, Benton County Deputy Prosecuting Attorney

5/26/2023

Date

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CONTRACT PROVISIONS AND PLANS

For Construction of:

2023 Bituminous Surface Treatment, Crack Seal and Edge Repair

C.E. 2137 S.M.P.

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: CB23-03

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OFFICE OF THE COUNTY ENGINEER
BENTON COUNTY
(Bid No. CB23-03)

CALL FOR BIDS:

Sealed bids for C.E. 2137 S.M.P. – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair, shall be received by the Benton County Engineer, Benton County Public Services Building, 102206 E. Wiser Parkway, Kennewick, Washington until **11:00 a.m., Local Time, May 4th, 2023.** NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME. Bids are to be opened on Thursday, May 4th, 2023, at 11:00 a.m., Local Time, in the Benton County Public Services Building, 102206 E. Wiser Parkway, Kennewick, Washington. Contractor's Bid Proposal shall include the complete proposal packet and the proposal bond, to be enclosed in a sealed envelope marked, "BID FOR 2023 BITUMINOUS SURFACE TREATMENT, CRACK SEAL AND EDGE REPAIR".

All bid proposals shall be accompanied by a bid proposal deposit as certified check, cashier check or proposal bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal deposit shall be forfeited to Benton County. The Board reserves the right to reject any or all bids and to waive informalities in the bidding. The award of contract, if made, will be approved by the Board of Benton County Commissioners, Benton County, Washington.

"NOTE: This document and the materials enclosed herewith constitute an invitation to submit bid proposals only and do not represent an offer by Benton County or the Benton County Engineer. Bid proposals submitted in response hereto shall constitute offers to contract with Benton County, and only upon the County's acceptance of such offer by bid award as provided herein, shall any contractual relations be created."

Complete digital project bidding documents are available at www.questcdn.com. Interested bidders may view the plans and specifications at no charge by signing up for an account and inputting Quest Project **#8422673** on the websites Projects Search Page. Firms who intend to submit a bid may download the digital plan documents, specifications, contract documents and bid proposal for twenty-two dollars ($22.00). Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership, registration, downloading, and working with this digital project information.

The following is applicable to all Benton County projects:

“The recipient, in accordance with Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

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CERTIFICATIONS

C.E. 2137 S.M.P.
2023 Bituminous Surface Treatment – Crack Seal
Area 7 and Edge Repair
Bid No. CB 23-03

ENGINEER'S CERTIFICATION:

As the Engineer in direct responsible charge of developing these contract provisions, I certify these provisions have been developed or incorporated into this project under my supervision or as a result of certified specifications provided by other licensed professionals.

APPROVED AS TO FORM:

The Call for Bids and Contract Provisions for the construction of C.E. 2137 - 2023 Bituminous Surface Treatment – Crack Seal Area 7 and Edge Repair have been reviewed and approved as to form:

DocuSigned by:
Eric Andrews
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Deputy Prosecuting Attorney

4/7/2023

Date

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SPECIAL PROVISIONS

INTRODUCTION TO THE SPECIAL PROVISIONS

(December 10, 2020 APWA GSP)

The work on this project shall be accomplished in accordance with the *Standard Specifications for Road, Bridge and Municipal Construction*, 2023 edition, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereafter "Standard Specifications"). The Standard Specifications, as modified or supplemented by these Special Provisions, all of which are made a part of the Contract Documents, shall govern all of the Work.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The project-specific Special Provisions are not labeled as such. The GSPs are labeled under the headers of each GSP, with the effective date of the GSP and its source. For example:

(March 8, 2013 APWA GSP)
(April 1, 2013 WSDOT GSP)
(March 12, 2014 Benton County GSP)
(******) Project Specific Special Provision

Also incorporated into the Contract Documents by reference are:

- *Manual on Uniform Traffic Control Devices for Streets and Highways*, currently adopted edition, with Washington State modifications, if any
- *Standard Plans for Road, Bridge and Municipal Construction*, WSDOT/APWA, current edition

Contractor shall obtain copies of these publications, at Contractor's own expense.

DIVISION 1
GENERAL REQUIREMENTS

DESCRIPTION OF WORK
(March 13, 1995 WSDOT GSP)

This contract provides for the improvement of *** all paved roads within Benton County BST Area #7, approximately 111.01 miles of Benton County roads, by means of Bituminous Surface Treatment; approximately 183.12 miles of Benton County Roads in Benton County Areas 1 and 7, by means of Crack Sealing; striping of said Benton County roads; and edge repair of 29.73 miles of roadway in Benton County Area 1*** and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.

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1-01.3 Definitions

(January 19, 2022 APWA GSP)

Delete the heading **Completion Dates** and the three paragraphs that follow it, and replace them with the following:

Dates

Bid Opening Date
The date on which the Contracting Agency publicly opens and reads the Bids.

Award Date
The date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive Bidder for the Work.

Contract Execution Date
The date the Contracting Agency officially binds the Agency to the Contract.

Notice to Proceed Date
The date stated in the Notice to Proceed on which the Contract time begins.

Substantial Completion Date
The day the Engineer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, any remaining traffic disruptions will be rare and brief, and only minor incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains for the Physical Completion of the total Contract.

Physical Completion Date
The day all of the Work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date.

Completion Date
The day all the Work specified in the Contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the Contract and required by law must be furnished by the Contractor before establishment of this date.

Final Acceptance Date
The date on which the Contracting Agency accepts the Work as complete.

Supplement this Section with the following:

All references in the Standard Specifications or WSDOT General Special Provisions, to the terms "Department of Transportation", "Washington State Transportation Commission", "Commission", "Secretary of Transportation", "Secretary", "Headquarters", and "State Treasurer" shall be revised to read "Contracting Agency".

All references to the terms "State" or "state" shall be revised to read "Contracting Agency" unless the reference is to an administrative agency of the State of Washington, a State statute or regulation, or the context reasonably indicates otherwise.

All references to "State Materials Laboratory" shall be revised to read "Contracting Agency designated location".

All references to "final contract voucher certification" shall be interpreted to mean the Contracting Agency form(s) by which final payment is authorized, and final completion and acceptance granted.

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Additive
A supplemental unit of work or group of bid items, identified separately in the Bid Proposal, which may, at the discretion of the Contracting Agency, be awarded in addition to the base bid.

Alternate
One of two or more units of work or groups of bid items, identified separately in the Bid Proposal, from which the Contracting Agency may make a choice between different methods or material of construction for performing the same work.

Business Day
A business day is any day from Monday through Friday except holidays as listed in Section 1-08.5.

Contract Bond
The definition in the Standard Specifications for "Contract Bond" applies to whatever bond form(s) are required by the Contract Documents, which may be a combination of a Payment Bond and a Performance Bond.

Contract Documents
See definition for "Contract".

Contract Time
The period of time established by the terms and conditions of the Contract within which the Work must be physically completed.

Notice of Award
The written notice from the Contracting Agency to the successful Bidder signifying the Contracting Agency's acceptance of the Bid Proposal.

Notice to Proceed
The written notice from the Contracting Agency or Engineer to the Contractor authorizing and directing the Contractor to proceed with the Work and establishing the date on which the Contract time begins.

Traffic
Both vehicular and non-vehicular traffic, such as pedestrians, bicyclists, wheelchairs, and equestrian traffic.

SECTION 1-02, BID PROCEDURES AND CONDITIONS

1-02.1, Prequalification of Bidders

Delete this Section and replace it with the following:

1-02.1, Qualifications of Bidder
(January 24, 2011 APWA GSP)

Before award of a public works contract, a bidder must meet at least the minimum qualifications of RCW 39.04.350(1) to be considered a responsible bidder and qualified to be awarded a public works project.

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1-02.2, Plans and Specifications
(September 14, 2021 BENTON GSP)

Delete this section and replace it with the following:

After award of the contract, plans and specifications will be issued to the Contractor at no cost as detailed below:

To Prime Contractor	No. of Sets	Basis of Distribution
Reduced plans (11" x 17")	*** 0 ***	Furnished automatically upon award.
Contract Provisions	*** 2 ***	Furnished automatically upon award.
Large plans (e.g., 22" x 34")	*** 0 ***	Furnished only upon request.

Additional plans and Contract Provisions may be obtained by the Contractor from the source stated in the Call for Bids, at the Contractor's own expense.

1-02.5 Proposal Forms
(July 31, 2017 APWA GSP)

Delete this section and replace it with the following:

The Proposal Form will identify the project and its location and describe the work. It will also list estimated quantities, units of measurement, the items of work, and the materials to be furnished at the unit bid prices. The bidder shall complete spaces on the proposal form that call for, but are not limited to, unit prices; extensions; summations; the total bid amount; signatures; date; and, where applicable, retail sales taxes and acknowledgment of addenda; the bidder's name, address, telephone number, and signature; the bidder's UDBE/DBE/M/WBE commitment, if applicable; a State of Washington Contractor's Registration Number; and a Business License Number, if applicable. Bids shall be completed by typing or shall be printed in ink by hand, preferably in black ink. The required certifications are included as part of the Proposal Form.

The Contracting Agency reserves the right to arrange the proposal forms with alternates and additives, if such be to the advantage of the Contracting Agency. The bidder shall bid on all alternates and additives set forth in the Proposal Form unless otherwise specified.

1-02.6 Preparation of Proposal
(December 10, 2020 APWA GSP, Option B)

Supplement the second paragraph with the following:

4. If a minimum bid amount has been established for any item, the unit or lump sum price must equal or exceed the minimum amount stated.
5. Any correction to a bid made by interlineation, alteration, or erasure, shall be initialed by the signer of the bid.

Delete the last two paragraphs, and replace them with the following:

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The Bidder shall submit with their Bid a completed Contractor Certification Wage Law Compliance form, provided by the Contracting Agency. Failure to return this certification as part of the Bid Proposal package will make this Bid Nonresponsive and ineligible for Award. A Contractor Certification of Wage Law Compliance form is included in the Proposal Forms.

The Bidder shall make no stipulation on the Bid Form, nor qualify the bid in any manner.

A bid by a corporation shall be executed in the corporate name, by the president or a vice president (or other corporate officer accompanied by evidence of authority to sign).

A bid by a partnership shall be executed in the partnership name, and signed by a partner. A copy of the partnership agreement shall be submitted with the Bid Form if any UDBE requirements are to be satisfied through such an agreement.

A bid by a joint venture shall be executed in the joint venture name and signed by a member of the joint venture. A copy of the joint venture agreement shall be submitted with the Bid Form if any UDBE requirements are to be satisfied through such an agreement.

1-02.6(1) Recycled Materials Proposal
(January 4, 2016 APWA GSP)

The Bidder shall submit with the Bid, its proposal for incorporating recycled materials into the project, using the form provided in the Contract Provisions.

1-02.7 Bid Deposit
(March 8, 2013 APWA GSP)

Supplement this section with the following:

Bid bonds shall contain the following:

1. Contracting Agency-assigned number for the project;
2. Name of the project;
3. The Contracting Agency named as obligee;
4. The amount of the bid bond stated either as a dollar figure or as a percentage which represents five percent of the maximum bid amount that could be awarded;
5. Signature of the bidder's officer empowered to sign official statements. The signature of the person authorized to submit the bid should agree with the signature on the bond, and the title of the person must accompany the said signature;
6. The signature of the surety's officer empowered to sign the bond and the power of attorney.

If so stated in the Contract Provisions, bidder must use the bond form included in the Contract Provisions.

If so stated in the Contract Provisions, cash will not be accepted for a bid deposit.

(March 12, 2014 Benton County GSP)
Revise the second sentence of this section to read:

This deposit may be certified check, cashier's check or a proposal bond (Surety bond).

Supplement this section with the following:

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Bidders wishing to submit a bid deposit in bond form shall use the Proposal Bond form included as part of the Proposal packet for this project.

1-02.9 Delivery of Proposal
(******)

Delete this section and replace it with the following:

Each Proposal shall be submitted in a sealed envelope, with the Project Name and Project Number as stated in the Call for Bids clearly marked on the outside of the envelope, or as otherwise required in the Bid Documents, to ensure proper handling and delivery.

Proposals that are received as required will be publicly opened and read as specified in Section 1-02.12. The Contracting Agency will not open or consider any Bid Proposal that is received after the time specified in the Call for Bids for receipt of Bid Proposals, or received in a location other than that specified in the Call for Bids. The Contracting Agency will not open or consider any "Supplemental Information" (DBE confirmations, or GFE documentation) that is received after the time specified above, or received in a location other than that specified in the Call for Bids.

If an emergency or unanticipated event interrupts normal work processes of the Contracting Agency so that Proposals cannot be received at the office designated for receipt of bids as specified in Section 1-02.12 the time specified for receipt of the Proposal will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which the normal work processes of the Contracting Agency resume.

1-02.10 Withdrawing, Revising, or Supplementing Proposal
(July 23, 2015 APWA GSP)

Delete this section, and replace it with the following:

After submitting a physical Bid Proposal to the Contracting Agency, the Bidder may withdraw, revise, or supplement it if:

1. The Bidder submits a written request signed by an authorized person and physically delivers it to the place designated for receipt of Bid Proposals, and
2. The Contracting Agency receives the request before the time set for receipt of Bid Proposals, and
3. The revised or supplemented Bid Proposal (if any) is received by the Contracting Agency before the time set for receipt of Bid Proposals.

If the Bidder's request to withdraw, revise, or supplement its Bid Proposal is received before the time set for receipt of Bid Proposals, the Contracting Agency will return the unopened Proposal package to the Bidder. The Bidder must then submit the revised or supplemented package in its entirety. If the Bidder does not submit a revised or supplemented package, then its bid shall be considered withdrawn.

Late revised or supplemented Bid Proposals or late withdrawal requests will be date recorded by the Contracting Agency and returned unopened. Mailed, emailed, or faxed requests to withdraw, revise, or supplement a Bid Proposal are not acceptable.

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1-02.13 Irregular Proposals

(December 30, 2022 APWA GSP)

Delete this section and replace it with the following:

1. A Proposal will be considered irregular and will be rejected if:
   a. The Bidder is not prequalified when so required;
   b. The authorized Proposal form furnished by the Contracting Agency is not used or is altered;
   c. The completed Proposal form contains any unauthorized additions, deletions, alternate Bids, or conditions;
   d. The Bidder adds provisions reserving the right to reject or accept the award, or enter into the Contract;
   e. A price per unit cannot be determined from the Bid Proposal;
   f. The Proposal form is not properly executed;
   g. The Bidder fails to submit or properly complete a subcontractor list (WSDOT Form 271-015), if applicable, as required in Section 1-02.6;
   h. The Bidder fails to submit or properly complete a Disadvantaged Business Enterprise Certification (WSDOT Form 272-056), if applicable, as required in Section 1-02.6;
   i. The Bidder fails to submit Written Confirmations (WSDOT Form 422-031) from each DBE firm listed on the Bidder's completed DBE Utilization Certification that they are in agreement with the bidder's DBE participation commitment, if applicable, as required in Section 1-02.6, or if the written confirmation that is submitted fails to meet the requirements of the Special Provisions;
   j. The Bidder fails to submit DBE Good Faith Effort documentation, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to demonstrate that a Good Faith Effort to meet the Condition of Award was made;
   k. The Bidder fails to submit a DBE Bid Item Breakdown (WSDOT Form 272-054), if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;
   l. The Bidder fails to submit DBE Trucking Credit Forms (WSDOT Form 272-058), if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;
   m. The Bid Proposal does not constitute a definite and unqualified offer to meet the material terms of the Bid invitation; or
   n. More than one Proposal is submitted for the same project from a Bidder under the same or different names.

2. A Proposal may be considered irregular and may be rejected if:
   a. The Proposal does not include a unit price for every Bid item;
   b. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the Contracting Agency;
   c. Receipt of Addenda is not acknowledged;
   d. A member of a joint venture or partnership and the joint venture or partnership submit Proposals for the same project (in such an instance, both Bids may be rejected); or
   e. If Proposal form entries are not made in ink.

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1-02.14 Disqualification of Bidders
(May 17, 2018 APWA GSP, Option A)

Delete this section and replace it with the following:

A Bidder will be deemed not responsible if the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1), as amended.

The Contracting Agency will verify that the Bidder meets the mandatory bidder responsibility criteria in RCW 39.04.350(1). To assess bidder responsibility, the Contracting Agency reserves the right to request documentation as needed from the Bidder and third parties concerning the Bidder's compliance with the mandatory bidder responsibility criteria.

If the Contracting Agency determines the Bidder does not meet the mandatory bidder responsibility criteria in RCW 39.04.350(1) and is therefore not a responsible Bidder, the Contracting Agency shall notify the Bidder in writing, with the reasons for its determination. If the Bidder disagrees with this determination, it may appeal the determination within two (2) business days of the Contracting Agency's determination by presenting its appeal and any additional information to the Contracting Agency. The Contracting Agency will consider the appeal and any additional information before issuing its final determination. If the final determination affirms that the Bidder is not responsible, the Contracting Agency will not execute a contract with any other Bidder until at least two business days after the Bidder determined to be not responsible has received the Contracting Agency's final determination.

1-02.15 Pre Award Information
(December 30, 2022 APWA GSP)

Revise this section to read:

Before awarding any contract, the Contracting Agency may require one or more of these items or actions of the apparent lowest responsible bidder:

1. A complete statement of the origin, composition, and manufacture of any or all materials to be used,
2. Samples of these materials for quality and fitness tests,
3. A progress schedule (in a form the Contracting Agency requires) showing the order of and time required for the various phases of the work,
4. A breakdown of costs assigned to any bid item,
5. Attendance at a conference with the Engineer or representatives of the Engineer,
6. Obtain, and furnish a copy of, a business license to do business in the city or county where the work is located.
7. Any other information or action taken that is deemed necessary to ensure that the bidder is the lowest responsible bidder.

SECTION 1-03, AWARD AND EXECUTION OF CONTRACT

1-03.1 Consideration of Bids
(December 30, 2022 APWA GSP)

Revise the first paragraph to read:

After opening and reading proposals, the Contracting Agency will check them for correctness of extensions of

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the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any bid item, the price per unit will control. If a minimum bid amount has been established for any item and the bidder's unit or lump sum price is less than the minimum specified amount, the Contracting Agency will unilaterally revise the unit or lump sum price, to the minimum specified amount and recalculate the extension. The total of extensions, corrected where necessary, including sales taxes where applicable and such additives and/or alternates as selected by the Contracting Agency, will be used by the Contracting Agency for award purposes and to fix the Awarded Contract Price amount and the amount of the contract bond.

1-03.1(1) Identical Bid Totals
(December 30, 2022 APWA GSP)

Revise this section to read:

After opening Bids, if two or more lowest responsive Bid totals are exactly equal, then the tie-breaker will be the Bidder with an equal lowest bid, that proposed to use the highest percentage of recycled materials in the Project, per the form submitted with the Bid Proposal. If those percentages are also exactly equal, then the tie-breaker will be determined by drawing as follows: Two or more slips of paper will be marked as follows: one marked "Winner" and the other(s) marked "unsuccessful". The slips will be folded to make the marking unseen. The slips will be placed inside a box. One authorized representative of each Bidder shall draw a slip from the box. Bidders shall draw in alphabetic order by the name of the firm as registered with the Washington State Department of Licensing. The slips shall be unfolded and the firm with the slip marked "Winner" will be determined to be the successful Bidder and eligible for Award of the Contract. Only those Bidders who submitted a Bid total that is exactly equal to the lowest responsive Bid, and with a proposed recycled materials percentage that is exactly equal to the highest proposed recycled materials amount, are eligible to draw.

1-03.3 Execution of Contract
(January 19, 2022 APWA GSP)

Revise this section to read:

Within 3 calendar days of Award date (not including Saturdays, Sundays and Holidays), the successful Bidder shall provide the information necessary to execute the Contract to the Contracting Agency. The Bidder shall send the contact information, including the full name, email address, and phone number, for the authorized signer and bonding agent to the Contracting Agency.

Copies of the Contract Provisions, including the unsigned Form of Contract, will be available for signature by the successful bidder on the first business day following award. The number of copies to be executed by the Contractor will be determined by the Contracting Agency.

Within 10 calendar days after the award date, the successful bidder shall return the signed Contracting Agency-prepared contract, an insurance certification as required by Section 1-07.18, a satisfactory bond as required by law and Section 1-03.4, the Transfer of Coverage form for the Construction Stormwater General Permit with sections I, III, and VIII completed when provided. Before execution of the contract by the Contracting Agency, the successful bidder shall provide any pre-award information the Contracting Agency may require under Section 1-02.15.

Until the Contracting Agency executes a contract, no proposal shall bind the Contracting Agency nor shall any work begin within the project limits or within Contracting Agency-furnished sites. The Contractor shall bear all risks for any work begun outside such areas and for any materials ordered before the contract is executed by the Contracting Agency.

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If the bidder experiences circumstances beyond their control that prevents return of the contract documents within the calendar days after the award date stated above, the Contracting Agency may grant up to a maximum of 10 additional calendar days for return of the documents, provided the Contracting Agency deems the circumstances warrant it.

1-03.4 Contract Bond
(July 23, 2015 APWA GSP)

Delete the first paragraph and replace it with the following:

The successful bidder shall provide executed payment and performance bond(s) for the full contract amount. The bond may be a combined payment and performance bond; or be separate payment and performance bonds. In the case of separate payment and performance bonds, each shall be for the full contract amount. The bond(s) shall:

1. Be on Contracting Agency-furnished form(s);
2. Be signed by an approved surety (or sureties) that:
    a. Is registered with the Washington State Insurance Commissioner, and
    b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,
3. Guarantee that the Contractor will perform and comply with all obligations, duties, and conditions under the Contract, including but not limited to the duty and obligation to indemnify, defend, and protect the Contracting Agency against all losses and claims related directly or indirectly from any failure:
    a. Of the Contractor (or any of the employees, subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform and comply with all contract obligations, conditions, and duties, or
    b. Of the Contractor (or the subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material person, or any other person who provides supplies or provisions for carrying out the work;
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the project under titles 50, 51, and 82 RCW; and
5. Be accompanied by a power of attorney for the Surety's officer empowered to sign the bond; and
6. Be signed by an officer of the Contractor empowered to sign official statements (sole proprietor or partner). If the Contractor is a corporation, the bond(s) must be signed by the president or vice president, unless accompanied by written proof of the authority of the individual signing the bond(s) to bind the corporation (i.e., corporate resolution, power of attorney, or a letter to such effect signed by the president or vice president).

1-03.7 Judicial Review
(December 30, 2022 APWA GSP)

Revise this section to read:

All decisions made by the Contracting Agency regarding the Award and execution of the Contract or Bid rejection shall be conclusive subject to the scope of judicial review permitted under Washington Law. Such review, if any, shall be timely filed in the Superior Court of the county where the Contracting Agency headquarters is located, provided that where an action is asserted against a county, RCW 36.01.050 shall control venue and jurisdiction.

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SECTION 1-04, SCOPE OF WORK

1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda

(December 30, 2022 APWA GSP)

Revise the second paragraph to read:

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Addenda,
2. Proposal Form,
3. Special Provisions,
4. Contract Plans,
5. Standard Specifications,
6. Contracting Agency's Standard Plans or Details (if any), and
7. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

1-04.4 Changes

(January 19, 2022 APWA GSP)

The first two sentences of the last paragraph of Section 1-04.4 are deleted.

1-04.6 Variation in Estimated Quantities

(May 25, 2006 APWA GSP)
Supplement this section with the following:

The quantities for Emulsified Asphalt CRS-2P, Emulsified Asphalt HFE-150, Crushed Surfacing Top Course From Stockpile SP-52 For Edge Repair, Aggregate From Stockpile SP-133 For BST, Aggregate From Stockpile SP-185 For BST, Aggregate From Stockpile SP-128 For BST, Aggregate From Stockpile SP-117 For BST, Crack Sealing – Ton, Paint Centerline, and Paint Edgeline have been entered into the Proposal only to provide a common proposal for bidders. Actual quantities will be determined in the field as the work progresses, and will be paid at the original bid price, regardless of final quantity. These bid items shall not be subject to the provisions of 1-04.6 of the Standard Specifications.

SECTION 1-05, CONTROL OF WORK

1-05.7, Removal of Defective and Unauthorized Work

(October 1, 2005 APWA GSP)
Supplement this section with the following:

If the Contractor fails to remedy defective or unauthorized work within the time specified in a written notice from the Engineer, or fails to perform any part of the work required by the Contract Documents, the Engineer may correct and remedy such work as may be identified in the written notice, with Contracting Agency forces or by such other means as the Contracting Agency may deem necessary.

If the Contractor fails to comply with a written order to remedy what the Engineer determines to be an emergency situation, the Engineer may have the defective and unauthorized work corrected immediately, have the rejected work removed and replaced, or have work the Contractor refuses to perform completed by using Contracting Agency or other forces. An emergency situation is any situation when, in the opinion of the Engineer, a delay in

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its remedy could be potentially unsafe, or might cause serious risk of loss or damage to the public.

Direct or indirect costs incurred by the Contracting Agency attributable to correcting and remedying defective or unauthorized work, or work the Contractor failed or refused to perform, shall be paid by the Contractor. Payment will be deducted by the Engineer from monies due, or to become due, the Contractor. Such direct and indirect costs shall include in particular, but without limitation, compensation for additional professional services required, and costs for repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of the Contractor's unauthorized work.

No adjustment in contract time or compensation will be allowed because of the delay in the performance of the work attributable to the exercise of the Contracting Agency's rights provided by this Section.

The rights exercised under the provisions of this section shall not diminish the Contracting Agency's right to pursue any other avenue for additional remedy or damages with respect to the Contractor's failure to perform the work as required.

1-05.11, Final Inspection
Delete this section and replace it with the following:

1-05.11, Final Inspections and Operational Testing
(October 1, 2005 APWA GSP)

1-05.11(1), Substantial Completion Date

When the Contractor considers the work to be substantially complete, the Contractor shall so notify the Engineer and request the Engineer establish the Substantial Completion Date. The Contractor's request shall list the specific items of work that remain to be completed in order to reach physical completion. The Engineer will schedule an inspection of the work with the Contractor to determine the status of completion. The Engineer may also establish the Substantial Completion Date unilaterally.

If, after this inspection, the Engineer concurs with the Contractor that the work is substantially complete and ready for its intended use, the Engineer, by written notice to the Contractor, will set the Substantial Completion Date. If, after this inspection the Engineer does not consider the work substantially complete and ready for its intended use, the Engineer will, by written notice, so notify the Contractor giving the reasons therefore. Upon receipt of written notice concurring in or denying substantial completion, whichever is applicable, the Contractor shall pursue vigorously, diligently and without unauthorized interruption, the work necessary to reach Substantial and Physical Completion. The Contractor shall provide the Engineer with a revised schedule indicating when the Contractor expects to reach substantial and physical completion of the work.

The above process shall be repeated until the Engineer establishes the Substantial Completion Date and the Contractor considers the work physically complete and ready for final inspection.

1-05.11(2), Final Inspection and Physical Completion Date

When the Contractor considers the work physically complete and ready for final inspection, the Contractor by written notice, shall request the Engineer to schedule a final inspection. The Engineer will set a date for final inspection. The Engineer and the Contractor will then make a final inspection and the Engineer will notify the Contractor in writing of all particulars in which the final inspection reveals the work incomplete or unacceptable. The Contractor shall immediately take such corrective measures as are necessary to remedy the listed deficiencies. Corrective work shall be pursued vigorously, diligently, and without interruption until physical completion of the listed deficiencies. This process will continue until the Engineer is satisfied the listed deficiencies have been corrected.

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If action to correct the listed deficiencies is not initiated within 7 days after receipt of the written notice listing the deficiencies, the Engineer may, upon written notice to the Contractor, take whatever steps are necessary to correct those deficiencies pursuant to Section 1-05.7. The Contractor will not be allowed an extension of contract time because of a delay in the performance of the work attributable to the exercise of the Engineer's right hereunder.

Upon correction of all deficiencies, the Engineer will notify the Contractor and the Contracting Agency, in writing, of the date upon which the work was considered physically complete. That date shall constitute the Physical Completion Date of the contract, but shall not imply acceptance of the work or that all the obligations of the Contractor under the contract have been fulfilled.

1-05.11(3), Operational Testing

It is the intent of the Contracting Agency to have at the Physical Completion Date a complete and operable system. Therefore when the work involves the installation of machinery or other mechanical equipment; street lighting, electrical distribution or signal systems; irrigation systems; buildings; or other similar work it may be desirable for the Engineer to have the Contractor operate and test the work for a period of time after final inspection but prior to the physical completion date. Whenever items of work are listed in the Contract Provisions for operational testing they shall be fully tested under operating conditions for the time period specified to ensure their acceptability prior to the Physical Completion Date. During and following the test period, the Contractor shall correct any items of workmanship, materials, or equipment which prove faulty, or that are not in first class operating condition. Equipment, electrical controls, meters, or other devices and equipment to be tested during this period shall be tested under the observation of the Engineer, so that the Engineer may determine their suitability for the purpose for which they were installed. The Physical Completion Date cannot be established until testing and corrections have been completed to the satisfaction of the Engineer.

The costs for power, gas, labor, material, supplies, and everything else needed to successfully complete operational testing, shall be included in the unit contract prices related to the system being tested, unless specifically set forth otherwise in the proposal.

Operational and test periods, when required by the Engineer, shall not affect a manufacturer's guaranties or warranties furnished under the terms of the contract.

1-05.13, Superintendents, Labor and Equipment of Contractor
(August 14, 2013 APWA GSP)

Delete the sixth and seventh paragraphs of this section.

1-05.15 Method of Serving Notices
(December 30, 2022 APWA GSP)

Revise the second paragraph to read:

> All correspondence from the Contractor shall be directed to the Project Engineer. All correspondence from the Contractor constituting any notification, notice of protest, notice of dispute, or other correspondence constituting notification required to be furnished under the Contract, must be in paper format, hand delivered or sent via mail delivery service to the Project Engineer's office. Electronic copies such as e-mails or electronically delivered copies of correspondence will not constitute such notice and will not comply with the requirements of the Contract.

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1-05.16, Water and Power
(October 1, 2005 APWA GSP)

The Contractor shall make necessary arrangements and shall bear the costs for power and water necessary for the performance of the work, unless the contract includes power and water as a pay item.

SECTION 1-06, CONTROL OF MATERIAL

1-06.6 Recycled Materials
(January 4, 2016 APWA GSP)

Delete this section, including its subsections, and replace it with the following:

The Contractor shall make their best effort to utilize recycled materials in the construction of the project. Approval of such material use shall be as detailed elsewhere in the Standard Specifications.

Prior to Physical Completion the Contractor shall report the quantity of recycled materials that were utilized in the construction of the project for each of the items listed in Section 9-03.21. The report shall include hot mix asphalt, recycled concrete aggregate, recycled glass, steel furnace slag and other recycled materials (e.g. utilization of on-site material and aggregates from concrete returned to the supplier). The Contractor's report shall be provided on DOT form 350-075 Recycled Materials Reporting.

SECTION 1-07, LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

1-07.1 Laws to be Observed
(October 1, 2005 APWA GSP)

Supplement this section with the following:

In cases of conflict between different safety regulations, the more stringent regulation shall apply.

The Washington State Department of Labor and Industries shall be the sole and paramount administrative agency responsible for the administration of the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA).

The Contractor shall maintain at the project site office, or other well-known place at the project site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish, and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the project site. Employees should not be permitted to work on the project site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.

The Contractor shall have sole responsibility for the safety, efficiency, and adequacy of the Contractor's plant, appliances, and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation. The Contractor shall be solely and completely responsible for the conditions of the project site, including safety for all persons and property in the performance of the work. This requirement shall apply continuously, and not be limited to normal working hours. The required or implied duty of the Engineer to conduct construction review of the Contractor's performance does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the project site.

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1-07.2, Sales Tax
Delete this section, including its sub-sections, in its entirety and replace it with the following:

1-07.2 State Sales Tax
(June 27, 2011 APWA GSP)

The Washington State Department of Revenue has issued special rules on the State sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contractor should contact the Washington State Department of Revenue for answers to questions in this area. The Contracting Agency will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

The Contractor shall include all Contractor-paid taxes in the unit bid prices or other contract amounts. In some cases, however, state retail sales tax will not be included. Section 1-07.2(2) describes this exception.

The Contracting Agency will pay the retained percentage (or release the Contract Bond if a FHWA-funded Project) only if the Contractor has obtained from the Washington State Department of Revenue a certificate showing that all contract-related taxes have been paid (RCW 60.28.051). The Contracting Agency may deduct from its payments to the Contractor any amount the Contractor may owe the Washington State Department of Revenue, whether the amount owed relates to this contract or not. Any amount so deducted will be paid into the proper State fund.

1-07.2(1), State Sales Tax — Rule 171

WAC 458-20-171, and its related rules, apply to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used primarily for foot or vehicular traffic. This includes storm or combined sewer systems within and included as a part of the street or road drainage system and power lines when such are part of the roadway lighting system. For work performed in such cases, the Contractor shall include Washington State Retail Sales Taxes in the various unit bid item prices, or other contract amounts, including those that the Contractor pays on the purchase of the materials, equipment, or supplies used or consumed in doing the work.

1-07.2(2), State Sales Tax — Rule 170

WAC 458-20-170, and its related rules, apply to the constructing and repairing of new or existing buildings, or other structures, upon real property. This includes, but is not limited to, the construction of streets, roads, highways, etc., owned by the state of Washington; water mains and their appurtenances; sanitary sewers and sewage disposal systems unless such sewers and disposal systems are within, and a part of, a street or road drainage system; telephone, telegraph, electrical power distribution lines, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system; and installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation.

For work performed in such cases, the Contractor shall collect from the Contracting Agency, retail sales tax on the full contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor. For this reason, the Contractor shall not include the retail sales tax in the unit bid item prices, or in any other contract amount subject to Rule 170, with the following exception.

Exception: The Contracting Agency will not add in sales tax for a payment the Contractor or a subcontractor makes on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid item prices or in any other contract amount.

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1-07.2(3), Services

The Contractor shall not collect retail sales tax from the Contracting Agency on any contract wholly for professional or other services (as defined in Washington State Department of Revenue Rules 138 and 244).

1-07.2(1), State Sales Tax
(******)
Supplement this section with the following:

The mineral aggregate source for Benton County Roads is stockpiled in a County owned/leased stockpile site for public road purposes and, therefore, the provisions of Section 1-07.2(1) of these specifications apply. For purposes of Washington State Use Tax, the values of the aggregate listed in **Bid Item 5, "Crushed Surfacing Top Course From Stockpile SP-52 For Edge Repair" is $5.63 per c.y.; for Bid Item 6, "Aggregate From Stockpile SP-133 For BST", is $10.24 per c.y.; for Bid Item 7, "Aggregate From Stockpile SP-185 For BST", is $10.68 per c.y.; for Bid Item 8, "Aggregate From Stockpile SP-128 For BST" is $5.82 per c.y.; and for Bid Item 9, "Aggregate From Stockpile SP-117 For BST" is $2.15 per c.y.** The Contractor shall verify with the Department of Revenue what taxes are to be paid.

1-07.14, Responsibility for Damage
(******)

Supplement this section with the following:

All references to the term "WSDOT" in this section shall be revised to read "Contracting Agency." All references to "Risk Management Office, PO Box 47418, Olympia, WA 98504-7418" shall be revised to read "Benton County Risk Management Office, 7122 W. Okanogan Place, Bldg. A, Kennewick WA 99336."

1-07.18 Public Liability and Property Damage Insurance

Delete this section in its entirety, and replace it with the following:

1-07.18 Insurance
(December 30, 2022 APWA GSP)

1-07.18(1) General Requirements

A. The Contractor shall procure and maintain the insurance described in all subsections of section 1-07.18 of these Special Provisions, from insurers with a current A. M. Best rating of not less than A-: VII and licensed to do business in the State of Washington. The Contracting Agency reserves the right to approve or reject the insurance provided, based on the insurer's financial condition.

B. The Contractor shall keep this insurance in force without interruption from the commencement of the Contractor's Work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated below.

C. If any insurance policy is written on a claims-made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the

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Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

D. The Contractor's Automobile Liability, Commercial General Liability and Excess or Umbrella Liability insurance policies shall be primary and non-contributory insurance as respects the Contracting Agency's insurance, self-insurance, or self-insured pool coverage. Any insurance, self-insurance, or self-insured pool coverage maintained by the Contracting Agency shall be excess of the Contractor's insurance and shall not contribute with it.

