

Jerome Delvin
District 1
Shon Small
District 2
James Beaver
District 3

Board of County Commissioners BENTON COUNTY

David Sparks
County Administrator

Loretta Smith Kelty
Deputy County Administrator

AGENDA BOARD OF BENTON COUNTY COMMISSIONERS Regular Board Meeting Tuesday, December 13, 2016 Benton County Courthouse, Prosser, WA

9:00 AM

Call to Order

Approval of Minutes

- ❖ December 1, 2016 Special Board Meeting
- ❖ December 6, 2016 Board Meeting

To view items in detail, please
click on the highlighted area.

Review Agenda

Consent Agenda

Auditor

- a. Surplus of Personal Property

Commissioners

- b. Line Item Transfer, Fund No. 0000-101, Dept. 107

Coroner

- c. Contract w/Dr. Sigmund Menchel for Forensic Pathology Services

District Court

- d. Line Item Transfer, Fund No. 0000-101, Dept. 111
- e. Line Item Transfer, Fund No. 0131-101, Dept. 000

Facilities

- f. Line Item Transfer, Fund No. 0000-101, Dept. 115 to Dept. 110

GIS

- g. Line Item Transfer, Fund No. 0000-101, Dept. 131

Information Technologies

- h. Purchase of Forensic Extraction Device from Cellebrite, Inc. for Sheriff's Office

Juvenile

- i. Agreement w/State of WA, Administrative Office of the Courts for Court Interpreter Services

Noxious Weed

- j. Approval of 2017 – 2018 Operating Budget

Office of Public Defense

- k. Superior Court Public Defense Amended Agreement w/C Harkins

Planning

- l. Short Plat Vacation ~ SPV 2016-003

Public Safety

- m. Line Item Transfer, Fund No. 0148-101, Dept. 111

Public Works

- n. Purchase of Radio Equipment from Tessco Technologies

- o.** Authorizing County Engineer to Sign Annual & Final Fiscal Reports for Federally Funded Projects
- p.** Construction Plans Approval for Summit View Phase 11 ~ Wallowa Road
- q.** Revised Equipment Rental & Revolving Fund Policy
- r.** Equipment Rental & Revolving Fund Rental Rates for Non-Road Vehicles
- s.** Equipment Rental & Revolving Fund Operational Rates for Road Vehicles

Sheriff

- t.** Line Item Transfer, Fund No. 0000-101, Dept. 120
- u.** Line Item Transfer, Fund No. 0000-101, Dept. 121
- v.** Line Item Transfer, Fund No. 0000-101, Dept. 121
- w.** Line Item Transfer, Fund No. 0000-101, Dept. 125
- x.** Line Item Transfer, Fund No. 0000-101, Dept. 125
- y.** Contract w/LexisNexis for Hard Drive Prison Solutions for Case Law & Codes of WA State
- z.** Payment to Surplus Ammo & Arms, LLC for Swat Equipment
- aa.** Memorandum of Understanding w/US Marshal for Joint Law Enforcement for 2017
- bb.** Contract w/Day Wireless Systems Management Corp. for Installation/Maintenance of Electronic Equipment
- cc.** Purchase of Furniture from Brutzman's Office Solution for Training Room

WSU Extension

- dd.** Line Item Transfer, Fund No. 0000-101, Dept. 108

Scheduled Business

Office of Public Defense 3rd Quarter Update ~ E Hsu

Unscheduled Visitors

Other Business

10:00 AM Benton County Emergency Management Training Response Actions ~ Brian Calvert

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Special Board Meeting
Thursday, December 1, 2016, 9:00 a.m.
Commissioners' Conference Room
Justice Center, Kennewick, WA

Present: Chairman Shon Small
Commissioner Jerome Delvin
Commissioner James Beaver
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; DPA Ryan Brown; DPA Ryan Lukson; Linda Ivey and Lisa Small, Sheriff's Office; Shyanne Faulconer, Community Programs/PR.

Short Term Agreement for Use of Jail with Cities

Commissioner Delvin said he met with the cities and David Sparks and Loretta Smith Kelty to discuss this issue. He summarized the issues as follows:

- Governance – the Commissioners were not interested in running the jail. He talked about an advisory group and the Sheriff needed to buy-in to this issue and would address that with the cities separately.
- Operating Budget – Ms. Smith Kelty had provided that to the cities. There were concerns regarding medical costs and whether it was correct and being properly reviewed and that will be worked through the Sheriff's office.
- Administrative Fee – from 5% to 7% - still being negotiated.
- Contract Term – cities wanted a 1-2 year contract to see how the new contract was working without being locked into a longer term.
- Month to month charge based on prisoners; 3-5 year rolling average - the cities wanted a 3-year rolling average. Mr. Sparks indicated it was a .16% difference to the County one way or the other.
- The cities requested a 4-month extension; he recommended sending a letter extending the contract for 3 months to March 31, 2017 (with the month of December, 2016 it would be 4 months).

Ryan Brown discussed the short term agreement and said it was 95% identical to the current contract except the term, the current estimated payment (he recommended bed day rate) with a flat rate per prisoner per day for short term plus medical expenses and no truing up.

Commissioner Beaver said he supported their efforts and would agree to extend the contract to March 31, 2017. He said there was a lot of time arguing about the bed day rate when the bottom line number was associated with the cost to run the facility. He didn't want to spend the next 4 months arguing about the small stuff.

Chairman Small said he also appreciated their efforts and was agreeable to March 31.

The Board recessed at 9:30 a.m. so Mr. Brown and Ms. Smith Kelty could finalize the letter and agreements for the Board's approval.

The Board reconvened at 9:43 a.m. and Mr. Brown recommended adding language to the compensation section to address the current contract payments.

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

Mr. Brown presented four separate short term agreements for each city with the language for the bed day rate in addition to any payments due under the current agreement, expiring on March 31, 2017.

MOTION: Commissioner Delvin moved to approve the Short Term Agreement for Use of Jail Facilities with the cities as presented until they finalized a new contract. Commissioner Beaver seconded and upon vote, the motion carried.

MOTION: Commissioner Delvin moved to approve the letter to the cities as presented explaining the terms of the Short Term Agreement. Commissioner Beaver seconded and upon vote, the motion carried.

Resolutions

- 2016-933: Short-Term Agreement for Use of Jail Facilities with City of Prosser
- 2016-934: Short-Term Agreement for Use of Jail Facilities with City of West Richland
- 2016-935: Short-Term Agreement for Use of Jail Facilities with City of Richland
- 2016-936: Short-Term Agreement for Use of Jail Facilities with City of Kennewick

There being no further business before the Board, the meeting adjourned at approximately 10:15 a.m.

Clerk of the Board

Chairman

Draft

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Tuesday, December 6, 2016, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

Present: Chairman Shon Small
Commissioner James Beaver
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Absent: Commissioner Jerome Delvin (China – Legislative Tour)

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; County Engineer Matt Rasmussen; Assistant County Engineer Robert Blain; DPA Ryan Brown; Clerk Josie Delvin; District Court Administrator Jacki Lahtinen; Assessor Bill Spencer; Treasurer Duane Davidson; Fred Bowen, Public Services Manager; Clark Posey, Assistant Planning Manager; Jerrod MacPherson, Assistant Planning Manager; Undersheriff Jerry Hatcher; Taylor Ranger and Aileen Coverdell, Auditor's Office; Teri Holmes, IT Manager; Shyanne Faulconer, Community Programs/PR Coordinator; Financial Analyst Paul Schut.

Approval of Minutes

The Minutes of November 22, 2016 were approved.

Consent Agenda

MOTION: Commissioner Beaver moved to approve the consent agenda items "a" through "ttt". Chairman Small seconded and upon vote, the Board approved the following:

Auditor

- a. Title Changes Within Auditor's Office

Clerk

- b. Line Item Transfer, Fund No. 0000-101, Dept. 106
- c. Line Item Transfer, Fund No. 0146-101, Dept. 000

Commissioners

- d. Organization of Commissioners' Board Assignments for 2017; Rescinding Resolution 2015-903
- e. Appointment of K Christensen to the Benton County Mosquito Control Board
- f. Memorandum of Understanding for the Allocation of Juvenile Justice Center Operations & Facilities Costs; Rescinding Resolution 04-349
- g. Memorandum of Agreement w/New Vision for Economic Study of Yakima Basin Integrated Plan
- h. Residual Equity Transfer from Fund No. 0143-101 to 0144-101

- i. Line Item Transfer, Fund No. 0000-101, Depts. 102 & 115 to Dept. 102
- j. Line Item Transfer, Fund No. 0120-101, Dept. 000
- k. Line Item Transfer, Fund No. 0000-101, Dept. 115 to Dept. 123
- l. Line Item Transfer, Fund No. 0000-101, Dept. 117

Coroner

- m. Line Item Transfer, Fund No. 0000-101, Dept. 109

Facilities

- n. Change Order #2 w/M.G. Wagner Co. for Justice Center Re-Roofing Project
- o. Solicitation of Bids for Procurement of Office Furniture for Justice Center Remodel
- p. Purchase of File Storage System Dividers for Health District from Allied Systems Products
- q. Amended Contract w/Latta Technical Services for Design & Engineering Services for Security System
- r. Contract w/Southern Folger Detention Equipment Co for Installation of Security Systems Equipment
- s. Line Item Transfer, Fund No. 0000-101, Dept. 110

Human Services

- t. Amended Agreement #4 w/DSHS for Prevention Services

Juvenile

- u. Contract w/Heritage Professional Landscaping for Snow Removal Services
- v. Contract w/Lutheran Community Services for Mental Health Clinician
- w. Contract w/City of Benton City for Graffiti Abatement Program
- x. Contract w/Inter-City Legal Processing & Messenger Service

Office of Public Defense

- y. Superior Court Public Defense Services Agreement w/S Swanberg on Homicide Cases
- z. Superior Court Public Defense Services Agreement w/S Swanberg
- aa. District Court Public Defense Services Agreement w/Z Goytowski
- bb. District Court Public Defense Services Agreement w/D Purcell on Appeal Cases
- cc. District Court Public Defense Services Amended Agreement No. 2 w/D Hickman
- dd. District Court Public Defense Services Agreement w/A McKinley
- ee. District Court Public Defense Services Agreement w/S Naccarato
- ff. District Court Public Defense Services Agreement w/A Farabee
- gg. District Court Public Defense Services Agreement w/R Hui
- hh. District Court Public Defense Services Amended Agreement w/D McKinley
- ii. District Court Public Defense Services Amended Agreement w/E Riley
- jj. District Court Public Defense Services Amended Agreement w/C Briggs
- kk. District Court Public Defense Services Amended Agreement w/M Prince
- ll. District Court Public Defense Services Amended Agreement w/E Scott
- mm. District Court Public Defense Services Amended Agreement w/L Mapes
- nn. District Court Public Defense Services Amended Agreement w/B Riley
- oo. District Court Public Defense Services Amended Agreement w/S Cornish
- pp. District Court Public Defense Services Amended Agreement w/J Andrews
- qq. Superior Court Public Defense Services Amended Agreement w/M Trombley
- rr. Superior Court Public Defense Services Amended Agreement w/R Swinburnson
- ss. Superior Court Public Defense Services Amended Agreement w/D Hanson
- tt. Superior Court Public Defense Services Amended Agreement w/K Hudson
- uu. Superior Court Public Defense Services Amended Agreement w/B Pang
- vv. Superior Court Public Defense Services Amended Agreement w/S Ajax
- ww. Line Item Transfer, Fund No. 0000-101, Dept. 136

Personnel

- xx. 2017 Holidays and Hours for Business Transaction
- yy. Payment to L&S Fencing for Vertical Pivot Gate

zz. Line Item Transfer, Fund No. 0503-101, Dept. 000

Public Safety

- aaa. Coding Corrections, Between Fund No. 0148101, Dept. 138
- bbb. Amended Agreement w/Mirror Ministries for Human Trafficking Survivor Services
- ccc. Line Item Transfer, Fund No. 0148-101, Dept. 136
- ddd. Letter to Benton Franklin Legal Aid Society for Gang & Crime Prevention Initiative
- eee. Letter to Benton Franklin Health District for Gang & Crime Prevention Initiative

Public Works

- fff. Public Works Organizational Chart Update
- ggg. Adoption of 2017 Annual Road Program
- hhh. Purchase of 2010 Freightliner Cascadia Cab from Jim's Pacific Garages, Inc.
- iii. Line Item Transfer, Fund No. 0501-101, Dept. 650; Rescinding Resolution 2016-915
- jjj. Line Item Transfer, Fund No. 0101-101, Dept. 500
- kkk. Line Item Transfer, Fund No. 0101-101, Dept. 500
- lll. Accepting Work Performed by Granite Construction Co. for Locust Grove Road Asphalt
- mmm Contract w/Co-Energy for Gasoline & Diesel Fuel
- nnn. Purchase of TrafficJet Print System from Avery Dennison
- ooo. Contract w/Jack's Superior Auto Body LLC for Automobile Body Repair
- ppp. Contract w/Mathews Auto Body for Automobile Body Repair
- qqq. Contract w/Mel's Inter City Collision for Automobile Body Repair

Sheriff

- rrr. Line Item Transfer, Fund No. 0000-101, Dept. 120
- sss. Contract w/Consolidated Food Management, Inc. for Corrections Food Services
- ttt. Contract w/CI Support for Local Document Destruction Services

Other Business

Treasurer Duane Davidson presented his letter of resignation as the Benton County Treasurer effective January 11, 2017 to take office as Washington State Treasurer. He said the letter was necessary to provide the Benton County Republican Party ample time to put forth three possible candidates for appointment as Benton County Treasurer.

Public Hearing - Short Plat Vacation – SPV 2016-003

Clark Posey presented the Short Plat Vacation of the 20 foot drainage easements on Lots 1 and 2 of Short Plat 3149 submitted by Christopher Bohlke. Based upon the information received, the Planning Department recommended approval of the proposed vacation of the 20 foot natural drainage easement as presented.

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

MOTION: Commissioner Beaver moved to approve the vacation of the 20 foot natural drainage easement A.F. #91-10295 located over the Westerly portion of Lot 1 and the Southeast corner of Lot 2 on Short Plat 3149. This motion is conditioned upon the applicant recording a document that relinquishes the underlying easement (A.F. # 91-10295) with the Benton County Auditor and that the applicant provide the Benton County Planning Department with a copy of the recorded document, prior to the signing of the resolution by the Board of County Commissioners. The document must be recorded within one year of the date of approval by the Benton County Board

of Commissioners or this approval will be null and void. Chairman Small seconded and upon vote, the motion carried.