E. The Contractor shall provide the Contracting Agency and all additional insureds with written notice of any policy cancellation, within two business days of their receipt of such notice.

F. The Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by the Contracting Agency

G. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the Contracting Agency may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.

H. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made.

1-07.18(2) Additional Insured

All insurance policies, with the exception of Workers Compensation, and of Professional Liability and Builder's Risk (if required by this Contract) shall name the following listed entities as additional insured(s) using the forms or endorsements required herein:

- the Contracting Agency and its officers, elected officials, employees, agents, and volunteers

The above-listed entities shall be additional insured(s) for the full available limits of liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract, and irrespective of whether the Certificate of Insurance provided by the Contractor pursuant to 1-07.18(4) describes limits lower than those maintained by the Contractor.

For Commercial General Liability insurance coverage, the required additional insured endorsements shall be at least as broad as ISO forms CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

1-07.18(3) Subcontractors

The Contractor shall cause each subcontractor of every tier to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors.

The Contractor shall ensure that all subcontractors of every tier add all entities listed in 1-07.18(2) as additional insureds, and provide proof of such on the policies as required by that section as detailed in 1-07.18(2) using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

Upon request by the Contracting Agency, the Contractor shall forward to the Contracting Agency evidence of insurance and copies of the additional insured endorsements of each subcontractor of every tier as required in 1-07.18(4) Verification of Coverage.

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1-07.18(4) Verification of Coverage

The Contractor shall deliver to the Contracting Agency a Certificate(s) of Insurance and endorsements for each policy of insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work. Failure of Contracting Agency to demand such verification of coverage with these insurance requirements or failure of Contracting Agency to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the Contracting Agency to be equivalent.
2. Copies of all endorsements naming Contracting Agency and all other entities listed in 1-07.18(2) as additional insured(s), showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.

Upon request by the Contracting Agency, the Contractor shall forward to the Contracting Agency a full and certified copy of the insurance policy(s). If Builders Risk insurance is required on this Project, a full and certified copy of that policy is required when the Contractor delivers the signed Contract for the work.

1-07.18(5) Coverages and Limits

The insurance shall provide the minimum coverages and limits set forth below. Contractor's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Contracting Agency's recourse to any remedy available at law or in equity.

All deductibles and self-insured retentions must be disclosed and are subject to approval by the Contracting Agency. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the Contractor. In the event an additional insured incurs a liability subject to any policy's deductibles or self-insured retention, said deductibles or self-insured retention shall be the responsibility of the Contractor.

1-07.18(5)A Commercial General Liability

Commercial General Liability insurance shall be written on coverage forms at least as broad as ISO occurrence form CG 00 01, including but not limited to liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage.

The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement.

Contractor shall maintain Commercial General Liability Insurance arising out of the Contractor's completed operations for at least three years following Substantial Completion of the Work.

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Such policy must provide the following minimum limits:

$ 1,000,000	Each Occurrence
$ 2,000,000	General Aggregate
$ 2,000,000	Products & Completed Operations Aggregate
$ 1,000,000	Personal & Advertising Injury each offence
$ 1,000,000	Stop Gap / Employers' Liability each accident

1-07.18(5)B Automobile Liability

Automobile Liability shall cover owned, non-owned, hired, and leased vehicles; and shall be written on a coverage form at least as broad as ISO form CA 00 01. If the work involves the transport of pollutants, the automobile liability policy shall include MCS 90 and CA 99 48 endorsements.

Such policy must provide the following minimum limit:

$1,000,000	Combined single limit each accident

1-07.18(5)C Workers' Compensation

The Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

1-07.24, Rights of Way

(July 23, 2015 APWA GSP)

Delete this section in its entirety, and replace it with the following:

Street Right of Way lines, limits of easements, and limits of construction permits are indicated in the Plans. The Contractor's construction activities shall be confined within these limits, unless arrangements for use of private property are made.

Generally, the Contracting Agency will have obtained, prior to bid opening, all rights of way and easements, both permanent and temporary, necessary for carrying out the work. Exceptions to this are noted in the Bid Documents or will be brought to the Contractor's attention by a duly issued Addendum.

Whenever any of the work is accomplished on or through property other than public Right of Way, the Contractor shall meet and fulfill all covenants and stipulations of any easement agreement obtained by the Contracting Agency from the owner of the private property. Copies of the easement agreements may be included in the Contract Provisions or made available to the Contractor as soon as practical after they have been obtained by the Engineer.

Whenever easements or rights of entry have not been acquired prior to advertising, these areas are so noted in the Plans. The Contractor shall not proceed with any portion of the work in areas where right of way, easements or rights of entry have not been acquired until the Engineer certifies to the Contractor that the right of way or easement is available or that the right of entry has been received. If the Contractor is delayed due to acts of omission on the part of the Contracting Agency in obtaining easements, rights of entry or right of way, the Contractor will be entitled to an extension of time. The Contractor agrees that such delay shall not be a breach of contract.

Each property owner shall be given 48 hours notice prior to entry by the Contractor. This includes entry onto easements and private property where private improvements must be adjusted.

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The Contractor shall be responsible for providing, without expense or liability to the Contracting Agency, any additional land and access thereto that the Contractor may desire for temporary construction facilities, storage of materials, or other Contractor needs. However, before using any private property, whether adjoining the work or not, the Contractor shall file with the Engineer a written permission of the private property owner, and, upon vacating the premises, a written release from the property owner of each property disturbed or otherwise interfered with by reasons of construction pursued under this contract. The statement shall be signed by the private property owner, or proper authority acting for the owner of the private property affected, stating that permission has been granted to use the property and all necessary permits have been obtained or, in the case of a release, that the restoration of the property has been satisfactorily accomplished. The statement shall include the parcel number, address, and date of signature. Written releases must be filed with the Engineer before the Completion Date will be established.

The Contractor shall be responsible for providing, without expense or liability to the Contracting Agency, any additional land and access thereto that the Contractor may desire for temporary construction facilities, storage of materials, or other Contractor needs. However, before using any private property, whether adjoining the work or not, the Contractor shall file with the Engineer a written permission of the private property owner, and, upon vacating the premises, a written release from the property owner of each property disturbed or otherwise interfered with by reasons of construction pursued under this contract. The statement shall be signed by the private property owner, or proper authority acting for the owner of the private property affected, stating that permission has been granted to use the property and all necessary permits have been obtained or, in the case of a release, that the restoration of the property has been satisfactorily accomplished. The statement shall include the parcel number, address, and date of signature. Written releases must be filed with the Engineer before the Completion Date will be established.

SECTION 1-08, PROSECUTION AND PROGRESS

Add the following new section:

1-08.0, Preliminary Matters

(May 25, 2006 APWA GSP)

Add the following new section:

1-08.0(1), Preconstruction Conference

(October 10, 2008 APWA GSP)

Prior to the Contractor beginning the work, a preconstruction conference will be held between the Contractor, the Engineer and such other interested parties as may be invited. The purpose of the preconstruction conference will be:

1. To review the initial progress schedule;
2. To establish a working understanding among the various parties associated or affected by the work;
3. To establish and review procedures for progress payment, notifications, approvals, submittals, etc.;
4. To establish normal working hours for the work;
5. To review safety standards and traffic control; and
6. To discuss such other related items as may be pertinent to the work.

The Contractor shall prepare and submit at the preconstruction conference the following:

1. A breakdown of all lump sum items;

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2. A preliminary schedule of working drawing submittals; and
3. A list of material sources for approval if applicable.

Add the following new section:

1-08.0(2) Hours of Work
(December 8, 2014 APWA GSP)

Except in the case of emergency or unless otherwise approved by the Engineer, the normal working hours for the Contract shall be any consecutive 8-hour period between 7:00 a.m. and 6:00 p.m. Monday through Friday, exclusive of a lunch break. If the Contractor desires different than the normal working hours stated above, the request must be submitted in writing prior to the preconstruction conference, subject to the provisions below. The working hours for the Contract shall be established at or prior to the preconstruction conference.

All working hours and days are also subject to local permit and ordinance conditions (such as noise ordinances).

If the Contractor wishes to deviate from the established working hours, the Contractor shall submit a written request to the Engineer for consideration. This request shall state what hours are being requested, and why. Requests shall be submitted for review no later than 48 hours prior to the day(s) the Contractor is requesting to change the hours.

If the Contracting Agency approves such a deviation, such approval may be subject to certain other conditions, which will be detailed in writing. For example:

1. On non-Federal aid projects, requiring the Contractor to reimburse the Contracting Agency for the costs in excess of straight-time costs for Contracting Agency representatives who worked during such times. (The Engineer may require designated representatives to be present during the work. Representatives who may be deemed necessary by the Engineer include, but are not limited to: survey crews; personnel from the Contracting Agency's material testing lab; inspectors; and other Contracting Agency employees or third party consultants when, in the opinion of the Engineer, such work necessitates their presence.)
2. Considering the work performed on Saturdays, Sundays, and holidays as working days with regard to the contract time.
3. Considering multiple work shifts as multiple working days with respect to contract time even though the multiple shifts occur in a single 24-hour period.
4. If a 4-10 work schedule is requested and approved the non working day for the week will be charged as a working day.
5. If Davis Bacon wage rates apply to this Contract, all requirements must be met and recorded properly on certified payroll

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1-08.1(7)A Payment Certification
(December 30, 2022 APWA GSP)

Delete this section.

1-08.3, General Requirements

1-08.3(2)A Type A Progress Schedule
(December 30, 2022 APWA GSP)

Revise this section to read:

The Contractor shall submit 1 copies of a Type A Progress Schedule no later than at the preconstruction conference, or some other mutually agreed upon submittal time. The schedule may be a critical path method (CPM) schedule, bar chart, or other standard schedule format. Regardless of which format used, the schedule shall identify the critical path. The Engineer will evaluate the Type A Progress Schedule and approve or return the schedule for corrections within 15 calendar days of receiving the submittal.

1-08.4 Prosecution of Work
Delete this section in its entirety, and replace it with the following:

1-08.4 Notice to Proceed and Prosecution of Work
(July 23, 2015 APWA GSP)

Notice to Proceed will be given after the contract has been executed and the contract bond and evidence of insurance have been approved and filed by the Contracting Agency. The Contractor shall not commence with the work until the Notice to Proceed has been given by the Engineer. The Contractor shall commence construction activities on the project site within ten days of the Notice to Proceed Date, unless otherwise approved in writing. The Contractor shall diligently pursue the work to the physical completion date within the time specified in the contract. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the work within the time(s) specified in the contract.

When shown in the Plans, the first order of work shall be the installation of high visibility fencing to delineate all areas for protection or restoration, as described in the Contract. Installation of high visibility fencing adjacent to the roadway shall occur after the placement of all necessary signs and traffic control devices in accordance with 1-10.1(2). Upon construction of the fencing, the Contractor shall request the Engineer to inspect the fence. No other work shall be performed on the site until the Contracting Agency has accepted the installation of high visibility fencing, as described in the Contract.

(******)

Notice to Proceed Date

A Notice to Proceed Date for this project shall be given on or after May 22, 2023.

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1-08.5 Time for Completion

(December 30, 2022 APWA GSP, Option A)

Revise the third and fourth paragraphs to read:

Contract time shall begin on the first working day following the Notice to Proceed Date.

Each working day shall be charged to the contract as it occurs, until the contract work is physically complete. If substantial completion has been granted and all the authorized working days have been used, charging of working days will cease. Each week the Engineer will provide the Contractor a statement that shows the number of working days: (1) charged to the contract the week before; (2) specified for the physical completion of the contract; and (3) remaining for the physical completion of the contract. The statement will also show the nonworking days and all partial or whole days the Engineer declares as unworkable The statement will be identified as a Written Determination by the Engineer. If the Contractor does not agree with the Written Determination of working days, the Contractor shall pursue the protest procedures in accordance with Section 1-04.5. By failing to follow the procedures of Section 1-04.5, the Contractor shall be deemed as having accepted the statement as correct. If the Contractor is approved to work 10 hours a day and 4 days a week (a 4-10 schedule) and the fifth day of the week in which a 4-10 shift is worked would ordinarily be charged as a working day then the fifth day of that week will be charged as a working day whether or not the Contractor works on that day.

Revise the sixth paragraph to read:

The Engineer will give the Contractor written notice of the completion date of the contract after all the Contractor's obligations under the contract have been performed by the Contractor. The following events must occur before the Completion Date can be established:

1. The physical work on the project must be complete; and
2. The Contractor must furnish all documentation required by the contract and required by law, to allow the Contracting Agency to process final acceptance of the contract. The following documents must be received by the Project Engineer prior to establishing a completion date:
    a. Certified Payrolls (per Section 1-07.9(5)).
    b. Material Acceptance Certification Documents
    c. Monthly Reports of Amounts Credited as DBE Participation, as required by the Contract Provisions.
    d. Final Contract Voucher Certification
    e. Copies of the approved "Affidavit of Prevailing Wages Paid" for the Contractor and all Subcontractors
    f. A copy of the Notice of Termination sent to the Washington State Department of Ecology (Ecology); the elapse of 30 calendar days from the date of receipt of the Notice of Termination by Ecology; and no rejection of the Notice of Termination by Ecology. This requirement will not apply if the Construction Stormwater General Permit is transferred back to the Contracting Agency in accordance with Section 8-01.3(16).
    g. Property owner releases per Section 1-07.24

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(March 13, 1995 WSDOT GSP)
Supplement this section with the following:

This project shall be physically completed within *** **45** *** working days.

1-08.9 Liquidated Damages
(March 3, 2021 APWA GSP, Option A)

Replace Section 1-08.9 with the following:

Time is of the essence of the Contract. Delays inconvenience the traveling public, obstruct traffic, interfere with and delay commerce, and increase risk to Highway users. Delays also cost tax payers undue sums of money, adding time needed for administration, engineering, inspection, and supervision.

Accordingly, the Contractor agrees:

1. To pay liquidated damages in the amount of *** $1,200.00 *** for each working day beyond the number of working days established for Physical Completion, and

2. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

When the Contract Work has progressed to Substantial Completion as defined in the Contract, the Engineer may determine the Contract Work is Substantially Complete. The Engineer will notify the Contractor in writing of the Substantial Completion Date. For overruns in Contract time occurring after the date so established, liquidated damages identified above will not apply. For overruns in Contract time occurring after the Substantial Completion Date, liquidated damages shall be assessed on the basis of direct engineering and related costs assignable to the project until the actual Physical Completion Date of all the Contract Work. The Contractor shall complete the remaining Work as promptly as possible. Upon request by the Project Engineer, the Contractor shall furnish a written schedule for completing the physical Work on the Contract.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract.

SECTION 1-09, MEASUREMENT AND PAYMENT

1-09.9 Payments
(December 30, 2022 APWA GSP)

Section 1-09.9 is revised to read:

The basis of payment will be the actual quantities of Work performed according to the Contract and as specified for payment.

The Contractor shall submit a breakdown of the cost of lump sum bid items at the Preconstruction Conference, to enable the Project Engineer to determine the Work performed on a monthly basis. A

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breakdown is not required for lump sum items that include a basis for incremental payments as part of the respective Specification. Absent a lump sum breakdown, the Project Engineer will make a determination based on information available. The Project Engineer's determination of the cost of work shall be final.

Progress payments for completed work and material on hand will be based upon progress estimates prepared by the Engineer. A progress estimate cutoff date will be established at the preconstruction conference.

The initial progress estimate will be made not later than 30 days after the Contractor commences the work, and successive progress estimates will be made every month thereafter until the Completion Date. Progress estimates made during progress of the work are tentative, and made only for the purpose of determining progress payments. The progress estimates are subject to change at any time prior to the calculation of the final payment.

The value of the progress estimate will be the sum of the following:

1. Unit Price Items in the Bid Form — the approximate quantity of acceptable units of work completed multiplied by the unit price.
2. Lump Sum Items in the Bid Form — based on the approved Contractor's lump sum breakdown for that item, or absent such a breakdown, based on the Engineer's determination.
3. Materials on Hand — 100 percent of invoiced cost of material delivered to Job site or other storage area approved by the Engineer.
4. Change Orders — entitlement for approved extra cost or completed extra work as determined by the Engineer.

Progress payments will be made in accordance with the progress estimate less:

1. Retainage per Section 1-09.9(1), on non FHWA-funded projects;
2. The amount of progress payments previously made; and
3. Funds withheld by the Contracting Agency for disbursement in accordance with the Contract Documents.

Progress payments for work performed shall not be evidence of acceptable performance or an admission by the Contracting Agency that any work has been satisfactorily completed. The determination of payments under the contract will be final in accordance with Section 1-05.1.

Failure to perform obligations under the Contract by the Contractor may be decreed by the Contracting Agency to be adequate reason for withholding any payments until compliance is achieved.

Upon completion of all Work and after final inspection (Section 1-05.11), the amount due the Contractor under the Contract will be paid based upon the final estimate made by the Engineer and presentation of a Final Contract Voucher Certification to be signed by the Contractor. The Contractor's signature on such voucher shall be deemed a release of all claims of the Contractor unless a Certified Claim is filed in accordance with the requirements of Section 1-09.11 and is expressly excepted from the Contractor's certification on the Final Contract Voucher Certification. The date the Contracting Agency signs the Final Contract Voucher Certification constitutes the final acceptance date (Section 1-05.12).

If the Contractor fails, refuses, or is unable to sign and return the Final Contract Voucher Certification or any other documentation required for completion and final acceptance of the Contract, the Contracting Agency reserves the right to establish a Completion Date (for the purpose of meeting the requirements of RCW 60.28) and unilaterally accept the Contract. Unilateral final acceptance will occur only after the

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Contractor has been provided the opportunity, by written request from the Engineer, to voluntarily submit such documents. If voluntary compliance is not achieved, formal notification of the impending establishment of a Completion Date and unilateral final acceptance will be provided by email with delivery confirmation from the Contracting Agency to the Contractor, which will provide 30 calendar days for the Contractor to submit the necessary documents. The 30 calendar day period will begin on the date the email with delivery confirmation is received by the Contractor. The date the Contracting Agency unilaterally signs the Final Contract Voucher Certification shall constitute the Completion Date and the final acceptance date (Section 1-05.12). The reservation by the Contracting Agency to unilaterally accept the Contract will apply to Contracts that are Physically Completed in accordance with Section 1-08.5, or for Contracts that are terminated in accordance with Section 1-08.10. Unilateral final acceptance of the Contract by the Contracting Agency does not in any way relieve the Contractor of their responsibility to comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect the Work under the Contract.

Payment to the Contractor of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

1-09.11(3) Time Limitation and Jurisdiction
(December 30, 2022 APWA GSP)

Revise this section to read:

For the convenience of the parties to the Contract it is mutually agreed by the parties that all claims or causes of action which the Contractor has against the Contracting Agency arising from the Contract shall be brought within 180 calendar days from the date of final acceptance (Section 1-05.12) of the Contract by the Contracting Agency; and it is further agreed that all such claims or causes of action shall be brought only in the Superior Court of the county where the Contracting Agency headquarters is located, provided that where an action is asserted against a county, RCW 36.01.050 shall control venue and jurisdiction. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to all such claims or causes of action. It is further mutually agreed by the parties that when claims or causes of action which the Contractor asserts against the Contracting Agency arising from the Contract are filed with the Contracting Agency or initiated in court, the Contractor shall permit the Contracting Agency to have timely access to all records deemed necessary by the Contracting Agency to assist in evaluating the claims or action.

1-09.13, Claims Resolution

1-09.13(1) General
(January 19, 2022 APWA GSP)

Revise this section to read:

Prior to seeking claims resolution through arbitration or litigation, the Contractor shall proceed in accordance with Sections 1-04.5 and 1-09.11. The provisions of Sections 1-04.5 and 1-09.11 must be complied with in full as a condition precedent to the Contractor's right to seek claim resolution through binding arbitration or litigation.

Any claims or causes of action which the Contractor has against the Contracting Agency arising from the Contract shall be resolved, as prescribed herein, through binding arbitration or litigation.

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The Contractor and the Contracting Agency mutually agree that those claims or causes of action which total $1,000,000 or less, which are not resolved by mediation, shall be resolved through litigation unless the parties mutually agree in writing to resolve the claim through binding arbitration.

The Contractor and the Contracting Agency mutually agree that those claims or causes of action in excess of $1,000,000, which are not resolved by mediation, shall be resolved through litigation unless the parties mutually agree in writing to resolve the claim through binding arbitration.

1-09.13(3)A Arbitration General
(January 19, 2022 APWA GSP)

Revise the third paragraph to read:

The Contracting Agency and the Contractor mutually agree to be bound by the decision of the arbitrator, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court of the county in which the Contracting Agency's headquarters is located, provided that where claims subject to arbitration are asserted against a county, RCW 36.01.050 shall control venue and jurisdiction of the Superior Court. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

1-09.13(4) Venue for Litigation
(December 30, 2022 APWA GSP)

Revise this section to read:

Litigation shall be brought in the Superior Court of the county in which the Contracting Agency's headquarters is located, provided that where claims are asserted against a county, RCW 36.01.050 shall control venue and jurisdiction of the Superior Court. It is mutually agreed by the parties that when litigation occurs, the Contractor shall permit the Contracting Agency to have timely access to all records deemed necessary by the Contracting Agency to assist in evaluating the claims or action.

1-10, TEMPORARY TRAFFIC CONTROL

1-10.2, Traffic Control Management

1-10.2(1) General
Section 1-10.2(1) is supplemented with the following:

(January 10, 2022)
The Traffic Control Supervisor shall be certified by one of the following:

The Northwest Laborers-Employers Training Trust
27055 Ohio Ave.
Kingston, WA 98346
(360) 297-3035
https://www.nwlett.edu

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Evergreen Safety Council
12545 135th Ave. NE
Kirkland, WA 98034-8709
1-800-521-0778
https://www.esc.org

The American Traffic Safety Services Association
15 Riverside Parkway, Suite 100
Fredericksburg, Virginia 22406-1022
Training Dept. Toll Free (877) 642-4637
Phone: (540) 368-1701
https://altssa.com/training

Integrity Safety
13912 NE 20th Ave.
Vancouver, WA 98686
(360) 574-6071
https://www.integritysafety.com

US Safety Alliance
(904) 705-5660
https://www.ussafetyalliance.com

K&D Services Inc.
2719 Rockefeller Ave.
Everett, WA 98201
(800) 343-4049
https://www.kndservices.net

1-10.2(2), Traffic Control Plans
(******)

Supplement this section with the following:

The Contractor shall submit a traffic control plan prior to commencing operations. The plan is to be used as a guide only and each roadway shall be reviewed for placement of applicable signs.

1-10.3, Traffic Control Labor, Procedures, and Devices

1-10.3(1), Traffic Control Labor
(******)

Supplement this section with the following:

Traffic control required for this contract shall include furnishing, installation and maintenance of all Temporary Class B construction signs, Pilot Vehicles, and all associated flagging for Benton County roads.

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1-10.3(2), Traffic Control Procedures
(******)

Supplement this section with the following:

Pilot cars shall be utilized for work on Badger Road and Dallas Road. The contract may elect to utilize pilot cars on other roads at their discretion. All costs for providing pilot cars shall be included in the lump sum bid for Traffic Control.

DIVISION 2
EARTHWORK

2-11 TRIMMING AND CLEANUP

2-11.3 Construction Requirements
(******)
This section is supplemented with the following:

7. The Contractor shall remove all sealant material that is applied as a part of this project which is splashed or tracked onto curbs, gutters, sidewalks, bridge rails, sign posts, or any other non-roadway surfaces. The contractor shall also be required to clean or replace pavement striping that is damaged by tracking or placement of sealant material due to excessive material application, spills, insufficient cure times before opening to traffic, or any other contractor operations.

8. The Contractor shall remove all sealant material from all utility lids, survey monuments, monument cases and grates and shall ensure that access to private driveways and roads is maintained.

9. The Contractor shall remove all sealant containers and other debris generated by their operations and dispose of them properly.

2-11.4 Measurement
(******)
This Section is revised to read:

There will be no measurement for trimming and clean up.

2-11.5 Payment
(******)
This Section is revised to read:

There will be no separate payment for trimming and clean up. All costs associated with this work shall be included in the unit contract price for "Crack Sealing-Ton", per ton per section 5-04.4

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DIVISION 3
AGGREGATE PRODUCTION AND ACCEPTANCE

SECTION 3-02, STOCKPILING AGGREGATES

3-02.2, General Requirements

3-02.2(7), Removing Aggregates From Stockpiles
(******)

Supplement this section with the following:

County Furnished Material Sources
The following sources of stockpiled material shall be used for this project.

Stockpile Site SP-133, Finley Stockpile, is the source for Aggregate From Stockpile For BST. Finley Stockpile site is located in Section 3, Township 7 North, Range 30 East, W.M. The location of this stockpile site is shown on the Benton County map included in the contract plans

Stockpile Site SP-117, Badger Stockpile, is the source for Aggregate From Stockpile For BST. Badger Stockpile site is located in Section 12, Township 8 North, Range 27 East, W.M. The location of the stockpile site is shown on the Benton County map included in the contract plans.

Stockpile Site SP-128, Travis Stockpile, is the source for Aggregate From Stockpile For BST. Badger Stockpile site is located in Section 32, Township 8 North, Range 27 East, W.M. The location of the stockpile site is shown on the Benton County map included in the contract plans.

Stockpile Site SP-185, C. Moore Stockpile, is the source for Aggregate From Stockpile For BST. Badger Stockpile site is located in Section 17, Township 8 North, Range 27 East, W.M. The location of the stockpile site is shown on the Benton County map included in the contract plans.

Stockpile Site SP-52, Cherry Lane Stockpile, is the source for Crushed Surfacing Top Course From Stockpile for Edge Repair. Cherry Lane Stockpile site is located in Section 30, Township 9 North, Range 25 East, W.M. The location of the stockpile site is shown on the Benton Couny map included in the contract plans.

Operation in Stockpile
The Contractor shall keep the entrance roads to all stockpile sites, haul roads within the stockpile areas, and the 3/8" - #10 stockpiles wetted down during BST operations.

3-02.4, Measurement
(******)

Supplement this section with the following:

"Aggregate From Stockpile SP-117 For BST", "Aggregate From Stockpile SP-128 For BST", "Aggregate From Stockpile SP-185 For BST", "Aggregate From Stockpile SP-133 for BST" and "Crushed Surfacing Top Course From Stockpile SP-52 For Edge Repair" shall be measured by the cubic yard. The Engineer will Survey the Stockpiles Prior to work beginning and after work has completed.

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3-02.5, Payment
(******)

Supplement this section with the following:

All equipment, tools, and labor necessary to load, haul, place, and compact the aggregate for Benton County Roads shall be paid for as follows:

"Aggregate From Stockpile SP-117 For BST", per c.y. "Aggregate From Stockpile SP-128 For BST", per c.y. "Aggregate From Stockpile SP-185 For BST", per c.y. "Aggregate From Stockpile SP-133 For BST", per c.y. "Crushed Surfacing Top Course From Stockpile SP-52 For Edge Repair", per c.y.

DIVISION 5
SURFACE TREATMENTS AND PAVEMENTS

SECTION 5-02, BITUMINOUS SURFACE TREATMENTS

5-02.3, Construction Requirements

5-02.3(2)B, Seal Coats
(******)

Supplement this section with the following:

Pavement Repair
Benton County maintenance forces will have their pavement repair; crack seal, road patches, and pre-leveling completed prior to the Notice to Proceed Date.

Power Brooming
All roads listed on the Benton County Road lists shall be power broomed, by the Contractor, prior to BST or edge repair placement. The Contractor shall wet roadways within residential areas prior to any power brooming operations. During all power brooming operations, the Contractor shall provide a "Follow" vehicle equipped with signs and warning lights to alert traffic of their operations.

5-02.3(3), Application of Asphalt Emulsion and Aggregate
(******)

Supplement this section with the following:

The grade of emulsified asphalt to be used for bituminous surface treatment (BST) Seal Coats shall be

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*** CRS-2P ***.

The grade of emulsified asphalt to be used for bituminous surface treatment Edge Repair shall be ***HFE-150***

(******)

Delete the existing "Application Rate" table and add the following "Application Rate" table, under "Seal Coats," on page 5-13:

	Undiluted Emulsified Asphalt (gal. per sq.yd.) Applied	Aggregate Size	Aggregate Application Rate (lbs. per sq. yd.)
3/8 inch – No. 10	0.35 – 0.45	3/8 inch – No. 10	20-30
Crushed Surfacing Top Course	0.45	3/4 Inch Minus	30-35

Rates shall apply to all County Roads unless directed otherwise by County Personnel.

5-02.3(5), Application of Aggregates
(******)

Revise the fourth paragraph to read:

A minimum of two pneumatic tired rollers and one steel drum roller (static mode) providing a minimum of two complete coverages to the Roadway immediately behind the spreading equipment for the course aggregate shall be required.

Supplement this section with the following:

Post Power and Pickup Brooming
All roads listed on the Benton County Road list for BST shall be power broomed, by the Contractor within 24 hours of BST placement. Where lawns or hard surfaced driveways are adjacent to the roadway, the Contractor shall broom material in a method that rock will not enter adjacent lawns or hard surfaced driveways. Rock entering adjacent lawns or hard surfaced driveways due to power brooming operations shall be removed by the Contractor at their own expense. During all power brooming operations, the Contractor shall provide a pilot vehicle equipped with signs and warning lights to alert traffic of their operations.

All roads listed on the Benton County Road list for Edge Repair shall be power broomed, by the Contractor seven (7) days after completion of Edge Repair placement. Where lawns or hard surfaced driveways are adjacent

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to the roadway, the Contractor shall broom material in a method that rock will not enter adjacent lawns or hard surfaced driveways. Rock entering adjacent lawns or hard surfaced driveways due to power brooming operations shall be removed by the Contractor at their own expense. During all power brooming operations, the Contractor shall provide a pilot vehicle equipped with signs and warning lights to alert traffic of their operations.

All roads listed on the Benton County Road list marked for Pickup Broom or including curb and gutter shall be swept with a pickup broom by the Contractor. Materials from pickup brooming shall become the property of the Contractor and they shall dispose of these materials in accordance with Section 2-03.3(7)C as amended.

5-02.4, Measurement
(******)

Supplement this section with the following:

Average Pavement Width
Widths shown on the road lists for Benton County are average widths only. The actual widths, widenings, and intersections will be adjusted in the field and paid for at the unit contract prices for the bid items involved.

5-02.5, Payment
(December 2, 2014 Benton County GSP)

Supplement this section with the following:

All costs to perform power and pickup brooming for Benton County shall be included in the unit contract prices for the various bid items of work.

5-04 HOT MIX ASPHALT

5-04.2 Materials
(******)
This section is supplemented with the following:

Joint Sealants 9-04.2

Hot Poured sealant for bituminous pavement shall meet the requirements of ASTM D6690 Type II.

5-04.3 Construction Requirements

5-04.3(4)A Crack Sealing

5-04.3(4)A1 General
(*****)
Revise the first paragraph to read:

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When the Proposal includes a pay item for crack sealing, seal all cracks between ¼ inch and 1-½ inches in width, excepting areas where alligator cracking creates cells that are 4 inches across or less as marked by the engineer.

Supplement the second paragraph of this section with the following:

The Contractor shall remove all loose debris generated by cleaning or otherwise from the roadway before the sealing operation begins. The Contractor shall control their cleaning operation to ensure that debris from the crack being cleaned do not contaminate cracks already cleaned, contaminate cracks already sealed or cause damage to passing vehicles or surrounding property.

The Contractor shall arrange their cleaning and application operation such that cleaning of the cracks occurs immediately in front of the application of sealant. All cracks that are cleaned shall be sealed within one hour, except cracks cleaned by hot air blasting, which shall be sealed within ten (10) minutes of cleaning. Traffic shall not be permitted to cross over cracks that have been cleaned.

Revise the first sentence of the fourth paragraph to read:

Hot Poured Sealant: Cracks of the width and character described in paragraph one of this section shall be sealed using hot poured sealant material meeting the requirements of Section 9-04.2 (1) and the manufacturer's recommendations.

Supplement the fourth paragraph of this section with:

The Contractor shall provide equipment sized appropriately to maintain the sealant within the manufacturers recommended temperature range throughout the project. The equipment shall continuously agitate the sealant to ensure uniform temperature distribution.

Crack sealant shall not be applied when the road surface or crack is wet, precipitation is imminent or the road surface temperature is not at least 40°F and rising. Sealant shall be placed directly in the crack, starting at one end and proceeding in one continuous motion to the other end of the crack. Sealant shall be applied from the bottom of the crack to the top. Sealant shall be level with the existing pavement surface when complete. Overfilling of cracks shall be avoided. Excess sealant material shall be struck or squeegeed off to provide a smooth surface.

The Engineer will periodically check adhesion by pulling up cooled sealant. Unbonded sealant shall be removed and the crack shall be resealed.

The Contractor shall prevent traffic from crossing sealed cracks until the sealant material has cured. The contractor may apply a De-tack material compatible with the sealant in order to open roads to traffic sooner. De-tack materials shall be approved by the Engineer prior to use and applied per the manufacturer's instructions.

5-04.3(4)A3 Crack Sealing Areas Not to be Paved

(******)

Revise this section to read: In areas where HMA will not be placed, fill the cracks as follows:

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1. Cracks 1/4 inch to 1 1/2 inch in width – fill with hot poured sealant.

2. Cracks greater than 1 1/2 inch in width – do not fill.

5-04.4 Measurement
(******)
Supplement this section with the following:

"Crack Sealing-Ton" will be measured by the ton.

5-04.5 Payment
(******)
Revise the tenth and eleventh paragraphs to read:

"Crack Sealing-Ton", by the ton
"Crack Sealing" will be paid for by the ton. Payment shall be full cost for the completed work including crack cleaning, crack sealing, striking off excess sealant and de-tack material. The quantities shown on the Bid Proposal are estimates and are for the purpose of providing a common proposal for all bidders. Actual quantities shall be determined in the field, by the Engineer, as the work progresses.

DIVISION 8
MISCELLANEOUS CONSTRUCTION

SECTION 8-22, PAVEMENT MARKING

8-22.1, Description
(******)

Supplement this section with the following:

This work consists of pavement marking with the following approximate quantities:

BST / EDGE REPAIR - STRIPING TOTALS (MILES)						
"Paint Centerline" - Yellow					"Paint Edgeline" - White	
Skip	Double No Pass	Right No Pass	Left No Pass	Two-Way Left Turn	Continuous 4"	Continuous 8"
48.33	19.87	11.47	10.77	0.94	128.88	0.73
Total Center Line					Total Edge Line	
91.38					129.61	

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8-22.4, Measurement
(December 2, 2014 Benton County GSP)

Revise the first paragraph to read:

Lines will be measured by the mile as "Paint Centerline" and "Paint Edgeline". No deduction will be made for unmarked area when the marking includes a broken line.

8-22.5, Payment
(******)

Supplement this section with the following:

"Paint Centerline", per mile.
"Paint Edgeline", per mile.

SECTION 8-23, TEMPORARY PAVEMENT MARKINGS

8-23.1, Description
(******)

Supplement this section with the following:

The Contractor shall furnish and install temporary pavement markers on County Roads where pavement markings have been covered or removed. The Contractor shall also install temporary pavement markers on County culvert crossings, which shall be marked with a perpendicular hatch in white paint on the pavement edge.

8-23.4, Measurement
(December 2, 2014 Benton County GSP)

Revise this section with the following:

There will be no measurement for temporary pavement markings.

8-23.5, Payment
(******)

Revise this section to read:

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All costs for Temporary Pavement Markings – Short Term shall be incidental to the cost of respective permanent pavement markings in Section 8-22.

APPENDICES
(*January 2, 2012 WSDOT GSP*)

The following appendix is attached and made a part of this contract:

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APPENDIX A:
Wage Rates – Washington State

APPENDIX B:
Benton County Road Listings and Area Maps

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WAGE RATES

APPENDIX A:

STATE WAGE RATES

For Construction of:

2023 Bituminous Surface Treatment, Crack Seal and Edge Repair

CE 2137 S.M.P

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: CB23-03

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APPENDIX A

REQUIRED CONTRACT PROVISIONS - STATE DEPARTMENT OF LABOR AND INDUSTRIES

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

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

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

> The Department of Labor & Industries prevailing wage rate website is http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm
>
> The effective date to use is May 4th, 2023.
>
> 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 Public Works Department, 620 Market Street, Prosser, WA or at the Public Services Building, 102206 Wiser Parkway, Kennewick, WA Monday through Friday, between 8:00 a.m. & noon and between 1:00 p.m. & 5:00 p.m. except holidays.