Vacation of Wheat Road

Matt Rasmussen said the City of Kennewick had been working on construction of a new road “Bob Olson Parkway”. The City of Kennewick and Apollo Inc. petitioned that the unnecessary portion of Wheat Road right of way be vacated. He said that portion of Wheat Road was no longer needed as part of the County road system and recommended the Board approve the vacation.

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

MOTION: Commissioner Beaver moved to approve the resolution vacating and abandoning a portion of Wheat Road located in the north half of the northeast quarter of Section 12, Township 8 North, Range 28 East. Chairman Small seconded and upon vote, the motion carried.

Approval to Seek Bids – Metasys Upgrade/Chilled Water Loop Repair

Dan Waggoner via/videoconference requested the Board authorize Facilities Department to complete the bidding process for the Metasys Upgrade/Chilled Water Loop Repair project. He said the conservative construction estimate for the project was \$402,000.00.

MOTION: Commissioner Beaver moved to approve the Facilities Department to seek bids for the above project. Chairman Small seconded.

Discussion

Chairman Small said everyone should pay attention to these large projects the County was going forward with and that it was the sound budgeting process that allowed them to save for a rainy day and complete these projects.

Upon vote, the motion carried.

Other Business

Aileen Coverdell presented a resolution authorizing the surplus of personal property in the Sheriff’s office. She said she was coming in under Other Business because the offer to exchange value would expire.

MOTION: Commissioner Beaver moved to approve the resolution authorizing the surplus of personal property for the Sheriff’s office. Chairman Small seconded and upon vote, the motion carried.

David Sparks said the budget was ready to go on December 20 and was posted on the website for anyone to review.

Claim for Damages

CC 2016-17: Received on December 6, 2016 from Miguel Sanchez

Account Payables

Check Date 11/30/16

Transfers #11301601-11301610
Total all Funds \$1,641,383.38

Warrants #148745-148876
Total all Funds \$367,804.31

Warrant #148877
Total all Funds \$667.89

Check Date 12/02/16

Transfers #12021601-12021606
Total all Funds \$826,415.71

Warrants #148937-149069
Total all Funds \$2,558.26

Warrant #149070-149123
Total all Funds \$137,255.22

Total amounts approved by fund can be reviewed in the Benton County Auditor's Office.

Resolutions

- 2016-937: Title Changes Within Auditor's Office
- 2016-938: Line Item Transfer, Fund No. 0000-101, Dept. 106
- 2016-939: Line Item Transfer, Fund No. 0146-101, Dept. 000
- 2016-940: Organization of Commissioners' Board Assignments for 2017
- 2016-941: Appointment of K Christensen to the Benton County Mosquito Control Board
- 2016-942: Memorandum of Understanding for the Allocation of Juvenile Justice Center Operations & Facilities Costs; Rescinding Resolution 04-349
- 2016-943: Memorandum of Agreement w/New Vision for Economic Study of Yakima Basin Integrated Plan
- 2016-944: Residual Equity Transfer from Fund No. 0143-101 to 0144-101
- 2016-945: Line Item Transfer, Fund No. 0000-101, Depts. 102 & 115 to Dept. 102
- 2016-946: Line Item Transfer, Fund No. 0120-101, Dept. 000
- 2016-947: Line Item Transfer, Fund No. 0000-101, Dept. 115 to Dept. 123
- 2016-948: Line Item Transfer, Fund No. 0000-101, Dept. 117

2016-949: Line Item Transfer, Fund No. 0000-101, Dept. 109
 2016-950: Change Order #2 w/M.G. Wagner Co. for Justice Center Re-Roofing Project
 2016-951: Solicitation of Bids for Procurement of Office Furniture for Justice Center Remodel
 2016-952: Purchase of File Storage System Dividers for Health District from Allied Systems Products
 2016-953: Amended Contract w/Latta Technical Services for Design & Engineering Services for Security System
 2016-954: Contract w/Southern Folger Detention Equipment Co for Installation of Security Systems Equipment
 2016-955: Line Item Transfer, Fund No. 0000-101, Dept. 110
 2016-956: Amended Agreement #4 w/DSHS for Prevention Services
 2016-957: Contract w/Heritage Professional Landscaping for Snow Removal Services
 2016-958: Contract w/Lutheran Community Services for Mental Health Clinician
 2016-959: Contract w/City of Benton City for Graffiti Abatement Program
 2016-960: Contract w/Inter-City Legal Processing & Messenger Service
 2016-961: Superior Court Public Defense Services Agreement w/S Swanberg on Homicide Cases
 2016-962: Superior Court Public Defense Services Agreement w/S Swanberg
 2016-963: District Court Public Defense Services Agreement w/Z Goytowski
 2016-964: District Court Public Defense Services Agreement w/D Purcell on Appeal Cases
 2016-965: District Court Public Defense Services Amended Agreement No. 2 w/D Hickman
 2016-966: District Court Public Defense Services Agreement w/A McKinley
 2016-967: District Court Public Defense Services Agreement w/S Naccarato
 2016-968: District Court Public Defense Services Agreement w/A Farabee
 2016-969: District Court Public Defense Services Agreement w/R Hui
 2016-970: District Court Public Defense Services Amended Agreement w/D McKinley
 2016-971: District Court Public Defense Services Amended Agreement w/E Riley
 2016-972: District Court Public Defense Services Amended Agreement w/C Briggs
 2016-973: District Court Public Defense Services Amended Agreement w/M Prince
 2016-974: District Court Public Defense Services Amended Agreement w/E Scott
 2016-975: District Court Public Defense Services Amended Agreement w/L Mapes
 2016-976: District Court Public Defense Services Amended Agreement w/B Riley
 2016-977: District Court Public Defense Services Amended Agreement w/S Cornish
 2016-978: District Court Public Defense Services Amended Agreement w/J Andrews
 2016-979: Superior Court Public Defense Services Amended Agreement w/M Trombley
 2016-980: Superior Court Public Defense Services Amended Agreement w/R Swinburnson
 2016-981: Superior Court Public Defense Services Amended Agreement w/D Hanson
 2016-982: Superior Court Public Defense Services Amended Agreement w/K Hudson
 2016-983: Superior Court Public Defense Services Amended Agreement w/B Pang
 2016-984: Superior Court Public Defense Services Amended Agreement w/S Ajax
 2016-985: Line Item Transfer, Fund No. 0000-101, Dept. 136
 2016-986: 2017 Holidays and Hours for Business Transaction
 2016-987: Payment to L&S Fencing for Vertical Pivot Gate
 2016-988: Line Item Transfer, Fund No. 0503-101, Dept. 000
 2016-989: Coding Corrections, Between Fund No. 0148101, Dept. 138

- 2016-990: Amended Agreement w/Mirror Ministries for Human Trafficking Survivor Services
- 2016-991: Line Item Transfer, Fund No. 0148-101, Dept. 136
- 2016-992: Public Works Organizational Chart Update
- 2016-993: Adoption of 2017 Annual Road Program
- 2016-994: Purchase of 2010 Freightliner Cascadia Cab from Jim's Pacific Garages, Inc.
- 2016-995: Line Item Transfer, Fund No. 0501-101, Dept. 650
- 2016-996: Line Item Transfer, Fund No. 0101-101, Dept. 500
- 2016-997: Line Item Transfer, Fund No. 0101-101, Dept. 500
- 2016-998: Accepting Work by Granite Construction Co. for Locust Grove Road Asphalt
- 2016-999: Contract w/Co-Energy for Gasoline & Diesel Fuel
- 2016-1000: Purchase of TrafficJet Print System from Avery Dennison
- 2016-1001: Contract w/Jack's Superior Auto Body LLC for Automobile Body Repair
- 2016-1002: Contract w/Mathews Auto Body for Automobile Body Repair
- 2016-1003: Contract w/Mel's Inter City Collision for Automobile Body Repair
- 2016-1004: Line Item Transfer, Fund No. 0000-101, Dept. 120
- 2016-1005: Contract w/Consolidated Food Management, Inc. for Corrections Food Services
- 2016-1006: Contract w/CI Support for Local Document Destruction Services
- 2016-1007: Vacating and Abandoning a Portion of Wheat Road
- 2016-1008: Surplus of Personal Property – Sheriff's Office

There being no further business before the Board, the meeting adjourned at approximately 9:15 a.m.

Clerk of the Board

Chairman

AGENDA/WORKSHOP ITEM		TYPE OF ACTION NEEDED	
Meeting Date:	December 13, 2016	Execute Contract	___
Subject:	Declaration of Surplus Property	Pass Resolution	<u>x</u>
By:	A. Coverdell	Pass Ordinance	___
Reviewed By:	B. Chilton/T. Ranger	Pass Motion	___
		Other	___
		Consent Agenda	<u>x</u>
		Public Hearing	___
		1st Discussion	___
		2nd Discussion	___
		Other	___

BACKGROUND INFORMATION

As outlined in Resolution 07-752, several County departments request supply and equipment items be declared surplus and be disposed of.

SUMMARY

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

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY POLICY, RE: SURPLUS OF PERSONAL PROPERTY IN ACCORDANCE WITH RESOLUTION 07-752

WHEREAS, The Benton County Auditor is the Personal Property Manager and maintains an updated inventory listing of County Personal Property; and

WHEREAS, various departments have identified supply items and equipment which have become obsolete; and,

WHEREAS, it is the recommendation of the Personal Property Manager that 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 antiquated and obsolete property; **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 held for online auction, the next surplus sale, disposed of as waste, or recycled depending on final condition assessment.

Dated this _____ day of _____, 2016.

Chairman of the Board

Member

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

Attest: _____
Clerk of the Board

ATTACHMENT A

Fellows brand plastic comb binding machine, model PB2450e (commissioner's office)

nine chairs – Inv. Tag #'s 09509 through 09517

Flat File Cabinet Tag # 07537

Canon Fax Machine Tag #09596

1998 DODGE Ram pickup vin# 1B7HD14YXJS747656 (plate 04313C) fairgrounds

1996 FORD F2500 pickup vin# 1FTHX25F9TEA34811 (plate 72384C) fairgrounds

Reader board and marquee sign letters fairgrounds

Light box (Road/GIS)

Viewsonic 19in Monitor (tag 01657 Road)

Dell monitor (tag 01879 Road)

Dell Optiplex GX620 (tag 00738)

Dell Optiplex GX 720D (tag 01633 Road)

HP Vectra (tag 001547 Road)

Princeton Ultra monitor (tag 01282)

Various keyboards

15172 HP 5550 printer

Type	Tag	Serial Number	Make	Description
laptop	15895	1MB2P71	Dell	Latitude D810 Pm/2000
laptop	16946	1BHTLF1	Dell	Latitude D830 Duo/2000
laptop	16954	8QPZMF1	Dell	Latitude D830 Duo/2000
laptop	16955	2QPZMF1	Dell	Latitude D830 Duo/2000
laptop	17722	6KYRPJ1	Dell	Latitude E6500 Duo/2930
laptop	17780	GTBW9K1	Dell	Latitude E4300 Duo/2400
monitor	17068	CN-OCC388-71618-7C2-AHEP	Dell	1907FPV 19" LCD
monitor	18375	CN-OFH8MW-74445-OAD-932L	Dell	Pro 2009 20" LCD
monitor	18541	CN-O8JCGH-74445-138-BZLL	Dell	Pro1911 19" LCD
monitor	18548	CN-O8JCGH-74445-141-AP7L	Dell	Pro1911 19" LCD
monitor	18628	CN-O8JCGH-74445-13T-DEWL	Dell	Pro P1911 19" LCD
monitor	18629	CN-O8JCGH-74445-13T-DHBL	Dell	Pro P1911 19" LCD
monitor	19050	CN-O8JCGH-74445-24H-853M	Dell	Pro 1911 LCD 19"
monitor	19051	CN-O8JCGH-74445-24H-858M	Dell	Pro 1911 LCD 19"

pc	16455	495HLC1	Dell	OptiPlex 745 DT PentD/1860
pc	16469	6LFVMC1	Dell	OptiPlex 745 DT PentD/1860
pc	16942	9L6KJF1	Dell	OptiPlex 740 SFF AthlonX2/2800
pc	18072	HLTTMM1	Dell	OptiPlex 780 SFF Duo/2930
pc	18389	8F46PN1	Dell	OptiPlex 780 SFF Duo/2930
pc	18391	8F66PN1	Dell	OptiPlex 780 SFF Duo/2930
pc	18395	8F67PN1	Dell	OptiPlex 780 SFF Duo/2930
pc	18539	HDPKHQ1	Dell	OptiPlex 790 SFF i3/3100
pc	18542	J3HLHQ1	Dell	OptiPlex 790 SFF i3/3100
pc	18630	F6QRXQ1	Dell	OptiPlex 790 SFF i3/3100
pc	19056	9L3Q5V1	Dell	OptiPlex 990MT i5/2400
pc	19058	9L2Q5V1	Dell	OptiPlex 990MT i5/2400
pc	19153	8V8K8V1	Dell	OptiPlex 990 SFF i5/2400
pc	19308	DRRXWV1	Dell	OptiPlex 990 SFF i5/2500
printer	17176	JPRL84P0FK	HP	LaserJet 9040n
printer	17860	CNT1P00231	HP	LaserJet P3005X
printer	18938	VNB3R02618	HP	LaserJet P3015dn
scanner	17791	509752	Fujitsu	fi-5110C
scanner	18038	9891	Fujitsu	fi-6240
scanner	19817	730030	Fujitsu	fi-6130z

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, DEPARTMENT NUMBER 107

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:

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM: Dept 107 & 115

TRANSFER TO: Dept 107

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
Department 107				511.200	1245	County Administrator	\$9,750
511.200	1251	Financial Analyst	\$12,300	511.200	1246	Executive Secretary/Clerk	\$3,950
511.200	1250	Executive Secretary	\$6,300	511.200	1571	Deputy County Administrator	\$10,500
511.200	4103	Professional Services	\$2,800	511.200	2104	Retirement	\$1,800
511.200	4503	Rentals - Office Equipment	\$5,600	511.300	1147	Clerk to the Board	\$3,900
511.200	4906	Printing	\$3,700	511.300	2102	Social Security	\$300
511.200	4301	Travel	\$2,000	511.300	2103	Medical Insurance	\$1,200
511.200	4201	Postage	\$150	511.300	2104	Retirement	\$600
511.200	4202	Telephone	\$150	511.600	1242	Commissioner	\$100
Department 115				511.600	2102	Social Security	\$400
597.100	0007	T/O to Juvenile	\$4,300	511.600	2103	Medical	\$3,500
				511.600	2104	Retirement	\$1,300
\$37,300				TOTAL			\$37,300

Explanation:

Transfer needed to cover shortages within salaries and benefits.