The Public Works Department will mail a hard copy of the wage rates upon request. We can be reached at (509)786-5611 or (509)736-3084 or by email at publicworks@co.benton.wa.us

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BENTON COUNTY ROAD LISTINGS AND MAPS

APPENDIX B:

2023 Bituminous Surface Treatment, Crack Seal and Edge Repair

C.E. 2137 S.M.P.

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: CB23-03

BITUMINOUS SURFACE TREATMENT SEAL COAT 3/8" - #10
BENTON COUNTY ROADS AREA #7 MAP A
Asphalt application rate of 0.35 gal/sq yd

Rd. No.	Art Acc	ROAD NAME	From	To	Length (Miles)	Width (Ft)	(Sq Yd)	CRS-2P (Ton)	Pickup Broom
11640	R	01ST PL, SE	DOYLE PL	MASON ST	0.23	28	3,778	6.30	
11680	R	02ND AVE, SE	15 ft before DOYLE PL	MASON ST	0.23	28	3,778	6.30	
11660	R	03RD AVE, SE	MITCHELL ST	PLYMOUTH RD	0.44	29	7,486	12.48	
74910	R	15TH PL	CUL-D-SAC	CUL-D-SAC	0.19	28	3,121	5.20	X
72170	R	16TH AVE	CITY LIMITS	ELM PL	0.24	28	3,942	6.57	X
75800	ART	27TH AVE	CITY LIMITS	GUM ST	0.41	38	9,140	15.23	X
16430	R	ANDERSON RD, SW	SR-221	END 25 FT WIDTH	0.83	25	12,173	20.29	
16430	R	ANDERSON RD, SW	BEGIN 22 FT WIDTH	SELLARDS RD	0.01	22	129	0.22	
19350	R	ARCHIE PRIOR RD	BEGIN COUNTY RD	TRAVIS RD	0.33	25	4,840	8.07	
19910	Art	BADGER CANYON RD	BEGIN PAVEMENT	END 22' WIDTH	0.16	22	2,065	3.44	
19910	Art	BADGER CANYON RD	BEGIN 28' WIDTH	BADGER RD	0.32	28	5,257	8.76	
19910	Art	BADGER CANYON RD	SELLARDS RD	END PAVEMENT	0.13	26	1,983	3.30	
19910	R	BADGER CANYON RD	BEGIN PAVEMENT	SELLARDS RD	1.14	26	17,389	28.98	
55100	Art	BADGER RD	WEBBER CANYON RD	END 26' WIDTH	0.82	26	12,508	20.85	
55100	Art	BADGER RD	BEGIN 28' WIDTH	BADGER CANYON RD	5.12	28	84,105	140.17	
55100	Art	BADGER RD	BADGER CANYON RD	COUNTY/CITY LIMITS	5.77	28	94,782	157.97	
55300	R	BRANDON DR	BEGIN OF ROAD	KASE BLVD	0.57	24	8,026	13.38	X
55290	R	BROOKLYN DR	BEGIN OF ROAD	COTTONWOOD SPRINGS	0.24	24	3,379	5.63	X
50182	R	CAMERON LN	REATA RD	COULEE VISTA DR	0.07	24	986	1.64	X
55340	R	CANYONVIEW DR	KASE BLVD	KASE BLVD	0.52	24	7,322	12.20	X
72150	R	CEDAR ST	50' SOUTH OF 16TH AVE	15TH AVE	0.12	28	1,971	3.29	X
16520	R	CEMETERY	750' WEST OF TRAVIS	225' EAST OF TRAVIS	0.18	24	2,534	4.22	
11100	Art	CHRISTY RD	PLYMOUTH RD	M.P. 1.34	1.34	25	19,653	32.76	
11100	Art	CHRISTY RD	M.P. 1.34	M.P. 2.59	1.25	24	17,600	29.33	
11100	Art	CHRISTY RD	M.P. 2.59	M.P. 5.22	2.63	22	33,945	56.57	
11100	Art	CHRISTY RD	M.P. 5.22	SR 14	2.24	27	35,482	59.14	
55350	R	CLEARVIEW LN	SUMMITVIEW DR	SAGEBRUSH RD	0.44	24	6,195	10.33	X
55360	R	CLEARVIEW LP	SUMMITVIEW DR	SUMMITVIEW DR	0.18	24	2,534	4.22	X
18430	R	CLODIUS RD	SELLARDS RD	RADIUS	0.01	30	176	0.29	
18430	R	CLODIUS RD	END RADIUS	END PAVEMENT	0.11	20	1,291	2.15	
55150	U	COTTONWOOD DR	BADGER ROAD	SAGEBRUSH RD	1.75	25	25,711	42.85	X
55250	R	COTTONWOOD SPRINGS	COTTONWOOD DR	CANYON VIEW DR	0.75	24	10,560	17.60	X
55250	R	COULEE VISTA DR	REATA RD	END OF OIL	0.96	24	13,517	22.53	X
11110	Art	COUNTY WELL RD	SR-221	GOULD RD	0.11	33	2,130	3.55	
11110	Art	COUNTY WELL RD	GOULD RD	M.P. 6.91	6.80	26	103,723	172.87	
11110	Art	COUNTY WELL RD	M.P. 6.91	M.P. 7.08	0.17	28	2,793	4.65	
11110	Art	COUNTY WELL RD	M.P. 7.08	WEBBER CANYON RD	0.19	32	3,567	5.94	
50950	T	DALLAS RD	BADGER RD	END COUNTY/BEG STATE	1.30	29	22,117	36.86	
50950	T	DALLAS RD	PR 210 (M.P. 3.19)	PR 669 (M.P. 3.49)	0.30	28	4,928	8.21	
12010	R	DAY ST	PATERSON AVE	PRIOR AVE	0.08	24	1,126	1.88	

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BITUMINOUS SURFACE TREATMENT SEAL COAT 3/8" - #10
BENTON COUNTY ROADS AREA #7 MAP A

11670	R	DOYLE PL	01ST PL, SE	02ND AVE, SE	0.04	28	657	1.10	
72060	R	ELM PL	16TH AVE	15TH AVE	0.07	28	1,150	1.92	X
50690	U	FAIRVIEW LP	SUMMITVIEW DR	SUMMITVIEW DR	0.28	24	3,942	6.57	X
50690	R	FAIRVIEW LP	SUMMITVIEW DR	SUMMITVIEW DR	0.28	24	3,942	6.57	X
50181	R	FESCUE LN	REATA RD	COULEE VISTA DR	0.08	24	1,126	1.88	X
50150	R	GOOSE GAP RD	KID CANAL	DALLAS	1.32	29	22,458	37.43	
50150	R	GOOSE GAP RD	DALLAS	END COUNTY RD	0.04	29	681	1.13	
55470	R	GRAND BLUFF LP	COULEE VISTA DR	REATA RD	0.88	24	12,390	20.65	X
50450	U	GRANDVIEW LN	SUMMITVIEW DR	SAGEBRUSH RD	0.63	24	8,870	14.78	X
50450	R	GRANDVIEW LN	END OF OIL	SAGEBRUSH RD	0.87	24	12,250	20.42	X
16200	R	GWINN RD	SR-221	M.P. 1.77	1.77	25	25,960	43.27	
16200	R	GWINN RD	M.P. 1.77	M.P. 1.86	0.09	32	1,690	2.82	
16200	R	GWINN RD	M.P. 1.86	END COUNTY ROAD	0.20	25	2,933	4.89	
55390	R	HEATHER DR	COTTONWOOD CREEK	COTTONWOOD CREEK	0.29	24	4,083	6.81	X
19980	R	HENSON RD	TRAVIS RD	END PAVEMENT	0.02	28	329	0.55	
55280	R	HILLVIEW DR	COTTONWOOD SPRINGS	COTTONWOOD DR	0.23	24	3,238	5.40	X
55490	R	JANELLE LN	REATA RD	COULEE VISTA DR	0.13	24	1,830	3.05	X
55270	R	KAITLYN DR	END OF OIL	COTTONWOOD SPRINGS	0.17	24	2,394	3.99	X
55330	R	KASE BLVD	END OF OIL	COTTONWOOD DR	0.50	24	7,040	11.73	X
11200	R	KASH LP	COTTONWOOD DR	COTTONWOOD DR	0.59	24	8,307	13.85	X
11200	R	KENT RD	SR-14	END 38' WIDTH	0.07	38	1,561	2.60	
11200	R	KENT RD	BEGIN 26' WIDTH	30 ft N of UPRR-XING	0.65	26	9,915	16.52	
50183	R	LANDON LN	GRAND BLUFF LP	COULEE VISTA DR	0.15	24	2,112	3.52	X
55320	R	LILLIAN DR	END OF OIL	COTTONWOOD SPRINGS	0.24	24	3,379	5.63	X
11070	R	LONGLEY RD	BEGIN COUNTY ROAD	CHRISTY RD	0.01	22	181	0.30	
11080	R	MARCUM DR	BEGIN COUNTY ROAD	CHRISTY RD	0.02	24	211	0.35	
12050	R	MASON ST	CHRISTY RD	03RD AVE, SE	0.14	28	2,300	3.83	
40120	R	MCNARY CT	SR 14	RADIUS	0.02	28	329	0.55	
40120	R	MCNARY CT	END RADIUS	END COUNTY RD	0.35	18	3,696	6.16	
40100	R	MCNARY RD	I-82 STATE LIMITS	M.P. 0.51	0.51	29	8,677	14.46	
40100	R	MCNARY RD	M.P. 0.51	M.P. 1.55	1.04	18	10,982	18.30	
11630	R	MITCHELL ST	CHRISTY RD	03RD AVE, SE	0.16	24	2,253	3.75	
55380	R	NICOLE DR	COTTONWOOD SPRINGS	COTTONWOOD SPRINGS	0.24	24	3,379	5.63	X
48910	ART	NINE CANYON ROAD	1000 SOUTH OF BECK RD	SR-397	5.86	28	96,260	160.43	
11850	R	NUNN ST	CHRISTY RD	03RD AVE, SE	0.15	30	2,640	4.40	
11650	R	OLIVE ST	CHRISTY RD	03RD AVE, SE	0.15	28	2,464	4.11	
12020	R	PATERSON AVE	SR-221	RADIUS	0.02	26	305	0.51	
12020	R	PATERSON AVE	END RADIUS	DAY ST	0.25	22	3,227	5.38	
11060	R	PAULS WAY	BEGIN COUNTY ROAD	CHRISTY RD	0.02	24	324	0.54	
11210	R	PLYMOUTH INDUST RD	BEGIN COUNTY ROAD	M.P. 0.10	0.10	26	1,525	2.54	
11210	R	PLYMOUTH INDUST RD	M.P. 0.10	SR-14	0.02	28	329	0.55	
11050	Art	PLYMOUTH RD	CHRISTY RD	03RD AVE, SE	0.13	60	4,576	7.63	
11050	Art	PLYMOUTH RD	03RD AVE, SE	SR 14 LIMITS	0.56	28	9,199	15.33	
11050	Art	PLYMOUTH RD	SR 14 LIMITS	H. SMITH	8.85	29	150,568	250.95	

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BITUMINOUS SURFACE TREATMENT SEAL COAT 3/8" - #10
BENTON COUNTY ROADS AREA #7 MAP A

11050	Art	PLYMOUTH RD	H. SMITH	SELLARDS RD	4.14	28	68,006	113.34	
11050	R	PLYMOUTH RD	CORPS OF ENGINEERS BNDRY	CHRISTY RD	0.13	60	4,576	7.63	
11690	R	PLYMOUTH ST	CHRISTY RD	03RD AVE, SE	0.16	28	2,628	4.38	
12000	R	PRIOR AVE	PATERSON SCHOOL	SR-221	0.27	28	4,435	7.39	
12000	R	PRIOR AVE	SR-221	DAY ST	0.26	22	3,356	5.59	
50180	U	REATA RD	DALLAS RD	SAGEBRUSH RD	1.58	26	24,100	40.17	X
55260	R	RIDGEVIEW DR	END OF OIL	HILLVIEW DR	0.54	24	7,603	12.67	X
55370	R	RIDGEVIEW LN	END OF OIL	SUMMITVIEW DR	0.24	24	3,379	5.63	X
50340	U	SAGEBRUSH RD	REATA RD	GRANDVIEW LN	0.21	24	2,957	4.93	X
50340	U	SAGEBRUSH RD	GRANDVIEW LN	SUMMITVIEW DR	0.96	27	15,206	25.34	X
50340	U	SAGEBRUSH RD	SUMMITVIEW DR	BERMUDA RD	0.23	25	3,373	5.62	X
50340	U	SAGEBRUSH RD	BERMUDA RD	COTTONWOOD DR	0.86	29	14,631	24.39	X
11020	Art	SELLARDS RD	SR221	TRAVIS RD	7.08	28	116,301	193.83	
11020	Art	SELLARDS RD	TRAVIS RD	PLYMOUTH RD	4.00	29	68,053	113.42	
55190	R	SPIRIT LN	END OF OIL	BADGER RD	0.46	24	6,477	10.79	
16600	R	STEPHEN RD	SR 221	END PAVEMENT	0.50	22	6,453	10.76	
50460	U	SUMMIT VIEW DR	BEGIN COUNTY RD	GRANDVIEW LN	0.05	24	704	1.17	X
50460	U	SUMMIT VIEW DR	GRANDVIEW LN	SAGEBRUSH RD	1.38	25	20,240	33.73	X
55480	R	TIMOTHY LN	JANELLE LN	GRAND BLUFF LP	0.25	24	3,520	5.87	X
11190	Art	TRAVIS RD	BEGIN COUNTY ROAD	SELLARDS RD	5.09	29	86,598	144.33	
11190	Art	TRAVIS RD	SELLARDS RD	COUNTY WELL	3.53	28	57,986	96.64	
11900	R	TRUMAN ST	CHRISTY RD	END OF OIL	0.04	24	563	0.94	
18310	R	TYACKE RD	COUNTY WELL RD	RADIUS	0.03	29	510	0.85	
18310	R	TYACKE RD	SELLARDS RD	RADIUS	0.04	25	587	0.98	
19500	ART	TYRELL RD	TRAVIS RD	PLYMOUTH RD	4.05	28	66,528	110.88	
50790	R	WALLOWA RD	GRANDVIEW LN	CLEARVIEW LN	0.38	24	5,350	8.92	X
11300	R	WATTS RD	SR-14	END OF OIL	0.19	24	2,675	4.46	
11180	Art	WEBBER CANYON RD	COUNTY WELL RD	JACOBS RD	6.32	33	122,355	203.93	
55450	R	WISER LP	WISER PRWY	WISER PKWY	0.28	24	3,942	6.57	X
55430	U	WISER PKWY	RR TRACKS	BADGER	0.05	28	821	1.37	X
55430	U	WISER PKWY	COTTONWOOD DR	M.P. .50	0.50	28	8,213	13.69	X
55430	U	WISER PKWY	M.P. .50	BADGER ROAD	0.33	36	6,970	11.62	X
		TOTALS			**111.01**		**1,782,502**	**2,970.84**	

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APPENDIX B

2023 CRACK SEAL ROAD LISTING (AREA 7)

ROAD	ROAD NUMBER	BEGIN MP	END MP			TOTAL MILES
Christy Rd	11100	0.00	7.46	Plymouth Road	SR14	7.46
Cottonwood Dr	55150	0.00	1.75	Badger Road	Sagebrush Road	1.75
Wiser	55430	0.00	0.83	Cottonwood Dr.	Badger Rd.	0.83
Badger	55100	0.00	11.70	Webber Canyon	Wiser PKWY	11.70
Dallas Rd	50950	0.00	1.22	Badger Road	Reata Road	1.22
Reata	50180	0.00	1.57	Dallas Road	Sagebrush Road	1.57
Sagebrush	50340	0.00	1.40	Reata Road	Bermuda Road	1.40
Webber Canyon	11180	0.00	6.32	County Well Road	2nd Street	6.32
County Well	11110	0.00	7.27	SR-221	Travis Road	7.27
Travis	11190	1.04	8.45	Tyrell Road	County Well Road	7.41
Tyrell	19500	0.00	4.05	Travis Road	Plymouth Road	4.05
Plymouth Rd	11050	0.00	12.88	Christy Road	Sella	8.88
Gwinn Rd	16200	0.00	2.04	SR-221	End of County Road	2.04
Sellards	11020	19.18	23.18	Travis Road	Plymouth Road	4.00
Prior Ave	12000	0.00	0.53	Begin County Road	Day Street	0.53
Paterson Ave	12020	0.00	0.27	SR-221	Day Street	0.27
Day St	12010	0.00	0.08	Paterson Ave.	Prior Ave.	0.08
Kent Rd	11200	0.00	0.72	SR-14	End of County Road	0.72
					Area 7 Total Miles	**67.50**

2023 CRACK SEAL ROAD LISTING (AREA 1)

COUNTY RT 12	21030	0.00	1.10	County Line Rd	Griffin Rd	1.10
COUNTY RT 12	21030	2.11	3.66	Wilgus Rd	Johnson Rd	1.56
MCKINLEY SPRINGS RD	13350	0.00	8.65	County Line	Township Rd	8.65
OLD INLAND EMPIRE HWY	22150	0.00	3.03	County Line Rd	Missimer Rd	3.03
RICHARDS RD	14900	1.87	2.09	SR22	Byron Rd	0.22
SELLARDS RD	11020	0.00	1.00	Township Rd	Ward Gap Rd	1.00
SELLARDS RD	11020	1.00	4.03	Ward Gap Road	Lincoln Rd	3.03
SELLARDS RD	11020	4.03	12.09	Lincoln Rd	SR221	8.06
BERT JAMES RD	15650	5.98	10.24	75' S. of Sellards	SR221	4.26
COUNTY LINE RD	20100	0.00	2.02	Old Inland Empire Hwy	King Tull Rd	2.02
GRIFFIN RD	20250	1.21	3.00	Old Inland Empire Hwy	1/4 Mi. S. of King Tull Rd	1.79
GRIFFIN RD	20250	3.91	7.44	Lemley Rd	Snipes Rd	3.53
HANKS RD	22220	0.00	3.02	County Line Rd	Missimer Rd	3.02
HORRIGAN RD	13700	0.00	0.03	McKinley Springs Rd	150' E McKinley Springs	0.03
HORRIGAN RD	13700	9.45	12.49	725' W. of Davis Rd	SR221	3.03
KING TULL RD	20460	0.09	1.01	SVID Canal	Griffin Rd	0.92
KING TULL RD	20460	1.62	3.06	NW Williams Rd	Missimer Rd	1.45
LOWER COUNTY LINE RD	20150	0.00	0.97	North River Rd	Old Inland Empire Hwy	0.97
MCCREADIE RD	22640	0.00	3.03	County Line Rd	Missimer Rd	3.03
NORTH RIVER RD	20120	0.00	1.73	Lower County Line Rd	Wilgus Rd	1.73
NORTH RIVER RD	20120	1.73	3.70	Wilgus Rd	1/2 Mi. E. of Webb Rd	1.97
SNIPES RD	22120	0.00	3.14	County Line Rd	Missimer Rd	3.14
WARD GAP RD	14850	0.00	0.10	Sellards Rd	500' N. of Sellards Rd	0.10
WARD GAP RD	14850	4.76	5.02	900' S. of Richards Rd	SR22	0.27
WILGUS RD	20570	0.00	2.76	North River Rd	County Route 12	2.76
APRICOT RD	20360	0.00	2.03	County Line Rd	Wilgus Rd	2.03
ATWOOD RD	20700	0.00	0.51	Wilgus Rd	Sievers Rd	0.51
ATWOOD RD	20700	0.51	1.01	Sievers Rd	Missimer Rd	0.50
BUENA VISTA RD	20600	0.00	0.42	West of Griffin Rd	Griffin Rd	0.42
BUENA VISTA RD	20600	1.01	2.94	West of Wilgus Rd	Webb Rd	1.93
BYRON RD	14960	0.00	2.80	Benton County Line	Richards	2.80
COUNTY LINE RD	20100	2.53	2.58	Highland Rd	County Route 12	0.05
DAVIS RD SW	16050	0.00	0.72	Horrigan Rd	3817' N of Horrigan Rd	0.72
DAVIS RD SW	16050	5.86	6.05	412' S of Sellards Rd	591' N of Sellards Rd	0.19
EVANS RD	23000	0.00	3.18	County Line Rd	Missimer Rd	3.18
FARNUM RD	13900	0.66	0.68	58' W of McKinley Spring	63' E of McKinley Springs	0.02
GRIFFIN RD	20250	0.00	1.21	1315' S of North River Rd	Old Inland Empire Hwy	1.21
GRIFFIN RD	20250	3.66	3.91	Cul-de-sac	Lemley Rd	0.25

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GRIFFIN RD	20250	7.44	7.95	Snipes Road	Olson Rd	0.51
GRIFFIN Y - JOHNSON	20180	0.00	0.03	Griffin Rd	Johnson Rd	0.03
HICKMAN RD	15850	1.40	1.47	338' S of SR 221	SR 221	0.06
HICKS RD	20230	0.00	1.51	Old Inland Empire Hwy	53' S of Apricot Rd	1.51
HIGHLAND RD NW	22500	0.00	0.13	County Line Rd	County Route 12	0.13
JOHNSON RD	20280	0.00	3.24	County Line Rd	County Route 12	3.24
KING RD	14200	1.16	1.17	37' W of McKinley Spr	McKinley Springs Rd	0.01
LANELL DRIVE	14950	0.00	0.16	Byron Rd	Cul-de-sac	0.16
LEMLEY RD	22560	0.00	2.14	Wilgus Rd	1172' S of McCreadie Rd	2.14
LENZIE RD	13640	0.00	1.23	End of County Rd	137' W of SR 221	1.23
LINCOLN RD	15150	6.11	6.14	74' S of Sellards Rd	58' N of Sellards Rd	0.02
MISSIMER RD	25550	0.00	2.41	1214' S of North River Rd	County Route 12	2.41
OLSEN RD	23060	0.00	1.00	County Line Rd	Griffin Rd	1.00
PAIGE LN	20060	0.00	0.24	Rivers Edge Dr	North River Rd	0.24
PERRAULT RD	16710	0.00	0.09	SR 221	465' N of SR 221	0.09
RICHARDS RD	14900	0.00	1.87	Ward Gap Road	SR 22	1.87
RIVERS EDGE DR	20070	0.00	0.19	Cul-de-sac	Cul-de-sac	0.19
ROBERTSON RD	22860	0.00	0.25	County Line Rd	1341' E of County Line Rd	0.25
RUNDLE RD	20550	0.00	0.32	1668' S of North River Rd	North River Rd	0.32
SALES YARD RD	15320	0.77	2.07	3796' E of Higdon Rd	Cul-de-sac	1.30
SIEVERS RD	20650	0.00	0.51	Old Inland Empire Hwy	Atwood Rd	0.51
SMITH RD	20050	0.59	0.60	63' S of North River Rd	North River Rd	0.01
SONOVA ROAD	11270	0.00	2.75	Benton County Line	175' N of Crow Butte Rd	2.75
STEELE RD	20810	0.00	0.49	North River Rd	Buena Vista Rd	0.49
TOWNSHIP RD	11040	0.00	0.71	Benton County Line	McKinley Springs Rd	0.71
WAGGONER RD	13050	0.00	1.44	Begin County Road	McKinley Springs Rd	1.44
WARD GAP RD	14850	5.02	5.05	SR 22	W.C.R.R.	0.03
WEBB RD	20870	0.00	0.50	North River Rd	Buena Vista Rd	0.50
WILGUS RD	20570	3.01	7.67	Cul-de-sac	2619' N of Snipes Rd	4.67
WILLIAMS RD NW	20430	0.00	0.49	King Tull Rd	Lemley Rd	0.49
WILLIAMSON RD	14800	0.94	3.01	4952' E of Lincoln Rd	Bert James Rd	2.07
YOUNG RD	14600	0.00	0.01	McKinley Springs Rd	69' E of McKinley Springs Rd	0.01
BENNETT AVE	15100	0.00	0.90	Richards Rd	Prosser City Limits	0.90
BYRON RD	14960	2.80	3.65	Richards Rd	Prosser City Limits	0.85
COUNTY RT 12	21030	1.10	2.11	Griffin Rd	Wilgus Rd	1.00
COUNTY RT 12	21030	3.66	4.71	Johnson Rd	Prosser City Limits	1.05
OLD INLAND EMPIRE HWY	22150	3.03	3.53	Missimer Rd	Prosser City Limits	0.50
GRIFFIN RD	20250	3.00	3.42	1/4 Mi. S. of King Tull Rd	County Route 12	0.41
KING TULL RD	20460	0.00	0.09	County Line Rd	SVID Canal	0.09
KING TULL RD	20460	1.01	1.43	Griffin Rd	County Route 12	0.42

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KING TULL RD	20460	1.52	1.62	County Route 12	NW Williams Rd	0.10
NORTH RIVER RD	20120	3.70	4.69	1/2 Mi. E. of Webb Rd	Prosser City Limits	0.99
BONE RD S	20490	0.00	0.47	Apricot Rd	County Route 12	0.47
BUENA VISTA RD	20600	2.94	3.44	Webb Rd	North River Rd	0.50
HIGDON RD	15310	0.00	0.12	Sales Yard Rd	End of County Rd	0.12
HOISINGTON RD	20980	0.00	0.48	Missimer Rd	County Route 12	0.48
LEE RD	15400	0.00	0.18	Prosser City Limits	End of County Rd	0.18
MOORE RD	20950	0.00	0.39	End of County Rd	North River Rd	0.39
NUNN RD	20110	0.00	0.19	North River Rd	Prosser City Limits	0.19
SALES YARD RD	15320	0.00	0.77	SR 221	3796' N of Higdon Rd	0.77
STEELE RD	20810	0.49	0.96	Buena Vista Rd	O.I.E.H.	0.47
WITTKOPF LN	15360	0.00	0.10	End of County Rd	Wittkopf Loop	0.10
WITTKOPF LP	15370	0.00	0.65	Prosser City Limits	Prosser City Limits	0.65

Area 1 Total Miles **115.47**

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APPENDIX B

2023 EDGE REPAIR ROAD LISTING

ROAD NAME	ROAD NUMBER	BEGIN MP	BEGIN INT.	END MP	END INT.	MILES	FOG LINE
Bert James	15650	5.99	Sellards	10.24	SR-221	4.25	NO
Byron	14960	0	Yakima County Limits	3.65	Prosser City Limits	3.65	NO
County Line	20100	0	O.I.E.	2.02	King Tull	2.02	NO
Griffin	20250	2.24	Johnson	3.42	CR-12	1.18	NO
Johnson	20280	0	County Line	3.24	CR-12	3.24	NO
King Tull	20460	0	County Line	1.43	CR-12	1.43	NO
McCreadie	22640	0	County Line	3.03	Missimer	3.03	NO
Missimer	25550	0.23	North River	2.41	CR-12	2.18	NO
North River	20120	1.73	Wilgus	4.2	Buena Vista	2.47	NO
O.I.E.	22150	0	County Line	3.52	Albro	3.52	YES
Wilgus	20570	0	North River	2.76	CR-12	2.76	NO

Project Total Miles **29.73**

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BST AREA 7 MAP "A"

STOCKPILE R-185

STOCKPILE R-117

STOCKPILE R-128

STOCKPILE R-133

SEE VICINITY MAP "B"

SKIP BST IN KIONA

15TH PLACE (0.19 MILES)
ELM PLACE (0.07 MILES)
16TH AVE. (0.24 MILES)
CEDAR ST. (0.12 MILES)

27TH AVE.
(CITY LIMITS TO GUM ST.)
0.41 MILES

NINE CANYON RD.
(SR 397 TO 1,000 FEET SOUTH OF BECK ROAD)
5.86 MILES

KENNEWICK

PATERSON

PLYMOUTH

SNAKE RIVER

LAKE WALLULA

COLUMBIA RIVER

KEY
- BST Area
- County Road (Gravel)
- County Road (Paved)
- State Highway

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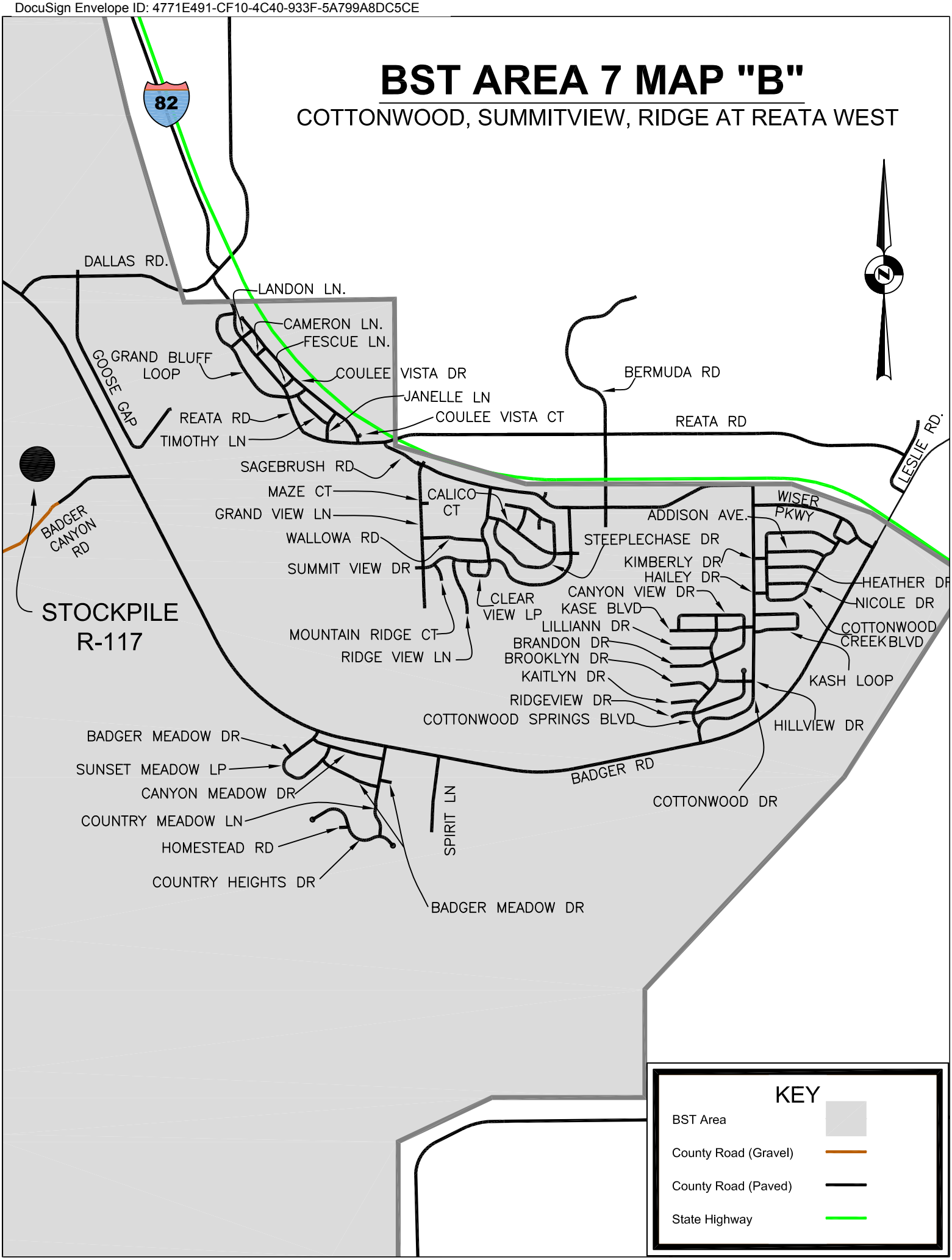
BST AREA 7 MAP "B"

COTTONWOOD, SUMMITVIEW, RIDGE AT REATA WEST



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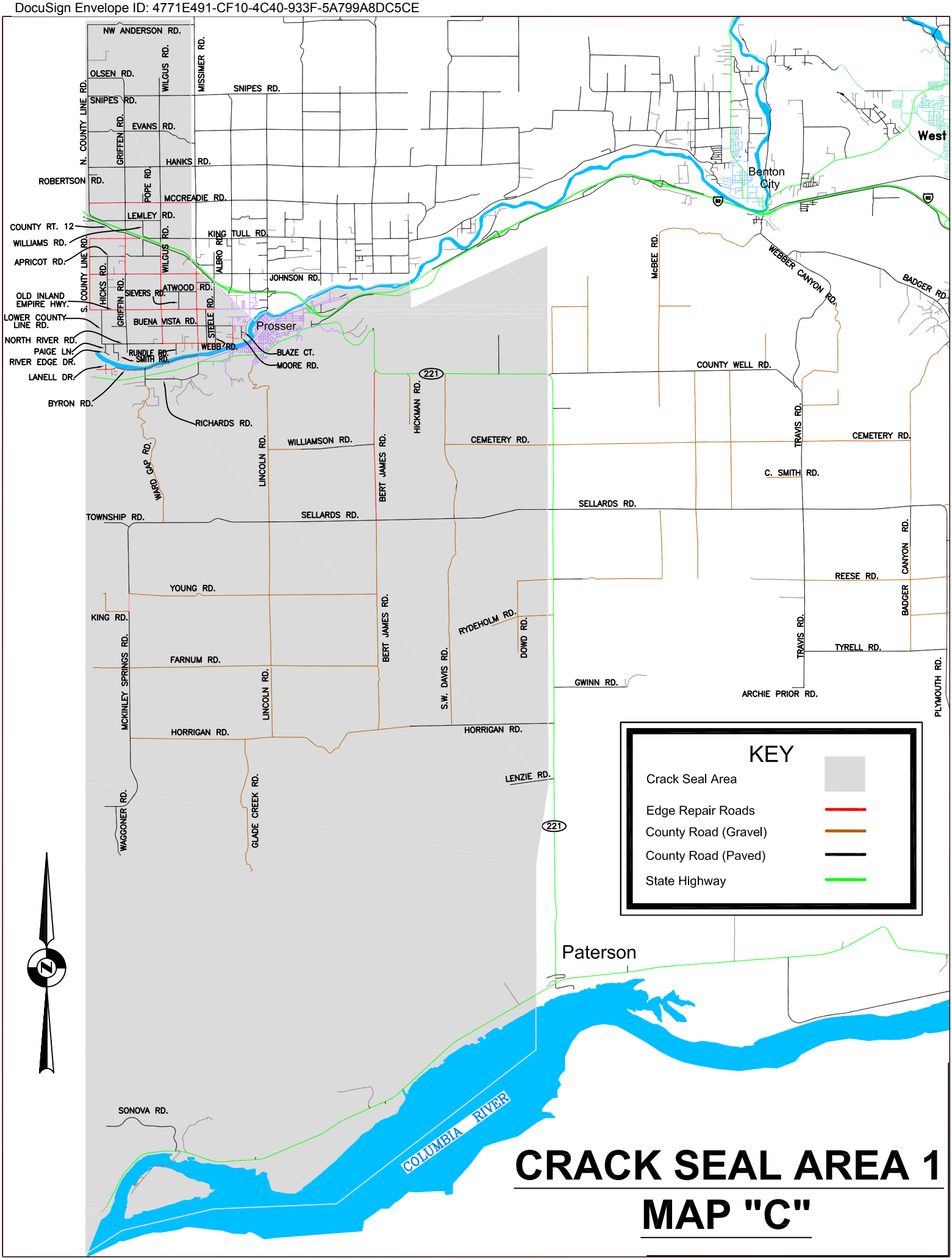

CRACK SEAL AREA 1

MAP "C"

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PROPOSAL
FOR BIDDING PURPOSES

For Construction of:

2023 Bituminous Surface Treatment, Crack Seal and Edge Repair

C.E. 2137 S.M.P.

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: CB23-03

DocuSign Envelope ID: 4771E491-CF10-4C40-933F-5A799A8DC5CE

PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY
PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned hereby certifies that he/she has examined the location of the public works project outlined in these attached special provisions, specifications and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

2023 BITUMINOUS SURFACE TREATMENT, CRACK SEAL AND EDGE REPAIR

(NOTE: Unit prices for all items, all extensions, and total amount of bid, shall be shown.)

ITEM NO.	QTY.	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts.	Dollars	Cts.
1	1	LS	Mobilization				
2	1	LS	Project Temporary Traffic Control				
3	3,000	Ton	Emulsified Asphalt CRS-2P				
4	330	Ton	Emulsified Asphalt HFE-150				
5	1,900	C.Y.	Crushed Surfacing Top Course From Stockpile SP-52 For Edge Repair				
6	6,300	C.Y.	Aggregate From Stockpile SP-133 For BST				
7	4,400	C.Y.	Aggregate From Stockpile SP-185 For BST				
8	3,700	C.Y.	Aggregate From Stockpile SP-128 For BST				
9	3,500	C.Y.	Aggregate From Stockpile SP-117 For BST				
10	183	Ton	Crack Sealing - Ton				
11	80.3	Linear Mile	Paint Centerline				
12	108.2	Linear Mile	Paint Edgeline				
13	24	HR	Additional Brooming				

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ITEM NO.	QTY.	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts.	Dollars	Cts.
14	1	Dol.	Minor Change	$10,000	00	$10,000	00
15	1	LS	SPCC Plan				
					GRAND TOTAL		

The undersigned hereby agrees to pay to labor not less than the hourly minimum rates of wages as set forth in these special provisions.

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below, is attached hereby:

Cashier's Check _____ In the Amount of _____

Certified Check _____ ($_____) Payable to the County Treasurer of Benton County, Washington.

Proposal Bond _____ In the amount of 5% of the Bid.

Receipt is hereby acknowledged of Addendum No(s). _____, _____, & _____.

PUBLIC WORKS TRAINING

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

ASSURANCE OF NON-DISCRIMINATION

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

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

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NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

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

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NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

PROPOSAL MUST BE SIGNED

CONTRACTOR'S REGISTRATION NO._____

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. _____

FIRM NAME:

_____

_____ _____

SIGNATURE OF AUTHORIZED OFFICIAL (PRINT NAME AND TITLE)

_____ _____

SIGNATURE OF AUTHORIZED OFFICIAL (PRINT NAME AND TITLE)

DATED this _____ day of _____, 20____.

ADDRESS OF BIDDER: _____

PRINCIPAL PLACE OF BUSINESS: _____

TELEPHONE NO.: (____)_____ EMAIL _____

NOTE:

1) This proposal form is not transferable, and any alteration of the firm name entered hereon without prior permission from the Board of County Commissioners will be sufficient cause for considering the proposal irregular and consequent rejection of the bid.
2) Should it be necessary to modify this proposal in writing, please make reference to the project number.

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PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, That we, _____

_____of _____

as principal, and the _____, a corporation

duly organized under the laws of the State of _____, and authorized to do business in the State of Washington, as surety, are held and firmly bound unto Benton County in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

C.E. 2137 S.M.P. – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair.

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by Benton County within a period of ten (10) days from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, the principal and surety have caused these presents to be

signed and sealed this _____day of _____, _____

_____
(Principal)

_____
(Surety)

_____
(Attorney-in-fact)

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COUNTY OF BENTON WASHINGTON

Proposal for Incorporating Recycled Materials into the Project

In compliance with a new law that went into effect January 1, 2016 (SHB1695), the Bidder shall propose below, the total percent of construction aggregate and concrete materials to be incorporated into the Project that are recycled materials. Calculated percentages must be within the amounts allowed in Section 9-03.21(1)E. Table on Maximum Allowable Percent (By weight) of Recycled Material, of the Standard Specifications.

Proposed total percentage: _____percent.

Note: Use of recycled materials is highly encouraged within the limits shown above, but does not constitute a Bidder Preference, and will not affect the determination of award, unless two or more lowest responsive Bid totals are exactly equal, in which case proposed recycling percentages will be used as a tiebreaker, per the APWA GSP in Section 1-03.1 of the Special Provisions. Regardless, the Bidders stated proposed percentages will become a goal the Contractor should do its best to accomplish. Bidders will be required to report on recycled materials actually incorporated into the Project, in accordance with the APWA GSP in Section 1-06.6 of the Special Provisions.

Bidder: _____

Signature: _____

Date: _____

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CONTRACT

INFORMATION FOR THE CONTRACTOR THAT IS AWARDED THE CONTRACT

For Construction of:

2023 Bituminous Surface Treatment, Crack Seal and Edge Repair

C.E. 2137 S.M.P.

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: CB23-03

DocuSign Envelope ID: 4771E491-CF10-4C40-933F-5A799A8DC5CE

CONTRACT

THIS CONTRACT, made and entered into this _____ day of _____, **2023**, between the COUNTY OF BENTON, STATE OF WASHINGTON, (hereinafter "the County") acting through the Board of County Commissioners, under and by virtue of RCW 36, as amended, and _____, (hereinafter "the Contractor").

WITNESSETH:

That in consideration of the terms and conditions contained herein and in the Contract Documents attached hereto and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall furnish all tools, materials, and equipment, and shall do all work described in and in accordance with the attached plans and specifications entitled "**Contract Provisions and Plans, CE 2137 S.M.P. – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair**," and as described in and in accordance with the State of Washington **2023** Standard Specifications for Road, Bridge, and Municipal Construction adopted by the County, (hereinafter collectively referred to as "the Contract Documents") which are by this reference incorporated herein and made part hereof, and shall perform any changes to the work in accord with the Contract Documents.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by the County.

II. The County hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same in accord with the attached plans and specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices at the time and in the manner and upon the conditions provided for in this contract. The County further agrees to employ the Contractor to perform any alterations in or additions to the work covered by this contract and every part thereof and any force account work that may be ordered and to pay for the same under the terms of this contract and the attached plans and specifications.

III. The Contractor, for himself, and for his heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

IV. The County agrees to pay to the Contractor, as full and complete compensation for materials and work provided in accordance with the Contract Documents, the sum of $_____, payable as provided in the Contract Documents.

V. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

VI. The Contractor shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorney fees thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractors acts, errors or omissions in the performance of this Contract. 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, its officers, officials, employees, or agents.

Informational Copy

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VII. The Contractor specifically waives the Contractor's immunity under Title 51 RCW (Industrial Insurance statute), and acknowledges that his waiver of immunity was mutually and expressly negotiated by the parties, and expressly agrees that Contractor's promise to indemnify and hold harmless applies to all claims filed by and/or injuries to the Contractor's own employees.

IN WITNESS WHEREOF, the said Contractor has executed this instrument, and the Board of County Commissioners of Benton County, Washington has caused this instrument to be executed by and in the name of the said Board of County Commissioners the day and year first above written.

Executed by the Contractor:

_____
Signature

_____
Title

_____
Date

COUNTY OF BENTON

_____
Chairman, Board of Commissioners

Attest:_____
Clerk of the Board

_____
Date

APPROVED AS TO FORM:

_____
Benton County Deputy Prosecuting Attorney

_____
Date

Informational Copy

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PUBLIC WORKS PAYMENT BOND

to BENTON COUNTY, WA

Bond No. _____

Benton County, Washington (County) has awarded to _____ (Principal), a contract for the construction of the project designated as **2023 Bituminous Surface Treatment – Crack Seal Area 7 and Edge Repair, Project No.: CE 2137 SMP,** in Benton County, Washington (Contract), and said Principal is required, under the terms of that Contract, to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of _____ US Dollars ($ _____) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all person who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL		SURETY	
_____		_____	
Principal Signature	Date	Surety Signature	Date
_____		_____	
Printed Name		Printed Name	
_____		_____	
Title		Title	

Name, address, and telephone of local office/agent of Surety Company is:

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PUBLIC WORKS PERFORMANCE BOND

to BENTON COUNTY, WA

Bond No. _____

Benton County, Washington (County) has awarded to _____ (Principal), a contract for the construction of the project designated as **2023 Bituminous Surface Treatment – Crack Seal Area 7 and Edge Repiar, Project No.: CE 2137 SMP,** in Benton County, Washington (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of _____ US Dollars ($ _____) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL		SURETY	
_____		_____	
Principal Signature	Date	Surety Signature	Date
_____		_____	
Printed Name		Printed Name	
_____		_____	
Title		Title	

Name, address, and telephone of local office/agent of Surety Company is:

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DocuSign Envelope ID: 7E647119-000D-44BD-AF56-8600A7A72E79

PROPOSAL
FOR BIDDING PURPOSES

For Construction of:

2023 Bituminous Surface Treatment, Crack Seal and Edge Repair

C.E. 2137 S.M.P.

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: CB23-03

DocuSign Envelope ID: 4771E491-CF10-4C40-933F-5A799A8DC5CE
DocuSign Envelope ID: 7E647119-000D-44BD-AF56-8600A7A72E79

PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY
PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned hereby certifies that he/she has examined the location of the public works project outlined in these attached special provisions, specifications and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

2023 BITUMINOUS SURFACE TREATMENT, CRACK SEAL AND EDGE REPAIR

(NOTE: Unit prices for all items, all extensions, and total amount of bid, shall be shown.)

ITEM NO.	QTY.	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts.	Dollars	Cts.
1	1	LS	Mobilization	490,000	00	490,000	00
2	1	LS	Project Temporary Traffic Control	475,000	00	475,000	00
3	3,000	Ton	Emulsified Asphalt CRS-2P	670	00	2,010,000	00
4	330	Ton	Emulsified Asphalt HFE-150	630	00	207,900	00
5	1,900	C.Y.	Crushed Surfacing Top Course From Stockpile SP-52 For Edge Repair	63	00	119,700	00
6	6,300	C.Y.	Aggregate From Stockpile SP-133 For BST	34	00	214,200	00
7	4,400	C.Y.	Aggregate From Stockpile SP-185 For BST	37	00	162,800	00
8	3,700	C.Y.	Aggregate From Stockpile SP-128 For BST	37	00	136,900	00
9	3,500	C.Y.	Aggregate From Stockpile SP-117 For BST	52	00	182,000	00
10	183	Ton	Crack Sealing - Ton	4700	00	860,100	00
11	80.3	Linear Mile	Paint Centerline	1300	00	104,390	00
12	108.2	Linear Mile	Paint Edgeline	1000	00	108,200	00
13	24	HR	Additional Brooming	150	00	3600	00

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ITEM NO.	QTY.	UNIT	ITEM DESCRIPTION	PRICE PER UNIT		AMOUNT	
				Dollars	Cts.	Dollars	Cts.
14	1	Dol.	Minor Change	$10,000	00	$10,000	00
15	1	LS	SPCC Plan	800	00	800	00
					GRAND TOTAL	5,085,590	00

The undersigned hereby agrees to pay to labor not less than the hourly minimum rates of wages as set forth in these special provisions.

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below, is attached hereby:

Cashier's Check _____ In the Amount of _____

Certified Check _____ ($_____) Payable to the County Treasurer of Benton County, Washington.

Proposal Bond ✓ In the amount of 5% of the Bid.

Receipt is hereby acknowledged of Addendum No(s). _____, _____, & _____.

PUBLIC WORKS TRAINING

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

ASSURANCE OF NON-DISCRIMINATION

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

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

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NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

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

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DocuSign Envelope ID: 7E647119-000D-44BD-AF56-8600A7A72E79

NOTICE TO ALL BIDDERS

To report bid rigging activities call:

1-800-424-9071

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

PROPOSAL MUST BE SIGNED

CONTRACTOR'S REGISTRATION NO. AMERIRP821DR

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. 602991003

FIRM NAME: Interstate Concrete & Asphalt Co. dba American Rock Products

SIGNATURE OF AUTHORIZED OFFICIAL

Jeffrey Lyle Hopkins Construction Manager
(PRINT NAME AND TITLE)

SIGNATURE OF AUTHORIZED OFFICIAL

(PRINT NAME AND TITLE)

DATED this 4th day of May, 2023.

ADDRESS OF BIDDER: PO Box 9337, Yakima, WA 98909

PRINCIPAL PLACE OF BUSINESS: 317 Parker Bridge Rd Wapato, WA 98951

TELEPHONE NO.: (509) 453-2063 EMAIL Tanner.Suing@americanrockproducts.com

NOTE:

1) This proposal form is not transferable, and any alteration of the firm name entered hereon without prior permission from the Board of County Commissioners will be sufficient cause for considering the proposal irregular and consequent rejection of the bid.
2) Should it be necessary to modify this proposal in writing, please make reference to the project number.

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DocuSign Envelope ID: 7E647119-000D-44BD-AF56-8600A7A72E79

PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, That we, Interstate Concrete & Asphalt Company dba American Rock Products of 377 Parker Bridge Road, Parker, WA 98939 as principal, and the Fidelity and Deposit Company of Maryland, a corporation duly organized under the laws of the State of IL, and authorized to do business in the State of Washington, as surety, are held and firmly bound unto Benton County in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

C.E. 2137 S.M.P. – 2023 Bituminous Surface Treatment, Crack Seal and Edge Repair.

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by Benton County within a period of ten (10) days from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, the principal and surety have caused these presents to be signed and sealed this 4th day of May, 2023

INTERSTATE CONCRETE AND ASPHALT COMPANY CORPORATE SEAL 1976 IDAHO

(Principal)

Fidelity and Deposit Company of Maryland

(Surety)

(Attorney-in-fact)

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ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Jared WISE, Krista SULLIVAN, James M. TIBBITS, John MADDEN, Michael MCBREEN and Kyle HOPKINS all of Wapato, Washington,** EACH, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, any and all bid bonds issued on behalf of **Interstate Concrete and Asphalt Company and Interstate Concrete and Asphalt Company dba American Rock Products, Washington,** each in a penalty not to exceed the sum of $1,000,000 and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York, the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland, and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 9th day of July, A.D. 2020.

ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: Robert D. Murray
Vice President

By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 9th day of July A.D. 2020, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposeth and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

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EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify of revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By- Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 4th day of May, 2023.

By: Brian M. Hodges
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsfclaims@zurichna.com
800-626-4577

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COUNTY OF BENTON WASHINGTON

Proposal for Incorporating Recycled Materials into the Project

In compliance with a new law that went into effect January 1, 2016 (SHB1695), the Bidder shall propose below, the total percent of construction aggregate and concrete materials to be incorporated into the Project that are recycled materials. Calculated percentages must be within the amounts allowed in Section 9-03.21(1)E. Table on Maximum Allowable Percent (By weight) of Recycled Material, of the Standard Specifications.

Proposed total percentage: 0 percent.

Note: Use of recycled materials is highly encouraged within the limits shown above, but does not constitute a Bidder Preference, and will not affect the determination of award, unless two or more lowest responsive Bid totals are exactly equal, in which case proposed recycling percentages will be used as a tiebreaker, per the APWA GSP in Section 1-03.1 of the Special Provisions. Regardless, the Bidders stated proposed percentages will become a goal the Contractor should do its best to accomplish. Bidders will be required to report on recycled materials actually incorporated into the Project, in accordance with the APWA GSP in Section 1-06.6 of the Special Provisions.

Bidder: American Rock Products

Signature: [signature]

Date: 5/4/23

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Declaration of Surplus Property
Presenter:	N/A
Prepared By:	D. Hope
Reviewed By:	McGhan, Procurement

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

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

Summary / Background Information

As outlined in Resolution 07-752, County departments may request personal property items be declared surplus and accordingly disposed of. A list of items for the current surplus is provided as an attachment.

Fiscal Impact

None.

Recommendation

The Personal Property Manager has determined that the personal property on the attached exhibit(s) can be declared surplus and disposed of accordingly.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

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

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

WHEREAS, ER&R and Public Works Solid Waste Department has identified items of personal property for which they are no longer in need; and

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

WHEREAS, the Board finds it to be in the best interest of the citizens of Benton County to surplus the property and the Personal Property Manager may dispose of such in accordance with the Personal Property Management Policy; **NOW, THEREFORE,**

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

Dated this 6th day of June 2023.

_____
Chairman of the Board

_____
Chairman Pro-Tem

_____
Commissioner

Attest: …….
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

D. Hope

Attachment A: Surplus

ER&R

- 2015 Ford Police Interceptor Utility (totaled)
  Vehicle # S15-03
  VIN # 1FM5K8AR3FGC08820

- 2011 Ford Escape SUV
  Vehicle # 1093
  VIN # 1FMCU9DG9BKB92468

- 2004 Ford F250 Truck
  Vehicle # S04-16
  VIN # 1FTNW21S54ED82485

- 2007 Chevrolet Impala Sedan
  Vehicle # 42-50
  VIN # 2G1WB58K879316987

- Battery Charger
- Floor Jack
- 2023 Ford Explorer Back Seat
- 2023 Ford Explorer Back Seat
- 2023 Ford Explorer Back Seat
- GPS unit
- Work Lights
- Heat Gun
- Air Hose chucks
- Impact gun
- Pressure Washer
- Oil Burner
- Brooms #1 – Qty 3
- Brooms #2 – Qty 3
- Used Diesel Tank
- Ice Machine
- 2020 Ford Explorer Rear Seats
- 12” Squeeze Roller
- Plotter

Solid Waste - MRWF

- Used Oil Collection Tank
- Use Oil Collection Tank
- Use Oil Collection Tank
- Used Anti-Freeze Tank
- Clamshell tote

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Contract w/ Chervenell Construction Company for Juvenile Justice Center Progressive Design Project
Presenter:	Robert Blain
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

On May 26, 2022, Benton County received approval from the Capital Projects Advisory Review Board(CPARB) to use the Progressive Design Build process for the Juvenile Justice Project.

On October 4, 2022, DLR Group presented the Juvenile Justice Center Feasibility Study/Space Needs Report to the Board of County Commissioners, with the Board directing staff to move forward with the progress design selection process for the project.

On April 11, 2023, the Board of Benton County Commissioners awarded the Juvenile Justice Project to Chervenell Construction Company pending the final approval of the MOU between Benton & Franklin Counties.

On May 2, 2023, the Board of Benton County Commissioners approved the updated MOU with Franklin County, giving Benton County sole ownership of the Juvenile Justice Facility.

A contract has been prepared, reviewed, and approved as to form by our Special Deputy Prosecutor, Robynne Thaxton, and has been executed by Chervenell Construction Company.

The initial "Validation Phase" is included in the attached contract, with future contract amendments for Phase 1, design and early procurement, and Phase II, construction with a guaranteed maximum price (GMP).

Fiscal Impact

Amount: $103,275.00 Validation Phase

Fund: Capital Projects Fund

Recommendation

Execute the attached contract with Chervenell Construction for the design and construction of the Juvenile Justice Center Project.

Suggested Motion

I move to approve that the Board of Benton County Commissioners hereby approves the contract with Chervenell Construction Company for the design and construction of the Juvenile Justice Center Project and authorizes the Chairman to sign the contract on the County's behalf.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF EXECUTING A CONTRACT WITH CHERVENELL CONSTRUCTION COMPANY FOR THE DESIGN AND CONSTRUCTION OF THE JUVENILE JUSTICE PROGRESSIVE DESIGN PROJECT

WHEREAS, on May 26, 2022, Benton County received approval from the Capital Projects Advisory Review Board(CPARB) to use the Progressive Design Build process for the Juvenile Justice Project; and

WHEREAS, on October 4, 2022, DLR Group presented the Juvenile Justice Center Feasibility Study/Space Needs Report to the Board of County Commissioners, with the Board directing staff to move forward with the progress design selection process for the project; and

WHEREAS, on April 11, 2023, the Board of Benton County Commissioners awarded the Juvenile Justice Project to Chervenell Construction Company pending the final approval of the MOU between Benton & Franklin Counties; and

WHEREAS, on May 2, 2023, the Board of Benton County Commissioners approved the updated MOU with Franklin County, giving Benton County sole ownership of the Juvenile Justice Facility; and

WHEREAS, a contract has been prepared, reviewed, and approved as to form by our Special Deputy Prosecutor, Robynne Thaxton, and has been executed by Chervenell Construction Company; and

WHEREAS, the initial "Validation Phase" is included in the attached contract, with future design and construction phases to be addressed with contract amendments; **NOW THEREFORE,**

BE IT RESOLVED the Board of County Commissioners approves the attached contract with Chervenell Construction Company for the initial "Validation Phase" in the amount not to exceed $103,275, excluding W.S.S.T. with future contract amendments for Phase 1, design and early procurement, and Phase II, construction with a guaranteed maximum price (GMP), of the Juvenile Justice Project; and

BE IT FURTHER RESOLVED the Board hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract with Chervenell Construction Company; and

BE IT FURTHER RESOLVED the contract shall expire one year after the final acceptance of the Juvenile Justice Project.

Dated this 6th day of June, 2023.

_____
Chairman

_____
Chairman Pro-Tem

_____
Commissioner

Attest:_____
Clerk of the Board

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

Orig.: Procurement P. Schut
cc: R.Blain Chervenell Construction Company

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Juvenile Justice Center / Sheriff's Office Project

Contract Documents

- **DBIA CONTRACT 530** – Progressive Design-Build Agreement Between Owner and Design-Builder – Cost Plus Fee with a Guaranteed Maximum Price
- **DBIA 535** – General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder
- **Certifications and Declarations**
- **Exhibit A** – Project Scope
- **Exhibit B1** – Insurance Requirement
- **Exhibit B2** – Public Works Payment Bond
- **Exhibit B3** – Public Works Performance Bond
- **Exhibit C** - Phase 1 & 2 Scope of Work
- **Exhibit D/E** – Validation Phase level of effort/Hourly Rates
- **Exhibit F** – Phase 1 & 2 Amendments
- **Exhibit G** – Change Order Forms, Phase 1 & 2

BENTON COUNTY WA

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DBIA CONTRACT 530 – Progressive Design-Build Agreement Between Owner and Design-Builder – Cost Plus Fee with a Guaranteed Maximum Price

BENTON COUNTY WA

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PROGRESSIVE DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER - COST PLUS FEE WITH A GUARANTEED MAXIMUM PRICE

Note: This document has been modified from the DBIA Form. A redlined copy will be provided upon request.

Document No. 530
Second Edition 2010
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Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ day of _____ in the year of 2023, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

Benton County, Washington
7122 W. Okanogan Place
Kennewick, WA 99336

DESIGN-BUILDER:

(Name and address)

Chervenell Construction Co.
07422 E. Detrick, Walter PRSE
Kennewick, WA 99338

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Juvenile Justice Center / Sheriff's Office Project

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

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Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as amended) ("General Conditions of Contract"), including but not limited to the Validation and GMP Amendments in accordance with Section 6.6 herein, provided such Amendments are executed between the parties.

2.1.2 This Agreement, including all exhibits but excluding the GMP Amendment:

.1	Exhibit A:	Initial Basis of Design Documents
.2	Exhibit B1:	Insurance Exhibit – Design-Builder's Insurance Requirements
.3	Exhibit B2:	Form of Payment Bond
.3	Exhibit B3:	Form of Performance Bond
.4	Exhibit C:	Phase 1 and 2 Scope of Services
.5	Exhibit D:	Validation Period Level of Effort
.6	Exhibit E:	Hourly Rates, Unit Prices, and Allowance Items
.6	Exhibit F:	Form GMP Amendment
.7	Exhibit G:	Form Change Orders

2.1.3 The General Conditions of Contract; and

2.1.4 Design Submissions, the Design Log, and the Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract, the most recent approved documents governing over previously approved documents.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including but not limited to the various documents in the Initial Basis of Design Documents set forth in Exhibit A, and the Phase 1 and 2 Scope of Services set forth in Exhibit C, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design

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industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement or after the parties' execution of the GMP Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. *(Note, the parties are strongly encouraged to establish in the GMP Exhibit or GMP Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If the Initial Basis of Design Documents contain design or prescriptive specifications the Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Initial Basis of Design Documents, including any performance specifications for the purposes of developing the Scope of Services for the Validation Period, the Phase 1, the Validation Not to Exceed Amount, the Phase 1 Not to Exceed Amount and the Design-Builder's Fee Percentage. However, during Phase 1, Design-Builder is required to perform an independent evaluation of such design or prescriptive specifications to verify the information provided by the Owner. Further, regardless of the inclusion of design or prescriptive specifications or criteria, Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Initial and Final Basis of Design Documents as well as all applicable Legal Requirements. Provided Design-Builder complies with other requirements set forth in this Agreement such as those regarding notice of claims to Owner and identification of differing site conditions, Design-Builder shall be entitled to an adjustment in the Scope of Services for the Validation Period, the Phase 1, the Validation Period Not to Exceed Amount, the Phase 1 Not to Exceed Amount and/or the Design-Builder's Fee Percentage, but only to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design or prescriptive specifications that are inconsistent with meeting the performance requirements.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

3.6 Design-Builder was selected based in part on the qualifications of the Key Team Members identified in the Design-Builder's Statement of Qualifications and Proposals. Design-Builder may not substitute the identified Key Team Members without written permission from Owner, such permission shall not be unreasonably withheld. Any substituted Key Team Member must possess the same or better qualifications as the previously approved Key Team Member.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier

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(collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

4.3.2 Owner shall not be required to pay Design-Builder additional compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 The Validation Period shall be completed no later than August 16, 2023 ("Validation Period Completion Date"). The parties will establish the completion date for Phase 1 ("Phase 1 Completion Date") with the Validation Period Amendment and a date for Substantial Completion of the entire Work ("Scheduled Substantial Completion Date") in the GMP Amendment.

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be determined during Phase 1: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

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5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.14 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion of the Project or any Interim Milestone Date is not attained by the Scheduled Interim Milestone Date or Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Therefore, provided the parties enter into the GMP Amendment, Design-Builder and Owner will establish a liquidated damage rate for delay in the GMP Amendment for each day that Substantial Completion extends beyond any Scheduled Interim Milestone Date and/or the Substantial Completion Date, as applicable.

5.5 Any liquidated damages assessed pursuant to this Agreement for delay damages shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

5.6 In addition, the parties may establish liquidated damages as a remedy for other breaches of contract or failure to achieve performance standards. Such liquidated damages provisions may be added in the GMP Amendment or by written Change Order.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") as set forth herein.

.1 The Validation Period Not To Exceed Amount is one hundred three thousand, two hundred and seventy-five dollars ($103,275.00).

.2 Subject to the provisions of the Contract Documents, the Owner shall pay Design Builder for each Phase of the Project in accordance with Section 6.6 of the Agreement. Design Builder's Compensation shall be subject to the Validation NTE, Phase 1 NTE and the GMP, as applicable. The Validation NTE, the Phase 1 NTE, and the GMP, as applicable, shall be the maximum amount that the Design Builder may be compensated for the applicable Contract Phase, as amended pursuant to this Contract. The maximum amount that the Design Builder may be compensated pursuant to this Agreement for any given phase shall also be referred to as the Contract Price ("Contract Price"). The elements of the Design Builder's Compensation, subject to the Contract Price are set forth herein. If the sum of the Design-Builder's Compensation is less than the Validation NTE, the Phase 1 NTE, and/or the GMP, as applicable, the savings shall go to the Owner.

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.3 The parties acknowledge that the scope of work for this Project is not fully developed. The Design-Builder shall develop the Basis of Design Documents and other deliverables in Exhibit C such that the total Compensation to the Design-Builder shall not exceed the GMP set forth herein, unless the parties agree in writing to increase the GMP or the Design-Builder is otherwise entitled to an increase to the GMP pursuant to the terms of the Contract Documents.

.

6.2 Design-Builder's Fee Percentage and Lump Sum Fee.

6.2.1 Design-Builder's Fee Percentage shall be:

5.1 percent (5.1%) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below.

The Fee Percentage and any Lump Sum Fee shall include the following items, which shall not be charged as a Cost of the Work:

.1 All profit of the Design-Builder for this Project; and

.2 All regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental office expenses attributed to work on this Project.

6.2.2 Prior to the execution of the GMP Amendment, Design-Builder's Fee Percentage will only be adjusted pursuant to Section 3.4 of this Agreement.

6.2.3 If the Parties enter into the GMP Amendment, Design-Builder shall be paid a lump sum fee (the "Lump Sum Fee") determined by multiplying the Fee Percentage by the estimated Cost of the Work included in the GMP Amendment. The estimated Cost of the Work shall include the Lump Sum General Conditions Amount. The Lump Sum Fee will be earned and paid on a monthly basis following execution of the GMP Amendment on a percentage of completion basis, specifically taking into account payments previously made, including during Phase 1. The following costs shall be excluded from the Cost of the Work when calculating the Lump Sum Fee:

.1 Owner Directed Allowances, as defined in Section 6.4.1.6; and

.2 The Design-Builder's Contingency as defined in Section 6.4.4.1.b.

6.2.4 The Lump Sum Fee established in the GMP Amendment shall not be modified unless the GMP varies, either upward or downward, by more than five percent (5%) from the GMP set forth in this Agreement ("Original GMP").

.1 If the GMP increases by more than five percent (5%) above the Original GMP, the Lump Sum Fee shall be increased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is in excess of one hundred five percent (105%) of the Cost of the Work set forth in the Original GMP.

.2 If the GMP decreases by more than five percent (5%) below the Original GMP, the Lump Sum Fee shall be decreased by the amount of the Fee Percentage multiplied by that portion of the Cost of the Work that is less than ninety-five percent (95%) of the Cost of the Work set forth in the Original GMP.

.3 The following costs shall be excluded from the Cost of the Work when calculating adjustments to the Lump Sum Fee:

a. Owner Directed Allowances, as defined in Section 6.4.1.6; and '

b. The Design Builder's Contingency as defined in Section 6.4.4.1.b.

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6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and necessarily incurred by Design-Builder in the proper performance of the Work. Unless included in the Lump Sum General Conditions, the Cost of the Work shall include only the following:

6.3.1 Wages of direct labor costs of employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of Prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement. Wages for those employees performing construction services shall be paid as follows: Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Design-Builder as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits. Whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. The Design-Builder shall provide to the Owner copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier for the period upon the Owner's request. Direct labor costs also include direct contributions to the State of Washington as industrial insurance, medical aid, and supplemental pension by class and rates established by the Washington Department of Labor and Industries and contributions required by the Federal Insurance Compensation Act (FICA), the Federal Unemployment Tax Act (FUTA) and the State Unemployment Compensation Act (SUCA).

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.3.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are approved in advance in writing by the Owner.

6.3.4 Unless included in Lump Sum General Conditions, costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.3.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work. Such costs must be approved in writing by Owner in advance.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. The costs for those employees performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those Hourly Rates set forth in Exhibit E. Contracts to Subcontractors and Design-Consultants that are paid on the basis of a Lump Sum must be approved in advance by the Owner, such approval shall not be unreasonably withheld.

6.3.7 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work. The material costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

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6.3.8 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.3.9 Costs of removal of debris and waste from the Site.

6.3.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.3.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work. The rental charge the applicable rental cost as established by the lower of the local prevailing rate published in the Rental Rate Blue Book by Data Quest. San Jose. California, as modified by the AGC/WSDOT agreement or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. The rental rates are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks) on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

6.3.12 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.3.13 All fuel and utility costs incurred in the performance of the Work.

6.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work, with the exception of Washington State Sales Tax, which shall be paid outside the Phase 1 NTE or GMP.

6.3.15 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.3.16 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.3.17 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

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6.3.19 Accounting and data processing costs related to the Work.

6.3.20 Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician. In order to receive this reimbursement the Design-Builder will be required to submit to Owner, a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

6.3.21 Unit Prices established by the parties in Exhibit E.

6.3.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder's Contingency, Design Builder's Fee Percentage, the Lump Sum Fee, or the Lump Sum General Conditions.

6.4 Other Methods of Compensation

Within the Phase 1 NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder's Compensation

6.4.1 Allowance Items and Allowance Values.

.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in Exhibit E or the GMP Amendment and are included within any established NTE and the GMP, as applicable.

.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance directly associated with the applicable Allowance Item. With the exception of Owner Directed Allowances, all other costs, including design fees, Design-Builder's overall project management and fixed general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.1.4; however, Design-Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

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.6 The Owner and the Design Builder may designate certain Allowances as "Owner Directed Allowances." Design Builder shall be compensated for Owner Directed Allowances for the Cost of the Work associated with such allowances plus the Fee Percentage. Items designated as "Owner Directed Allowances" shall not be included in the calculation to determine the Lump Sum Fee.

6.4.2 Not To Exceed Sums

.1 The Owner and Design Builder may establish Not to Exceed ("NTE") Sums for specific scopes of the Work. Any such NTE Sum will be negotiated between the Owner and Design-Builder. The NTE Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:

a. A specific description of the Scope of the Work that is subject to the NTE Sum;

b. An updated Schedule of Values that incorporates the NTE Sum; and

c. Any milestone dates associated with the scope of the Work associated with the NTE Sum.

.2 For each scope of work for which a NTE Sum has been established, the Design-Builder shall be reimbursed for the scope of the Work as a Cost of the Work; however, Design-Builder's compensation shall not exceed the NTE Sum without a written Change Order.

.3 Design-Builder shall not request reimbursement for costs that are within the scope of the NTE Sum unless those costs are identified in the Payment Application as subject to the NTE Sum. Except as allowed in Section 6.4.4.1.b, costs that are within the scope of the NTE Sum that are in excess of the NTE Sum shall be the sole responsibility of the Design-Builder.

.4 NTE Sums may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

.1 The Owner and Design-Builder may establish Lump Sums for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:

a. A specific description of the Scope of the Work that is subject to the Lump Sum;

b. An updated Schedule of Values that incorporates the Lump Sum; and

c. Any milestone dates associated with the scope of the Work associated with the Lump Sum.

.2 For each scope of work for which a Lump Sum has been established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above

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based on the percentage of the Scope of the Work subject to the Lump Sum that has been completed.

.3 Design-Builder shall not request reimbursement for costs that are within the scope of the Lump Sum unless those costs are identified in the Payment Application as subject to the Lump Sum. Except as allowed in Section 6.4.4.1.b, costs that are within the scope of the Lump Sum that are in excess of the Lump Sum shall be the sole responsibility of the Design-Builder.

.4 Lump Sums may only be modified via Change Order pursuant to the General Conditions

6.4.4 Contingencies

.1 The Parties shall establish, as part of any NTE and the GMP, the following Contingencies which are available for Design-Builder's exclusive use for the below described unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). Continency Items include the costs described below, which are subject to written approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under a Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.

(a) Cost of the Work Contingency. The Cost of the Work Contingency is reimbursed as a Cost of the Work. The Cost of the Work Contingency is available to the Design-Builder for the following items:

(i) Trade buy-out differentials;

(ii) Escalation of materials; and

(iii) Other direct Costs of the Work that are not included in the Design-Builder's Contingency, but only with the prior written consent of the Owner.

(b) Design-Builder's Contingency. The Design-Builder's Contingency is available to the Design-Builder for items that are not excluded by Section 6.5 hereof and include but are not limited to the following items:

(i) Overtime or acceleration;

(ii) Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained;

(iii) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work,

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provided such costs do not arise from disputes between Owner and Design-Builder;

(iv) Subcontractor or other tier defaults to the extent not compensated by any surety or bond; or

(v) Costs that are in excess of an NTE Sum or Lump Sum.

.2 The Design-Builder shall be reimbursed for Contingency Items in the same manner as set forth in Section 6.3 of the Agreement; however, Design-Builder's compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design-Builder's Contingency in the applicable NTE or GMP without a written Change Order. Design-Builder shall not be entitled to any Fee Percentage for items reimbursed under Section 6.4.4.1.b, the Design-Builder's Contingency. Further, the amounts included in the Design-Builder's Contingency set forth in Section 6.4.4.1.b shall be excluded from the calculation set forth in Section 6.2.3 to establish the Lump Sum Fee and the calculation set forth in Section 6.2.4 to determine whether the GMP has changed.

.3 Prior to the final accounting, the Contingencies are not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase an NTE or GMP under the Contract Documents.