Prepared by:

Date:

Approved

Denied

Date: _____

_____ Chairman

_____ Member

_____ Member

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: _____	Execute Contract _____	Consent Agenda _____
Subject: _____	Pass Resolution _____	Public Hearing _____
Prepared by: _____	Pass Ordinance _____	1st Discussion _____
Reviewed by: _____	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION:

Attached is a contract between Dr. Sigmund Menchel and Benton County for Forensic Pathology services. Dr. Menchel has been providing autopsy services to the County for over 3 years and has done excellent work. This is simply a renewal of last year's contract for another 24 months. His rates are on par with other Pathologists in the State and have not increased from last year.

SUMMARY

The Benton County Coroner's Office currently has a contract with Dr. Menchel and wishes to extend it for another 24 months and at the same rate as in the past.

Dr. Menchel has signed his copy of the contract and it has been reviewed and approved by the Benton County prosecutor's Office.

The contract shall run from January 1st, 2017 to December 31st, 2018.

RECOMMENDATION

The Benton County Coroner recommends this contract be entered into.

FISCAL IMPACT

This is an ordinary expense of the Coroner's Office and is also the largest expense of the office.

MOTION

Move to approve the contract between Benton County and Dr. Sigmund Menchel for autopsy services at a rate of \$1,500.00 per event and extending from January 1st, 2017 to December 31st, 2018.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY:

IN THE MATTER OF A SERVICE AGREEMENT BETWEEN THE BENTON COUNTY CORONER AND DR. SIGMUND MENCHEL FOR FORENSIC PATHOLOGY SERVICES

WHEREAS, the Benton County Coroner's Office has utilized Dr. Sigmund Menchel for forensic pathologist services over the past couple of years when an autopsy was needed in Benton County; and

WHEREAS, Dr. Sigmund Menchel provided the Benton County Coroner with his 2017 rate, which is \$1500 per autopsy, and agrees to continue to serve Benton County as an independent contractor forensic pathologist as availability and schedule permit; and

WHEREAS, the Benton County Coroner is very pleased with the services Dr. Sigmund Menchel provides and recommends Benton County Commissioners to enter into a contract for said services;

NOW THEREFORE,

BE IT RESOLVED THE Board of County Commissioners, Benton County, Washington hereby agrees to enter a service agreement with Dr. Sigmund Menchel for forensic pathology services for the Benton County Coroner's Office for a service fee of \$1500 per autopsy as an independent contractor forensic pathologist; and

BE IT FURTHER RESOLVED the Board of County Commissioners is hereby authorized to sign the attached Service Contract; and

BE IT FURTHER RESOLVED that this contract shall run through December 31, 2018

Dated this _____ day of _____, 2016

Chairman of the Board

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

**PROFESSIONAL SERVICES CONTRACT
TERMS AND CONDITIONS**

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and Dr. Sigmund M. Menchel with his principal offices at 6701 154th Place S.E., Bellevue, WA 98006 (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 no additional documents.

2. DURATION OF CONTRACT

The term of this Contract shall begin January 1, 2017, and shall expire on December 31, 2018, unless earlier terminated pursuant to Section 9 herein.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. Complete autopsy and forensic pathologist services as needed by the Benton County Coroner.
- b. The CONTRACTOR shall perform the work specified in the Contract according to standard practices in the medical profession.
- c. COUNTY makes no representation that it will use CONTRACTOR as its sole provider of autopsy and forensic pathologist services. COUNTY has the sole discretion to contract and use other providers for the above listed services.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR: Dr. Sigmund M. Menchel
6701 154th Place S.E.
Bellevue, WA 98006
Phone:
Fax:

- b. For COUNTY: John Hansens, Coroner
7122 W. Okanogan Place, Bldg A
Kennewick, WA 99336
Phone: (509) 222-2720
Fax: (509) 222-3711

5. COMPENSATION

- a. For the services provided in Section 3, CONTRACTOR shall be paid at the rate of \$1,500.00 per autopsy.

- b. The CONTRACTOR may submit invoices to the COUNTY for services per occurrence. Invoices shall include the date of said services. The COUNTY shall pay the CONTRACTOR for services rendered within thirty (30) days from the date of receipt.

- c. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services 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 done by the CONTRACTOR, and all reports submitted in conjunction thereof shall be certified by the CONTRACTOR and checked for errors and omissions. The Contractor shall be responsible for the accuracy of the work and submitted reports, even if the work is accepted by the COUNTY.

- b. No amendment, modification or renewal 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, 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, which are caused in whole or in part by any act or omission, negligent or otherwise, of CONTRACTOR or its subcontractors, which arise in connection with the work performed under this Contract, or are 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, its officers, officials, employees or agents.

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

8. **INSURANCE**

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

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Contract. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of 36 months after the completion of work. CONTRACTOR shall annually provide 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 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, which may arise from any actions or inactions under this Contract by CONTRACTOR or by anyone directly employed by or contracting with CONTRACTOR. The minimum commercial general liability insurance limits shall be as follows:

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

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

The CONTRACTOR will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section [7]. 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 auto (Symbol 1), or if the Contractor has no owned autos, hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars (\$1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

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

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

3. Any failure to comply with reporting provisions of the

policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**
7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. 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 Agreement 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 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 CONTRACTOR, 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 CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the County's Contract Representative referenced in Section 4.
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 at the following address: Benton County Risk

Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick,
WA 99336.

9. **TERMINATION**

- a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all cost incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.
- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. The CONTRACTOR may terminate this Contract in whole or in part whenever the CONTRACTOR determines, in its sole discretion that such termination is in the best interests of the CONTRACTOR. The CONTRACTOR may terminate this Contract upon giving thirty (30) days written notice by certified mail to the COUNTY. 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 Section 5, Compensation. Nothing in this section shall limit the rights of the COUNTY pursuant to this Contract or by law.
- d. 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 terminate this Contract, 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 the 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 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.

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 the CONTRACTOR is not entitled to any COUNTY benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or

privileges afforded to COUNTY employees.

- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.
- d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law, which are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

15. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status, or the presence of any disability.

16. DISPUTES

Differences 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.

17. CONFIDENTIALITY

The CONTRACTOR, its employees, subcontractors, and their 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.

18. 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, 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.

19. SUCCESSORS AND ASSIGNS

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

20. SEVERABILITY

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

Contract did not contain the particular provision held to be invalid.

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

21. ENTIRE CONTRACT

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

22. NOTICES

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

23. 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 (Section [7]); extended reporting period requirements for professional liability insurance (Section [8(a)]); inspection and keeping of records and books (Section [14]); litigation hold notice (Section [24]); Public Records Act (Section [25]) and confidentiality (Section [17]).

24. 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 as set out above in Section [14].

25. PUBLIC RECORDS ACT

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

The parties to this Contract have executed this Contract to take effect as of the date provided in Section 2 herein.

BENTON COUNTY COMMISSIONERS

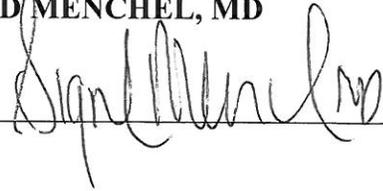
SIGMUND MENCHEL, MD

James Beaver, Chairman

SIGMUND MENCHEL, MD

Dated: _____

Dated: _____



Approved as to Form:



Ryan Lukson
Deputy Prosecuting Attorney

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, DEPARTMENT NUMBER 111

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:

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM: Dept 111

TRANSFER TO: Dept 111

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.400	1274	Judge	\$6,834	512.400	1134	Judge	\$8,973
512.400	1280	Agency Desk Clerk	\$7,427	512.400	1166	Judge	\$8,973
512.400	1283	Infractions/Switchboard	\$15,431	512.400	1259	Judge	\$8,973
512.400	1292	Accounting Assistant II	\$14,655	512.400	1275	Judge	\$8,973
512.400	1301	Clerk Assistant	\$1,265	512.400	1277	Administrator	\$4,980
512.400	1307	Cashier Clerk	\$16,937	512.400	1278	Head Cashier/Accountant	\$3,192
512.400	1316	Assitant to Presiding Judge	\$7,299	512.400	1279	Cashier Clerk	\$2,908
512.400	2104	Retirement	\$12,105	512.400	1281	Agency Desk Clerk	\$2,916
512.400	3507	Non-Replacement Computers	\$19,893	512.400	1282	Agency Desk Clerk	\$2,916
512.400	4108	Jurry Fees & Milage	\$2,282	512.400	1284	Small Claims/Civil Clerk	\$2,612
				512.400	1285	Small Claims/Civil Clerk	\$2,784
				512.400	1286	Court Recorder Clerk	\$1,556
				512.400	1287	Agency Desk Clerk	\$2,741
				512.400	1288	Court Recorder Clerk	\$2,309
				512.400	1289	Court Recorder	\$2,267
				512.400	1291	Courtroom Clerk Assistant	\$3,285
				512.400	1293	Clerk	\$3,516
				512.400	1294	Computer Coordinator/Assistant	\$4,301
				512.400	1295	Clerk Assistant	\$2,494
				512.400	1296	Clerk	\$2,716
				512.400	1300	Legal Process Assistant III/IV	\$2,809
				512.400	1303	Clerk	\$2,580

EXHIBIT "A"

				512.400	1308	Cashier Clerk	\$3,006
				512.400	1310	Court Recorder	\$2,524
				512.400	1311	Clerk Assistant	\$1,160
				512.400	1791	Small Claims/Civil Clerk	\$1,048
				512.400	2102	Social Security	\$2,894
				512.400	2103	Medical Insurance	\$4,722
				\$104,128	TOTAL		\$104,128

Explanation:

Transfer needed to cover shortages in Salaries and Benefits.

Prepared by:

Date:

Approved Denied

Chairman

Member

Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
PROBATION FUND NUMBER 0131101, DEPARTMENT NUMBER 000.

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

Dated this _____ day of _____, _____

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; LSK

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: District Court Probation

Dept Nbr: 000

Fund Name: Probation Fund

Fund Nbr: 0131101

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
512.410	4906	Print/Bindery	\$500	512.410	5114	WSP Services	\$500
TOTAL			\$500	TOTAL			\$500

Explanation:

Fund transfer needed for WSP for final 2016 billing

Prepared by: Reva Kirby

Date: 06-Dec-2017

Approved

Denied

Date: _____

Chairman

Member

Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF TRANSFER OF FUNDS FROM CURRENT EXPENSE FUND
0000101, NON-DEPARTMENT DEPT. 115 TO CURRENT EXPENSE FUND
0000101, FACILITIES DEPT. 110

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

C. McKenzie

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM: Dept. 115

TRANSFER TO: Dept. 110

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
597.100	0007	T/O to Juvenile	\$50,000	518-301	4701	Utilities	\$25,000
				518-302	3135	Maintenance Supplies	\$5,000
				518-302	4701	Utilities	\$20,000
TOTAL			\$50,000	TOTAL			\$50,000

Explanation:

2015-2016 Budget. To cover shortages in supplies and utilities.

Prepared by:

Date:

Approved

Denied

Date: _____

Chairman

Member

Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, DEPARTMENT NUMBER 131

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:

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM: Dept 115

TRANSFER TO: Dept 131

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
597.100	0007	T/O to Juvenile	\$22,095	519.710	1149	GIS TECHNICIAN I	\$3,354
				519.710	1237	GIS MANAGER	\$8,047
				519.710	1238	GIS TECHNICIAN II	\$3,876
				519.710	2102	SOCIAL SECURITY (FICA)	\$1,171
				519.710	2103	MEDICAL INSURANCE	\$3,473
				519.710	2104	RETIREMENT	\$2,174
TOTAL			\$22,095	TOTAL			\$22,095

Explanation:

Transfer needed to cover shortages in Salaries and Benefits for the 2015-2016 Budget.

Prepared by:

Date:

Approved Denied

Date: _____

Chairman

Member

Member

AGENDA/WORKSHOP ITEM	TYPE OF ACTION NEEDED	
Meeting Date: December 13, 2016	Execute Contract	___
Subject: Approval of Cellebrite Forensic Extraction Device for Sheriff's office	Pass Resolution	<u>X</u>
	Pass Ordinance	___
By: Teri L. Holmes	Pass Motion	___
Reviewed By: Loretta SmithKelty	Other	___
	Consent Agenda	<u>X</u>
	Public Hearing	___
	1st Discussion	___
	2nd Discussion	___
	Other	___

BACKGROUND INFORMATION

Benton County Sheriff's Detective Division is requesting the purchase of a Cellebrite UFED Touch 2, cellphone forensic extraction device. It is a hardware and software device used to extract and analyze cellphone data. The Detective Division currently has two trained cellphone forensic analysts and the Gang Team has one analyst. The level of work that we are currently experiencing along with the projected increase in the number of cellphones the Sheriff's Office will need to analyze for investigations has led us to requesting a second extraction and analytical device. Currently investigations are stalled due to the wait time between availability of the extraction device. The software for the device we are asking to purchase is interchangeable with the current device we have. The detectives that use the device have been trained to use the Cellebrite and is where their current expertise lies. Cellebrite is a sole source provider for the UFED device we are asking to purchase.

SUMMARY

Information Technology agrees that purchasing a second Cellbrite UFED Forensic Extraction device is the most appropriate direction to meet the needs of the Benton County Sheriff's Detectives.

RECOMMENDATION

Recommend the Board of Benton County Commissioners approve the purchase of one (1) Cellebrite UFED Touch2, Ultimate, Standard from Cellebrite, Parsippany, NJ in an amount not to exceed \$10,600.00 excluding WSST.

FISCAL IMPACT

2015-2016 budget funds are available.

MOTION

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF APPROVING THE PURCHASE OF ONE UFED TOUCH2 ULTIMATE FORENSIC EXTRACTION DEVICE FROM CELLEBRITE INC, PARSIPPANY, NJ

WHEREAS, The Board of Benton County Sheriff's Detectives anticipating an increase in electronic forensic extraction and analytic activities have expressed a need for an second Cellebrite UFED Touch 2 cellphone extraction device; and

WHEREAS, adding a second forensic extraction will help avoid excessive wait times and stalled investigations related to extraction device availability; and

WHEREAS, Cellebrite, Inc. is a sole source provider; and

WHEREAS, Information Technology agrees with the Sheriff's Office recommendation of Cellebrite UFED Touch2 Ultimate device, as the device best meeting their needs; NOW, THEREFORE,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs and approves the purchase of one UFED Touch2, Ultimate, Standard from Cellebrite, Inc. Parsippany, NJ in an amount not to exceed \$10,600 excluding WSST.