.4 Design-Builder shall provide Owner notice of all anticipated charges against the Contingencies and shall provide Owner as part of the monthly status report required by the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from a Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.4.5 Lump Sum General Conditions Costs

.1 If the Parties enter into the GMP Amendment, the Parties shall establish an amount for the Lump Sum General Conditions Costs. The parties shall determine the portions of the Cost of the Work set forth in Section 6.3 that are included in the Lump Sum General Conditions Costs, and the parties shall include a description of such costs in the GMP Amendment. Unless the parties agree in writing otherwise, the costs that will be included in the Lump Sum General Conditions Costs are as follows:

a. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work. Specifically, the following personnel are included in the Lump Sum General Conditions Amount:

i. Project Executive

ii. Project Manger

iii. Superintendent and/or Construction Manager

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iv. Quality Control Manager

v. Project Field Engineer and/or Design Manager

vi. Project Controls

vii. Project Scheduler

viii. Safety Manager

b. Wages or salaries of Design Builder's personnel stationed at Design Builder's principal or branch offices, but only to the extent said personnel are approved in advance of the performance of the Work in writing by the Owner.

c. Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under this Section.

d. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work and with the written consent of the Owner as set forth below:

i. Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at www.gsa.gov.

ii. Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed the Federal Per Diem maximum lodging rate for the location where the work is being performed.

iii. Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car (including fuel), at cost, in the ratio of one mid-size class rental car for each three Contractor's personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the Owner unless such options are approved in advance by the Owner's Representative. Appropriate insurance coverage should be included in the Contractor's insurance policies.

e. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

f. Premiums for insurance and bonds required specifically by this Agreement or the performance of the Work by the Design Builder.

g. Accounting and data processing costs related to the Work.

h. Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician and the determination of the locality of

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the work to confirm the appropriate classification of work. In order to receive this reimbursement, the Design-Builder will be required to submit to Owner a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

i. General administrative costs not specifically listed in this subsection, including but not limited to the following:

i. Shop Drawing Reproduction
ii. Construction Schedule & Updates
iii. Safety/Security
iv. Field Office Set-up (mobilization/demobilization)
v. Office Supplies
vi. Telephone System
vii. Telephone Service Charge
viii. Computer Network/System Set-up
ix. Courier Service
x. Postage (Fed-X, USPS)
xi. Furniture/Equipment
xii. Office Cleaning
xiii. Project Superintendent Vehicle
xiv. Computers
xv. Copy Machine
xvi. Temporary Electric Hook-up/Removal
xvii. Temporary Electric Material
xviii. Project Signage
xix. Temporary Water Hook-up/Removal
xx. Drinking Water & Supplies
xxi. Chemical Toilets
xxii. O&M Manuals
xxiii. Project Record Documents
xxiv. Field Engineering/Layout Survey

.2 For the Costs of the Work that are included in the Lump Sum General Conditions Costs, the Design-Builder shall no longer be entitled to be reimbursed for such costs as part of the Cost of the Work, and the Design Builder's sole compensation for the costs set forth in the identified General Conditions shall be through the Lump Sum General Conditions Costs.

.3 The Owner shall have the right to examine the back-up documentation establishing the Lump Sum General Conditions Costs, including but not limited to all estimates, proposals, contracts and other financial documentation on a transparent basis.

.4 The Lump Sum General Conditions Costs shall only be modified if the Design-Builder is entitled to compensation for a delay pursuant to Section 8.2 of the

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General Conditions. Any modification to the Lump Sum General Conditions Costs shall be calculated as follows:

a. The Design Builder shall be entitled to receive a liquidated daily rate for extended General Conditions Costs ("Design-Builder's Delay Rate") for each day that the Contract Time is extended pursuant to Section 8.2 of the General Conditions.

   i. The Design-Builder's Delay Rate shall be calculated by dividing the Lump Sum General Conditions Costs by the number of days in the Contract Time set forth in the GMP Amendment for Phase 2.

   ii. Then, the Design-Builder's Delay Rate is multiplied by the number of days that the Contract Time is extended for Design-Builder's Delay, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.

   iii. The result from the Design-Builder's Delay Rate multiplied by the number of days is the Extended General Conditions Costs which shall be added to the Lump Sum General Conditions Costs by Change Order and paid to the Design Builder pursuant to the Schedule of Values, subject to a determination of entitlement pursuant to Article 8 of the General Conditions.

b. The Design-Builder's Delay Rate shall not apply to delays occurring after Substantial Completion is achieved.

c. The Parties agree that determining the Design Builder's damages for delay in Phase 2 would be extremely difficult or impracticable to determine and that the Design-Builder's Delay Rate, as calculated in this Section 6.4.5.4, is a reasonable estimate of and reasonable sum for such damages; therefore, the Design-Builder's Delay Rate shall be payable to the Design Builder as liquidated damages and not as a penalty.

6.4.6 Unit Prices and Hourly Rates

.1 Any Unit Prices and Hourly Rates shall be agreed upon in writing and set forth in Exhibit E to the Agreement. Design-Builder shall not charge more than a specified Unit Price or Hourly Rate than the amount set forth in Exhibit E, as modified through the Contract Documents.

.2 Once established, Unit Prices and Hourly Rates shall not be subject to audit and may only be changed by Change Order.

.3 Design-Builder must maintain a record of the number of Unit Prices and Hours billed using Hourly Rates for review by Owner.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as expressly provided for in Section 6.3 hereof.

.2 Overhead and general expenses, except as provided for in Section 6.3 hereof.

.3 The cost of Design-Builder's capital used in the performance of the Work.

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.4 Costs that would cause the Phase 1 NTE, the GMP, the Cost of the Work Contingency, or the Design Builder's Contingency as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 Project Phases.

6.6.1 Phase 1

.1 Compensation. During Phase 1, the Design Builder shall be compensated for the following:

a. The Cost of the Work set forth in Section 6.3;

b. Design-Builder's Fee Percentage set forth in Section 6.2.1 multiplied by the Cost of the Work; and

d. Contingency Items charged under Section 6.4.4.1.b.

.2 Validation Period. At the beginning of the Project, Design-Builder shall engage in Validation of the Project information as set forth in Exhibit C, Section 1.03 (the "Validation Period").

a. **Validation Period Not to Exceed Amount.** Design-Builder guarantees that its Compensation during the Validation Period of Phase 1 for the Project shall not exceed the Validation Period Not to Exceed Amount ("Validation Period NTE"). Documents used as a basis for the Validation Period NTE are set forth in Exhibit D. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the applicable Validation Period NTE, as adjusted in accordance with the Contract Documents.

b. **Development of Phase 1 Commercial Terms.** During the Validation Period for the Project, the parties will collaboratively develop the Phase 1 Not to Exceed Amount ("Phase 1 NTE"), Phase 1 Completion Date, the Phase 1 Scope of Work, a Validated GMP, a Target Schedule, the Initial Project Scope, and other Submittals for the Project as set forth in Exhibit C. At the conclusion of the Validation Period, provided the parties agree on the applicable terms, the parties shall enter into the Validation Amendment to establish the Phase 1 NTE, the Phase 1 Completion Date, the Validated GMP, the Target Schedule, and the Initial Project Scope and to finalize the other Submittals required by Exhibit C.

.3 Design Development Period. Provided the parties enter into the Validation Amendment establishing the Commercial Terms of the Design Development Period, Design-Builder shall engage in the remainder of the Phase 1 activities as set forth in the Contract Documents and the Validation Amendment.

a. **Compensation during the Design Development Period.** Design-Builder shall be compensated during the Design Development Period for the Project in the same manner as the Validation Period set forth in Section 6.2.2.1 above. Design-Builder guarantees that its compensation for the remainder of Phase 1 for the Project shall not exceed the Phase 1 NTE in the Validation Amendment. Documents used as a basis for a Phase 1 NTE shall be identified as an Exhibit to the Validation Amendment. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceeds the Phase 1 NTE, as adjusted in accordance with the Contract Documents.

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b. **Development of the GMP Proposal.** During the remainder of Phase 1 for the Project, the parties will collaboratively develop the GMP Proposal pursuant to Exhibit C.

.4 GMP Proposal. At the conclusion of Phase 1, Design-Builder shall submit a GMP Proposal to Owner which shall include the deliverables set forth in Exhibit C, unless the parties mutually agree otherwise.

.5 Submission of the GMP Proposal. Submission of the GMP Proposal constitutes Design-Builder's representation and agreement that it has adequately investigated the site and the project parameters, the Project is adequately defined, the Final Basis of Design Documents are sufficiently defined to provide an accurate GMP and Project Schedule, and subject to the assumptions and clarifications in the GMP Proposal, the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the Original GMP.

.6 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal. To assist in the Owner's review of the GMP Proposal, the Design Builder shall, upon the Owner's Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the GMP Proposal. The Owner shall make its best efforts to review any revised GMP Proposal within thirty (30) days of receipt of the revised GMP Proposal.

.7 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the terms of the GMP Proposal shall be set forth in the GMP Amendment. At the Owner's option, the GMP may be converted into a Lump Sum.

.8 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

a. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.7 above;

b. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

.9 Performance of Work After Submission of GMP Proposal. The Design-Builder shall not perform any Work after the submission of the GMP Proposal until the Owner has approved and signed the GMP Amendment unless the Design-Builder obtains the Owner's prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent. If Design-Builder performs such Work, Design-Builder shall be compensated pursuant to the written approval.

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6.6.2 Phase 2 Post GMP Period.

.1 Compensation. During Phase 2, the Design Builder shall be compensated for the following, all subject to the GMP:

a. The Cost of the Work set forth in Section 6.3;

b. Design-Builder's Lump Sum Fee established pursuant to Section 6.2.3;

c. Any Lump Sums established pursuant to Section 6.4.3;

d. Contingency Items charged under Section 6.4.4.1.b; and

e. Design-Builder's Lump Sum General Conditions Costs established pursuant to Section 6.4.5.

.2 GMP The total compensation paid to Design-Builder for this Project shall not exceed the GMP, as amended pursuant to this Contract. By agreeing to the GMP Amendment, the Design-Builder understands that if the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design-Builder, and Design-Builder hereby assumes liability for such costs without reimbursement by the Owner.

.3 If the parties decide to convert the GMP into a Lump Sum, Design-Builder shall be compensated pursuant to Section 6.4.3 of the Agreement.

6.6.3 Savings.

.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall go to 100% to the Owner.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the twenty fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder's Fee under Section 6.2 hereof is a lump sum amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

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7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage pursuant to RCW Chapter 60.28, and Owner shall release such retainage pursuant to state law. Pursuant to RCW Chapter 60.28, the Design-Builder may submit a bond in lieu of the retainage that the Owner would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on the form approved by the Owner. In the event the Design-Builder fails at any time to pay persons protected under RCW Chapter 60.28 or the Owner has reason to believe that the Owner or other obligee under the bond has a claim against the retainage or for other good cause, the Owner may, at its option, resume retaining from monies earned by the Design-Builder in such amount as it would otherwise be entitled to retain had the bond not been accepted. Notwithstanding the Owner's resuming such retainage, said bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Design-Builder. After the Design-Builder has paid protected persons or otherwise cured any default, the Owner may, at its option, again release retainage pursuant to the terms of the bond.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the statutory rate of interest per month until paid.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner, Owner's accountants, the Washington State Department of Commerce and the Washington State Auditor shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate all or a portion of this Agreement. In such event, Owner shall pay Design-Builder for allowable costs and subject to any established Not to Exceed Amount or GMP:

8.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

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8.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

8.1.3 The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above based on Design-Builder's Fee Percentage, provided, however, if a Lump Sum Fee has been established, then the Lump Sum Fee shall only be modified pursuant to Section 6.2.4 above.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Jerrod MacPherson
Count Administrator
Benton County
7122 W Okanogan Pl.
Kennewick, WA 99336
509-786-5600

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Robert Blain
Director of Operation and Capital Programs
Benton County
7122 W Okanogan Pl.
Kennewick, WA 99336
509-736-2704

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Brandon Mayfield
President
Chervenell Construction
107422 E Detrick PR SE
Kennewick, WA 99338
509-735-3377

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9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Brandon Mayfield
President
Chervenell Construction
107422 E Detrick PR SE
Kennewick, WA 99338
509-735-3377

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Upon execution of this Agreement, Design-Builder shall provide a performance and a labor and material bond, pursuant to RCW Chapter 39.08, equal to one hundred percent (100%) of the Validation Period NTE in the form set forth as Exhibit B. Upon execution of the Validation Amendment, Design-Builder shall increase the Performance and Payment bond to an amount equal to 100% of the Phase 1 NTE in the form set forth as Exhibit B. Upon execution of the GMP Amendment, Design-Builder shall increase the Performance and Payment Bond to an amount equal to one hundred percent (100%) of the GMP in the form set forth as Exhibit B.

10.3 All bonds furnished by Design-Builder shall be from a surety that is qualified and registered to conduct business in the state of Washington.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.2 Wages.

11.2.1 The Design-Builder and its Subcontractors, Consultants and Sub-Consultants shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the applicable state prevailing wage rate required by (RCW Chapter 39.12). The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Design-Builder's responsibility to verify the applicable prevailing wage rate.

11.2.2 Before payment is made by the Owner to the Design-Builder for any Work performed by Design-Builder or any Subcontractor, Consultant or Sub-Consultant whose work is included in the application for payment, the Design-Builder shall submit, or shall have previously submitted, to the Owner a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of employees, laborers, workers, or mechanics employed for the Work by Design-Builder, Consultants, Subcontractors and Sub-Consultants. The "Statement of Intent to Pay Prevailing Wages" shall include: (1) the Design-Builder's registration number; and (2) the prevailing wages under RCW 39.12.020 and the number of workers in each classification. Each voucher claim submitted by the Design-Builder for payment on a project estimate shall state that the prevailing wages have been

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paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the Owner.

11.2.3 Design-Builder and each Subcontractor required to pay the prevailing rate of wages shall post in a location readily visible at the job site: (1) a copy of a "Statement of Intent to Pay Prevailing Wages" approved by the industrial statistician of the Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.4 Prior to release of the retainage, the Design-Builder shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Design-Builder and every Consultant, Sub-Consultant, and Subcontractor of any tier that performed work on the Project.

11.2.5 Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

11.2.6 Each Application for Payment submitted by Design-Builder shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copied of the approved intent statements(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

11.2.7 In compliance with WAC Chapter 296-127, Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

11.2.8 Consistent with WAC 296-127-320, the Design-Builder and all Consultants, Sub-Consultants and Subcontractors shall submit a certified copy of payroll records if requested.

11.3 Hours of Labor

11.3.1 Design-Builder shall comply with applicable provisions of RCW Chapter 49.28, and such provisions are incorporated herein by reference.

11.3.2 RCW 49.28 permits entities performing public works contracts to enter into an agreement where employees work up to ten hours in a calendar day, subject to the provisions of the statute. No such agreement may provide that employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees.

11.4 Off Site Prefabricated Items.

11.4.1 In accordance with RCW 39.04.370, Design-Builder shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington as a part of the Affidavit of Wages Paid form filed with the Washington State Department of Labor and Industries.

11.5 Nondiscrimination.

11.5.1 No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. The

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Design-Builder agrees to comply with and to require that all subcontractors comply with, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as applicable.

11.6 Business Registration Requirement.

11.6.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers of every tier are properly licensed to perform the work for which they are contracted and have all applicable business licenses, including but not limited to any licenses or registrations required by the State of Washington and any other regulatory authority. Design-Builder shall be solely responsible for contacting the State of Washington Business License Services at http://bls.dor.wa.gov or 1-800-451-7985 to obtain a business registration.

11.7 Contractor's Registration Requirement.

11.7.1 Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW 39.06.010.

11.8 Apprenticeship Program

11.8.1 Design-Builder shall comply with the apprenticeship program set forth in RCW 39.04.320, as applicable.

11.9 Submission of Information to CPARB

Design-Builder and its subcontractors and designers shall submit to Owner project information required by the Washington State Capital Projects Advisory Board pursuant to RCW 39.10. Specifically, and without limitation, Design-Builder must report to Owner its utilization of businesses certified by the Office of Minority and Women Business Enterprises ("OMWBE") and veteran certified businesses.

11.10 Inclusion Plans

Design-Builder shall submit to Owner inclusion plans for underutilized firms as subcontractors and suppliers including, but not limited to, OMWBE certified businesses, veteran certified businesses, and small businesses as required in Exhibit C.

11.11 No Party is Drafter

Each party has had an opportunity to negotiate the provisions of this Agreement and its Exhibits and attachments, and neither party shall be construed as the drafter.

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In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:	**DESIGN-BUILDER:**
Benton County, Washington	*Chervenell Construction Co.*
(Signature)	DocuSigned by: 8F913A65C3E74BF... *(Signature)*
(Printed Name)	Brandon Mayfield *(Printed Name)*
(Title)	President *(Title)*
Date:	Date: 5/25/2023

DocuSigned by:
Robynne Thaxton
8057D03FE3CC4DC...
Approved to Form: Robynne Thaxton
Special Deputy Prosecutor

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.

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DBIA 535 – General Conditions of Progressive Design-Build Contract Between Owner and Design-Builder

BENTON COUNTY WA

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GENERAL CONDITIONS OF PROGRESSIVE DESIGN-BUILD CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

Note: This document has been modified from the DBIA Form. A redlined version will be provided upon request.

Document No. 535
Second Edition, 2010

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Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.1.2 **Integrated Delivery:** The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

.1 Create a culture of open and honest communication throughout the course of the Project;
.2 Resolve disputes quickly and at the lowest possible level;
.3 Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process;
.4 Utilize lean construction methods efficiently and effectively;
.5 Establish a collaborative environment based on mutual trust, good faith, and fair dealing where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties; and
.6 Establish equitable business terms for the parties who are members of the Design-Build Team.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Progressive Design-Build Agreement Between Owner and Design-Builder – with Cost Plus Fee and a Guaranteed Maximum Price* (2010 Edition, as revised).

1.2.2 *Initial Basis of Design Documents* are those documents developed as a Phase 1 deliverable that outline the scope of the Project and include the DBIA 530 Revised Form of Progressive Design-Build Agreement Between Owner and Design-Builder Cost plus Fee with a Guaranteed Maximum Price (as revised); the DBIA 535 Form of General Conditions of Progressive Design-Build Contract (as revised), and the other documents required as a Phase 1 deliverable.

1.2.3 *Commercial Terms* are any terms that establish a GMP, Not to Exceed, Lump Sum, Hourly Rate or Contract Time.

1.2.4 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Initial and Final Basis of Design Documents unless a deviation from the Initial or Final Basis of Design Documents (as applicable) is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.5 *Contingencies* are the amounts available for Design-Builder's use and are defined in Section 6.4.4 of the Agreement. The Cost of the Work Contingency is defined in Section 6.4.4.1.a. The Design-Builder's Contingency is defined in Section 6.4.4.1.b.

1.2.6 *Contract Time* consists of the dates set forth in Article 5 of the Agreement.

1.2.7 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract

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Documents.

1.2.8 *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.9 *Design Consultant* is a qualified, design professional licensed in the State of Washington who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.10 *Design Development Period* is the period of Phase 1 after the parties enter into the Validation Amendment and collaboratively develop the Basis of Design Documents, the Project Schedule, and the GMP.

1.2.11 *Design Log* is a log of Reliable Design Decisions agreed upon by the parties. The Design Log supplements the Initial and Final Basis of Design Documents, as applicable.

1.2.12 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Builder: (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.2.13 *Final Basis of Design Documents* are the documents agreed upon in the GMP Amendment by the Owner and Design-Builder at the conclusion of Phase 1 that comprise the performance and other requirements of the Project.

1.2.14 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission and receipt of all documents set forth in Section 6.7.2.

1.2.15 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.16 *General Conditions of Contract* refer to this DBIA Document No. 535, *General Conditions of Contract Between Owner and Design-Builder* (2010 Edition, as revised).

1.2.17 *GMP Amendment* means an amendment to the Agreement entered into the parties at the conclusion of Phase 1 that establishes the Final Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.

1.2.18 *Initial Project Scope* is the scope of the project that the parties collaboratively establish at the conclusion of the Validation Period that represents the parties' best determination of an achievable project scope within the Validated GMP.

1.2.19 *Phase 1* is the first phase of the Contract when the Design-Builder engages in consultation with the Owner and other stakeholders to develop the design, budget and schedule to a sufficient extent to allow the Design-Builder to submit a GMP Proposal. At the conclusion of Phase 1, the Design-Builder shall submit the deliverables set forth in the Contract Documents.

1.2.20 *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of the Agreement.

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1.2.21 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.22 *Key Team Members are those individuals who were identified as part of the Design-Builder's Statement of Qualifications and Proposal submitted pursuant to the procurement of this Project.*

1.2.23 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.24 *Original GMP* is the GMP set forth in the GMP Amendment.

1.2.25 *Owner Directed Allowances* are the amounts defined in Section 6.4.1.6 of the Agreement.

1.2.26 *Owner Provided Information* is all information provided by the Owner to the Design-Builder during the course of the Project.

1.2.27 *Phase 2* is the second phase of the Project that commences after the parties enter into the GMP Amendment. The scope of Phase 2 shall be set forth in the GMP Amendment.

1.2.28 *Project Schedule* is the schedule provided by the Design-Builder and approved by the Owner pursuant to Section 2.1.3 of the General Conditions and Exhibit C.

1.2.29 *Reliable Design Decision* is a decision, development, or election that refines the Initial Basis of Design Documents or Final Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Design Decision cannot change the Initial Basis of Design Documents or Final Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

1.2.30 *Site* is the land or premises on which the Project is located.

1.2.31 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen, and suppliers.

1.2.32 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include Design Sub-Consultants, materialmen, and suppliers.

1.2.33 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an Interim Milestone Date, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes without compromising the building operation (including materially increasing operating expenses) or the user's ability to reasonably use all parts of the Project.

1.2.34 *Target Schedule* is the estimated Schedule collaboratively established by the parties at the conclusion of the Validation Period that represents the parties' best determination of an achievable Schedule.

1.2.35 *Trend* is an issue identified in the Trend Log.

1.2.36 *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.

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1.2.37 *Validated GMP* is the GMP that is validated by the Design-Builder during the Validation Period that represents the parties' best determination of an achievable GMP.

1.2.38 *Validation Amendment* is the Contract Amendment entered into after the Validation Period that establishes the Initial Project Scope, the Validated GMP, and the Target Schedule.

1.2.39 *Validation Period* is the time period established in Section 6.6 of the Agreement to accomplish the tasks set forth in Exhibit C, Section 2.02.

1.2.40 *Validation Proposal* is the Proposal provided by the Design-Builder at the time set forth in Exhibit C that establishes the terms of the remainder of Phase 1, including but not limited to the Phase 1 Scope, the Phase 1 Not to Exceed Amount, the Validated GMP, the Target Scope, and the Initial Basis of Design Documents.

1.2.41 *Work* shall mean the services, design and construction to be completed by the Design-Builder under the terms of this Contract. Work specifically includes the furnishing of all services, labor, materials, equipment, and all incidentals necessary to the successful completion of the services, design and construction, whether expressly required by or reasonably inferable from the Contract Documents, whether they are temporary or permanent, and whether they are incorporated into the finished Work or not. Work also includes all other obligations imposed on the Design-Builder by the Contract. The Work is sometimes generally referred to as the "Project."

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner status reports detailing the progress of the Work as set forth in Exhibit C, including but not limited to (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency accounts; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). In addition to the frequency set forth in Exhibit C, status reports shall be submitted with the Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Design-Builder shall prepare and submit the schedules and deliverables set forth in Exhibit C, including but not limited to the Project Schedule for the execution of Work for Owner's review and response. The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by Exhibit C and the conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the Project Schedule and other deliverables provided by Design-Builder shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement any procedures additional to Exhibit C, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 The Design-Build Team, which at a minimum shall consist of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the information required in Exhibit C and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three days of meeting.

2.1.6 Design Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Design Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which the Owner designates in writing. The Owner may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to the Owner for entering into the Contract with Design Builder and may not be withdrawn prior to Final Completion.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant. Design-Builder shall provide to Owner a list of all Design Consultants and Design Sub-Consultants who will perform material portions of the Work. "Material portions of the Work" shall, at a minimum, include the civil, landscape, architectural, structural, mechanical, electrical, and plumbing design. Design-Builder shall not substitute a listed Design Consultant or Sub-Consultant without obtaining Owner's prior written consent, such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Design Consultant or Subconsultant of any tier including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

2.3 Standard of Performance for Professional Services.

2.3.1 The standard of care for all professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Initial and/or Final Basis of Design Documents.

2.3.2 Design Builder shall perform all activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents.

2.4 Design Development Services.

2.4.1 Design-Builder shall provide the Design Submissions set forth in the Contract Documents. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any additional interim Design Submissions that Owner may wish to review,

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which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

.1 Interim and final Design Submissions shall be consistent with the Initial and Final Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1, as well as the Commercial Terms. By submitting a Design Submission, the Design-Builder represents to the Owner that the Work depicted and otherwise, shown, contained, or reflected in the Design Submission may be constructed for the then current Initial or Final Basis of Design Documents (as applicable) and the Commercial Terms. Notwithstanding the above, Design-Builder may propose designs that may alter the Initial or Final Basis of Design Documents, the Commercial Terms; however, Design-Builder must provide notice thereof in accordance with Article 10 and obtain a Change Order before such proposed designs are incorporated into an approved Design Submission or Construction Documents.

.2 Design-Builder shall provide the Design Submissions set forth in Exhibit C. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Initial or Final Basis of Design Documents, or, if applicable, previously submitted Design Submissions.

.3 The Owner shall review and comment on such Design Submissions, providing any comments and/or concerns about such Design Submissions. The Owner shall provide all comments on the Design Submissions within the time provided by the Schedule. The Design-Builder shall revise the Design Submissions (and any other deliverables) in response to the Owner's comments and incorporate said responses into the next Design Submission.

.4 If incorporation of the Owner's comments result in a design that is inconsistent with the Initial or Final Basis of Design Documents or otherwise give rise to a change in the Initial or Final Basis of Design Documents or the Commercial Terms, the Design-Builder shall provide notice thereof in accordance with Article 10. Changes to the Initial or Final Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9.

.5 The Design-Builder shall provide an updated cost model for the Project periodically as required in Exhibit C. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.

.6 Design Log. A Design Log, including a full listing of Reliable Design Decisions and all changes to the Initial and Final Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.

a. Both parties must agree to include a Reliable Design Decision in the Design Log.

b. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.

c. Once a Reliable Design Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Interim or Final Basis of Design Documents.

d. The Design Log is for the sole purpose of tracking the development of the Design Submissions. If a Reliable Design Decision will cause a change in the Interim or Final Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Articles 9 and 10.

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.7 Trend Log. If either party does not know the extent to which a Design Submission or other potential change will alter a Commercial Term, either party may request in writing to identify a Trend in the Trend Log.

a. The request to include a Trend in the Trend Log must include the following information:

i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;

ii. The estimated change in the applicable Commercial Term; and

iii. Potential impacts or changes to the Initial or Final Basis of Design Documents as a result of the Trend.

b. Both parties must consent in writing to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.

c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Initial or Final Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order. If the resolution does not change the Initial or Final Basis of Design Documents and/or any Commercial Term, it shall be removed from the Trend Log.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified by the parties and recorded as set forth in the Contract Documents. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above and Exhibit C. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any Design Submissions, meeting minutes, the Design Log, the Trend Log and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions, such time period shall not be less than ten business days.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Commercial Terms shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date the parties agree upon the Commercial Term. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

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2.6 Government Approvals and Permits.

2.6.1 Unless the parties have identified permits in an Owner's Permit List attached as either an exhibit to the Agreement or as part of the Initial or Final Basis of Design Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 The Design-Builder shall assemble and install all equipment according to the applicable manufacturer's installation instructions. Work that does not conform to the applicable instructions and/or any resulting errors in assembly or installation shall be corrected by the Design-Builder. If the Owner determines that the Design-Builder has incorrectly assembled, installed and/or damaged any such equipment, the Design-Builder shall, at its own expense, furnish a competent manufacturer's representative to assist, instruct and approve the Design-Builder's corrected work.

2.7.4 If any materials or equipment are stored by Design-Builder, they shall be stored so as to ensure the preservation of their quality and fitness. Materials and equipment shall be placed on platforms or other hard, clean surfaces, and not on the ground, and shall be placed under cover and heated adequately to prevent condensation, oxidation or freezing. Stored materials and equipment shall be located so as to facilitate observation. The Design-Builder shall be responsible for all damage or loss that occurs as a result of its fault or negligence in connection with the care and protection of all materials and equipment until acceptance by the Owner.

2.7.5 Design-Builder is responsible for verifying that any equipment supplied by the Owner is in working order and sufficient for the purposes for which it was intended in the Project. If equipment furnished by Owner is not in working order or is not sufficient for the Project, Design-Builder shall notify Owner immediately, and Owner shall either repair or replace the equipment, at Owner's sole discretion. Design-Builder is responsible for the proper installation of the equipment furnished by Owner.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Subcontracts

2.8.1 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Design-Builder shall, prior to the start

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of the Work applicable to each Subcontractor, provide Owner with a list of all Subcontractors performing the work to Owner. To the extent that the Design-Builder has not selected a Subcontractor prior to performing the applicable work, Design-Builder shall inform Owner in writing of the scope of work that has not been subcontracted and provide Owner a list of any subsequently added Subcontractors prior to the Subcontractor performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

2.8.2 Design-Builder shall submit a Subcontracting Procurement Procedure during Phase 1 as required in Exhibit C, subject to the approval of the Owner. After approval by the Owner, Design-Builder may only modify the Subcontracting Plan upon obtaining written approval from the Owner. Design-Builder may not award any Subcontract on the basis of a lump sum price without obtaining prior written permission from the Owner, such permission shall not be unreasonably withheld.

2.8.3 All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with a Subcontractor Procurement Procedure established during Phase 1. Design-Builder shall identify the scope of subcontracted Work ("Subcontract Package") and shall identify qualified Subcontractors for each Subcontract Package. Unless approved in writing by the Owner, the Subcontractor Procurement Procedure shall comply with the following:

.1 All subcontracted work associated with performance of Construction Packages shall be award by the Design-Builder to Subcontractors in accordance with a best value selection process established between the parties. Unless otherwise agreed in writing by the parties, the best value selection process shall contain mutually acceptable evaluation criteria for the proposal and selection process that is clear and consistent and includes both qualifications and price.

.2 The Design-Builder may only modify the Subcontractor Procurement Procedure after obtaining written approval from the Owner. Any such modification shall be at the sole risk and responsibility of the Design-Builder and without any modification to any applicable Commercial Terms.

.3 The Design-Builder's selection of Subcontractors shall comply with the following requirements, unless modified by the Subcontractor Procurement Procedure approved in writing by the Owner:

a. The Design-Builder shall identify the scope of the Work to be subcontracted and shall identify at least three pre-qualified Subcontractors for such scope for written approval by the Owner.

b. After approval of the pre-qualified Subcontractors by the Owner, the Design-Builder shall select from the three pre-approved Subcontractors for the identified scope of the Work, unless it obtains prior written approval from the Owner to select a different Subcontractor.

c. If the Design-Builder cannot reasonably identify three pre-qualified Subcontractors, it shall inform the Owner in writing as to the reason for the inability to identify the Subcontractors and shall not proceed with the selection of a Subcontractor without the prior written approval of the Owner.

d. The Design-Builder shall select Subcontractors on the basis of the best value to the Project. If in the Design-Builder's determination, the Subcontractor who proposes the best value did not propose the lowest cost, the Design-Builder shall i) provide a written justification for the selection of the Subcontractor, and ii) obtain the Owner's written approval prior to Design-Builder entering into the Subcontract.

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2.8.4 Design-Builder must obtain prior, written approval from the Owner for the Design-Builder or the lead Constructor (if the lead Constructor is not also the Design-Builder) to self-perform construction Work.

1. For each scope of Work for which Design-Builder proposes self-performance, Design-Builder must submit to the Owner a proposal that contains the following minimum information as well as any other information reasonably requested by the Owner:
    a. A detailed description of the scope of Work; and
    b. A detailed explanation of the effect of the self-performed construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project.
2. Design-Builder will provide the Owner with an estimate of the costs for all self-performed construction Work on an open book basis. In calculating the costs for self-performed construction Work, the following shall apply:
    a. The costs for self-performed construction Work shall not include costs that are also included in the Lump Sum General Conditions Costs.
    b. Notwithstanding the above, Design-Builder may include in the costs for self-performed construction Work additional general conditions costs that are directly associated with the self-performed construction Work that Design-Builder would not have incurred but for the self-performed construction Work.

2.8.5 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.8.6 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.9 Design-Builder's Responsibility for Project Safety.

2.9.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.9.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

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2.9.3 Design-Builder's responsibility for safety under this Section 2.9 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.10 Design-Builder's Warranty.

2.10.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

2.11.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.10 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.11.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.11.3 The one-year period referenced in Section 2.11.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.12 Contract Phases

2.12.1 Phase 1. Phase 1 shall commence upon Notice to Proceed from the Owner and shall end on the Phase 1 Completion Date as set forth in DBIA Document 530, Section 5.2. The services provided by the Design-Builder during Phase 1 shall be established in Exhibit C.

.1 In the Validation Period of Phase 1, the Design-Builder shall carefully and thoroughly examine the information set forth in Exhibit C, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities; necessary testing of existing facilities; geotechnical and other site conditions; and legal, permitting and regulatory requirements and restrictions.

.2 The Design-Builder may not rely on information provided by the Owner and must

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validate all information provided by the Owner during Phase 1 as set forth in Exhibit C. Notwithstanding the above, the parties recognize that the Design-Builder relied on the information set forth in the Request for Proposals to establish the Phase 1 NTE, and if the actual conditions differ materially from the information set forth in the RFP, then the Design-Builder shall provide Notice thereof and may be entitled to an equitable adjustment in the Phase 1 NTE, provided that the Design-Builder meets the requirements in Section 4.2.1 of the General Conditions.

.3 The Design-Builder shall provide the submissions set forth in Exhibit C. In addition, the Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents, agree upon the quantity and level of development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. Design Submissions shall be consistent with the GMP and the information set forth in the RFP, as they may develop through the design process set forth in the Contract Documents.

.4 Design-Builder must verify the information set forth in Exhibit C by the conclusion of the Validation Period. The extent to which such verification will occur in the Validation Period shall be set forth in Exhibit C. If the Design-Builder discovers or should have discovered with reasonable diligence material differences from the actual conditions and the information provided in Exhibit C, Design-Builder shall, at the conclusion of the Validation Period, provide Owner with written notice of any such material differences in the Validation Proposal. A “Material Difference” is defined as one that would either a) impact the Initial Basis of Design Documents or Design-Builder’s Fee Percentage or b) be considered a Differing Site Condition pursuant to Section 4.2.1 of the General Conditions. Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during the Validation Period.

.5 At the time set forth in the Phase 1 Schedule, the Design-Builder will submit a Validation Proposal pursuant to Exhibit C and Section 6.6.1 of the Agreement. The parties will negotiate the Final terms of the Validation Proposal, and if the parties agree, they will enter into the Validation Amendment that will, among other terms, set forth the scope of the remainder of Phase 1, the Phase 1 Not to Exceed Amount, the Validated GMP, the Target Schedule, and the Initial Project Scope. Upon execution of the Validation Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the Phase 1 NTE.

.6 At the conclusion of Phase 1, the Design-Builder will submit a GMP Proposal pursuant to Exhibit C and Section 6.6.1 of the Agreement. The parties will negotiate the Final terms of the GMP Proposal, and if the parties agree, they will enter into the GMP Amendment. Upon execution of the GMP Amendment, the Design-Builder shall provide a payment and performance bond for the amount of the GMP.

.7 If the Design-Builder performs Work after the submission of the GMP Proposal but before the parties enter into the GMP Amendment pursuant to Section 6.6.1 of the Agreement, the Design-Builder shall be entitled to be paid in the same manner as it was paid during Phase 1; however, in no case shall the Design-Builder be entitled to be paid in excess of the Phase 1 NTE.

2.12.2 Phase 2. Phase 2 is the final phase of the Contract where the Design-Builder: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, (iii) undertakes any necessary warranty services for the Project, and (iv) performs other services as set forth in Exhibit C and the GMP Amendment.

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Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 The Initial Basis of Design Documents sets forth the information provided by the Owner.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 If Design-Builder has reasonable belief that Owner will not have sufficient funds to complete the Project, at Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Section 2.6.1.

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3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site that could have been reasonably discovered during Phase 1. Unless working with Hazardous Condition is part of the scope of the Work, upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions that are not set forth as part of the Work or that could not have been reasonably discovered during Phase 1, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site pursuant to this Section.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees

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and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.7 With respect to Hazardous Conditions that are part of the Work, Design-Builder agrees to comply with all applicable regulatory authorities, including but not limited to any statute, regulation, or regulatory agency regarding such Hazardous Conditions. Design-Builder agrees to work cooperatively with Owner and regulatory agencies with jurisdiction over the Project to properly handle, dispose of, and/or remediate any Hazardous Conditions.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the applicable Commercial Term to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. Notwithstanding the above, provided the parties sign the GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions pursuant to Section 4.2.1(i) of the General Conditions if the Differing Site Condition could have been discovered, with reasonable diligence, during Phase 1.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder and Owner shall work together cooperatively to determine the appropriate course of action regarding any Differing Site Condition.

4.3 Archaeological Resources

4.3.1 In the event the Design-Builder or any of its Subcontractors inadvertently discover archaeological resources at any time during the project, Design-Builder shall immediately notify the Owner and suspend all excavation activities at the site.

4.3.2 "Archaeological Resource" shall mean any material remains of human life or activities which are of interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistoric or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to objects pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives scrapers, rock carvings and paintings, and other implements and artifacts of any material or form.

4.3.3 The disturbance of any cairn or Native Indian grave is prohibited by the Indian Graves and Records Act (RCW 27.44).

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and

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with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Builder's Risk Insurance.

5.3.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance on an "all risk" or equivalent policy form upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design-Builder shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall be on a special perils form and shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. A copy of the builder's risk policy shall be made available to the Owner for its approval at Owner's written request, such approval shall not be unreasonably withheld. The builder's risk insurance shall include physical loss or damage to the Work, including temporary buildings, debris removal, and damage to materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1 to the extent that the Design-Builder, or any subcontractor or subconsultant of any tier is responsible for the claim against the builder's risk insurance.

5.3.2 Not Used.

5.3.3 Not Used.

5.3.4 Any loss covered under the builder's risk insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors,

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Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement. Such waiver shall be effective whether the person or entity would otherwise have a duty of indemnification, do not pay the insurance premiums, and whether or not the person or entity had an insurable interest in the property damaged.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval a preliminary schedule of values for all of the Work as set forth in Exhibit C. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values, adequate and reliable cost justification and documentation so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

6.1.2 The Owner will timely review and approve the Schedule of Values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 If authorized by Owner, the Application for Payment may include request for payment for equipment and/or material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

.1 The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;

.2 The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;

.3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);

.4 Design-Builder furnishes Owner a certificate of insurance extending Design- Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;

.5 The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;

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.6 Owner shall at all times have the right of access in the company of Design-Builder;

.7 Design-Builder and its surety assume total responsibility for the stored materials;

.8 Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site; and

.9 Upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

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6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work representing an Interim Milestone, has achieved Substantial Completion. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Substantial Completion in accordance with the requirements of the Contract Documents. If Design-Builder has achieved Substantial Completion, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Not Used

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

.3 Consent of Design-Builder's surety, if any, to final payment;

.4 All operating manuals, warranties, record drawings, and other deliverables required by the Contract Documents;

.5 "As Built" drawings, with any and all implemented changes that constitute a final record set of the Project; and

.6 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects

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Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

6.7.5 Owner shall release the Contract Retainage pursuant to RCW 60.28.011.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Not Used.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the

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failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its Consultants, and their respective, its officers, directors, and employees (collectively "Indemnitees") from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, it's agents or employees.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under the worker's compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

7.4.4 THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND THE WAIVER OF IMMUNITY UNDER RCW TITLE 51 WERE MUTUALLY NEGOTIATED.

OWNER'S INITIALS: (_____)
DESIGN-BUILDER'S INITIALS: (_____)

7.4.5 The Owner shall not be responsible or be held liable for any damage to person or property

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consequent upon the use, misuse or failure of any crane, hoist, rigging, blocking, scaffolding or other equipment used by the Design-Builder or any of its Subcontractors, even though the said crane, hoist, rigging, blocking, scaffolding, or other equipment be furnished or loaned to the Design-Builder by the Owner. The acceptance and/or use of any such crane, hoist, rigging, blocking, scaffolding or other equipment by the Design-Builder or its Subcontractors shall be construed to mean that the Design-Builder accepts all responsibility for any claims for damages whatsoever resulting from the use, misuse or failure of such apparatus whether such damages by its own employees or property or to the employees or property of other contractors, the Owner, or otherwise.

7.5 Lower Tier Contractors Indemnification Obligations

7.5.1 Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

7.6 Limited Recourse.

7.6.1 None of the obligations set forth in this Agreement (on behalf of any Party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees or agents of any Party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement and any Amendment to the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

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Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

.1 The scope of the change in the Work;

.2 The amount of the adjustment to the Contract Price or any Commercial Term; and

.3 The extent of the adjustment to the Contract Time(s) or any Commercial Term.

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including but not limited to all incidental and indirect costs and time extensions associated with the Change. Changes Orders will not be allowed unless there is an actual change to the Work.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall work with the Owner to adjust the remaining Work to meet as many of Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder pursuant to Article 10 or Differing Site Conditions pursuant to Section 4.2.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

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9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

.3 The Cost of the Work as set forth in the Agreement; or

.4 If an increase or decrease cannot be agreed to as set forth in items.1 through.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including the Fee Percentage (if applicable), as set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

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10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder, unless the parties specifically agree to allow the Design Log or Trend Log to operate as such written notice of claims. The Design-Builder shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice, the more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. The failure to provide timely written notice of any claim shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other binding dispute resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures

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set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTIONS 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

10.5.3 The consequential damages limitation set forth in Section 10.5.1 above does not affect the ability of any party to recover consequential damages that are covered by insurance.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if i) its cost or time to perform the Work has been materially and adversely impacted by any suspension of stoppage of the Work by Owner, ii) the Design-Builder is entitled to the adjustment

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pursuant to the other provisions of the Contract Documents, and iii) the Design-Builder complies with all provisions of the Contract Documents regarding an adjustment to the Contract Price and/or Contract Time.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, (vi) perform material obligations under the Contract Documents, or (vii) comply with the requirements regarding safety, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of any Commercial Term, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the reprocurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event

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is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder may not stop work unless it provides such written notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

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11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

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12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

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13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient, or (iv) by electronic mail, by the time frame stated in the email generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments, Work Directives and Change Orders.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

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Certifications and Declarations

BENTON COUNTY WA

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Juvenile Justice Center / Sheriff's Office Project
Design Builder's Certifications & Declarations

ASSURANCE OF NON-DISCRIMINATION

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

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

NON-COLLUSION DECLARATION

The Design-Builder hereby declares, under penalty of perjury under the laws of the United States that the following statement is true and correct:

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

CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

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

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DESIGN-BUILDER:

DocuSigned by:
8E913A65C3E74BF...

(Signature) Chervenell Construction Co.

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Exhibit A – Project Scope

BENTON COUNTY WA

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Exhibit A1

Juvenile Justice Center Remodel Scope

1-24-2023

The Board of County Commissioners have identified $24.5 million for the project GMP, $16.5 million for the Juvenile Justice Center Remodel. With this target in mind, modifications were made to the proposed estimate created by Roen Associated presented in the final report crated by DLR Group.

A document prepared by Judge Stam on September 22, 2022, presents a list of items which shows a reduced scope accompanied by a list of items they would like to see included if the budget permits.

The items induced in the project scope for the Juvenile Justice Center Project include the following:

1. Item 1 – Secure Facility Renovation (Select Scope Only) – This includes the following items:
    a. Security Electronics, Fire Alarm & Comm. System Retrofit
    b. HVAC, Plumbing & Fire Sprinkler Upgrades
    c. Roof Replacement
2. Item 2 – Existing Courts Administration Renovation – the scope of this work will include the following items:
    a. Electrical (Includes Security)
    b. HVAC
    c. Plumbing
    d. Fire Protection
3. Item 4 – Annex Renovation & Connection – This work will need to be reduced to include the following items:
    a. Electrical (Includes Security)
    b. HVAC
    c. Plumbing
    d. Fire Protection
4. Item 5 – Replace Generator
5. Item 6 – Site Improvements

Items to add to the scope as budget permits

1. Connector between the Annex structure and the main building
2. New layout and reconstruction of the interior of the Annex Building
3. Enhance size of the Lobby/security area at front entrance both for temporary benefit, and in preparation for future phase expansion to the South side of building
4. Improvements to Juvenile Courtroom (lights/ remove carpet on the walls/ paint)
5. Additional work in the detention space.

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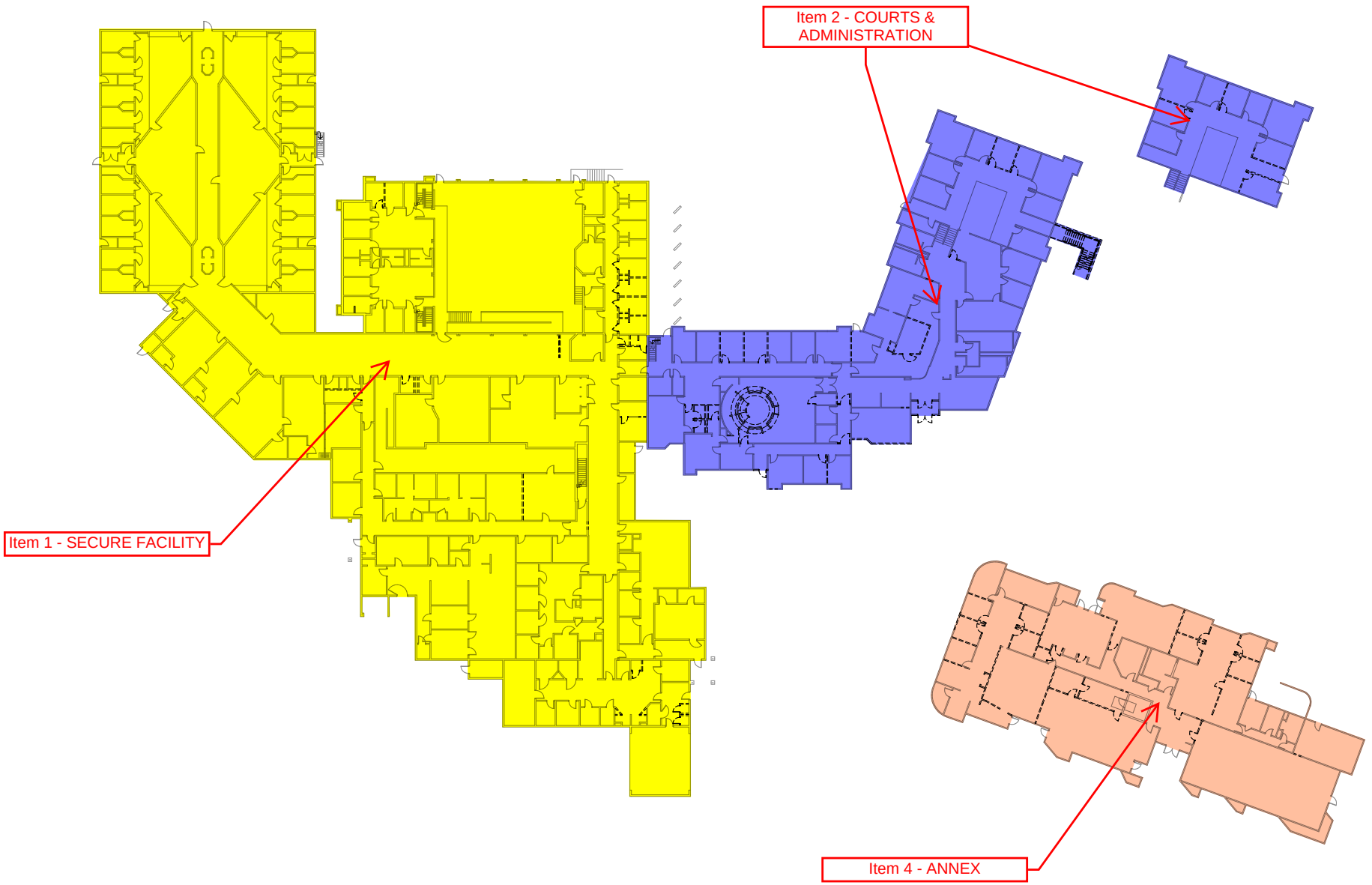
Juvenile Justice Center Key Map



DLRGROUP
© DLRGroup

BENTON-FRANKLIN COUNTY JUVENLINE STUDY
9606 W Canal Dr Kennewick, WA 99336

COSTING SET
08/29/2022
REVISIONS

73-22147-00

LEVEL 01 - DEMOLITION PLAN

AD1.1A

Autodesk Docs://73-22147-00 Benton-Franklin County Juvenile Study/73-22147-00_Benton-Franklin County Juvenile Study_ARI_r22.rvt
8/29/2022 11:01:01 AM

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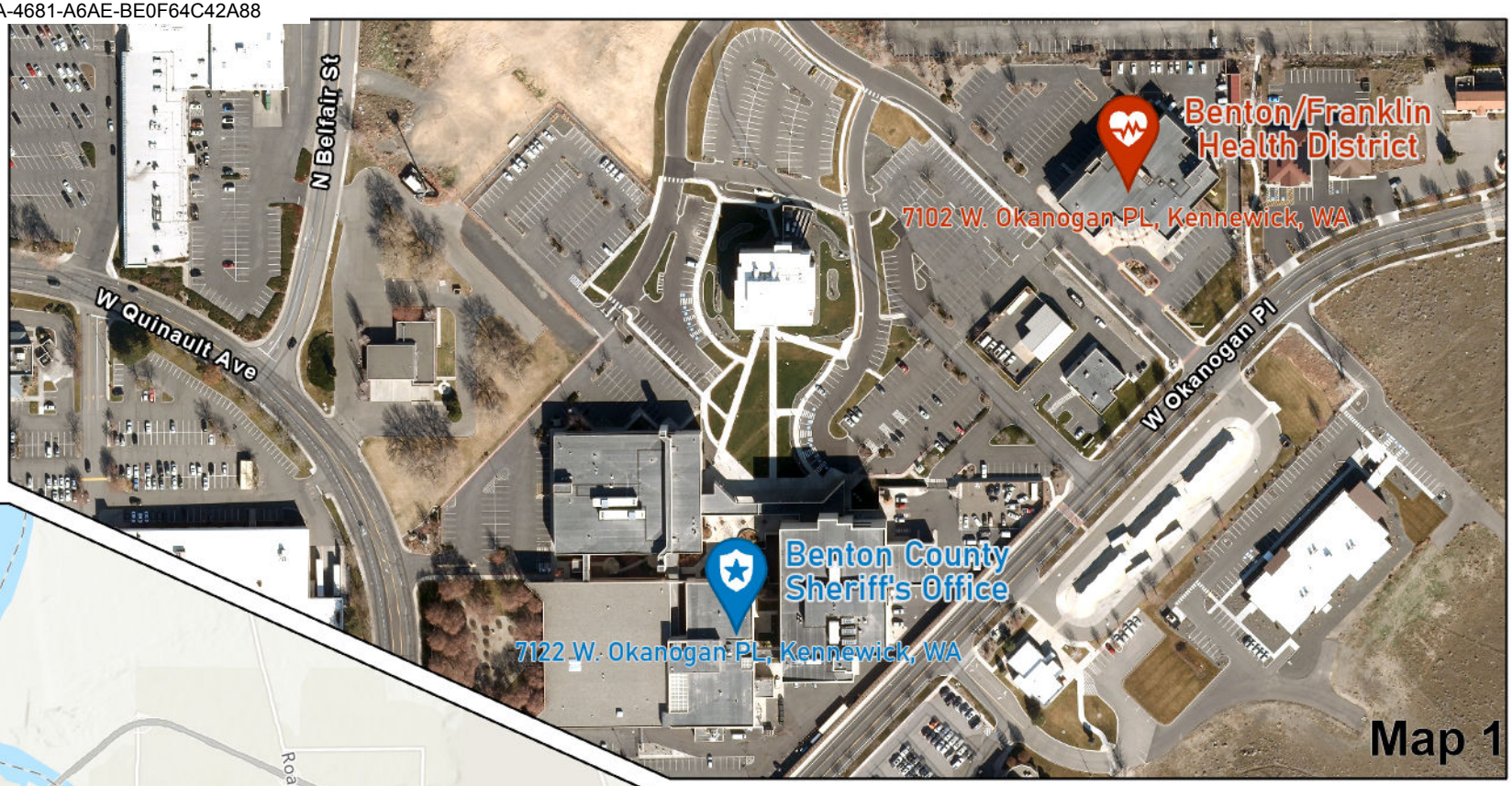
Site Map

December 8, 2022



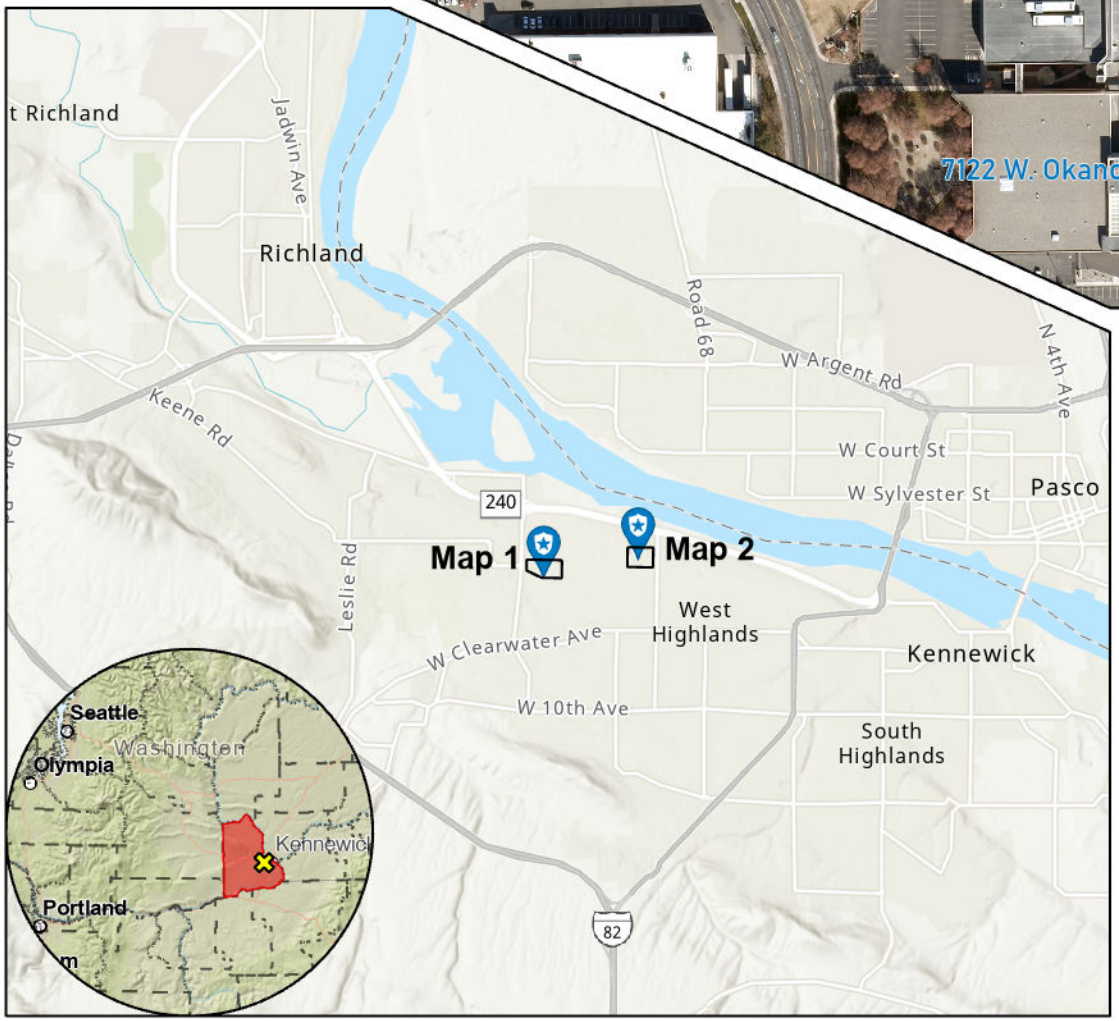


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Exhibit B1 – Insurance Requirement

BENTON COUNTY WA

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EXHIBIT B1
INSURANCE REQUIREMENTS
BENTON COUNTY
PROGRESSIVE DESIGN-BUILD AGREEMENT

Insurance Exhibit

1.1 Insurance Types and Limits.

1.1.1 Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition):

(Specify each type of insurance as applicable, minimum ratings of the carriers, applicable limits and deductible amounts, required endorsements, and other terms and conditions, as applicable.)

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required *Per Claim/Occurrence*	Minimum Limits Required *Aggregate Policy Limits*	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	All deductibles shall be commercially reasonable and acceptable to the Owner
2. Employer's Liability (Bodily Injury by Accident)	$1,000,000	$1,000,000	See above
3. Commercial General Liability	$10,000,000	$10,000,000	See above
4. Contractor's Protective Liability (if applicable)	$1,000,000	$1,000,000	See above
5. Commercial Automobile Liability	$2,000,000	$2,000,000	See above
6. Professional Errors and Omissions pursuant to Section 1.3 (A) and 1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible	$3,000,000	$3,000,000	See above
7. Contractor's Pollution Liability including coverage for microbial matter (if applicable)	$1,000,000	$1,000,000	See above
8. Umbrella Excess Liability Insurance	$3,000,000	$3,000,000	See above
Builder's Risk	Full amount of contract		$50,000

1.1.2 The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

1.1.3 PROFESSIONAL LIABILITY INSURANCE.

1.1.3(A) Professional Liability Insurance To Be Provided By Design Consultant. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant. ***[Note: Even if this coverage part is selected, the Design-Builder should consider obtaining its own professional liability coverage.]***

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☑ The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design Consultant's practice policy and shall include in the Design Consultant Agreement a provision requiring the Design Consultant to give the Design-Builder 30 Days written notice of any cancellation or non-renewal.

1.1.3(A).1 The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences, or procedures by the Design Consultant or any person or entity providing design or other professional services as its Sub-Consultant. This exclusion is permissible only if such entities are not performing any construction activities. Notwithstanding the above, a Design Consultant's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

1.1.3(A).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.3(A).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.

1.1.3(A).4 The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

1.1.3(A).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design Consultant then it is the responsibility of Design Consultant to ensure that such person or entity provide Design-Builder and Design Consultant with evidence of insurance to comport with this Exhibit.

1.1.3(A).6 Waiver of subrogation is to be provided in favor of Design-Builder and its officers, directors and employees, and (if commercially available) Owner and its officers, directors and employees.

1.1.3(B) Professional Liability Insurance To Be Provided By Design-Builder. Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design-Builder.

☑ The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-Builder.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design-Builder's practice policy.

1.1.3(B).1 The Design-Builder's policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder's valid and collectible commercial general liability/umbrella excess liability policies. Notwithstanding the above, a Design-Builder's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.

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1.1.3(B).2 Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

1.1.3(B).3 Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-Builder.

1.1.3(B).4 The policy must provide coverage for damages resulting from delays, including delays in project completion, and cost overruns that result from the rendering or failure to render professional services.

1.1.3(B).5 If any portion of the design or other professional service is to be performed by any person or entity other than Design-Builder then it is the responsibility of Design-Builder to ensure that person or entity provide Design-Builder with evidence of insurance to comport with this Exhibit.

1.1.3(B).6 Waiver of subrogation is to be provided in favor of Design-Builder and Owner (if commercially available) and their respective officers, directors and employees.

1.1.4 Any coverage required to be maintained after Final Payment shall be identified below. *(List here any coverages required to be maintained after Final Payment is made)*

General Liability, including completed operations coverage
Worker's Compensation
Professional Liability, including Contractor's Protective Liability, if applicable.
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.

2.1 Coverage Parameters and Endorsements.

2.1.1 Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form (December 2004 Edition) or equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided the same are agreed upon by Owner and Design-Builder.

2.1.1.1 Acceptable professional liability exclusions to the Design-Builder's commercial general liability insurance are limited to ISO endorsements CG 2280 or CG 2279 or their equivalent.

2.1.2 General Liability, Automobile Liability, Worker's Compensation/Employers Liability and Umbrella Excess Liability policies shall each include the following endorsements:

2.1.2.1 Unintentional Errors and Omissions Endorsement

2.1.2.2 Notice of Occurrence Endorsement

2.1.2.3 Knowledge of Occurrence Endorsement

2.1.3 Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.

2.1.4 Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

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2.1.5 Contractors Pollution Liability shall either be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.5.

2.1.5.1 The policy is to provide coverage for off-site transportation by all applicable modes of conveyance. When required, coverage is also to be provided for claims involving materials removed from the site and brought to off-site disposal, treatment and storage facilities.

2.1.5.2 Any restriction, limitation, or exclusion related to Naturally Occurring Substances must be modified so as not to apply to microbial matter and the release of such Naturally Occurring Substances as a result of the performance of Operations.

2.1.6 Industrial Insurance Waiver

2.1.6.1 Title 51 Waiver of Immunity with respect to the performance of this CONTRACT and as to claims against COUNTY, its officers, agents and employees, CONTRACTOR expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this CONTRACT extend to any claim brought by or on behalf of any employee of CONTRACTOR. This waiver is mutually negotiated by the parties to this CONTRACT.

3.1 Additional Insureds

3.1.1 Owner and Owner's officers, directors and employees shall be included as an additional insured on general liability, umbrella and automobile liability policies of insurance of the Design-Builder and its Subcontractors and Design Consultants at any tier. If required, as set forth above, Owner shall also be included as an additional insured on the Design-Builder's Contractor's Pollution Liability policy of insurance. No person shall be named as an additional insured on any professional liability policy. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Design-Builder shall furnish to Owner a copy of all Certificates of Insurance showing the Owner as additional insured as set forth above. Design-Builder shall require Subcontractors and Design Consultants of any tier to furnish such certificates, and upon request of the same will furnish them to the Owner. Owner shall not be an additional insured on any other of Design-Builder's policies except for those which are specifically listed below: *(List here any other policies for which the Owner will be an additional insured, as well as other entities who are to be named an additional insured.)*

3.1.2 Each of the policies designated in section 3.1 is to provide a waiver of subrogation in favor of those persons or entities included as additional insureds. A waiver of subrogation is also to be provided to such entities under Worker's Compensation/Employer's Liability policies.

3.1.3 Additional Insured coverage provided under the Commercial General Liability/Umbrella/Excess and, if applicable, Design-Builder's Contractor's Pollution Liability policies, shall cover both the premises/operations and completed operations hazards.

4.1 Terms and Effective Dates.

4.1.1 If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

4.1.2 If the Contractor's Pollution Policy is made on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable

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extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

4.1.3 Professional Liability coverage shall be retroactive to the date that professional services first commenced.

4.1.4 RESERVED

4.1.5 All Claims-Made Policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.

4.1.6 List here any coverage required to be maintained after Final Payment:

General Liability, including completed operations coverage
Worker's Compensation
Professional Liability, including Contractor's Protective Liability, if applicable.
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.

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Exhibit B2 – Public Works Payment Bond

BENTON COUNTY WA

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PUBLIC WORKS PAYMENT BOND

to BENTON COUNTY, WA

Bond No. _____

Benton County, Washington (County) has awarded to **Chervenell Construction Co.** (Principal), a contract for the construction of the project designated as **Juvenile Justice Center / Sheriff's Office Project,** in Benton County, Washington (Contract), and said Principal is required, under the terms of that Contract, to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of _____ US Dollars ($ _____) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all person who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL		SURETY	
_____		_____	
Principal Signature	Date	Surety Signature	Date
_____		_____	
Printed Name		Printed Name	
_____		_____	
Title		Title	

Name, address, and telephone of local office/agent of Surety Company is:

Informational Copy

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Exhibit B3 – Public Works Performance Bond

BENTON COUNTY WA

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PUBLIC WORKS PERFORMANCE BOND

to BENTON COUNTY, WA

Bond No. _____

Benton County, Washington (County) has awarded to **Chervenell Construction Co.**(Principal), a contract for the construction of the project designated as **Juvenile Justice Center / Sheriff's Office Project,** in Benton County, Washington (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the County, in the sum of _____ US Dollars ($ _____) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL		SURETY	
_____		_____	
Principal Signature	Date	Surety Signature	Date
_____		_____	
Printed Name		Printed Name	
_____		_____	
Title		Title	

Name, address, and telephone of local office/agent of Surety Company is:

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Exhibit C - Phase 1 & 2 Scope of Work

BENTON COUNTY WA

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PART 1 PROJECT INFORMATION

1.01 OWNER'S PROJECT GOALS

The Owner has established the following Project Goals for the Project. The Parties agree to work in good faith to meet and/or exceed the Project Goals:

- Update the selected building systems to ensure a safe, secure, comfortable, ADA and code compliant space for the youth and staff.
- Create better spaces for youth to learn while benefiting from modern technology
- Enhance the functionality of the existing space for the staff to operate seamlessly
- Explore creative solutions for the JJC to maximize scope
- Find a way to include in the scope: front entrance lobby/security enhancements as well as updates to the existing Juvenile Courtroom

1.02 COMMUNICATION AND BEHAVIORS

A. All communications between the parties shall be open, honest and clear and shall endeavor, as much as possible, to be accurate and complete. The parties accept a duty to disclose to each other in a timely fashion both positive and negative information, including but not limited to, issues, conflicts, claims, mistakes, additional costs, delays, and other all information relevant to the Project.

B. Design Builder shall provide the Deliverables in a timely fashion pursuant to this Exhibit. Deliverables shall be provided in a format acceptable to the Owner. Owner shall timely review and respond to the deliverables, as applicable.

C. Decisions by the parties shall be made in the Best Interests of the Project. The Best Interests of the Project is defined as:

1. Compliance with the Basis of Design Documents
2. Completion of the Project according to the Project Schedule
3. Completion of the Project according to the Contract Price
4. Compliance with Legal Requirements
5. Consistency with the principles of collaboration and integration set forth in this Exhibit.
6. The risk assumed by the parties in the Underlying Contracts.
7. Achieving the Project Goals.

PART 2 PHASE 1 PROGRAM VALIDATION AND DESIGN PERIOD SCOPE OF SERVICES

2.01 SUMMARY OF WORK

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A. This Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 1.

2.02 VALIDATION OF INFORMATION.

A. During the Validation Period, Design Builder shall perform such assessments, reviews and investigations of the Owner Provided Information, as determined by Design Builder to be reasonably necessary to validate the Owner Provided Information as well as investigate any other information required to accomplish the Project, including but not limited to the information below. Additional reviews, assessments and investigations of Owner Provided Information shall include, if reasonably necessary, the following:

1. Verification that the As-Built drawings (if applicable) and other architectural and engineering drawings, plans and specifications are correct,
2. Constructability, including proposed methods of construction, of the proposed structures in the Initial Basis of Design Documents,
3. Verification of the architectural, engineering and other assumptions and calculations (if any) in any Owner Provided Information,
4. Examination and verification of actual site conditions as set forth below,
5. Verification of any surveys,
6. Review and assessment of all applicable legal and regulatory rules and restrictions on the Project, including consultation with permit authorities regarding their requirements,
7. Verification and validation of assumptions regarding the establishment of the Commercial Terms, including but not limited to the GMP, the Project Schedule, and the Initial and Final Basis of Design Documents.

B. Design Builder shall perform site investigations as necessary for Design Builder to verify the Owner Provided Information and validate the Commercial Terms and the Initial Basis of Design Documents. Design Builder shall visit the Site and examine thoroughly and understand the nature and extent of the Work, site, locality, actual conditions, as-built conditions, and all local conditions and federal, state, and local laws and regulations that in any manner may affect cost, time, progress, performance or furnishing of the Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design Builder and safety precautions and programs incident thereto. Such additional investigations shall be conducted to sufficiently identify or characterize utility locations (underground and overhead), contaminated materials, and observable or

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concealed conditions in the existing facilities, including but not limited to the following:

1. Undertake surveys, investigations and analysis to provide necessary data and information for project design including sufficient information to evaluate design alternatives.
2. If required by a regulatory agency, complete a comprehensive archaeological site survey and conduct a literature and data search to determine potentially archaeologically significant sites and conditions.
3. Perform Geotechnical soils sampling, testing, and analysis to provide necessary data and information for Project design and provide a final Geotechnical Report. At a minimum, test for contamination and soil percolation rates during this process.

C. Subsurface investigation work, including the disturbance of existing vegetation, cannot proceed until all required permits have been obtained.

D. Design Builder will conduct or obtain and understand all such examinations, investigations, explorations, tests, reports and studies, in addition to or to supplement those referred to above, that pertain to the subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, time, progress, performance or furnishing of Work, as Design Builder considers necessary for the performance or furnishing of Work for the Commercial Terms and in accordance with the Initial Basis of Design Documents as well as other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required from the Owner by Design Builder for such purposes.

E. All reports or analyses generated by Design Builder's research, testing, inspections, and investigations, including but not limited to geotechnical evaluations and hazardous materials studies, archaeological site surveys, hazardous materials investigations, etc., shall be provided to the Owner promptly, within seven (7) business days, after such reports are analyzed and generated.

F. Design Builder shall be responsible for ensuring that its design documents and construction work accurately conforms to, and interfaces with, the existing conditions and shall not request a change or claim for unforeseen or concealed conditions except as provided under the provisions of the Contract Documents.

G. The Design Builder shall work with the Owner to determine if additional examinations, investigations, explorations, tests, reports, studies or similar may be required after partial or complete demolition of the existing stations. This work shall be completed by the Design Builder as agreed.

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H. At the time set forth in the Validation Period Schedule, the Design-Builder will provide to Owner a Validation Period Proposal with the deliverables set forth in Section 3.01.C.

I. With the Validation Period Proposal, Design-Builder will be deemed to have reviewed and verified all Owner Provided Information and Commercial Terms; therefore, Design-Builder cannot rely on any Owner Provided Information or the Owner's Project Criteria for the purposes of performing the Work, unless specifically noted in writing by the Owner.

2.03 DESIGN DEVELOPMENT PERIOD

A. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to obtain input regarding the Project design and functionality, as well as other major Project elements and to develop the Final Basis of Design Documents.

B. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to progress the design to a sufficient state to develop the Final Basis of Design Documents, the Project Schedule, and the Guaranteed Maximum Price within the project budget. The timing of the GMP Proposal and the percentage complete of the designs and specifications will be jointly determined by the Owner and the Design-Builder.

C. Design Builder shall manage the design process in a collaborative, efficient, transparent and coordinated manner and conduct design workshops as required by the Contract Documents. The Final Basis of Design Documents will establish the scope of the Work and provide the basis for the GMP. The Final Basis of Design Documents must be consistent with the Initial Basis of Design Documents, unless the Owner has consented to modify its requirements in writing through a Change Order, Field Directive, Design Log or other written means allowed by the Contract Documents.

D. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.

E. The Owner will review and comment on the Design Submissions in a timely fashion. The Design-Builder will allow adequate time for the Owner to review the Design Submissions, which shall not be less than 10 business days.

F. Design Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.

G. By submitting Design Submissions, Design Builder represents to the

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Owner that the Design Submissions may be designed and constructed for the then current Commercial Terms and in accordance with the Initial Basis of Design Documents, the Design Log, and any changes made thereto. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Initial Basis of Design Documents; however, with any such Design Submissions, Design Builder must provide notice pursuant to Article 10 of the General Conditions.

2.04 DEVELOPMENT OF GMP PRICING

A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.

B. Throughout the Project, Design Builder will update estimates and forecasts and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis. The project controls system used by the Design Builder shall be acceptable to the Owner and will be capable of being broken down and reported in a number of different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Document packages, etc.

C. The Design Builder will coordinate the development of the GMP pricing with the development of the Final Basis of Design Documents as well as the Project Schedule so that the Owner may obtain an accurate understanding of the GMP. The GMP set forth it the Agreement shall not be exceeded without a written Change Order.

2.05 DEVELOPMENT OF PROJECT SCHEDULE

A. The forecasting and development of the Project Schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.

B. Design Builder shall provide the Owner with frequent updates to the project schedule in a format acceptable to the Owner.

PART 3 PHASE 1 DELIVERABLES

3.01 SUBMITTALS

A. *Submittals During Phase 1:* Design Builder shall provide the following submittals during Phase 1.

1. *Submittals After Phase 1 Notice to Proceed:* Upon completion of the Validation Phase, Design Builder shall provide the following

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Submittals within 30 days after the Notice to Proceed with Phase 1, unless otherwise noted in Phase 1 Schedule.

a. Phase 1 Schedule pursuant to Section 3.02.A.

b. Preliminary Schedule of Values for the GMP pursuant to Section 3.04.A.1

c. Preliminary Cost Model pursuant to Section 3.04.B.5

d. Subcontractor Procurement Procedure pursuant to Section 3.05.A

2. On a monthly basis throughout Phase 1:

a. Updates to the Phase 1 Schedule, Schedule of Values, Project Schedule pursuant to Section 3.02. A and B

b. Design Submissions Packages pursuant to Section 3.03.A.

c. Preliminary estimating information pursuant to Section 3.04.A and updates to the Cost Model Pursuant to Section 3.04.B.