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

Attest: _____
Clerk of the Board

Constituting the Board of County Commissioners
of Benton County, Washington

Cellebrite Inc.
 7 Campus Drive
 Suite 210
 Parsippany, NJ 07054
 USA
 Tel. +1 201 848 8552
 Fax. +1 201 848 9982
 Tax ID#: 22-3770059



Quote

Quote #:
 CB-58758
Quote Date:
 Nov 30, 2016

Bill To: Benton County Sheriff's Office
 PO Box 608
 Prosser, Washington, 99350
 United States

Ship To: Benton County Sheriff
 620 Market Street
 Prosser, WA, 99350
 United States

Contact: Larry Smith
Phone #: 509-735-6555 ext 7204

Contact: Larry Smith
Phone #: 509-735-6555 ext 7204

Customer ID	Good Thru	Payment Terms	Sales Rep
SF-00044553	Dec 30, 2016	Net 30	Zach Cohen

Item Code	Description	Quantity	Net Price
F-UFD-03-002	UFED Touch2,Ultimate,Standard	1	\$10,499

Subtotal:	\$10,499
Shipping & Handling:	\$ 0
Sales Tax (6.5%*):	\$682.44
Total:	\$11,181.44

Comments:

***SALES TAX DISCLAIMER:** Cellebrite, Inc. is required to collect Sales and Use Tax for purchases made from the following certain U.S. States. Orders are accepted with the understanding that such taxes and charges shall be added, as required by law. Where applicable, Cellebrite Inc. will charge sales tax unless you have a valid sales tax exemption certificate on file with Cellebrite Inc. Cellebrite Inc. will not refund tax amounts collected in the event a valid sales tax certificate is not provided. If you are exempt from sales tax, you must provide us with your sales tax exempt number and fax a copy of your sales tax exempt certificate to Cellebrite Inc.

Please include the following information on your PO for Cellebrite UFED purchase:

- Please include the ORIGINAL QUOTE NUMBER (For example - M777) on your PO
- CONTACT NAME & NUMBER of individual purchasing and bill to address
- E-MAIL ADDRESS of END USER for monthly software update as this is critical for future functionality

Terms and conditions:

- Payment terms: Net 30; 1.5% per month interest on late payment

- Shipping: FCA, Parsippany, NJ, USA : Limited Warranty: Hardware: 12 Months; Software: 60 days; Touch Screen: 30 days
- 12 months software support included in initial purchase. The next support period purchased begins immediately at the end of the 12 months, i.e., no gaps in support period are allowed.
- Complete Terms and conditions of sale available upon request (or available at: <http://legal.cellebrite.com/us/index.html> .

i. Agreement w/State of WA, Administrative Office of the Courts for Court Interpreter Services

AGENDA ITEM: Consent	TYPE OF ACTION NEEDED	
MEETING DATE: F/C 11-30-16 B/C 12-13-16	Executive Contract <u>xx</u>	CONSENT AGENDA <u>xx</u>
SUBJECT: Interagency Agreement IAA17525 with Administrative Office of the Courts for Court Interpreter Funding	Pass Resolution <u>xx</u>	PUBLIC HEARING
	Pass Ordinance <u> </u>	1ST DISCUSSION
Prepared By: Maria Loera	Pass Motion <u> </u>	2ND DISCUSSION
Reviewed By: Darryl Banks	Other <u> </u>	OTHER

BACKGROUND INFORMATION

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

SUMMARY

The period of performance for this agreement is from July 1, 2016 through June 30, 2017. The Interagency Agreement is backdated to July 1, 2016 so that services are not interrupted and the Juvenile Justice Center can maximize the use of available funds effective on July 1, 2016. The contract was not received until October 18, 2016.

RECOMMENDATION

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Interagency Agreement #IAA17525 between the Benton-Franklin Counties Juvenile Justice Center and the State of Washington Administrative Office of the Courts.

COORDINATION

Coordination of the agreement occurred as follows: Janet Taylor, Franklin County Deputy Prosecuting Attorney who reviewed the agreement as to form; Administrative Office of the Courts (AOC); and Darryl Banks, Administrator for the Benton-Franklin Counties Juvenile Justice Center.

FISCAL IMPACT

The reimbursed compensation from the Administrative Office of the Courts (AOC) is a maximum of \$14,413.00.

MOTION

I move that the Chairman of the Board of Benton County Commissioners and the Chairman of the Board of Franklin County Commissioners be and they hereby are authorized to sign, on behalf of their respective county, the AOC Contract (IAA17525) between Benton-Franklin Counties Juvenile Justice Center and the State of Washington Administrative Office of the Courts.

HANDLING/ROUTING

Following signature from Franklin County, route to Benton County for signature. Following signature from Benton County all four (4) originals are to be returned to Maria Loera for AOC signature.

I certify the above information is accurate and complete.

Maria Loera

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

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

IN THE MATTER OF AWARDING THE INTERAGENCY AGREEMENT IAA17525 BETWEEN THE JUVENILE JUSTICE CENTER AND STATE OF WASHINGTON, ADMINISTRATIVE OFFICE OF THE COURTS

WHEREAS, Darryl Banks, Administrator of the Juvenile Court, believes it is in the best interest of the Juvenile Justice Center that the Interagency Agreement IAA17525 between the State of Washington, Administrative Office of the Courts, and Benton-Franklin Counties Juvenile Justice Center be approved as presented; and

WHEREAS, the new agreement was not received until October 18, 2016 and is backdated to July 1, 2016 so that services are not disrupted and so that the Juvenile Justice Center can maximize the use of available funds effective July 1, 2016; and

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

BE IT FURTHER RESOLVED, the Juvenile Justice Center will be reimbursed a maximum of \$14,413.00 for costs incurred during the period of performance; and

BE IT FURTHER RESOLVED, that the chairman is authorized to sign the attached Interagency Agreement; and

BE IT FURTHER RESOLVED, the agreement is July 1, 2016 and expires on June 30, 2017.

DATED this _____ day of _____ 2016
BENTON COUNTY BOARD OF COMMISSIONERS

DATED this _____ day of _____ 2016
FRANKLIN COUNTY BOARD OF COMMISSIONERS

Chairman of the Board

Chairman of the Board

Member

Chairman Pro Tem

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

Member
Constituting the Board of
County Commissioners,
Franklin County, Washington

ATTEST:

ATTEST:

Clerk of the Board

Clerk of the Board

**INTERAGENCY AGREEMENT IAA17525
BETWEEN
STATE OF WASHINGTON
ADMINISTRATIVE OFFICE OF THE COURTS
AND
BENTON/FRANKLIN COUNTIES JUVENILE COURT**

THIS AGREEMENT (Agreement) is entered into by and between the Administrative Office of the Courts (AOC) and Benton/Franklin Counties (County), for the purpose of distributing funds for court interpreter services expenses to the Benton/Franklin Counties Juvenile Court (Court).

1. DEFINITIONS

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

- a. "Certified Interpreter" means an interpreter who is certified by the Administrative Office of the Courts, as defined in RCW 2.43.020 (4) or an interpreter certified by the Office of the Deaf and Hard of Hearing (ODHH) pursuant to WAC 388-818-500, *et. seq.* The names and contact information of AOC-certified interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/. The names and contact information of ODHH-certified interpreters are found, and incorporated herein by reference, at <https://fortress.wa.gov/dshs/odhhapps/Interpreters/CourtInterpreter.aspx>
- b. "Registered Interpreter" means an interpreter who is registered by the Administrative Office of the Courts, as defined in RCW 2.43.020 (6). The names and contact information of registered interpreters are found, and incorporated herein by reference, at http://www.courts.wa.gov/programs_orgs/pos_interpret/.
- c. "Qualified Interpreter" means a spoken language interpreter as defined in RCW 2.43.020 (2), or sign language interpreter as defined in RCW 2.42.110 (2).
- d. "Qualifying Event" means a court interpreted event meeting the criteria found in Exhibit A and incorporated herein by reference and for which reimbursement is sought by the Court.

2. PURPOSE

The purpose of this Agreement is to engage the services of the Court to improve the quality and availability of court interpreter services for Limited English Proficient (LEP), deaf, and hard of hearing persons in accordance with chapters 2.42 and 2.43 RCW.

- a. These funds are intended to address the Court's following needs:
 - Financial need - i.e., the gap between the Court's available financial resources and the costs to meet its need for certified, registered, and qualified interpreters; and
 - Interpreter need - i.e., the gap between the level of the LEP, deaf, and hard of hearing public's need for language access to the Court's (i.e., the level of interpreter need) and the available interpreter pool (in particular, certified, registered, and qualified interpreters in the Court's most frequently needed languages).

3. DESCRIPTION OF SERVICES TO BE PROVIDED

- a. The Court agrees to actively participate in the vision and structure for state funding of interpreter services, and to track and provide interpreter cost and usage data needed to demonstrate the impact of the funding. In particular, the Court agrees to submit electronically with each request for reimbursement, completed Interpreter Services Funding Data (ISF Data) reflecting interpreter services and costs. The Court will submit ISF Data representing both Qualifying and non-qualifying Events.
- b. Electronic data shall be submitted quarterly following the schedule as outlined in Section 5c below and using the online application and instructions found, and incorporated herein by reference, at:
<http://inside.courts.wa.gov/index.cfm?fa=controller.showPage&folder=courtInterpreter&file=interpreterStateFunding>.
- c. The Court will ensure that the interpreter funding is used for reimbursement of costs paid to certified, registered, and qualified interpreters for Qualifying Events pursuant to Exhibit A, which is incorporated herein by reference.
- d. The Court agrees to partner closely with the AOC Interpreter Program, the Interpreter Commission, and neighboring courts to identify and implement innovations and best and promising practices for providing interpreter services (e.g., innovations in scheduling of interpreters, sharing of translated resources, training of staff and judges), with a view to improving interpreter services and the service infrastructure statewide.
- e. The Court may elect to pay for interpreter services that are not in accordance with the provisions of Exhibit A as set forth; however, such payments will **not** be reimbursed.
- f. The Court agrees to submit a written report to the designated AOC Program Manager by June 30, 2017, using the template attached at Exhibit B. The report will, among other things, identify and describe innovations and best and promising practices for interpreter services which have been implemented by the Court since July 1, 2016.
- g. As a condition of receiving funding under this Agreement, the Court agrees to implement, maintain, and annually review an AOC-approved Language Assistance Plan (LAP) as reported in response to Section 10 of Exhibit B.

4. PERIOD OF PERFORMANCE

The execution of this Agreement shall constitute a ratification of an earlier verbal agreement between the parties that is now set forth in writing. Accordingly, the beginning date of performance under this Agreement is July 1, 2016, regardless of the date of execution and which shall end on June 30, 2017.

5. COMPENSATION

- a. The Court shall be reimbursed a maximum of \$14,413 for interpreter services costs incurred during the period of July 1, 2016 to June 30, 2017. No reimbursement shall be made under this Agreement for interpreting services provided after June 30, 2017.
- b. The Court shall receive payment for no more than 50 percent costs for interpreter services as set forth in Exhibit A, and incorporated herein.

- c. The Court shall not be reimbursed for interpreter services costs for Qualifying Events until properly-completed paper A-19 invoices and corresponding electronic ISF Data are received and approved by AOC, pursuant to the following schedule:
 - 1) Reflecting Qualifying and non-qualifying Events occurring between July 1, 2016 and September 30, 2016, must be received by the AOC no later than December 31, 2016.
 - 2) Reflecting Qualifying and non-qualifying Events occurring between October 1, 2016 and December 31, 2016, must be received by the AOC no later than March 1, 2017.
 - 3) Reflecting Qualifying and non-qualifying Events occurring between January 1, 2017 and March 30, 2017, must be received by the AOC no later than April 30, 2017.
 - 4) Reflecting Qualifying and non-qualifying Events occurring between April 1, 2017 and June 30, 2017, must be received by the AOC no later than July 31, 2017.
- d. If this agreement is terminated, the Court shall only receive payment for performance rendered or costs incurred in accordance with the terms of this agreement prior to the effective date of termination.
- e. The Court shall, submit its paper A-19 invoices quarterly to:

AOC Financial Services
PO Box 41170
Olympia, Washington 98504-1170

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

- f. Payment to the Court for approved and completed work will be made by warrant or account transfer by AOC within 30 days of receipt of a properly-completed paper invoice and the completed ISF Data.
- g. The Court shall maintain sufficient backup documentation of expenses under this Agreement.
- h. The AOC, in its sole discretion and upon notice, may initiate revenue sharing and reallocate funding among courts. If it appears the Court may not expend the maximum Agreement amount, the AOC may reduce the maximum Agreement amount. AOC may increase the maximum Agreement amount if additional funds become available through these revenue sharing provisions.

6. TREATMENT OF ASSETS AND PROPERTY

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

7. RIGHTS IN DATA

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

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

8. INDEPENDENT CAPACITY

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

9. AGREEMENT ALTERATIONS AND AMENDMENTS

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

10. RECORDS, DOCUMENTS, AND REPORTS

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

11. RIGHT OF INSPECTION

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

12. DISPUTES

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

13. TERMINATION

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

14. GOVERNANCE

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

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

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

15. ASSIGNMENT

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

16. WAIVER

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

17. SEVERABILITY

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

18. ENTIRE AGREEMENT

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

19. AGREEMENT MANAGEMENT

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

AOC Program Manager	Court Program Manager
<p>Robert Lichtenberg PO Box 41170 Olympia, WA 98504-1170 robert.lichtenberg@courts.wa.gov (360) 350-5373</p>	<p>Darryl Banks Administrator 5606 W Canal Pl Ste 106 Kennewick, WA 99336-1300 Darryl.Banks@co.benton.wa.us 509-222-2316</p>

AGREED:

Administrative Office of the Courts

Benton/Franklin Counties

Please see attached signature page.

Signature *Date*

Callie Dietz

Name

Administrator, AOC

Title

Signature *Date*

Name

Title

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

BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER



11-9-16

Darryl Banks, Juvenile Court Administrator

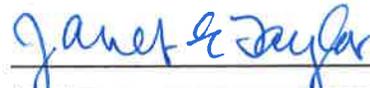
BENTON COUNTY APPROVAL

FRANKLIN COUNTY APPROVAL

Approved as to Form:

Approved as to Form:

Stephen Hallstrom, Deputy Prosecuting Attorney Date

 11-10-16
Janet Taylor, Civil Deputy Prosecuting Attorney Date

By: _____
Name: _____
Title: Chairman, Board of Commissioners
Date: _____
Attest:

By: _____
Name: _____
Title: Chairman, Board of Commissioners
Date: _____
Attest:

Clerk of the Board: _____

Clerk of the Board: _____

EXHIBIT A

WASHINGTON STATE INTERPRETER SERVICES FUNDING FUNDING CONDITIONS AND PAYMENT STRUCTURE

The Court Interpreter Reimbursement Program funding conditions and payment structure shall be as follows:

1. General Funding Conditions

The AOC will reimburse courts under this Agreement for the cost of AOC-certified, registered, or otherwise court-qualified interpreters appointed pursuant to RCW 2.42 and RCW 2.43 under the following conditions:

A. Spoken Language Interpreters

1) Certified and Registered Language Interpreters

Compensation for interpreters currently credentialed by the AOC in the certified and registered language categories shall be reimbursed for actual compensation paid pursuant to the payment structure for those interpreters as outlined in this Exhibit A.

2) Non-Credentialed Interpreters in Certified and Registered Language Categories

If either (a), the AOC master interpreter list for certified or registered languages does not include any interpreters credentialed by the AOC for those languages, or (b), after diligent search, a registered interpreter cannot be obtained for that language, then reimbursement will be provided for actual compensation paid pursuant to the payment structure as outlined in this Exhibit A, Section 2, (see "Payment Structure"), for those interpreters, providing that the interpreter is found otherwise qualified on the record by the Court pursuant to Chapter 2.43.

3) Non-Credentialed Languages

Compensation for interpreters for languages for which neither certification nor registration is offered will be reimbursed where the interpreter has been deemed qualified on the record pursuant to 2.43 RCW.

B. Sign Language Interpreters

Reimbursement for American Sign Language (ASL) interpreters appointed pursuant to RCW 2.42 will be authorized under the following conditions:

1) When the Court uses either:

- (a) An interpreter with an SC:L or comparable legal specialist certification issued by the Registry of Interpreters for the Deaf; or
- (b) An interpreter under contract or subcontracted with the Department of Social and Health Services, Office of Deaf and Hard of Hearing (DSHS, ODHH).

C. Salaried Staff and Contract Interpreters

Reimbursement will be provided for salaried staff or contracted interpreters meeting the Qualifying Event conditions for the payment of credentialed spoken and sign language interpreters, as referenced above.

D. Remote Interpreting

The AOC will reimburse local jurisdictions for using certified, registered, or otherwise qualified interpreters operating by telephone or videophone when providing court interpreting services for Limited English Proficiency (LEP) persons or persons who rely on sign language for in-court proceedings and for services that are provided by the Court to the public outside of the courtroom.

E. Scope of Interpreter Funding

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

2. Payment Structure

A. Hourly Rate

1) Rate for Spoken Language Interpreters

Subject to the maximum compensation allowable under this contract, the AOC will reimburse the Court under this Agreement for 50 percent of the hourly cost and the hourly minimum charges for services provided under this Agreement by AOC-certified, registered, or otherwise court-qualified interpreters. The AOC will reimburse courts not to exceed \$25 an hour for interpreter hourly rates and hourly minimum charges.

2) Rate for Sign Language Interpreters

Subject to the maximum compensation allowable under this contract, the AOC will reimburse the Court under this Agreement for 50 percent of the hourly cost and the hourly minimum charges for services provided under this Agreement. The AOC will reimburse courts not to exceed \$25 an hour for interpreter hourly rates and hourly minimum charges.

3) Salaried Interpreters

Subject to the maximum compensation allowable under this contract, the AOC will reimburse the Court for 50 percent of the cost of staff interpreters meeting the funding conditions for staff interpreters and will reimburse only for their provision of interpreter services, up to a maximum total salary of \$60,000 plus 27 percent in benefits (i.e., state reimbursement = up to \$30,000 of salary plus 13.5 percent in benefits).

4) Contracted Interpreters

Subject to the maximum compensation allowable under this contract, the cost of contracted interpreters who are paid on an hourly basis will be reimbursed under the same conditions as in 2.A and 2.B. The cost of contract interpreters who are paid other than on an hourly basis (e.g., on

a half-day or flat rate basis) will be only reimbursed for the actual number of hours of interpreting provided for each Qualifying Event.

5) Telephone Interpreting Rate

The AOC will reimburse local jurisdictions for up to 50 percent of the cost of using certified, registered, or otherwise qualified interpreters providing interpretation by telephone or videophone for LEP persons or persons who rely on sign language, up to a maximum of \$1.64 per minute (with no minimum service time).

6) Hourly Minimum Rate Charges

Where a minimum hourly rate charge up to \$50 an hour and no greater is imposed for no more than the first two hours, reimbursement will be paid for half of such hourly minimum rate.

7) Excess Charges

Interpreter rates in excess of \$50 an hour or for hourly minimum rates exceeding the first two hours shall be the sole responsibility of the Court.

8) Hourly Rounding

Hourly compensation for services provided shall be charged and paid in 30 minute increments.

B. Travel Time and Mileage

The AOC will reimburse Courts for up to 50 percent of the cost of interpreter travel time or mileage when such charges are in accordance with this Exhibit A and reimbursed as identified below in *Interpreter Travel and Mileage Reimbursement*. In such event, travel time and mileage charges will only be reimbursed for interpreters meeting the funding conditions. The AOC reserves the right to limit travel reimbursement to reasonable travel, based on known availability and location of certified, registered, or otherwise qualified interpreters.

INTERPRETER TRAVEL AND MILEAGE REIMBURSEMENT

Interpreter mileage and/or travel time will be reimbursed as follows:

1. Mileage

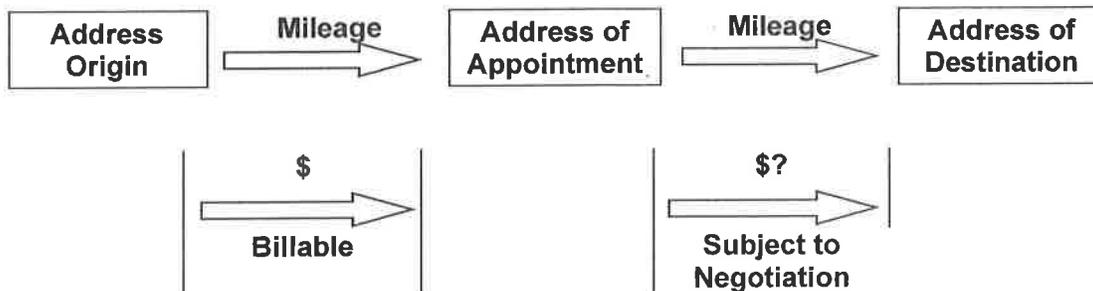
Interpreter mileage will be reimbursed in accordance with the prevailing Office of Financial Management (OFM) Policy and Guidance rate. The Court will notify interpreters of any change in the OFM rate before it becomes effective.

Mileage will be reimbursed on a from "address of origin"¹ to "address of appointment"² basis. The Court and interpreter will negotiate reimbursement for mileage traveled from the "address of appointment" to "address of destination"³ on a case-by-case basis. (NOTE: Courts are encouraged to have a consistent policy regarding the return trip.) In Eastern Washington, due to the scarcity of interpreters and vast distance for portal-to-portal travel, it is recommended that the Court reimburse the interpreter for mileage on an "address of appointment" to "address of destination" or roundtrip basis⁴.

Interpreter mileage related to an appointment is billable if a required party fails to appear. "Failure to appear" means a non-appearance by the LEP or deaf or hard of hearing client, attorneys, witnesses, or any necessary party to a hearing, thereby necessitating a cancellation or continuance of the hearing.

If the interpreter fails to appear, he/she will not be paid for mileage.

Mileage related to appointments that have been cancelled where the interpreter has received prior notice of the cancellation is not billable.



¹ "Address of origin" means the interpreter's home, office, or immediately previous appointment meeting place.

² "Address of appointment" means the courthouse or other location of the interpreter assignment.

³ "Address of destination" means the interpreter's home, office, or immediately next appointment meeting place.

⁴ "Roundtrip" means from the interpreter's home/office to the appointed meeting place, followed by the interpreter's return to their home/office.

2. TRAVEL TIME

Travel time will be reimbursed on a from “address of origin” to “address of appointment” basis. The Court and interpreter will negotiate reimbursement for travel time from “the address of appointment” to “address of final destination” on a case-by-case basis at the time the appointment is requested. (NOTE: Courts are encouraged to have a consistent policy regarding the return trip.) In Eastern Washington, due to the scarcity of interpreters and vast distance for portal-to-portal travel, it is recommended that the Court reimburse the interpreter for travel time on an “address of appointment” to “address of destination” or roundtrip basis.

Interpreters must travel for either a minimum of sixteen (16) miles or for one-half hour in order to be eligible for travel time reimbursement. Exceptions to the sixteen (16) mile minimum requirement shall be made when the use of a ferry contributes to the one-half hour or more of travel time.

Travel time will be reimbursed at a rate of one half the hourly interpreter rate for each hour of travel. Example: Interpreter traveled four hours to an appointment and the hourly rate is \$50. One half of the hourly rate is \$25. The calculation would be $4 \times \$25 = \100 for travel time.

Distance	Reimbursable
Origin  Appointment 0 -15 Miles	Mileage Only
Origin  Appointment 16+ Miles or half-hour travel*	Mileage or Travel Time* (but not both)

*Travel Time can be claimed only when traveling time is half hour (30 minutes) or more.

Interpreter travel time related to an appointment is billable if a required party fails to appear. “Failure to appear” means a non-appearance by the LEP or deaf or hard of hearing client, attorneys, witnesses, or any necessary party to a hearing, thereby necessitating a cancellation or continuance of the hearing.

If the interpreter fails to appear, he/she will not be paid for travel.

Travel time related to appointments that have been cancelled where the interpreter has received prior notice of the cancellation is not billable.



Exhibit B

Interpreter Reimbursement Program Court Report Template

This information is to help evaluate the effectiveness of the court interpreter reimbursement program.

- The report should cover the period July 1, 2016 thru June 30, 2017.
 - The report should include and answer the following, and can be supplemented by other materials such as charts, spreadsheets, etc.
 - The report should be returned no later than July 31, 2017 to Robert Lichtenberg at Robert.lichtenberg@courts.wa.gov.
 - The report should be no longer than three (3) pages.
1. Name of Court
 2. Contract Number
 3. Name of Person Completing Report
 4. Provide a general description of interpreter services provided by your court. The report should provide information other than that provided on the quarterly Interpreter Services Funding Data (ISF) reports. For example, include information on charging litigants, types of hearings interpreters were provided for, use of staff interpreters, interpreter scheduling practices, pool of interpreters, etc.
 5. Describe any collaborative efforts with other courts including, why the collaboration was sought, the impact of these efforts, challenges, and why the efforts were initiated. For example, sometimes neighboring courts work with one another to improve interpreting services including combined scheduling, implementation of consistent payment policies, shared staff interpreters, or coordination of interpreter calendars.
 6. Identify two or three improvements made or promising practices realized by your court to improve interpreter services and/or to reduce expenses.
 7. Identify any changes or improvements your court plans to implement in the future to improve interpreter services and/or to reduce expenses.
 8. Identify any challenges or trends your court is experiencing with providing interpreter services.

9. Indicate if your court is regularly reviewing, monitoring, and updating your Language Access Plan (LAP).
 - a. If so, who is responsible for this and how often is this accomplished? When was the LAP last reviewed and/or revised?
 - b. If not, will your court be doing so in the future? When? What have been the impediments for doing so?
10. What do you see as the most significant areas of remaining need with regard to improving interpreter services?
11. Provide any additional information you would like us to know about your court's use of these funds and interpreter services in general.

AGENDA ITEM		TYPE OF ACTION NEEDED			
Meeting Date:	<u>12/13/2016</u>	Execute Contract	_____	Consent Agenda	<u> X </u>
Subject:	2017-2018 Weed Board Budget	Pass Resolution	<u> X </u>	Public Hearing	_____
Prepared by:	<u>Victor Reeve</u>	Pass Ordinance	_____	1st Discussion	_____
Reviewed by:	_____	Pass Motion	_____	2nd Discussion	_____
		Other	_____	Other	_____

BACKGROUND INFORMATION

The Benton County Noxious Weed Control Board presents a budget to the Benton County Board of Commissioners for annual review. This year we are presenting a biennial budget for 2017-2018.

SUMMARY

The largest expense for the Benton County Noxious Weed Control Board is employee cost. To attract and retain employees that have the education, skills and licenses required we must offer a competitive wage and benefit package. Currently the staff consist of one coordinator and one inspector to survey, monitor and assist county residents in an area that covers over 1,000,000 acres.

The 2017-2018 budget includes funds for the addition of one inspector for that two year period. Adding one staff member will allow the Weed Board to expand survey hours and leverage our time for supplementary opportunities to enhance our program. Reserve funds are available to safeguard against assessment deficiencies that could occur during this budget cycle.

RECOMMENDATION

Benton County Board of Commissioners accept resolution 161101 WB approved at the October 12, 2016 public hearing concerning the 2017-2018 budget of the Benton County Noxious Weed Control Board.

FISCAL IMPACT

There will be no change in the parcel assessment or acreage assessment, therefore no effect on the county general fund.

MOTION

- 1) Motion to accept resolution 161101 WB approving the 2017-2018 budget as presented.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF THE 2017-2018 OPERATING BUDGET FOR THE
BENTON COUNTY NOXIOUS WEED CONTROL BOARD**

WHEREAS, Resolution 2015 441 established Benton County Noxious Weed Control Board as an independent and district agency subject to rules, regulations, provisions and oversight only as set forth in Chapter 17.10 RCW: and,

WHEREAS, per RCW17.10.240 the Benton County Noxious Weed Control Board shall submit an operating budget to the Benton County Board of Commissioners for approval and,

WHEREAS, on October 12, 2016 a public hearing was held by the Benton County Noxious Weed Control Board to review the 2017-2018 budget: and,

WHEREAS, the Benton County Noxious Weed Control Board of Directors unanimously approved the 2017-2018 operating budget as presented in Resolution 161101 WB, Exhibit "A"; now, and therefore,

BE IT RESOLVED, the Board of Benton County Commissioners hereby approve the 2017-2018 operating budget for the Benton County Noxious Weed Control Board as presented in Resolution 161101 WB, Exhibit "A".