3. Submittals with Validation Proposal. Design-Builder shall provide the following Submittals in the Validation Proposal, unless otherwise noted in the approved Phase 1 Schedule.

a. Phase 1 Not to Exceed Amount with Phase 1 Schedule of Values pursuant to Section 3.04.A

b. Updated Phase 1 Schedule pursuant to Section 3.02.A

c. Phase 1 Scope of Work pursuant to Section 3.03.A

d. Target Schedule pursuant to Section 3.02.B

e. Validated GMP and updated Cost Model and Phase 2 Schedule of 'Values pursuant to Section 3.04.A

f. Initial Project Scope pursuant to Section 3.03.B.

g. Design Submittal Packages and Design Submittal Schedule pursuant to Section 3.03.C

h. Project Safety and Job Hazard Analysis for Phase 1 pursuant to Section 3.06.A.

i. Subcontract Plan pursuant to Section 3.05.A

j. Inclusion Plan for Disadvantaged and Small Businesses pursuant to 3.10 that meets the agreed upon percentages

k. List of additional submittals (if any) required for the GMP Proposal

B. GMP Proposal: At the time set forth in the Updated Phase 1 Schedule, Design Builder shall provide a GMP Proposal that includes the following Deliverables.

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1. GMP Pricing and Verification of GMP pursuant to Section 3.04.C.
2. Final Basis of Design Documents pursuant to Section 3.03.B.
3. Project Schedule pursuant to Section 3.02.D.
4. Schedule of Values and Cost Model pursuant to Section 3.04.B.
5. A list of the assumptions and clarifications made by the Design-Builder in preparation of the GMP Proposal.
6. Project Safety and Job Site Hazard Analysis pursuant to Section 3.06.B.
7. Project Phasing/Staging Analysis pursuant to 3.07.
8. Permitting Strategy Plan pursuant to Section 3.08.
9. Contract Close-Out Plan pursuant to Section 3.09.

3.02 SCHEDULES

A. Phase 1 Schedule. By the date set forth in Section 3.01.A.1 herein, Design Builder shall provide a Phase 1 Schedule.

1. Phase 1 Schedule shall show the activities of the Owner and Design Builder necessary to meet Phase 1 requirements.
2. Phase 1 Schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available.

If an update to Phase 1 Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.

3. With the Validation Proposal, Design-Builder shall provide an updated Phase 1 Schedule.

B. Target Schedule. By the date set forth in Section 3.01.A.2, Design Builder shall submit a Target Schedule that reflects Design Builder's sequence of design, procurement and construction activities including the interrelationships of the Demolition and Construction Packages.

1. The Target Schedule shall show the activities of the Owner and Design Builder necessary to meet the Project completion requirements.
2. The Target Schedule shall be updated periodically monthly with the level of detail for each schedule update reflecting the information then available.
3. If an update to the Target Schedule indicates that a previously approved milestone will not be met, Design Builder shall submit a corrective action plan and recovery schedule to the Owner pursuant to the Contract Documents.

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C. Design Builder shall meet with the Owner to review the Target Schedule and updates. In the event that the Owner has any comments relative to the Target Schedule or Schedule Updates or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the Target Schedule, its basis, or both. If the parties agree, the Target Schedule shall be included in the Validation Amendment. The parties will work collaboratively to make adjustments in the Final Basis of Design Document, the Project Schedule, or GMP to fit within the Owner's objectives.

D. With the GMP Proposal, Design Builder shall provide a Project Schedule that will incorporate the Target Schedule developed collaboratively during the Validation Period along with any updates to the schedule.

E. All schedules must be in the format of a Critical Path Method (CPM) schedule as set forth below.

F. Critical Path Method (CPM) schedule

1. The CPM Schedule will contain the following
    a. All tasks required to complete the scope of work for the project.
    b. Durations for all tasks in the project schedule.
    c. Logical ties and sequence of work for every task in the schedule.
2. Project Schedule shall be detailed and organized according to pre-defined Design-Builder's WBS that is developed in the Scope Management Plan. The project schedule will include all activities and relationships identified in the Design-Builder's Scope of Work Narrative. Each major area of work within Design-Builder's scope shall be represented by activities in the schedule.
3. Design-Builder shall prepare a detailed CPM Project Schedule in accordance with this specification. The schedule shall be submitted to the Owner for their review. The detailed schedule shall reflect, at a minimum, engineering, procurement, construction, fabrication, and delivery activities for each piece of procured equipment, key drawing release dates by discipline, and logic and interrelationships between activities so that a logical progression of the work is depicted. Project Milestones shall also be included in schedule.
4. Design-Builder and subcontractors shall meet with the Owner to review and approve the detailed CPM baseline Project Schedule.
5. Once the detailed project schedule has been approved by the Owner, Design-Builder will establish a baseline schedule. Thereafter Design-Builder shall advise the Owner of any proposed Critical Path Schedule changes and promptly provide the Owner

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with any revisions thereto and recovery plans as required to meet the contractual dates.

6. Schedule Validity and Content

   a. Prepare schedules in a format acceptable to the Owner.

   b. Contain Work Breakdown Structure coding matching deliverables and work packages.

   c. Schedule will reflect all deliverables and tasks mention in the Scope of Work narrative.

   d. Schedules shall be coded for grouping by engineering, procurement, construction, and commissioning

   e. Project schedule activities that Design-Builder is responsible for performing shall include engineering and procurement activities. Construction activities shall be included for 60 days prior to site mobilization.

   f. Engineering, procurement and construction activities shall be included, such that Project staffing requirements can be determined or verified with schedule. The original construction schedule shall form basis for progress reporting, and payment.

   g. Critical path for Design-Builder's schedule activities.

3.03 PROJECT SCOPE

A. Phase 1 Scope of Work. With the Validation Proposal, Design-Builder shall submit a Phase 1 Scope of Work for Owner's review and approval. The Phase 1 Scope of Work will provide detail on the Work Design-Builder will perform during the remainder of Phase 1, including but not limited to the following:

   1. Design hours by Design Submittal Package

   2. General Conditions Costs

   3. Other Costs of the Work, described in detail.

B. Initial Project Scope. During the Validation Period, the Design-Builder shall review the Initial Basis of Design Documents and evaluate the feasibility of including the Initial Basis of Design Documents within the GMP and Schedule.

   1. Design-Builder shall develop a Proposed Initial Project Scope for the Project that represents the Design-Builder's best estimate of a reasonably feasible scope of work that can be accomplished for the GMP and Proposed Target Schedule.

   2. The Design-Builder shall submit its Proposed Initial Project Scope to Owner for review, and after review by the Owner, the parties shall

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collaboratively develop the final Initial Project Scope that will be used as a basis for designing the Project throughout Phase 1.

3. Should the Design Builder believe the Initial Basis of Design is not feasible within the GMP and schedule, the Design Builder will provide options, recommendations and/or alternative technical concepts for the Owner to consider. The parties may decide to determine whether to designate certain parts of the Work as Deferred Scope. Deferred Scope is work that the parties determine is not in the Initial Project Scope; however, the parties will continue to develop the work with the goal of adding the Deferred Scope back into the Project at a later time within the GMP.

C. Design Submissions. Design Submissions will be submitted pursuant to the Design Submission Schedule provided by the Design-Builder with the Validation Proposal and approved by the Owner.

1. Design Builder shall coordinate with the Owner to determine the schedule for submission of Design Submissions Packages to review collaboratively with the Owner. Design Builder shall schedule the review of the Design Submissions Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner.

2. The parties will work collaboratively to make adjustments in the Design Submissions and in the proposed Final Basis of Design Documents to fit within the Owner's Project Goals.

D. The Owner and Design Builder shall work collaboratively to develop the Final Basis of Design Documents provided as part of the GMP Proposal. The Final Basis of Design Documents submitted with the GMP Proposal shall include at a minimum the following documents and set forth the assumptions and clarifications on which the GMP and Project Schedule are based.

1. Project Manual, which shall set forth both the general objectives for the Owner, as well as specific uses for each of the project elements set forth in the Initial Basis of Design Documents.

2. The Specifications applicable to the Project.

3. Performance Requirements, which shall set forth the specific requirements for the project and identification of each major system, including but not limited to the following:

   a. Mechanical, electrical and plumbing systems

   b. Structural capacities and requirements

   c. Warranty obligations

   d. Operations and maintenance requirements

4. Designs developed during Phase 1.

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5. Legal Requirements on which the GMP Proposal.
6. Unless the parties agree in writing otherwise, Design Builder will provide the following Milestone Design Deliverables to the Owner:
    a. 50% Schematic Design
    b. 100% Schematic Design
    c. 60% Design Development
    d. 100% Design Development (With GMP Proposal)
7. The Milestone Deliverables shall include major building elements and components, such as curtain walls, and finishes and shall include, but not be limited to the following.
    a. Concept, Character, and Principals
    b. Landscape Plan
    c. Existing Site Photos
    d. Site Plan and Access;
    e. Massing Plan
    f. Exterior Elevations
    g. Building Sections
    h. Build Entries and Circulation
    i. Solar Orientation
    j. Floor Plans
    k. Proposed Materials and Color Palate
    l. Parking Concept
    m. Narrative
    n. Renderings (Exterior/Interior)
    o. Phasing Plans
8. Design-Builder must have written approval from the Owner to proceed with the project after submission of each of the Milestone Design Deliverables set forth above.
9. Design Builder shall schedule the review of the Construction Packages such that the review of each package submitted is of reasonable scope for prompt and thorough review by the Owner.
10. Design Builder shall highlight any material differences and developments between the Initial Basis of Design Documents, any Design Submissions, and the Final Basis of Design Documents as the Final Basis of Design Documents are being developed.

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11. In the event that the Owner has any comments relative to the Design Submissions or finds any inconsistencies from the Initial Basis of Design Documents or discovers inaccuracies in the Design Submissions, the Owner shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the proposed Final Basis of Design Documents.

12. The parties will work collaboratively to make adjustments in the Design Submissions and in the proposed Final Basis of Design Documents to fit within the Owner's Project Goals as well as the GMP.

13. Performance Specifications, which shall set forth the specific requirements for the project and identification of each major system, including but not limited to the following:

    a. Mechanical, electrical (Power, Emergency Power, Lighting, Low Voltage, Communications, Fire Alarm, Security, etc) and plumbing systems

    b. Structural capacities and requirements

    c. Warranty obligations

    d. Operations and maintenance requirements

3.04 COSTS AND GMP PRICING

A. Preliminary Schedule of Values

1. Preliminary Schedule of Values. Within the date set forth in Section 3.01.A, Design Builder shall submit a preliminary Schedule of Values for the Project in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.

2. With the submission of Design Submissions Packages, Design Builder shall provide preliminary estimates of costs associated with the Design Submissions in a format acceptable to the Owner that will be incorporated into the GMP.

3. The preliminary estimates shall be provided on a bi-weekly basis and shall be updated with new information as Design Builder develops and finalizes the GMP.

4. With the Validation Proposal, the Design-Builder shall submit a Phase 1 Not to Exceed Amount ("Phase 1 NTE") that will include all costs to complete Phase 1 of the Project. Design-Builder shall be responsible for all costs that exceed the Phase 1 NTE, unless the parties agree to a Change Order modifying the Phase 1 NTE.

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5. With the Validation Proposal, the Design-Builder shall submit an updated Cost Model and Schedule of Values.

6. With the Validation Proposal, the Design-Builder shall provide a Validated GMP. Submission of the Validation Proposal is a representation from the Design-Builder that after review during the Validation Period, the Validated GMP is the parties' best determination of an achievable GMP for the Initial Project Scope and within the Target Schedule.

B. Schedule of Values and Cost Model

1. Schedule of Values. When required by this Exhibit, , Design Builder shall provide an initial and updated Schedule of Values for the Work with actual start and/or finish dates and percentages complete for the Owner's review and acceptance. Updates shall compare the planned progress from baseline schedule with actual progress from the current schedule. The Schedule of Values shall be in conformance with the requirements below and in such a form and supported by such data to substantiate its accuracy in reflecting the breakdown for administrative and payment purposes as the Owner may reasonably require. The Schedule of Values shall be further organized to conform to the Construction Specifications Institute (CSI) standard format for divisions and sections.

2. The sum of all values listed in the schedule shall equal the project budget and, when established, the GMP.

3. Each item shall include directly proportional amount of the Design-Builder's Fee Percentage or Lump Sum Fee, as applicable.

4. Schedule of Values Form and Content

   a. Schedule of Values will be in a form acceptable to the Owner.

   b. Title of Project and location.

   c. Project number.

   d. Name and Address of Design-Builder.

   e. Date of submission.

   f. Schedule of Values columns will contain at a minimum the following information

      (1) Line Item # - Corresponding back to the WBS and CPM Schedule

      (2) Line Item Description

      (3) Budgetary Cost

      (4) Current Period % Complete

      (5) Current Period Cost

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(6) JTD % Complete

(7) JTD Cost

(8) Variance Column Representing Budgetary Cost Minus JTD Cost

5. Cost Model. Within the time frames set forth in this Exhibit, Design Builder shall provide an initial and updated Cost Model, for the Owner's review and acceptance.

   a. The Cost Model shall, at a minimum, provide the following information:

      (1) List for all Design and Construction Packages, organized by CSI;

      (2) Estimated base bid amounts for all Construction Packages;

      (3) Construction Package Allowances.

   b. Design Builder shall utilize a project controls management system (PCMS) that will be reviewed for acceptance to the Owner.

   c. Estimates and forecasts within the Cost Model will need to have the capability to be broken down and reported on in many different formats. These formats may include organizing the estimate by different projects, project funding types, Owner cost element codes, contracts, vendors, Construction Package Sets, Construction Packages, etc. Design-Builder shall collaborate with the Owner to determine the appropriate Work Breakdown Structure that will be used for the development of the Cost Model and all Project cost estimates.

   d. In developing its Construction Package Plan, Design-Builder shall coordinate with the Owner to determine a packaging strategy deemed advantageous to all parties. The agreed-upon packaging strategy will be incorporated into the Cost Model and Project schedule.

   e. On the schedule set forth in Section 3.01 and with the GMP Proposal, Design-Builder shall update estimates and forecasts as data becomes available to reflect real time information. The Owner will rely on this real-time information for accuracy of overall Owner cost forecasts across all Owner projects.

6. Work Breakdown Structure (WBS)

   a. The Work Breakdown Structure (WBS) is a task-oriented division of work necessary to engineer, procure, and construct the Project. It categorizes successively smaller

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tasks, in order to achieve scope, schedule, and budget control at the most practical level.

b. Design-Builder will develop a WBS structure at the completion of Phase 1. Design-Builder will work with the Owner to develop a mutual compatible WBS system to satisfy the intent of the project. The WBS structure will represent the Design-Builder's entire scope for the project, broken down into manageable deliverables or work packages.

7. Scope of Work Narrative

a. Design-Builder will develop, from the Work Breakdown Structure, a Scope of Work Narrative for the project before Phase 2 is approved. This document will provide a description of the work to be done for each WBS work package. This document will identify the Design-Builder's general understanding of the project, as well as, provide a description of the work that will be done, and deliverables that will be produced for work packages in the WBS. A narrative for each work package will include, but is not limited to the following:

b. Narrative of work to be performed

c. List of major deliverables

C. GMP.

1. With the GMP Proposal, Design Builder shall prepare and submit the GMP Pricing to the Owner, in a format acceptable to the Owner, reflecting Design Builder's total cost for the Project on an open book basis. The GMP in the GMP Proposal shall include:

a. Design Builder's Lump Sum Fee as defined in Section 6.2.3 of the Agreement.

b. The Cost of the Work as defined in Section 6.3 of the Agreement.

c. The Lump Sum General Conditions Costs as defined in Section 6.4.5 of the Agreement.

d. If applicable, any Allowance established by the Parties pursuant to Section 6.4.1 of the Agreement.

e. Design Builder's Contingencies established pursuant to Section 6.4.4 of the Agreement.

2. In support of the proposed GMP, Design Builder shall provide:

a. A list of Not to Exceed Amounts and the information required in Section 6.4.2 of the Agreement

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b. A list of Lump Sums and the information required in Section 6.4.3 of the Agreement

c. A list of the assumptions and clarifications made by Design Builder in the preparation of the GMP to supplement the information contained in the Final Basis of Design Documents.

d. All material changes from the Initial Basis of Design Documents and Design Builder's Proposal and the costs associated with such changes.

D. Design Builder shall meet with the Owner to review the GMP Proposal. In the event that the Owner has any comments relative to the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to Design Builder, who shall make appropriate adjustments to the GMP Proposal, its basis, or both. The parties will work collaboratively to make adjustments in the Final Basis of Design Documents, Project Schedule, or GMP to meet the Owner's objectives.

3.05 SUBCONTRACTOR PROCUREMENT PROCEDURE

A. By the date set forth in Section 3.01.A herein, Design Builder shall submit for approval the Subcontractor Procurement Procedure as required in Section 2.8 of the General Conditions.

3.06 PROJECT SAFETY AND JOB SITE HAZARD ANALYSIS

A. By the date set forth in Section 3.01A herein, Design Builder shall submit a Project Safety and Job Site Hazard Analysis for the activities associated with Phase 1.

B. With GMP Proposal, Design Builder shall submit a Project Safety Plan with Job Site Hazard Analyses addressing all phases of the project after Phase 1.

C. No field investigation or construction activities will be authorized without acceptance of safety plans as required for the Work.

3.07 PROJECT PHASING /STAGING ANALYSIS

A. With the GMP Proposal, Design Builder shall provide a Project Phasing/Staging analysis for all Demolition and Construction Packages that includes detailed plans for the phasing of the following elements of the Project, including but not limited to all modifications and all other construction activities including the staging of construction materials and facilities.

3.08 PERMITTING STRATEGY PLAN:

A. With the GMP Proposal, Design Builder shall provide a Permitting Strategy Plan detailing the process for obtaining the building and site development permits for various phases of the project.

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B. During Phase 1, Design Builder must meet with the applicable building officials and develop processes and time lines for plan check approvals.

C. Design Builder shall coordinate with all authorities with jurisdiction over the Project for the approval of environmental mitigation measures.

3.09 CONTRACT CLOSEOUT PLAN

A. With the GMP Proposal, Design Builder shall provide a Project Closeout Plan that integrates all aspects of project closeout proactively over the life of the project. The Closeout Plan will be a living document that will grow and expand as the design and construction progress. The Project Closeout Plan should include, but not be limited to mechanisms and procedures for:

1. Closeout provisions included in subcontract procurement documents
2. Phased completions and early subcontract closeouts
3. Commissioning
4. Warranties
5. Training
6. O&M Documentation
7. Record Documents
8. Cost Reconciliations
9. Permit and Regulatory Requirements

3.10 INCLUSION PLAN FOR DISADVANTAGED BUSINESSES AND SMALL BUSINESSES

A. Disadvantaged Businesses means any business entity certified with the office of minority and women's business enterprises under RCW Chapter 39.19.

B. Small Business means a small business as defined in RCW 39.26.010.

C. With the Validation Proposal, Design Builder shall analyze the capabilities of Disadvantaged Businesses and Small Businesses and the projected manpower availability to determine and report on the percentage of the Work that such firms could reasonably be expected to perform during the Design, Preconstruction and Construction Phases of the Project.

D. Based on this analysis, Design Builder shall prepare an Inclusion Plan, subject to the review and approval of the Owner.

E. As a minimum, the Inclusion Plan shall include:

1. A complete definition of the efforts to be taken on the part of Design Builder to tailor design, preconstruction services and Construction Packages so as to be capable of being performed by

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small, local and/or regional consultants, designers, and/or subcontractors.

2. A description of the formal outreach process to be used to communicate the requirements of the Work with the small, local and/or regional consultants, designers and/or subcontractors.

3. The approach to procure consultants and subcontractors (e.g., open bid, prequalification, best-value, etc.) to maximize participation by Disadvantaged and Small Businesses.

Phase 2 Scope of Services

PART 4 PHASE 2

Unless the parties agree otherwise in writing, this Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 2.

4.01 PHASE 2 SCOPE

A. Design Builder engage and work collaboratively with the Owner and the Project Stakeholders to complete the design and construction services as set forth in the GMP Amendment.

B. Design Builder shall provide the deliverables set forth in this Attachment during the course of Phase 2. Deliverables shall be provided in a format acceptable to the Owner and consistent with the requirements for Phase 1.

4.02 COMPLETION OF DESIGN

A. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.

B. The Owner will review and comment on the Construction Documents and other Design Submissions in a timely fashion.

C. Design Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies, such as BIM or Design-Build processes, may require modifications to these requirements.

D. By submitting Design Submissions, including but not limited to the Construction Documents, Design Builder represents to the Owner that the Construction Documents may be constructed for the then current Commercial Terms and in accordance with the Initial Basis of Design Documents and the Final Basis of Design Documents. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term or the Initial Basis of Design Documents; however, with any such Design Submissions, Design Builder must provide notice pursuant to Article

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10 of the General Conditions. The Construction Documents must be consistent with the Final Basis of Design Documents, approved Design Submissions and the Design Log, unless the Owner has consented to modify its Requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.

4.03 SCHEDULE OF VALUES AND COST MODEL

A. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.

B. Unless modified by the parties in writing, on the schedule set forth in Section 3.01.B, Design Builder will continue to update estimates and forecasts in the format required above and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an open and transparent basis.

C. The Schedule of Values and Cost Model must be consistent with the GMP Amendment and the format required above, unless the parties have agreed on a Change to the terms set forth in the GMP Amendment pursuant to Article 10 of the General Conditions.

4.04 PROJECT SCHEDULE

A. The forecasting and development of the project schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.

B. Design Builder shall provide the Owner with updates to the project schedule on the schedule set forth in Section 3.01.B and in the format required above for a scheduled completion within the GMP established in the GMP Amendment.

4.05 CONSTRUCTION SERVICES

A. Design-Builder shall provide Construction Services and complete the construction of the Project pursuant to the Contract Documents.

4.06 COMMISSIONING, TESTING AND CLOSEOUT

A. Design Builder shall provide commissioning, testing, and closeout of the Project pursuant to the Contract Documents.

<u>PHASE 2 DELIVERABLES</u>

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4.07 DELIVERABLES

A. Design Builder shall provide the following Milestone Design Deliverable pursuant to the Project Schedule:

1. 100% Construction Documents for review and approval by the Owner.

2. Design Builder shall not proceed with the project after submission of the 100% Construction Documents until it receives the Owner's written approval.

B. Design Builder shall provide such other deliverables as set forth in the Contract Documents to successfully complete the Project.

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Exhibit D/E – Validation Phase level of effort/Hourly Rates

BENTON COUNTY WA

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Benton County Juvenile Justice Center - Exhibit D & E

Pre-Design Services - Project Validation

ARCHITECTURAL - Design West and TreanorHL

PROGRAM & SCOPING			Weeks: 10		
	Rate	*Hrs/Week*	*Hrs*	*TOTAL*	
Principal Architect (Jeff Lane, Mark Ryan, Brandon Wilm)	225	12	120	$27,000	
Project Architect (Brad Clark)	160	18	180	$28,800	
Project Manager (Tathiana Woolery, Mike Weber)	140	6	60	$8,400	
CAD Production (Sun Park, Andres Rojo, Adam Gonzales)	100	8	80	$8,000	
Administrative (Amelia Hudspeth, Kathleen Hoover)	90	3	30	$2,700	
Subtotal			470	**$47,900**	NTE

BUILDER - Chervenell Construction

PROGRAM & SCOPING			Weeks: 10		
	Rate	*Hrs/Week*	*Hrs*	*TOTAL*	
Lead Estimator/DB Manager (Brandon Mayfield)	185	6	60	$11,100	
Project Manager (Macoy Goulet)	165	3	30	$4,950	
Operations Manager (Manny Torrez)	185	2	20	$3,700	
Superintendent (Lester Brown)	165	2	20	$3,300	
Trade Assist Invetigation (TBD)	165	4	40	$6,600	
Subtotal			170	**$29,650**	NTE

REIMBURSABLE - Design Build Team

Reimbursables are defined as: deliverables (reporduction, shipping and materials), out-of-town travel, lodging and meals per Washington State per diem rates.

	TOTAL	
Deliverables	$1,725	
P&P Bond	$1,000	
Travel & Trips (4 anticipated)	$23,000	
Subtotal	$25,725	NTE
Not-To-Exceed (Time & Materials)		
TOTAL VALIDATION PHASE PROPOSAL	**$103,275**	

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Validation Period Schedule

We anticipate beginning this effort in June 2023, spending approximately 10 weeks on activities and then a two week period and the conclusion to assemble the Phase 1 documents

List of Deliverables D/B to provide at the conclusion of Validation Period:

- Updated Programming Document Capturing the changes from the owner provided document.
- Provide Meeting Minutes/Summary from Tours, Staff Communication, etc.
- Complete Project Scope Narrative (Complete Scope Definition)
- Create Conceptual Building Layout (Note Detailed Floor Plan but Identify areas for each project component)
- Create Conceptual Building Massing
- Create Conceptual Site Layout
- Summary of Validation above from Cost/GMP Perspective

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Exhibit F – Phase 1 & 2 Amendments

BENTON COUNTY WA

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EXHIBIT F
FORM OF VALIDATION AMENDMENT
BENTON COUNTY
PROGRESSIVE DESIGN-BUILD AGREEMENT

Unless the parties agree in writing otherwise, the Validation Amendment shall be in a substantially similar form as follow:

1. Pursuant to Section 6.6.1 of the Agreement, this Validation Amendment incorporates the following terms into the Agreement. To the extent any terms set forth in this Validation Amendment conflict with the Agreement, the terms in this Validation Amendment shall govern.

2. The Design-Builder has submitted to Owner the Validation Proposal pursuant to Section 2.02.H of Exhibit C.

3. The parties have collaboratively developed the terms of this Amendment pursuant to Section 6.6.1 of the Agreement.

4. The Parties agree to enter into this Validation Amendment to continue Phase 1 of the Project pursuant to Section 6.6.1.2.b of the Agreement.

5. The parties hereby establish the following Commercial Terms:

Phase 1 Not to Exceed Amount	$
Phase 1 Completion Date	
Validated GMP	$

6. Other Commercial Terms are set forth in the following Exhibits to this Amendment, which are incorporated as if fully set forth herein:

Exhibit A: Phase 1 Schedule of Values

Exhibit B: Updated Phase 1 Schedule

Exhibit C: Phase 1 Scope of Work

Exhibit D: Target Schedule

Exhibit E: Validated GMP and Updated Cost Model with Phase 2 Schedule of Values

Exhibit F: Initial Project Scope

Exhibit G: Design Submittal Packages

Exhibit H: Project Safety and Job Hazard Analysis for Phase 1

Exhibit I: Subcontract Plan

Exhibit J: Inclusion Plan for Disadvantaged and Small Businesses

Exhibit K: Design Quality Management Plan

[List other agreed submittals here]

7. Pursuant to Section 10.2 of the Agreement, Design-Builder shall provide a Payment and Performance Bond pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the amount of the Phase 1 Not to Exceed Amount set forth above.

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EXHIBIT F
FORM OF VALIDATION AMENDMENT
BENTON COUNTY
PROGRESSIVE DESIGN-BUILD AGREEMENT

In executing this Amendment, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Amendment, and each has the necessary corporate approvals to execute this Amendment, and perform the services described herein.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date set forth below.

BENTON COUNTY

By _____

_____

Its _____

Date: _____

DESIGN-BUILDER

_____

Name of Design-Builder

By _____

Its _____

Date: _____

DESIGN-BUILDER'S ADDRESS AND PHONE:

_____

_____

_____

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EXHIBIT F
FORM OF GMP AMENDMENT
BENTON COUNTY
PROGRESSIVE DESIGN-BUILD AGREEMENT

Unless the parties agree in writing otherwise, the GMP Amendment shall be in a substantially similar form as follow:

1. Pursuant to Section 6.6.1 of the Agreement, this GMP Amendment incorporates the following terms into the Agreement. To the extent any terms set forth in this GMP Amendment conflict with the Agreement, the terms in this GMP Amendment shall govern.

2. The Design-Builder has submitted to Owner the GMP Proposal pursuant to Section 6.6.1.5 of the Agreement.

3. The Owner has reviewed the GMP Proposal, the parties have reconciled the Owner's Comments pursuant to Section 6.6.1.6 of the Agreement, and the Owner has accepted the GMP Proposal as reconciled. The conformed, reconciled GMP Proposal is attached to this GMP Amendment at Exhibit A and is incorporated as if fully set forth herein.

4. The Owner has decided to exercise its option to enter into Phase 2 of the Agreement pursuant to Section 6.6.1.7 of the Agreement.

5. Consistent with the GMP Proposal, the parties hereby establish the following Commercial Terms:

Guaranteed Maximum Price	$
Cost of the Work	$
Design-Builder's Lump Sum Fee	$
Lump Sum General Conditions Costs	$
Cost of the Work Contingency (Section 6.4.4.1.a)	$
Design-Builder's Contingency (Section 6.4.4.1.b)	$
Substantial Completion Date	
Final Completion Date	

6. Other Commercial Terms are set forth pursuant to the following Exhibits:

   a. Allowances as set forth in Section 6.4.1 of the Agreement are set forth and described in Exhibit B to the GMP Amendment.

   b. Not to Exceed Sums as set forth in Section 6.4.2 of the Agreement are set forth and described in Exhibit C to the GMP Amendment.

   c. Lump Sums as set forth in Section 6.4.3 of the Agreement (with the exception of the Design-Builder's Lump Sum Fee set forth above) are set forth and described in Exhibit D to the GMP Amendment.

   d. Contingencies as set forth in Section 6.4.4 of the Agreement are set forth above and described in Exhibit E to the GMP Amendment.

   e. Design-Builder's Lump Sum General Conditions Costs as set forth in Section 6.4.5 of the Agreement are set forth above and described in Exhibit F to the GMP Amendment.

   f. Unit Prices and Hourly Rates as set forth in Section 6.5.6 of the Agreement are described in Exhibit G to the GMP Amendment.

   g. Liquidated Damages as provided in Section 5.4 – 5.6 of the Agreement are $_____ per calendar day.

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EXHIBIT F
FORM OF GMP AMENDMENT
BENTON COUNTY
PROGRESSIVE DESIGN-BUILD AGREEMENT

7. Pursuant to Section 10.2 of the Agreement, Design-Builder shall provide a Payment and Performance Bond pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the amount of the Guaranteed Maximum Price set forth above.

In executing this Amendment, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Amendment, and each has the necessary corporate approvals to execute this Amendment, and perform the services described herein.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date set forth below.

BENTON COUNTY	**DESIGN-BUILDER**
By _____	_____
_____	Name of Design-Builder
Its _____	By _____
	Its _____
Date: _____	Date: _____
	DESIGN-BUILDER'S ADDRESS AND PHONE:
_____	_____
	_____

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Exhibit G – Change Order Forms, Phase 1 & 2

BENTON COUNTY WA

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EXHIBIT G
FORM PHASE 1 CHANGE ORDER

Phase 1 Contract Change Order

Benton County	Design-Builder

Project Name: Justice Center **Change Order#: _____**

COR#	Description of Change	Change in Contract Time	Change in Phase 1 NTE

Original Phase 1 Not to Exceed Amount	$
Net change by previous authorized Change Orders	$
Total net *[check one]* ☐ Increase / ☐ Decrease in the Phase 1 NTE by this Change Order	$
New Phase 1 NTE including this Change Order	$

The new Contract Time including this Change Order is:

New Phase 1 Completion Date	
New Interim Milestone Dates:	

The changes in the Phase 1 Not to Exceed Amount and Contract Time identified in this Change Order include all costs and time extensions associated with performing the changes set forth herein.

Benton County	Design-Builder
By: _____ Signature _____ Printed Name Title: _____ Date: _____	By: _____ Signature _____ Printed Name Title: _____ Date: _____

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EXHIBIT G
FORM PHASE 2 CHANGE ORDER

Phase 2 Contract Change Order

Benton County	Design-Builder

Project Name: Justice Center **Change Order#: _____**

COR#	Description of Change	Change in Contract Time	Change in GMP

Original Guaranteed Maximum Price	$
Net change by previous authorized Change Orders	$
Total net *[check one]* ☐ Increase / ☐ Decrease in the GMP by this Change Order	$
New Guaranteed Maximum Price including this Change Order	$

The new Contract Time including this Change Order is:

New Scheduled Substantial Completion Date	
New Scheduled Interim Milestone Dates:	
New Final Completion Date	

The changes in the GMP and Contract Time identified in this Change Order include all costs and time extensions associated with performing the changes set forth herein.

Benton County	Design-Builder
By: _____ Signature _____ Printed Name Title: _____ Date: _____	By: _____ Signature _____ Printed Name Title: _____ Date: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Memorandum of Understanding between the Greater Columbia Region Municipalities to Establish an Opioid Abatement Council
Presenter:	Matt Rasmussen and Kyle Sullivan
Prepared By:	Kyle Sullivan
Reviewed By:	Kyle Sullivan

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

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

Summary / Background Information

The attorney declined to approve to form, which will be discussed during the meeting. Washington State filed a lawsuit against entities within the pharmaceutical supply chain for their roles in the state's opioid epidemic resulting in three large opioid distributors agreeing to pay the State of Washington $476 million to end the litigation. Benton County was one of 126 eligible local governments that joined the State of Washington Opioid Settlement. Settlement funds are scheduled to be distributed over the next 17 years with Benton County expected to receive approximately $121,901 per year. Local governments who receive funds as part of the settlement are required to participate in an Opioid Abatement Council to oversee and approve the plans for the spending of those funds. This Memorandum of Understanding between the local governments within the Greater Columbia Region designates Greater Columbia Behavioral Health, LLC as the administering agency for the Opioid Abatement Council.

Fiscal Impact

There is no impact to current expense. 10% of the opioid funds received will be reserved for administrative costs related to the Opioid Abatement Council. All revenues and expenses will come from Fund 1600.

Recommendation

Sign the Memorandum of Understanding.

Suggested Motion

Move to approve the Memorandum of Understanding for the formation of an Opioid Abatement Council and that the administering agency will be Greater Columbia Behavioral Health, LLC.

RESOLUTION

Benton County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;

IN THE MATTER OF EXECUTING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GREATER COLUMBIA REGION MUNICIPALITIES TO ESTABLISH AN OPIOID ABATEMENT COUNCIL

WHEREAS, the people of Benton County and the State of Washington have been harmed by entities within the pharmaceutical supply chain who manufacture, distribute, and dispense prescription opioids; and

WHEREAS, Washington State filed a lawsuit against entities within the pharmaceutical supply chain for their roles in the state's opioid epidemic resulting in three large opioid distributors agreeing to pay the State of Washington $476 million to end the litigation; and

WHEREAS, Benton County was one of 126 eligible local governments that joined the State of Washington Opioid Settlement. Settlement funds are scheduled to be distributed over the next 17 years with Benton County expected to receive approximately $121,901 per year; and

WHEREAS, local governments who receive funds as part of the settlement are required to participate in an Opioid Abatement Council to oversee and approve the plans for the spending of those funds; and

WHEREAS, the local governments within the Greater Columbia Region agree to enter into this Memorandum of Understanding relating to the formation of an Opioid Abatement Council and that the administering agency will be Greater Columbia Behavioral Health, LLC; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed Memorandum of Understanding relating to the formation of an Opioid Abatement Council; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign, on behalf of Benton County, this Memorandum of Understanding.

Dated this 6th day of June, 2023.

_____
Chair of the Board

_____
Chair Pro Tem

_____
Commissioner

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Human Services; Benton County Commissioners K. Sullivan

MEMORANDUM OF UNDERSTANDING BETWEEN THE GREATER COLUMBIA REGION MUNICIPALITIES TO ESTABLISH AN OPIOID ABATEMENT COUNCIL

Whereas, the people of the State of Washington and its communities have been harmed by entities within the Pharmaceutical Supply Chain who manufacture, distribute, and dispense prescription opioids;

Whereas, certain Local Governments, through their elected representatives and counsel are engaged in litigation seeking to hold these entities within the Pharmaceutical Supply Chain of prescription opioids accountable for the damage they have caused to the Local Governments;

Whereas, Local Governments and elected officials share a common desire to abate and alleviate the impacts of harms caused by these entities within the Pharmaceutical Supply Chain throughout the State of Washington, and strive to ensure that principals of equity and equitable service delivery are factors considered in the allocation and use of Opioid Funds;

Whereas, Certain Local Governments engaged in litigation and the other cities and counties in Washington desire to agree on a form of allocation for Opioid Funds they receive from entities within the Pharmaceutical Supply Chain;

Whereas, Local Governments who receive funds that are governed by the August 2022 One Washington Memorandum of Understanding are required to participate in an Opioid Abatement Council to oversee and approve the plans for the spending of those funds;

Now therefore, the Local Governments within the Greater Columbia Region enter into this Memorandum of Understanding ("MOU") relating to the formation of an Opioid Abatement Council.