Dated this day of, 20

Chairman of the Board

Chairman Pro Tem

Member

Attest:
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington



**Benton County
Noxious Weed Control Board**

509-943-6005 bcnwcb@frontier.com
1908 Butler Loop Richland, WA 99354

RESOLUTION NO. 161101 WB

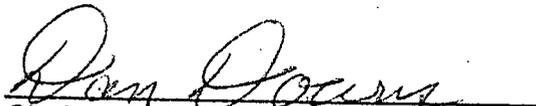
RESOLUTION ADOPTING THE 2017-2018
BUDGET FOR THE BENTON COUNTY NOXIOUS WEED CONTROL BOARD

WHEREAS, a public meeting was held **October 12th, 2016** at the regular monthly meeting of the Benton County Noxious Weed Control Board, held at 6095 West Van Giesen West Richland Washington, at which time the Board of Directors reviewed and adopted the two year budget for 2017-2018.

IT IS HEREBY RESOLVED that the Directors of the Benton County Noxious Weed Control Board adopt and set its budget as follows:

Salary and Medical Stipend	\$ 312,000.00
Benefits	\$ 59,732.00
Supplies	\$ 29,000.00
Other Services	\$ 89,050.00
Capital Outlay	\$ 40,000.00
Inter-Fund expense	\$ 5,000.00
TOTAL	\$ 534,782.00

Respectfully submitted, October 25, 2016


Chairman, Dan Downs

BENTON COUNTY
BOARD OF COUNTY COMMISSIONERS
Agenda Request Summary

<u>Type of Action Requested</u>	<u>Classification</u>
<input checked="" type="checkbox"/> Execute contract	<input type="checkbox"/> Consent agenda
<input checked="" type="checkbox"/> Pass resolution	<input type="checkbox"/> Public hearing
<input type="checkbox"/> Pass ordinance	<input type="checkbox"/> 1 st discussion
<input type="checkbox"/> Pass motion	<input type="checkbox"/> 2 nd discussion
<input type="checkbox"/> Other (describe)	<input type="checkbox"/> Other

Requested meeting date: Dec 13, 2016
Presentation length:
Presenting elected office/department: OPD
Prepared by: Eric Hsu
Reviewed by: Loretta Smith-Kelty

BACKGROUND INFORMATION

The following attorney presently holds a contract with Benton County to provide public defense services in Benton County Superior Court:

Catherine Harkins

Though her contract does not expire until 2017, an amendment has been proposed to increase her compensation level. This increased compensation level is appropriate in light of the fact that there was no increase in compensation during the 2015-2016 biennium, and because the increased compensation is necessary to continue to keep Benton County's public defense contracts competitive with those of the region, and therefore make recruiting and retention of contract talent easier.

SUMMARY

Contract amendment for above listed contract public defender is proposed. Amendment increases compensation for the 2017-2018 biennium to keep these contracts competitive in the marketplace.

RECOMMENDATION

Execute amendments as proposed.

ANTICIPATED FISCAL IMPACT

None beyond budgeted.

RESOLUTION
BENTON COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH ATTORNEY CATHERINE HARKINS FOR PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT.

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

WHEREAS, per Benton County resolution 2012-677, "...The County need not advertise or follow a formal competitive bidding procedure for professional service contracts (except for architectural, engineering, or design services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost..."; and

WHEREAS, County presently contracts with, among others, attorney Catherine Harkins for public defense services in Benton County Superior Court; and

WHEREAS, County wishes to amend the contract with attorney Harkins by increasing the compensation to account for a lack of increase in compensation over the 2015-2016 biennium and to make it more competitive with other public defense opportunities in the region thereby making it easier for County to recruit and retain public defense contract talent;

NOW THEREFORE, BE IT RESOLVED THAT the public defense contract with attorney Harkins, originally executed by and through Resolution 2014-024, be amended as proposed, the maximum Annual compensation be revised to be \$79,375 plus trial per diems and other allowable costs and that the amendment be designated BCSC1718CEH001.

Dated this day of , 20

Chairman of the Board

Chairman Pro-Tem

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

**Attest:
Clerk of the Board**

AMENDED
**PROFESSIONAL SERVICES AGREEMENT TO PROVIDE
 LEGAL REPRESENTATION TO INDIGENT PERSONS IN
 BENTON COUNTY SUPERIOR COURT**
 BCSC1718CEH001

CONTRACT SUMMARY			
Contract Type	Monthly compensation		
Contract Number	BCSC1718CEH001	Contract Holder	Catherine E. Harkins
WSBA #	38113	Effective Dates	Jan 1, 2017 – Dec 31, 2018
Caseload Cap	125	Compensation	\$635 per case

THE AGREEMENT, previously entered into by and between **Catherine Harkins**, attorney at law, Washington State Bar Association #38113 ("Attorney"), dba Harkins, Swinburnson & Wagar, PLLC, and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court, executed by and through Resolution 2014-1024, is hereby amended by replacing it in its entirety, effective January 1, 2017 with the following:

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

- A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.
- B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in Benton County Superior Court.

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

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **January 1, 2017**, and shall continue thereafter through and including **December 31, 2018**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement.

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

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 5724 W Clearwater Ave, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 737-8308 and (509) 737-8352, respectively; and Attorney's current office/work e-mail address is catherine@hark-swin-law.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 B and Class C felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

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

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

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

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

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

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

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM

with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year.

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

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

6. **CONTINUED REPRESENTATION.**

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

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

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

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then

Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **125 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE EQUIVALENTS.**

a. For the sole and exclusive purpose of calculating Attorney's "case equivalents" under this Agreement and correspondingly determining the compensation due to Attorney under paragraph 12, the following provisions of this paragraph 8 shall apply, but such provisions are not intended to constitute, and do not constitute, any type of "weighting system" adopted by the County for purposes of Attorney's above-referenced certifications of compliance with the Defense Standards adopted by the Washington State Supreme Court, and such provisions shall not be used or relied upon by Attorney in any way for such reasons or similar purposes.

- (i) Class B and Class C felonies, as well as unclassified felonies, shall constitute one (1) case equivalent.
- (ii) Class A felonies shall constitute two (2) case equivalents.
- (iii) Appointment on a mental health or substance-abuse involuntary commitment (generally only done when the attorney contracted to provide such services has a conflict of interest) shall count as one-half (1/2) of a case equivalent.
- (iv) Appointment to represent a person in a material witness matter in a case pending in Benton County Superior Court shall count as one-half (1/2) of a case equivalent.
- (v) Appointment on a felony matter filed in Benton County Superior Court following a declination hearing in Juvenile Court shall count as one (1) case equivalent notwithstanding any prior case credit granted to any attorney in Juvenile Court.
- (vi) An appointment to a case or matter returned to Benton County Superior Court from a higher court shall be counted as determined by the PDM in his sole discretion following consultation.

- (vii) Case equivalent credit value assigned is based on cases, not charges, and is determined by the classification of the most serious offense charged.
- (viii) Any civil contempt of court proceeding shall count as one-half (1/2) of a case equivalent.
- (ix) Any post-conviction matter shall count as one-third (1/3) of a case equivalent provided that if substantial research or briefing is necessary, then, on a case-by-case basis, at the sole discretion of the PDM, up to a full case equivalent credit may be awarded upon request from Attorney, which formal request must be made by Attorney to the PDM in writing within thirty (30) days from the date of final resolution of such matter, and any untimely requests will not be considered by the PDM.
- (x) Provisional representation of clients during arraignment docket representation on a docket other than the pre-trial docket to which Attorney is regularly assigned (usually only required when staff attorneys employed by Benton County are unable to attend such dockets) shall constitute one-fourth (1/4) of a case equivalent.
- (xi) If Attorney is appointed to a case and withdraws prior to the omnibus order being entered for any reason (except if the withdrawal is as a result of the case being conclusively resolved by a change of plea and sentencing or dismissal), including the substitution of retained counsel or a conflict of interest, that appointment shall, as a default, not be counted as a case credit provided that, upon Attorney's request, such a matter may count as a partial/fractional case equivalent credit if substantive work has been done on the case as determined by the PDM in his sole discretion. Attorney's formal request must be made by Attorney to the PDM in writing within thirty (30) days from the date of Attorney's withdrawal from such matter, and any untimely requests will not be considered by the PDM.
- (xii) In the case of appointments that are exceedingly complex and/or cause Attorney to expend inordinate amounts of time, Attorney may request up to two (2) additional case equivalent credits for such an appointment, which request will be considered and decided by the PDM in his sole discretion. Attorney's formal request must be made by Attorney to the PDM in writing within thirty (30) days from the date of final resolution of such matter, and any untimely requests will not be considered by the PDM.

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

who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

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

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

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

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

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

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

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

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

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

- (i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130 or misdemeanor sex offense under the laws of the State of Washington, any other State, or Federal law.
- (ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile 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 **\$635 per case equivalent**. Attorney is eligible to receive compensation for an appointment after performing a conflicts check and filing a claim for compensation utilizing the procedure set forth under paragraph 12.d. below. Attorney may file a claim for compensation as often as every two (2) weeks, and a single claim for compensation may be filed for multiple case appointments, provided that a claim for compensation for multiple cases must list and specifically identify all of the cases for which compensation is being sought.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive \$400.00 per day for each full day of trial and \$200.00 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 \$400.00 if the matter was scheduled for a jury trial or \$200.00 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. As a precondition to Attorney receiving payment of the compensation specified under paragraphs 12.a. and/or 12.b. above, Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period.

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

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and

correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** Homicide and persistent offender cases are appointed to attorneys pursuant to a separate contract and Attorney should not expect to receive any such appointments under this Agreement.

14. **COSTS AND EXPENSES.**

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

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

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide

authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

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

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

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims,

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

17. **INSURANCE.**

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

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

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

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than

\$1,000,000.00 per occurrence nor less than \$2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than \$1,000,000.00.

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

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

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

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

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

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The

foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Court.

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

19. **TERMINATION.**

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

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

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

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

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

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

20. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the PDM, the

Superior Court Administrator, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

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

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

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

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

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

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

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

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

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

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

26. **CAPTIONS; TIME COMPUTATION.**

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

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

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

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

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

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

31. **DISPUTE RESOLUTION.**

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

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party

may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

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

32. **NOTICES.**

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

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

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address

set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

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

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

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

BENTON COUNTY

Date _____

Chairman

Commissioner

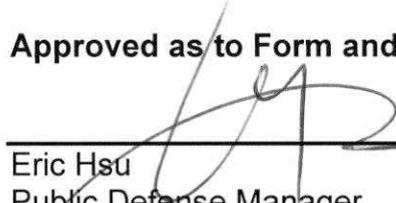
Commissioner

Constituting the Board of County
Commissioners for Benton County

Attest:

Clerk of the Board

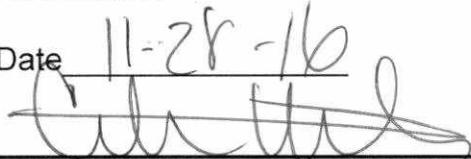
Approved as to Form and Content



Eric Hsu
Public Defense Manager

ATTORNEY

Date 11-28-16



Catherine Harkins, WSBA 38113
*Not valid unless Performance Standards
Monitoring Acknowledgment on following
page is also signed.*

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:

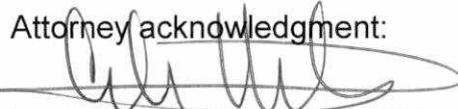
a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- 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:


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.

I. Short Plat Vacation ~ SPV 2016-003

<p>AGENDA ITEM: MTG. DATE: December 13, 2016 MEMO. DATE: December 13, 2016 SUBJECT: Short Plat Vacation SPV 2016-003 - Christopher Bohlke Prepared By: Donna Hutchinson Reviewed By: Clark A. Posey</p>	<p><u>TYPE OF ACTION</u> <u>NEEDED</u> Execute Contract Pass Resolution X Pass Ordinance Pass Motion X Other</p>	<p>Consent Agenda X Public Hearing 1st Discussion 2nd Discussion Other</p>
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BACKGROUND INFORMATION

On December 6, 2016, the Board of County Commissioners conducted a public hearing on SPV 2016-003 regarding the vacation of the 20 foot natural drainage easement located over the Westerly portion of Lot 1 and the Southeast corner of Lot 2 of Short Plat 3149. At the conclusion of the public hearing the Board made a motion to approve the vacation. The Planning Department has prepared the resolution for signature by the Board.

SUMMARY

The resolution approving the Short Plat Vacation has been prepared for signature per the motion of the Board at the public hearing.

RECOMMENDATION

It is the recommendation of Staff that the Board sign the resolution approving the Short Plat Vacation File No. SPV 2016-003.

MOTION

No motion is needed at this time, just the Board's signature on the resolution.

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

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF COUNTY PLANNING REGARDING THE PROPOSED VACATION OF A 20-FOOT DRAINAGE EASEMENT ON LOTS 1 & 2 OF SHORT PLAT 3149, IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M. APPLICANT: CHRISTOPHER BOHLKE PARCEL NUMBER 1-2288-101-3149-001, FILE NUMBER - SPV 2016-003

WHEREAS, the Board of County Commissioners did conduct a public hearing on Tuesday, December 6, 2016, at 9:00 a.m. in the Commissioners Meeting Room, County Courthouse, Prosser, Washington; and,

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

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

WHEREAS, the Board of County Commissioners agrees with the summary report from the Benton County Planning Department, retained in File No. SPV 2016-003; and,

WHEREAS, the 20-foot Drainage Easement to be vacated appears on Lots 1 and 2 of Short Plat 3149; and,

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

BE IT RESOLVED, that the vacation of the 20-foot Drainage Easement on Lots 1 and 2 of Short Plat 3149 in the Northeast Quarter of Section 22, Township 8 North, Range 28 East, W.M. is hereby approved.

Dated this 13th day of December 2016.

Chairman of the Board

Member

Member

Constituting the Board of County
Commissioners of Benton County
Washington.

Attest.....
Clerk of the Board

CAP:djh

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
PUBLIC SAFETY TAX FUND NUMBER 0148-101, DEPARTMENT NUMBER 111

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:

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM: Dept 115

TRANSFER TO: Dept 111

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.320	4103	Professional Services	\$675	512.400	1311	Legal Process Assistant III/IV	\$500
				512.400	2102	Social Security	\$50
				512.400	2103	Medical Insurance	\$50
				512.400	2104	Retirement	\$75
TOTAL			\$675	TOTAL			\$675

Explanation:

Transfer needed to cover shortage in the salaries and benefits.