A. Definitions

As used in this MOU:

1. "Administering Agency" shall mean the Greater Columbia Behavioral Health, LLC.
2. "Approved Purposes" shall mean the strategies specified and set forth in the Opioid Abatement Strategies attached as Exhibit A.
3. "Greater Columbia Region" shall mean the allocation region as determined by the August 2022 One Washington Memorandum of Understanding between Washington Municipalities (One Washington MOU) made up of the following counties: Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, Whitman, and Yakima.
4. "Participating Local Governments" shall mean those local governments that have chosen to sign on to the One Washington MOU. The Participating Local Governments for this MOU are: Asotin County, Benton County, Columbia County, Franklin County, Garfield County, Kittitas County, Walla Walla County, Whitman County, Yakima County, Kennewick, Richland, West Richland, Pasco, Ellensburg, Walla Walla, Pullman, Grandview, Sunnyside and Yakima.
5. "Opioid Abatement Council (OAC)" shall mean the group of representatives from the municipalities receiving funds within the Greater Columbia Region to oversee

Opioid fund allocation, distribution, expenditures and dispute resolution as well as other responsibilities laid out in this MOU. *See also* One Washington MOU.

6. "Opioid Funds" shall mean monetary amounts obtained through a Settlement as defined in the One Washington MOU.

B. Opioid Abatement Council

a. All Participating Local Governments may have one representative on the OAC subject to the requirements detailed in the One Washington MOU..
b. The OAC shall meet on a quarterly basis or as needed, as determined by the Administering Agency.
c. All Participating Local Governments will submit a spending plan to the OAC that complies with the Approved Purposes as outlined in Exhibit A, prior to the Participating Local Governments' expenditure of any Opioid funds.
d. Responsibilities of the OAC:
    i. Overseeing distribution of Opioid Funds from Participating Local Governments to programs and services within the Allocation Region for Approved Purposes.
    ii. Annual review of expenditure reports from Participating Local Jurisdictions within the Allocation Region for compliance with Approved Purposes and the terms of this MOU and any Settlement. To facilitate this process, each Participating Local Government shall submit monthly expenditure reports for each month that funds were distributed.
    iii. Reporting and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures by the OAC or directly by Participating Local Governments.
    iv. Developing and maintaining a centralized public dashboard or other repository for the publication of expenditure data from any Participating Local Government that receives Opioid Funds, and for expenditures by the OAC in that Allocation Region, which it shall update at least annually.
    v. Hearing complaints by Participating Local Governments within the Allocation Region regarding alleged failure to:
        1. Use Opioid Funds for Approved Purposes or
        2. Comply with reporting requirements.
    vi. If necessary, requiring and collecting additional outcome related data from Participating Local Governments to evaluate the use of Opioid Funds, and all Participating Local Governments shall comply with such requirements.
e. If the OAC concludes that a Participating Local Government's expenditure of its allocation of Opioid Funds did not comply with the Approved Purposes listed in Exhibit A or the terms of this MOU, or that the Participating Local Government otherwise misused its allocation of Opioid Funds, the OAC may take remedial action against the alleged offending Participating Local Government. Such remedial action is left to the discretion of the OAC and may include withholding future Opioid Funds owed to the offending Participating Local Government or requiring the offending Participating Local Government to reimburse improperly

expended Opioid Funds back to the OAC to be re-allocated to the remaining Participating Local Governments within the Region.

f. All Participating Local Governments and the OAC shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by any other Participating Local Government or OAC, or the public. Records requested by the public shall be produced in accordance with Washington's Public Records Act RCW 42.56.001 *et seq*. Records requested by another Participating Local Government or an OAC shall be produced within twenty-one (21) days of the date the record request was received. This requirement does not supplant any Participating Local Government or OAC's obligations under Washington s Public Records Act RCW 42.56.001 *et seq*.

g. Each Participating Local Government may elect to have its share re-allocated to the OAC. The OAC will then utilize this share for the benefit of Participating Local Governments within the Allocation Region, consistent with the Approved Purposes set forth in Exhibit A. A Participating Local Government's election to forego its allocation of Opioid Funds shall apply to all future allocations unless the Participating Local Government notifies the OAC otherwise. If a Participating Local Government elects to forego its allocation of the Opioid Funds, the Participating Local Government shall be excused from the reporting requirements set forth in this Agreement.
    i. In the case where Participating Local Governments chose to forego their allocation of Opioid fund, the OAC shall be responsible for:
        1. Approving or denying proposals by Participating Local Governments or community groups to the OAC for use of Opioid Funds within the Allocation Region.
        2. Directing the Trustee to distribute Opioid Funds for use by Participating Local Governments or community groups whose proposals are approved by the OAC.
        3. Administrating and maintaining records of all OAC decisions and distributions of Opioid Funds.

h. Participating Local Governments will reserve 10% of the Opioid Funds received for administrative costs related to the OAC. The OAC will provide an annual accounting for actual costs, and any remaining funds may then be used for the Participating Local Government's Approved purpose. The Administering Agency will be responsible for providing staffing and administrative support for the OAC.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GREATER COLUMBIA REGION MUNICIPALITIES TO ESTABLISH AN OPIOID ABATEMENT COUNCIL

This Memorandum of Understanding between the Greater Columbia Region Municipalities to Establish an Opioid Abatement Council is signed this _____ day of _____, 2023 by:

_____

Name & Title _____

On Behalf of _____

Memorandum of Understanding Between the Greater Columbia Region Municipalities to Establish an Opioid Abatement Council

By their signatures below, the parties agree to the terms and conditions of this Contract and all documents incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized to sign this Contract.

For Benton County:	**Attest:**
Chair Date	Clerk of the Board
Approved as to content:	**Approved as to form:**
Dept. of Human Services	Benton Co Prosecutor's Office

Exhibit A

OPIOID ABATEMENT STRATEGIES

Participating Local Governments that receive a direct payment maintain full discretion over the use and distribution of their allocation of Opioid Funds, provided the Opioid Funds are used solely for Approved Purposes. **Reasonable administrative costs for a Participating Local Government to administer its allocation of Opioid Funds shall not exceed actual costs or 10% of the Participating Local Government's allocation Opioid Funds, whichever is less.**

PART ONE: TREATMENT

A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions. Co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction. Including all forms of Medication-Assisted Treatment (MAT) approved by the U.S. Food and Drug Administration.

2. Support and reimburse services that include the full American Society of Addiction Medicine (ASAM) continuum of care for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to:

    a. Medication-Assisted Treatment (MAT);

    b. Abstinence-based treatment;

    c. Treatment, recovery, or other services provided by states, subdivisions, community health centers; non-for-profit providers; or for-profit providers;

    d. Treatment by providers that focus on OUD treatment as well as treatment by providers that offer OUD treatment along with treatment for other SUD/MH condition, co-usage, and/or co-addiction; or

e. Evidence- informed residential services programs, as noted below.

3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.

4. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-based, evidence-informed, or promising practices such as adequate methadone dosing.

5. Support mobile intervention, treatment, and recovery services, offered by qualified professional and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction and for persons who have experienced an opioid overdose.

6. Support treatment of mental health trauma resulting from the traumatic experiences of the opioid user (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.
7. Support detoxification (detox) and withdrawal management services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including medical detox, referral to treatment, or connections to other services or supports.
8. Support training on MAT for health care providers, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Provide fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (DATA 2000) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
12. Support the dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.
13. Support the development and dissemination of new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication-Assisted Treatment.

B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in treatment for and recovery form OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidenced-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Provide the full continuum of care of recovery services for OUD and any co0occurrinf SUD/MH condition, co-usage, and/or co-addiction, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.
2. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
3. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, recovery housing, housing assistance programs, or training for housing providers.
4. Provide community support services. Including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
5. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
6. Provide employment training or educational services for persons in treatment for or recovery form OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
7. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
8. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to manage the opioid user in the family.
9. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to current and recovering opioid users, including reducing stigma.
10. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED (CONNECTIONS TO CARE)

Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Support Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorders.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.
4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Support training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
6. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or person who have experienced an opioid overdose, into community treatment or recovery services through a bridge clinic or similar approach.
7. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions, co=usage, and /or co-addiction or persons that have experienced an opioid overdose.
8. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid=related adverse event.
9. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced an opioid overdose.
10. Provide funding for peer navigators, recovery coaches, care coordinators, or care managers that offer assistance to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to person who have experienced on opioid overdose.
11. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
12. Develop and support best practices on addressing OUD in the workplace.
13. Support assistance programs for health care providers with OUD.
14. Engage non-profits and the faith community as a system to support outreach for treatment.
15. Support centralized call centers that provide information and connections to appropriate services and supports for person s with OUD and any co-occurring SUD/MH conditions, co-usage, an/or co-addiction.
16. Create or support intake and call centers to facilitate education and access to treatment, prevention, and recovery services for persons with OUD and any co-occurring SUD/MH condition, co-usage, and/or co-addiction.

17. Develop or support a National Treatment Availability Clearing house – a multistate/nationally accessible database whereby health care providers can list locations for currently available in-patient and out-patient OUD treatment services that are accessible on a real-time basis by persons who seek treatment.

D. ADDRESS THE NEEDS OF CRIMINAL-JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are involved – or are at risk of becoming involved – in the criminal justice system through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support pre-arrest or post-arrest diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including established strategies such as:
   a. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);
   b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;
   c. "Naloxone Plus" strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
   d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model;
   e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative;
   f. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise and to reduce perceived barriers associated with law enforcement 911 responses; or
   g. County prosecution diversion programs, including diversion officer salary, only for counties with a population of 50,000 or less. Any diversion services in matters involving opioids must include drug testing, monitoring, or treatment.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, but only if these courts provide referrals to evidence-informed treatment, including MAT.
4. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are leaving jail or prison have recently

left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.

6. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who have immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal-justice-involved persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, case management, or other services offered in connection with any of the strategies described in this section.

E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and the needs of their families, including babies with neonatal abstinence syndrome, through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support evidence-based, evidence-informed, or promising treatment, including MAT, recovery services and supports, and prevention services for pregnant women – or women who could become pregnant – who have OUD and y any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Provide training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
3. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of safe care.
4. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.
5. Offer enhanced family supports and home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to parent skills training.
6. Support for Children's Services – Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIODS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
2. Academic counter-detailing to educate prescribers on appropriated opioid prescribing.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Support enhancements or improvements to Prescription Drug Monitoring Programs (PSMPs), including but not limited to improvements that:
    A. Increase the number of prescribers using PDMPs;
    B. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs or by improving the interface that prescribers use to access PDMP data, or both; or
    C. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD.
6. Development and implementation of a national PDMP – Fund development of a multistate/national PDMP that permits information sharing while providing appropriate safeguards on sharing of private health information, including but not limited to:
    a. Integration of PDMP data with electronic health records, overdose episodes, and decision support tools for health care providers relating to OUD.
    b. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database.
7. Increase electronic prescribing to prevent diversion or forgery.
8. Educate Dispensers on appropriate opioid dispensing.

G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Corrective advertising or affirmative public education campaigns based on evidence.
2. Public education relating to drug disposal.

3. Drug take-back disposal or destruction programs.
4. Fund community anti-drug coalitions that engage in drug prevention efforts.
5. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).
6. Engage non-profits and faith-based communities as systems to support prevention.
7. Support evidence-informed school and community education programs and campaigns for students. Families, school employees, school athletic programs, parent-teacher and student associations, and others.
8. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
9. Support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
11. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or other drug misuse.

H. PREVENT OVERDOSE DEATHS AND OTHER HARMS

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Increase availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, opioid users, families and friends of opioid users, schools, community navigators and outreach workers, drug offenders upon release from jail/prison, or other members of the general public.
2. Provision by public health entities of free naloxone to anyone in the community, including but not limited to provision of intra-nasal naloxone in settings where other options are not available or allowed.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, and other members of the general public.
4. Enable school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.

5. Expand, improve, or develop data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educate first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
10. Support mobile units that offer or provide referrals to treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
11. Provide training in treatment and recovery strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
12. Support Screening for fentanyl in routine clinical toxicology testing

PART THREE: OTHER STRATEGIES

I. FIRST RESPONDERS

In addition to items C8, D1 through D7, H1, H3 and H8, support the following:

1. Current and future law enforcement expenditures relating to the opioid epidemic.
2. Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, and coordination to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Community regional planning to identify goals for reducing harms related to the opioid epidemic, to identify areas and populations with the greatest needs for treatment intervention services, or to support other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

2. A government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes.

3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

4. Provide resources to staff government oversight and management of opioid abatement programs.

K. TRAINING

In addition to the training referred to in various items above, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Invest in infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (e.g., health care, primary care, pharmacies, PDMPs, etc.)

L. RESEARCH

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, and evaluation of programs and strategies described in this opioid abatement strategy list.

2. Research non-opioid treatment of chronic pain.

3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
5. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).
6. Research on expanded modalities such as prescription methadone that can expand access to MAT.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6, 2023
Subject:	Amending Bylaws & Rules of Procedure for the Board of Benton County Commissioners
Presenter:	Jerrod MacPherson/Matt Rasmussen
Prepared By:	Cami McKenzie
Reviewed By:	Matt Rasmussen/Jerrod MacPherson/Ryan Brown

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

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

Summary / Background Information

The Board desires to amend the Bylaws & Rules of Procedure for the Board of Benton County Commissioners as follows:

- Amend section 3.1 relating to "Regular Commission Meetings" to allow regular meetings outside the county seat, once per calendar month, per RCW 36.32.080(3) and House Bill 1645, effective July 23, 2023.
- Regular meetings outside the county seat shall be held on the second Tuesday of each month, at 9:00 a.m. in the Commissioners' Hearing Room 303 on the 3rd Floor of the Benton County Administration Building at 7122 W. Okanogan Place, Bldg. E, Room 303, Kennewick, WA. beginning August 8, 2023.

Fiscal Impact

None

Recommendation

Recommend the Board amend the Bylaws & Rules of Procedure for the Board of Benton County Commissioners.

Suggested Motion

I move to approve the attached Resolution Amending the Bylaws and Rules of Procedure for the Board of Benton County Commissioners; Repealing and Superseding Resolution 2023-039 as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AMENDING THE BYLAWS AND RULES OF PROCEDURE FOR THE BOARD OF BENTON COUNTY COMMISSIONERS; REPEALING AND SUPERSEDING RESOLUTION 2023-039

WHEREAS, on January 10, 2023, per Resolution 2023-039, the Board of Benton County Commissioners amended section 3.1 relating to "Regular Commission Meetings" to allow regular meetings outside the county seat, but within the county, no more than once per calendar quarter, per RCW 36.32.080(3); and

WHEREAS, the Board of Benton County Commissioners desires to further amend section 3.1 relating to "Regular Commission Meetings", in the interest of supporting greater citizen engagement, to allow regular meetings outside the county seat, once per calendar month, per RCW 36.32.080(3) and House Bill 1645, effective July 23, 2023; and

WHEREAS, the Board of Benton County Commissioners desires to amend section 3.1 relating to "Regular Commission Meetings", to meet on the second Tuesday of each month at 9:00 a.m. in the Commissioners' Hearing Room 303 on the 3rd Floor of the Benton County Administration Building at 7122 W. Okanogan Place, Bldg. E, Room 303, Kennewick, WA, beginning August 8, 2023; **NOW, THEREFORE**,

BE IT RESOLVED, the Board shall meet on the second Tuesday of each month at 9:00 a.m. in the Commissioners' Hearing Room 303 on the 3rd Floor of the Benton County Administration Building at 7122 W. Okanogan Place, Bldg. E, Room 303, Kennewick, WA, beginning August 8, 2023; and

BE IT FURTHER RESOLVED, the Board adopts this Resolution and the attached Bylaws and Rules of Procedure, and that such replaces the Bylaws and Rules of Procedure adopted by the Board pursuant to Resolution 2023-039 and that Resolution is hereby repealed and superseded by 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: Cmnrs, All Departments, Intranet (Policies & Procedures); Communications Coordinator McKenzie

June
2023

BOARD OF BENTON COUNTY COMMISSIONERS

BYLAWS AND RULES OF PROCEDURE

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1. AUTHORITY

1.1 **Resolution:** The Board of Benton County Commissioners (the "Commission" or "Board") may by resolution determine its own rules of conduct and rules of procedure for meetings in accordance with state law. The following set of rules shall be in effect upon their adoption by the Commission and until they are amended, or new rules adopted in the manner provided by these rules.

2. GENERAL RULES

2.1 **Meetings to be Public:** All meetings of the Commission shall be open to the public except for the executive sessions, as allowed by law.

2.2 **Quorum:** Except as otherwise allowed by state law, two commissioners shall be in attendance to constitute a quorum and be necessary for the transaction of business.

2.3 **Commissioners' Meeting Minutes:** Minutes of all proceedings of the Commission shall be kept by the Clerk of the Board and shall be the official record of the Commission (see Section 6). Media recordings of such meetings shall be made and kept for as long a period as required by state law.

2.4 **Right of Floor:** Any member desiring to speak on the subject under consideration shall be recognized at a time determined by the Chair.

2.5 **County Administrator:** The County Administrator shall attend all meetings of the Commission unless excused by the Commission. The County Administrator shall keep the Commission fully advised as to the general condition, finances, and needs of Benton County (the "County"). At the discretion of the Commission, the County Administrator may make recommendations to the Commission and may take part in discussion on all matters concerning the welfare of the County.

2.6 **Clerk of the Board:** The Clerk of the Board (the "Clerk") shall keep minutes of the meeting and perform such other duties as may be required by the County Administrator. The Clerk shall decide on all matters regarding parliamentary procedure. However, he or she may seek the advice of the Prosecuting Attorney's Office and/or a Registered Parliamentarian.

2.7 **Rules of Order:** The current edition of "Robert's Rules of Order Newly Revised", in the possession of the Clerk shall govern the meetings and deliberations of the Commission, except as they may conflict with these rules.

2.8 **Adjournment; Motion to Adjourn:** A motion to adjourn shall be in order at any time, except as follows:

2.8.1 When made as an interruption of a member while speaking;

2.8.2 When the previous question has been ordered or called for; or

2.8.3 When a vote is being taken.

A formal motion to adjourn and terminate the meeting is required if there is not clear consensus to adjourn a meeting via an implicit motion. To adjourn a meeting for continuation to a later time, a formal motion shall be made specifying the requested time and place for the continuation. A motion to adjourn is debatable only as to whether the adjournment is proper and as to the time to which the meeting is adjourned.

2.9 **Reconsideration:** After decision by the Commission on any question, any member who voted with the prevailing side may move a reconsideration of any action during the same meeting or at a subsequent meeting.

2.10 **Recusal:** If a member decides to recuse himself or herself from an issue, his or her recusal and the reasons therefore shall be stated on the record by the recusing member and shall remain in effect for all discussions and decisions on that issue until such issue is resolved. The member shall state their recusal on the record each time the issue is before the Board and shall not be present during any executive sessions regarding the issue.

3. MEETINGS

3.1 **Regular Commission Meetings:** The Commission shall meet every Tuesday at 9:00 a.m. in the Commissioners' Conference Room of the Benton County Courthouse in Prosser for a regular Commission meeting, except that in the interest of supporting greater citizen engagement, the Commission shall meet on the second Tuesday of each month at 9:00 a.m. in the Commissioners' Hearing Room 303 on the 3rd Floor of the Benton County Administration Building at 7122 W. Okanogan Place, Bldg. E, Room 303, Kennewick, WA. When a holiday falls on a Monday or Tuesday, the regular Commission meeting for that week shall automatically be canceled. The Commission may cancel other regular meetings by a motion or by written notice issued by the Clerk or Executive Assistant for the Board at the direction of the County Administrator.

Notice of all regular meetings held at 7122 W. Okanogan Place, Bldg. E, Room 303, Kennewick, WA pursuant to RCW 36.32.080(3) shall be given at least thirty (30) days prior to the time of the meeting specified in the notice by the means set forth in RCW 36.32.080(3) as now in effect or hereafter amended.

3.2 **Special Meetings:** Special meetings may be called by the Chair or the majority of the Board of Commissioners. At the request of the Chair or two members of the Board, the Clerk or Executive Assistant shall prepare a written notice of the special meeting, stating the time, place, and subject, and deliver written notice personally by mail, by fax, or by electronic mail, upon each of the Commissioners at least 24 hours before the time of such meeting.

Although not required for the meeting to be valid, the Clerk or Executive Assistant shall also attempt to notify each member of the Commission by telephone or otherwise, of the special meeting. The required written notice shall be waived for any member who arrives at the meeting at the time it convenes or who provides a written waiver of the notice to the Clerk or Executive Assistant at or prior to the time the meeting convenes.

The Clerk or Executive Assistant shall also give written notice of the special meeting to local media (TV, radio, and newspaper) which has filed with the Clerk or Executive Assistant a written request to be notified of special meetings, to be delivered personally by mail, by fax, or by electronic mail at least 24 hours before the time of such meeting. The Board of Commissioners **shall not** discuss or make final disposition of any matter not mentioned in the notice. The notices required herein may be dispensed with under the circumstances set forth in RCW 42.30.080 as now in effect or as hereafter amended.

3.3 **Adjourned Sessions:** Any session of the Commission may be continued or adjourned from day to day or for more than one day in accordance with the terms of Section 2.8 hereof and RCW

42.30.090 as now in effect or as hereafter amended, including any requirement of posting an order or notice of adjournment.

3.4 **Executive Sessions:** Executive sessions will be held in accordance with the provisions of the Washington State Open Meetings Act. No executive sessions will be held pursuant to RCW 42.30.110(1)(i), unless an attorney employed or appointed by the Prosecuting Attorney's Office is present.

3.5 **Attendance at Meetings by Conference Telephone:** Members of the Board may participate at any Special Meeting (including emergency meetings) by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting and in the audience, if any, can hear each other at the same time. Members may also participate at Regular Meetings by such means unless objected to by a majority of the Board. Participation in a meeting by such means shall constitute presence in person at such meeting.

4. CHAIR AND DUTIES

4.1 **Chair:** The Chair shall satisfy his or her duties set forth in RCW 36.32.100 as now in effect or as hereafter amended. Despite the duty of the Chair to sign on behalf of the County, all members voting in the majority to approve an action or document have the authority to also sign such document in addition to the Chair.

4.2 **Call to Order:** The meetings of the Board shall be called to order by the Chair or, in his or her absence, by the Chair Pro Tem.

4.3 **Preservation of Order:** The Chair shall preserve order and decorum and confine debate to the question under discussion (i.e., order of the day). The Chair should keep the meeting on time but be flexible when necessary.

4.4 **Points of Order:** The Chair shall consider and rule on all points of order, subject to the right of any member to appeal the Chair's decision to the entire Board. Prior to the Board appealing the decision, it can seek the advice of the Clerk. An appeal to reverse the decision of the Chair requires a second and must be voted on.

4.5 **Introduction of Motions:** The purpose of a motion is to bring the subject before the Board. All debate and discussion regarding a motion must wait until after the motion has been introduced, seconded, and the Chair has called for discussion. All motions shall be clearly stated in full. "So moved" is not a motion. The Clerk may request that long motions be presented in writing.

4.6 **Powers of the Chair:** The Chair may move, second, and debate from the chair, subject to the same considerations imposed on all members by Robert's Rules and shall not be deprived of any of the rights and privileges of a member because of his or her acting as the Chair.

4.7 **Press Conferences/Special Dedications - Notice to Members:** The Chair, or any individual member of the Board at the direction of the Chair or the majority of the Board, may convey a formal opinion or decision of the Commission at press conferences and special dedications, and shall give at least 24-hour notice to all members of his or her intent to hold any such press conference or make special dedication on behalf of the County. Each member of the Board must approve any exceptions to the 24-hour notice verbally or in writing.

4.8 **Correspondence:** Any correspondence going out under the direction of the Board shall be on Board letterhead. Any correspondence authored by an individual commissioner and not approved by the Board shall go out on letterhead with that commissioner's name and not be on Board letterhead.

4.9 **Committee Appointments:** The Chair may make recommendations for committee appointments.

5. ORDER OF BUSINESS AND AGENDA

5.1 **Order of Business:** The business of all regular meetings of the Board shall be transacted in the following order unless the Board, by a majority vote of the members present, suspends the rules and changes the order:

1. Call to Order
2. Pledge of Allegiance
3. Approval of Minutes
4. Review Agenda
5. Public Comment
6. Review and Approval of Consent Agenda
7. Public Hearings
8. Scheduled Business
9. Other Business
10. Executive Sessions
11. Adjournment

The consent agenda may contain items that are of a routine and non-controversial nature and may be accepted by consent of the Board by a single vote without reading. If a member of the Board requests such reading, such a request shall be granted. Any item on the consent agenda may be removed and considered separately at the request of any individual Board member.

The other business agenda may not include any monetary or contractual obligations to be approved without County Administrator or Office of Budget and Finance prior review.

5.2 **Agenda:** The County Administrator is responsible for placing and removing all items on the agenda. Complete agenda packets must be submitted for review to the Commissioners' Office in electronic format only, as a single PDF file, to commissioners.review@co.benton.wa.us no later than 5:00 p.m. on the Friday prior to the final deadline.

Once approved for final submission, the complete agenda packet must be submitted in electronic format AND hard copy no later than 5:00 p.m. on the Tuesday preceding the meeting date; hard copies must be submitted to the Commissioners' Office at the Prosser Courthouse and electronic copies must be submitted as a single PDF file to commissioners.agenda@co.benton.wa.us.

Failure to comply with these deadlines without the consent of the County Administrator shall result in removal of the agenda item. The County Administrator shall arrange a list of such matters according to the order of business and, at the request of the Chair, may review such matters with the Chair before final approval.

The Executive Assistant shall furnish each member of the Board, the County Administrator, County personnel, and all news media (pursuant to a written request) a copy of the agenda by 5:00 p.m. on the Thursday preceding the meeting.

6. MINUTES POLICY

6.1 Content of the Minutes

6.1.1 The first paragraph should contain the following information: type of meeting, name of the board, date, time, and place of the meeting, and the members and parties present.

6.1.2 The minutes generally should contain a summarized record of what was done at the meeting, not what was said by the members. Minutes will not usually be typed verbatim; however, verbatim excerpts can be inserted at the Clerk's discretion. Members of the Commission can request additional verbatim excerpts from the Clerk, but they will not be considered part of the minutes nor attached to the minutes, unless typed by the Clerk during the meeting. No individual member shall instruct the Clerk as to the contents of the minutes. Any corrections or suggestions shall be in writing, presented at the time of approval, and approved by the Board.

6.1.3 The body of the minutes should contain a separate paragraph for each subject matter. Motions will name the mover, seconder, and show how each motion was adopted with the facts as to whether the motion may have been debated or amended. Motions will be indicated in bold and underlined and resolutions will be listed separately at the end of the minutes. The minutes should identify the item of business before the board, summarize discussions on the item, and describe the exact disposition of any action, clearly indicating what was done, by whom, and why.

6.1.4 The last paragraph contains the time of adjournment.

6.1.5 The minutes are closed with the signature and title of the Chair and Clerk.

6.1.6 An action follow-up sheet, if one is necessary, will be attached to the draft minutes as a reminder to the Board and employees in the Commissioners' office.

6.2 Approval of Minutes

6.2.1 Minutes must be approved as read or as corrected.

6.2.2 If minutes are approved by general consent, no motion is required unless a member specifically requests one. The Chair may assume this motion and indicate that if there are no corrections, the minutes are approved, or that if there are no further corrections, the minutes are approved as corrected.

6.2.3 Once the minutes are approved, the Clerk shall post the approved minutes on the Benton County website.

6.2.4 The approved minutes are then printed onto the journal pages and prepared for signature by the Chair and Clerk.

6.2.5 Approved minutes may be corrected by motion whenever a typographical or clerical error is found, regardless of the time elapsed. Correction of minutes after they have been approved requires a "Motion to Amend Something Previously Adopted" and majority vote.

6.2.6 Nothing may be erased from the journal. Corrections must be made in the margin along with a notation, which states: "Amended, see minutes of _____." (Write in the meeting date at which the Motion to Amend Something Previously Adopted was made and approved.) If material is expunged (stricken from the record), a line is drawn through the words that are expunged.

7. ORDINANCES, RESOLUTIONS, AND MOTIONS

7.1 **Form:** Ordinances, resolutions, and accompanying documents shall be presented to the Board in writing following proper format.

7.2 **Funding:** All resolutions authorizing the expenditure of money shall include the exact source of the funds to be expended.

7.3 **Ordinances - Introduction:** All proposed ordinances must be prepared under the direction of and approved as to form by the Prosecuting Attorney's Office. The department requesting the ordinance shall attach a summary of the provisions thereof and any proposed amendments to an existing ordinance; such summary shall indicate the change to be made and the name of the department or party requesting the proposed ordinance.

7.4 **Recording of Votes:** The ayes and nays shall be recorded upon the passage of all ordinances and resolutions in the official record of the Board.

7.5 **Tie Vote:** In the event of a tie on any motion when only two members are present at the meeting, the motion shall be postponed to the next appropriate meeting.

7.6 **Numbering Ordinances and Resolutions:** The Clerk shall assign a number (in consecutive order) to each ordinance or resolution.

7.7 **Ordinance and Resolution Passage Procedure:** When passed by the Board, an ordinance or resolution shall be signed by a majority of the Board members or the Chair and be attested to by the Clerk. It shall immediately be filed and thereafter preserved in the office of the Commissioners.

7.7.1 Absent. If a commissioner is absent, the Clerk shall affix their name stamp stating "absent" on the signature line on all documents approved on that date.

7.7.2 Opposed. If a commissioner opposes the ordinance, resolution, or document, the Clerk shall affix their name stamp stating "opposed" on the signature line.

8. LEGAL ADVICE AND CONFIDENTIAL INFORMATION

8.1 **Requests for Legal Opinions:** Upon receipt of a written legal opinion from the Prosecuting Attorney's Office relating to County business addressed to any Board member, the written legal

opinion shall be distributed to all members of the Board, except those that have recused themselves from deliberations on the subject matter of the opinion.

8.2 **Confidentiality:** No member of the Commission may make a disclosure of confidential information gained because of the member's position on the Board without a motion by the Commission approving such disclosure. If there is any uncertainty whether information is confidential, the Board member shall seek advice from the Prosecuting Attorney's Office.

9. CITIZENS' RIGHTS

9.1 **Public Comment:** Any member of the public not scheduled on the agenda but desiring to address the Board by oral communication may do so during the Public Comment portion of the agenda.

9.2 **Manner of Addressing the Board During Public Comment:** Each person addressing the Board shall step up to the microphone, give his or her name and address in an audible tone of voice for the record and, unless further time is granted by the Board, shall limit their remarks to three minutes. All remarks shall be addressed to the Board as a body, and not to any member thereof. No questions shall be asked of the Board members, except through the Chair. The Board would then determine the proper disposition of the issue.

9.3 **Scheduled Business – Public Comment:** If the Board allows public comment during scheduled business, the comments should be limited to the time allotted on the agenda for the scheduled business.

9.4 **Written Communications:** Interested parties, or their authorized representatives, may address the Board by written communication regarding any matter concerning the County's business at any time by mail or through the Clerk or Executive Assistant. Copies must be distributed to the Board members and are subject to public review and request.

10. AMENDMENT OF THESE RULES

10.1 **Amendment of These Rules:** These rules may be amended, or new rules adopted, by the Board; provided, the proposed amendments or new rules may only be passed at a Board meeting with all members present at the time the issue is initially discussed.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 6 2023
Subject:	Auditor General Fund Budget Adjustment
Presenter:	Brenda Chilton
Prepared By:	Lorene Roe
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

Second phase of reorganization of the Accounting Division of the Auditor's Office, the reorganization is budget neutral. Effective 06/06/2023. Accounting Operations Supervisor will become Chief Accountant, Grade 21, existing classification.

Fiscal Impact

Is budget neutral in the General Fund 0010, Department 102

Recommendation

The Board of County Commissioners hereby authorize the Budget Adjustment of the Auditor's Office.

Suggested Motion

Move to approve the line item transfer/budget adjustment for the Auditor's Office in the General Fund, Fund 0010, Department 102.

CC: B. Chilton; L. Ivey; Accounting

L. Roe

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN GENERAL FUND FUND NUMBER 0010 DEPARTMENT NUMBER 102

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: L.Roe

EXHIBIT "A"

BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Auditor Dept Nbr: 102

Fund Name: General Fund Fund Nbr: 0010

TRANSFER FROM: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5143000	51744	Accounting Operations Supervisor	$156,496
TOTAL			$156,496

TRANSFER TO: **Dept.**

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
5143000	51744	Chief Accountant	$156,496
TOTAL			$156,496

Explanation:

Second phase of reorganization of the Accounting Division of the Auditor's Office, the reorganization is budget neutral. Effective 06/06/2023. Accounting Operations Supervisor will become Chief Accountant, Grade 21, existing classification.

Prepared by: Lorene Roe Date: 5/31/23

Approved ❑ Denied ❑ Date: _____

_____
Chairman

_____
Commissioner

_____
Commissioner

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	6/6/2023
Subject:	Authorizing BCSO to Apply for FY2023 Grant Funding under the Patrick Leahy Bulletproof Vest Partnership Program
Presenter:	N/A
Prepared By:	Katie Gillies
Reviewed By:	Jon Law, Undersheriff

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

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

Summary / Background Information

The U.S. Department of Justice (DOJ), Bureau of Justice Assistance (BJA) annually offers the Patrick Leahy Bulletproof Vest Partnership Program (BVP).

The Patrick Leahy Bulletproof Vest Partnership Program (BVP) reimburses states, units of local government, and federally recognized Indian tribes for up to 50 percent of the cost of body armor vests purchased for law enforcement officers. Since 1999, more than 13,000 jurisdictions have participated in the BVP Program, with a total of $573 million in federal funds for the purchase of more than 1.5 million body armor vests.

The Benton County Sheriff's Office anticipates purchasing 16 body armor vests during the funding cycle for the FY 2023 BVP at an approximate cost of $1600 each.

Fiscal Impact

Reimbursable funding paid back to the County general fund. This grant reimbursement was not budgeted in the 2023/2024 budget cycle. The vest expenditures were included in the 2023/2024 budget and come out of the Sheriff's Replacement Fund 1410.

Recommendation

The Benton County Sheriff's Office recommends submitting an application for FY2023 funding under the Patrick Leahy Bulletproof Vest Partnership Program (BVP) for up to 50 percent reimbursement for the 16 body armor vests that will be purchased in 2023.

Suggested Motion

The Board of Benton County Commissioners, Benton County, Washington concurs with the recommendation and hereby authorizes the Benton County Sheriff's Office to apply for FY23 grant funding under the Patrick Leahy Bulletproof Vest Partnership Program.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE BOARD OF BENTON COUNTY COMMISSIONERS AUTHORIZING THE BENTON COUNTY SHERIFF'S OFFICE TO SUBMIT AN APPLICATION FOR FY 2023 GRANT FUNDING FOR BULLETPROOF VESTS UNDER THE U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, PATRICK LEAHY BULLETPROOF VEST PARTNERSHIP

WHEREAS, the U.S. Department of Justice (DOJ), Bureau of Justice Assistance (BJA) annually offers the Patrick Leahy Bulletproof Vest Partnership Program (BVP); and

WHEREAS, the Patrick Leahy Bulletproof Vest Partnership Program (BVP) reimburses states, units of local government, and federally recognized Indian tribes for up to 50 percent of the cost of body armor vests purchased for law enforcement officers. Since 1999, more than 13,000 jurisdictions have participated in the BVP Program, with a total of $573 million in federal funds for the purchase of more than 1.5 million body armor vests; and

WHEREAS, the Benton County Sheriff's Office anticipates purchasing 16 body armor vests during the funding cycle for the FY 2023 Bullet Proof Vest Partnership Program at an approximate cost of $1600 each, which was budgeted in the Sheriff's replacement fund 1410. This grant reimbursement was not budgeted in the 2023/2024 budget cycle, but will go back into the general fund; and

WHEREAS, the Benton County Sheriff's Office recommends submitting an application for FY2023 funding under the Patrick Leahy Bulletproof Vest Partnership Program (BVP) for up to 50 percent reimbursement for the 16 body armor vests that will be purchased in 2023; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington concurs with the recommendation and hereby authorizes the Benton County Sheriff's Office to apply for FY23 grant funding under the Patrick Leahy Bulletproof Vest Partnership Program.

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

Orig: BCSO
Cc: L. Roe, B. Chilton

Finance Presentation

January 1, 2023 – April 30, 2023
General Fund/Current Expense

Finance Presentation

January 1, 2023 – April 30, 2023
Public Safety Tax Fund