Prepared by:

Date:

Approved Denied

Date: _____

Chairman

Member

Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AUTHORIZING THE PURCHASE OF JPS RADIO EQUIPMENT UTILIZING WASHINGTON STATE CONTRACT NO. 02612 BY BENTON COUNTY ROAD DEPARTMENT WITH ROAD FUNDS

WHEREAS, by Resolution 2013-431 dated June 11, 2013, the Board of County Commissioners approved the Master Contract Usage Agreement for the purpose of purchasing or acquiring goods and services under contracts entered into by the Department of Enterprise Services; and

WHEREAS, the Benton County Road Department desires to purchase public safety communications radio equipment which would allow the ability to communicate with crews in remote locations throughout the county; and

WHEREAS, JPS radio equipment offers the capacity to communicate with crews in all locations countywide; and

WHEREAS, JPS radio equipment is listed on Contract 02612 and is available from Tessco Technologies, Inc., Reno, Nevada; and

WHEREAS, the County Engineer recommends the procurement of radio equipment from Tessco Technologies for the amount of \$8,862.51, plus applicable taxes through the use of the Master Contract Usage Agreement-Contract No. 02612; **NOW, THEREFORE**

BE IT RESOLVED, that the Board of County Commissioners hereby authorizes the expenditure of \$8,862.51 plus applicable taxes, from the County Road Fund for the purpose of purchasing radio equipment from Tessco Technologies through the use of the Master Contract Usage Agreement-Contract No. 02612.

Dated this 13th day of December, 2016.

Chairman of the Board

Chairman ProTem

Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest _____
Clerk of the Board

Contractor: TESSCO INCORPORATED

Primary Contact: John Hunt
Email: bid@tessco.com

Telephone:
800-316-2830

Internet address: www.tessco.com

Federal ID No.: 52-1868893

Company address: 11126 McCormick Road, Hunt Valley, MD 21031-1494

Ordering Contact: John Hunt
salesupport@tessco.com

Telephone:
800-472-7373

Credit card acceptance: Visa, Mastercard, American Express

Minimum orders: None

Delivery time: 5-180 days After Receipt of Order (ARO) depending on product.

Payment terms: Net 30 Days

Shipping destination: Free on Board (FOB) destination

Freight: Prepaid and included for orders over \$400.00. Orders less than \$400.00 may be shipped freight prepaid and added as a separate line item on the invoice.

Return Policy: See notes below.

Warranty & Repair Contact: John Hunt
salesupport@tessco.com

Telephone:
800-472-7373

NOTE: Return Policy for damaged/defective product: Within 30 days. Customer pays shipping, performance and delivery guarantee charges. In original condition and packaging, including all components and manuals. Repair parts are excluded from this policy.

Overstock returns within 31- 60 days with 20% restocking fee.



Contract Summary

Intelligent Transportation System Equipment 2

Contract#: 02612 **Related Contracts:** 03709

DES MANAGEMENT FEE: The following are the only contractors authorized to reflect the management fee as a separate line item (SLI) on an invoice:

Advanced Traffic Products, Inc

Consolidated Electrical Distributors (CED) (NOTICE: CED is authorized to charge the management fee as a separate line item but is electing not to charge the management fee on this contract and will give DES advanced notice should they want to charge it in the future. Should a change occur, DES will update this message).

KAR-GOR Inc.

Traffic Safety Supply Company

Western Pacific Signal

Western Systems

Current Term Start Date: 12-23-2013 **Award Date:** 12-21-2012 **Est. Annual Worth:** \$1,330,902

Current Term Ends On: 12-23-2016 **Final Term Ends On:** 12-23-2016

Diversity: 0% WBE 0% MBE **# of Bids Received:** 22

Contact Info: Master Contracts & Consulting – Mark Roush at (360) 407-9311 or mark.roush@des.wa.gov

Who can use this contract?

- » Organizations with Master Contract Usage Agreements
- » Oregon Coop Members

Current Documents

- » Pricing & Ordering
- » Specifications
- » Contract & Amendments

Historical Documents

- » Bid Tab

Resources

- » Contract Comments
- » Vendor and Contract Performance Feedback
- » Best Buy Form

Contractors	OMWBE	Veteran	Small Business
ADDCO - W33077		N	N
ADVANCED TRAFFIC PRODUCTS INC. - w4933		N	N

ASTI TRANSPORTATION SYSTEMS, INC. - w40740		N	N
CASCADE SIGNAL CORPORATION - w6423		N	Y
CONSOLIDATED ELECTRICAL DISTRIBUTORS - w3028		N	N
CORAL SALES COMPANY - w232	W	N	Y
DAKTRONICS, INC. - w4051		N	N
INTERNATIONAL ROAD DYNAMICS CORP - w11014		N	N
IPMOBILENET LLC - w28326		N	N
KAR-GOR, INC. - w1591		N	N
M.H. CORBIN, INC. - w43769		N	N
NORTHWEST SIGNAL SUPPLY, INC. - w240	W	N	Y
RFI COMMUNICATIONS AND SECURITY - w2031		N	N
TESSCO INCORPORATED - w602		N	N
TRAFFIC SAFETY SUPPLY CO. - w3461		N	N
URS ELECTRONICS - w1006		N	N
WESTERN PACIFIC SIGNAL LLC - w25368		N	N
WESTERN SYSTEMS INC. - w2462		N	N

M=OMWBE Certified Minority Owned W=OMWBE Certified Women Owned MW=OMWBE Certified Minority Women Owned

Information about the number of bids received is included to show:

- Vendors which contracts would benefit from more competition.
- Assure our customers that we sought the best overall value through as many competitive bids as possible.



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APPENDIX C, MODEL CONTRACT

State of Washington

Department of Enterprise Services
DES (DES)



Contract 02612,
Intelligent Transportation System Equipment 2

Under the Authority of
Chapter 43.19 RCW

IFB #02612, Intelligent Transportation System Equipment 2

1 OVERVIEW

1.1 CONTRACT SCOPE

The contract resulting from this Invitation for Bid (IFB) will provide purchasers with a statewide contract for the procurement of Intelligent Transportation System Equipment and related products. This contract will also provide for the purchase of replacement parts and will facilitate purchaser's system standardization efforts. The manufacturer lines specified herein are those product lines found to perform well, and are in compliance with existing industry and regulatory standards and are compatible with current Washington State Department of Transportation replacement equipment requirements.

1.2 CONTRACT SCOPE AND MODIFICATIONS

DES reserves the right to modify this Contract by mutual agreement between DES and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

1.3 RECITALS

The state of Washington, acting by and through Department of Enterprise Services (DES), issued an Invitation for Bid (IFB), for the purpose of purchasing Intelligent Transportation System Equipment and related products in accordance with its authority under Chapter 43.19 RCW.

[Contractor] has submitted a timely Response to DES incorporated by reference.

DES evaluated all properly submitted Responses to the above-referenced IFB and has identified *[Contractor]* as the apparently successful Contractor.

The Purchasing Activity has determined that entering into a Contract with *[Contractor]* will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, DES awards to *[Contractor]* this Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the Intelligent Transportation System Equipment and related products identified herein. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1.4 ESTIMATED USAGE

Based on past and/or projected usage, it is estimated that purchases over the initial two (2) year term of the Contract may approximate \$4,000,000 (Washington State Agencies 55% vs. 45% participating political subdivisions). This estimate was provided solely for the purpose of assisting Bidders in preparing their Response. Orders will be placed only on an as needed basis

The State of Washington does not represent or guarantee any minimum purchase, and does not guarantee any purchases will be made.

1.5 CONTRACT TERM

The initial term of this contract will be from effective date through December 23, 2013 with the option to extend for additional term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of DES upon written notice to the Contractor(s). The total contract term, including the initial term and all subsequent extensions, shall not exceed December 23, 2015 unless an emergency exists and/or special circumstances require a partial term extension. The state reserves the right to extend with all or some of the Contractors, solely determined by the state.

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1.6 PURCHASERS

General Use

This contract is for use by all members of the Washington State Purchasing Cooperative (WSPC) and Oregon's Department of Administrative Services Cooperative Purchasing Program (ORCPP) including where applicable: State Agencies, Institutions of Higher Education, and Political Subdivisions. The primary purchaser is the Washington State Department of Transportation (WSDOT).

While use of the contract by Political Subdivisions and Non-Profit Corporations that are members of the WSPC and ORCPP members is optional, the DES encourages them to use state contracts. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies. The DES accepts no responsibility for orders or payment by WSPC members.

A list of WSPC members is available at <https://fortress.wa.gov/ga/apps/coop/Default.aspx>.

A list of current authorized ORCPP members is available at:
<http://www.oregon.gov/DAS/EGS/PS/docs/orcpp/MemberList/orcpp-member-list.html>

Purchases by Nonprofit Corporations

Legislation allows nonprofit corporations to participate in State Contracts for purchases administered by the DES. By mutual agreement with DES, the Contractor may sell goods or services at contract pricing awarded under this IFB and resulting contract to self certified nonprofit corporations. Such organizations purchasing under the State Contract shall do so only to the extent they retain eligibility and comply with other contract and statutory provisions. The Contractor may make reasonable inquiry of credit worthiness prior to accepting orders or delivering goods or services on contract. The State accepts no responsibility for payments by nonprofit corporations. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies.

2 CONTRACT ADMINISTRATION

2.1 CONTRACT ADMINISTRATOR

The DES shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract. The DES will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Contract.

2.2 ADMINISTRATION OF CONTRACT

DES will maintain Contract information and pricing and make it available on DES's website. The Contract prices are the maximum price Contractor can charge. The Contractor may also offer volume discounts to Purchasers.

A Contractor may propose a revision to its offerings to reflect changed Products appropriate to the scope of the Contract, and may propose such new Products with associated prices to the DES Contract Administrator for approval. Contract Administrator has the sole discretion in approval of addition of revised offerings and pricing. New or changed Products proposed by Contractor must meet the requirements established in this solicitation document or subsequent revisions. If approved by DES, the new Products will be added to the Contract by written amendment.

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For the term of the Contract, pricing for all Products will be no greater than the prices quoted in the Bidder's Response. If, however, during any term of the Contract lower prices and rates become effective for like quantities of Products under similar terms and conditions, through reduction in Contractor's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's Representative, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract;
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract;
4. Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination; and,
5. Be bound by all written communications given to or received from the Contractor's Representative.

2.4 POST AWARD CONFERENCE

The Contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

2.5 CONTRACTOR RESPONSIBILITIES

Upon award of this contract, the Contractor shall:

1. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
2. Promote and market the use of this contract to all authorized contract Purchasers.
3. Ensure that those who endeavor to utilize this contract are authorized Purchasers under this Contract.
4. Assist Purchasers in the following manner, at no additional charge, to make the most cost effective, value based, purchases including, but not limited to:
 - a. Visiting the Purchaser's site and providing Purchaser with materials/supplies/equipment recommendations.
 - b. Providing Purchasers with a detailed list of contract items including current contract pricing and part numbers.
5. Shall designate a customer service representative who will be responsible for addressing Purchaser issues including, but not limited to:
 - a. Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
 - b. Providing Purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.

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6. Acting as the lead and liaison between the manufacturer and Purchaser in resolving warranty claims for contract items purchased.

2.6 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance by the Contract Administrator of a mutually agreed Contract Amendment. However, administrative changes (such as point of contact information) may be updated without the issuance of a mutually agreed Contract Amendment.

2.8 SALES AND SUBCONTRACTOR REPORTS

The Contractor shall provide a Sales and Subcontractor Report to DES on a quarterly basis in the electronic format provided by DES at: <https://fortress.wa.gov/ga/apps/CSR/Login.aspx>.

Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

2.9 WASHINGTON'S ELECTRONIC BUSINESS SOLUTIONS (WEBS)

Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solutions (WEBS) www.ga.wa.gov/webs, maintained by the Washington State Department of Enterprise Services. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

3 PRICING

3.2 NO ADDITIONAL CHARGES

Unless otherwise specified in the Solicitation, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, containers, reels; or the processing fees associated with the use of credit cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrators sole discretion, additional charges may be allowed.

3.3 PRICE ADJUSTMENTS

Once a percentage discount off the manufacturer's most current price list has been established, the percent discount shall remain firm (not subject to change). Contractors may offer higher discount levels than specified in the contract to meet a competitive price or in response to a volume purchase.

For Price List items within awarded categories, the manufacturer's price list may be changed during the term of the contract whenever the manufacturer publishes a new price list however, the discount percentage shall remain unchanged.

Contractors shall not make contract extensions contingent on price adjustments.

4 CONTRACTOR REQUIREMENTS

4.1 ESTABLISHED BUSINESS

Prior to commencing performance, or prior to that time if required by DES, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as

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specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this contract.

DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

4.2 DEALER AUTHORIZATION

The Contractor, if other than the manufacturer, shall provide upon request a current, dated, and signed authorization from the manufacturer that the Contractor is an authorized distributor, dealer or service representative and is authorized to sell the manufacturer's products. Failure to provide manufacturer's authorization upon request will result in Contract cancellation.

4.3 SUBCONTRACTS AND ASSIGNMENT

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Contractor's duties.

4.4 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established State Contracts.

4.5 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

5 DELIVERY REQUIREMENTS

5.1 DELIVERY REQUIREMENTS Order Fulfillment Requirements

Authorized Purchasers may place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

1. For purposes of price verification and auditing, upon receipt of a purchase order the Contractor shall send the Purchaser an order confirmation notification that identifies the manufacturer's charges.

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2. Upon the request of the Purchaser, the Contractor shall supply Purchaser with manufacturer's list pricing or other documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at Contractor's expense. Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.
4. The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

5.2 STANDARD OF QUALITY/CONSISTENCY OVER TERM OF CONTRACT

If, in the sole judgment of the DES or the Purchaser, any item is determined not to be an equal, the Purchaser may take any or all of the following actions:

1. the product may be returned at Contractor's expense; or
2. the contract may be terminated without any liability to the State of Washington or Purchaser.

5.3 SHIPPING AND RISK OF LOSS

The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to delivery except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After delivery, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

5.4 FREIGHT CHARGES

Orders less than \$400.00 in value will be shipped freight prepaid and the freight charges will be added as a separate line item on the invoice. The purchaser may elect to arrange for shipping under FOB Origin for orders less than \$400.00. Orders larger than \$400.00 shall be shipped FOB Destination with freight prepaid and freight charges included in the contract price of the items.

For expedited orders at any value, up-charges will be negotiated by the purchaser with the contractor and may be added as separate line items on the invoice. An expedited order is defined as any order where the delivery time frame is shorter than established in the **Appendix G, Price Sheets**. Contractor bears risks of loss, injury or destruction of goods and materials ordered herein which may occur prior to delivery and acceptance. Such loss, injury or destruction shall not release Contractor from any contract obligations.

5.5 DELIVERY

Delivery must be made during Purchaser's normal work hours and within time frames either:

1. required in the Solicitation,
2. if requested in the Solicitation, proposed by Contractor in its Bid and subsequently accepted by the DES or,
3. as otherwise mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

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Failure to comply with agreed upon delivery times may subject Contractor to liquidated or other damages. The Purchaser may refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly. The acceptance by the Purchaser of late performance, with or without objection or reservation by the Purchaser, shall not waive the right to claim damage for such breach, nor preclude the DES or Purchaser from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the Order Document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

The delivery lead-time will be as identified in the **Appendix G, Price Sheets**, or as mutually agreed at the time of order placement. Delivery must be made during Purchaser's normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the state. Failure to comply may subject Contractor to non-delivery assessment charges and/or liquidated damages as appropriate. The purchaser reserves the right to refuse shipment when delivered after normal working hours. Contractor shall verify specific working hours of individual purchaser and so instruct carrier(s) to deliver accordingly. The acceptance by the purchaser of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All shall be packed and loaded for shipping so no damage will occur during shipping and storage. Any damage to the equipment and its related components shall be repaired/replaced within 30 days at no costs to the Purchaser. The Vendor shall notify the Purchaser of delivery a minimum of five (5) working days prior to delivery. Material will not be accepted without the required advance notice. Delivery notification shall be made during Purchaser's normal business hours.

5.6 SITE SECURITY

While on Purchaser's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations of the Purchasers.

5.7 INSPECTION AND REJECTION

The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

5.8 INSTALLATION

Installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a clean condition. The Purchaser reserves the right to

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require the Contractor to repair all damages occurring during the installation or provide full compensation for these damages as determined by the Purchaser.

5.9 TITLE TO PRODUCT

Upon delivery Contractor shall convey to Purchaser good title to the Product free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

5.11 HAZARDOUS MATERIALS

“Right to know” legislation requires the Department of Labor and Industries to establish a program to make employers and employees more aware of hazardous substances in their work environment. Implementing Chapter 296-839 WAC requires that all manufacturers and distributors of hazardous substances, including any of the items listed in this Contract, must include a complete Material Safety Data Sheet (MSDS) for each hazardous material. Additionally, each container of hazardous materials must be appropriately labeled with:

1. The identity of the hazardous material,
2. Appropriate hazard warnings, and
3. Name and address of the chemical manufacturer, importer, or other responsible party

Labor and Industries may levy appropriate fines for noncompliance and agencies may withhold payment-pending receipt of a legible copy of MSDS. It should be noted that OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to “carcinogenic ingredients” and “routes of entry” of the product(s) in question.

5.12 SERVICE EXPECTATION

Contractors will review the impact of this award and take the necessary steps to ensure adequate coverage and contract compliance. We expect the State to be designated as a preferred customer as a result of this contract. The Contractor will assist purchasers in making cost effective purchases. This assistance should include, in part, suggesting alternate product and new methods, advance notification when the delivery lead-time increases for typically used contract items, and economic order quantities.

Contractor is encouraged to contact participating purchasers, within the first 90 days and a minimum of annually thereafter. Continual monitoring of their required service expectations is vital to contract success.

6 PAYMENT

6.1 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Contract.

6.2 IDENTIFICATION

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser’s order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

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6.3 PAYMENT FOR CABINETS

The following is the payment procedure for controller cabinets. For those cabinets that do not require supplier representative's presence at "turn on", payment of 100% of purchase order price will be made after acceptance. For those cabinets that require supplier representative's presence, 90% partial payment shall be paid 30 days after acceptance. The balance held shall be paid 30 days after cabinet "turn on" with supplier's representative present when specified on the order. If supplier's representative fails to be present during "turn on", the balance being held will be forfeited as liquidated damages.

For all other items listed in the contract, payment will be NET 30 days or as specified for prompt payment discount.

6.4 PAYMENT, INVOICING AND DISCOUNTS

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice shall be identified by the associated Contract Number; the Contractor's Statewide Vendor registration number assigned by Washington State Office of Financial Management (OFM), the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the state has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

Under Chapter 39.76 RCW, if Purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. If the Contractor fails to make timely payment(s) or issuance of credit memos, the Purchaser may impose a 1% per month on the amount overdue.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

6.5 TAXES, FEES AND LICENSES

Taxes:

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, the Purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or

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equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

Collection of Retail Sales and Use Taxes:

In general, Contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with Contractor's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the Contractor either directly or by an agent or other representative:

1. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from Purchasers located within the State of Washington via sales representatives entering the State of Washington;
4. Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with Purchasers in an attempt to establish or maintain market(s); or
5. Other factors identified in WAC 458-20.

Department of Revenue Registration for Out-of-State Contractors:

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit "use tax," Purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

Fees/Licenses:

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

Customs/Brokerage Fees:

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or Contract. Neither the DES nor the Purchaser will incur additional costs related to Contractor's payment of such fees.

Taxes on Invoice:

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

6.6 MINORITY AND WOMEN'S BUSINESS ENTERPRISE (MWBE) PARTICIPATION

With each invoice for payment and within thirty (30) days of Purchaser's request, Contractor shall provide Purchaser an Affidavit of Amounts Paid. The Affidavit of Amounts Paid shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still

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maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the Affidavit of Amounts Paid in accordance with this Contract's Retention of Records section.

6.7 OVERPAYMENTS TO CONTRACTOR

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

6.8 AUDITS

The State reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

7 QUALITY ASSURANCE

7.1 RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to DES, or any of DES's officers, or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

7.2 CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

7.3 PRODUCT WARRANTY

All materials or equipment provided shall be new, unused, of the latest model or design and of recent manufacture.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the State maximum benefits, DES may avail itself of the Contractor's warranty if deemed more beneficial to the State.

Warranty and Repair Stations:

Contractor may have factory-authorized warranty and repair stations located in the state of Washington, Oregon, Idaho and Montana, that will honor the warranty of all items on contract.

Warranty:

The Intelligent Transportation System Equipment and related products shall be provided with a minimum one-year on-site full parts and labor warranty initiating upon final acceptance of the material or equipment. The warranty shall be executed in writing and contain the provisions here in

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and shall be provided to the purchaser. The final acceptance date shall be established by the date final payment is made by the purchaser. Any warranty document shall denote that the warranty period begins upon acceptance of the system denoted by the final date of payment by the purchaser.

The Purchaser's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance or as acceptance of the materials or equipment if materials or equipment do not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the Purchaser will promptly notify the Contractor thereof. Without limiting any other rights, the Purchaser, may require the Contractor to:

1. Repair or replace, at Contractor's expense, any or all of the damaged goods,
2. Refund the price of any or all of the damaged goods, or
3. Accept the return of any or all of the damaged goods, without penalty.

Any component that fails to comply with the warranty shall be replaced by the warrantor free of all charges, including return freight and shipping costs and any labor or equipment costs incurred by the warrantor for their role in removing and reinstalling the component(s).

The warrantee shall notify the warrantor, in writing, within a reasonable time after the discovery of any component failure, defect or damage covered by the warranty. Any replacement parts or components shall be new. If the warrantor fails to replace the component(s) within a reasonable time after receipt of notice, the warrantee shall have the right to replace, repair and otherwise remedy the failure, defect or damage at warrantor's expense.

Any warranty work to the component(s) will have a one (1) year warranty from the date the replaced component(s) is reinstalled into the system(s).

7.4 WARRANTIES

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

7.5 MANUFACTURER AUTHORIZED WARRANTY REPAIR PROOF OF CERTIFICATION/AUTHORIZATION

Contractor shall also provide, upon request of the purchaser prior to order placement, documentation demonstrating the qualification of each facility to perform service and repairs for all equipment categories and manufactures identified in **Appendix G, Price Sheets**, including at least the following:

- A letter signed by an authorized representative of the manufacturer certifying that each facility listed is an authorized service and repair facility for materials, supplies, or equipment; and
- Geographic area served by each facility
- Manufacturer authorized service must be available in the geographic area(s)
- Within 48 hours to any location in the State of Washington.

The contractor shall identify a single point of contract for equipment repair and through which the Purchaser can direct all warranty and repair related services. This single point of

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contact will be responsible for coordinating any 3rd party services necessary to address warranty and repair related services.

8 INFORMATION AND COMMUNICATIONS

8.1 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Contract Administrator.

8.2 RETENTION OF RECORDS

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by DES, personnel duly authorized by DES, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

8.3 PROPRIETARY OR CONFIDENTIAL INFORMATION

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, DES shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, DES will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DES will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as DES retains Contractor's information in DES records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

8.4 NON-ENDORSEMENT AND PUBLICITY

Neither DES nor the Purchasers are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to DES, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of DES.

8.5 OWNERSHIP/RIGHTS IN DATA

Purchaser and Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq.*, and shall be owned by Purchaser. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques,

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findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings (down to the circuit board and component level), Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.

Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of Purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

Material that is delivered under this Contract, but that does not originate there from ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

9 GENERAL PROVISIONS

9.1 GOVERNING LAW/VENUE

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

9.2 SEVERABILITY

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

9.3 SURVIVORSHIP

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further,

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the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

9.4 GIFTS AND GRATUITIES

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 43.19.1937, RCW 43.19.1939, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under RCW 43.19.1937 and the Ethics in Public Service Law, Chapter 42.52 RCW state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

9.5 IMMUNITY AND HOLD HARMLESS

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

9.6 PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

9.7 INSURANCE

General Requirements:

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in Contract cancellation.

Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein.

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Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

Specific Requirements:

Employers Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this Contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business Contract), and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$1,000,000
Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000

Business Auto Policy (BAP):

In the event that services delivered pursuant to this Contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, Subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Additional Insurance Provisions:

All above insurance policies shall include, but not be limited to, the following provisions:

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Additional Insured:

The State of Washington and all authorized Purchasers shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

Notice of Policy(ies) Cancellation/Non-renewal:

For insurers subject to Chapter 48.18 RCW (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee forty-five (45) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this Contract. Written notice shall include the affected Contract reference number.

Surplus Lines:

For insurers subject to Chapter 48.15 RCW (Surplus Lines) a written notice shall be given to the director of purchasing or designee twenty (20) calendar days prior to cancellation or any material change to the policy(ies) as it relates to this Contract. Written notice shall include the affected Contract reference number.

Cancellation for Non-payment to Premium:

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee ten (10) calendar days prior to cancellation. Written notice shall include the affected Contract reference number.

Identification:

Policy(ies) and Certificates of Insurance shall include the affected Contract reference number.

Insurance Carrier Rating:

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the Contract and evidence of insurance before Contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC .

Excess Coverage:

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

Limit Adjustments:

The state reserves the right to increase or decrease limits as appropriate.

9.8 INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the DES may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

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9.9 NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

9.10 OSHA AND WISHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless DES and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

9.11 ANTITRUST

The State maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Purchaser. Therefore, the Contractor hereby assigns to the State of Washington any and all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this Contract.

9.12 WAIVER

Failure or delay of the Department of Enterprise Services, DES or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the DES's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the DES or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the DES or Purchaser of any existing or future right and/or remedy available by law.

10 DISPUTES AND REMEDIES

10.1 PROBLEM RESOLUTION AND DISPUTES

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between the DES or the Purchaser and Contractor and it cannot be resolved between the parties through the normal problem escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

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If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

Unless irreparable harm will result, neither the party shall commence litigation against the other before Dispute Resolution Panel has issued its decision on the matter in dispute.

DES, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

10.2 ADMINISTRATIVE SUSPENSION

When it in the best interest of the state, the Department of Enterprise Services, DES may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

10.3 FORCE MAJEURE

The term "Force Majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force Majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of Force Majeure.

Notification: If either party is delayed by Force Majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the Force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

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Rights Reserved: The DES reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the State.

10.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

10.5 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

10.6 LIQUIDATED DAMAGES

Liquidated Damages – General

The DES and or the Purchasers and the Contractor agree that the liquidated damages provisions in the Contract are a reasonable forecast of the actual damages that would be suffered by the Purchaser in the event of Contractor's nonperformance, that such liquidated damages are not a penalty but represent the reasonable compensation due to the purchaser in the event of a breach, and that such liquidated damages will be assessed as set forth herein.

Any delayed delivery will interfere with the proper implementation of Purchaser's programs and will result in loss and damage to Purchaser.

As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, Purchaser and Contractor agree that in the event of any such failure(s) to perform, the amount of damage that will be sustained will be the amount set forth in the following subsections and the parties agree that Contractor shall pay such amounts as liquidated damages and not as a penalty.

Liquidated damages provided under the terms of this Contract are subject to the same limitations as provided in the section titled Limitation of Liability.

Liquidated Damages – Specific

If Contractor does not have the equipment delivered by the delivery date as established by the delivery time frame identified in the **Appendix G, Price Sheets**, or as agreed upon between purchaser and Contractor at the time of order, the Contractor shall provide a revised delivery date and pay to the purchaser as fixed and agreed liquidated damages, for each business day between the specified delivery date and the date that Contractor actually delivers the equipment. This amount of liquidated damages shall be in lieu of all other damages due to such delay, The amount of this liquidated damage shall be an amount of 1% of the purchase order value per business days or not to exceed a total of 20% as a delivery default to cover the purchaser's anticipated administrative expense caused by late delivery.

If the revised Delivery Date is more than thirty (30) calendar days from the original Delivery Date, then by written notice to Contractor, Purchaser may immediately terminate the right of Contractor to deliver the Equipment and Purchaser may obtain substitute Equipment from another vendor. In this event, Contractor shall be liable for fixed and agreed-upon liquidated damages, in lieu of all

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other damages due to such delay, in the amount specified above, until substitute equipment is delivered up to a maximum of 20% of the original invoice total.

Cost of Remedying Defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

10.7 LIMITATION OF LIABILITY

The parties agree that neither Contractor, Department of Enterprise Services, DES nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, the DES, nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the DES or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the DES or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the DES or the Purchaser, or their respective Subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

10.8 FEDERAL FUNDING

In the event that a federally funded acquisition results from this procurement, the Contractor may be required to provide additional information (free of charge) at the request of the DES or purchaser: Further, the Contractor may be subject to those federal requirements specific to the commodity.

10.9 FEDERAL RESTRICTIONS ON LOBBYING

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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10.10 FEDERAL DEBARMENT AND SUSPENSION

The Contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11 CONTRACT TERMINATION

11.1 MATERIAL BREACH

Contractor may be Terminated for Cause by the DES, at the sole discretion of the Contract Administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder; and,
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

11.2 OPPORTUNITY TO CURE

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the DES may issue a written cure notice. The Contractor may have a period of time in which to cure. The DES is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the DES. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the DES may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and any related Contracts or portions thereof;
3. Procure replacements and impose damages as set forth elsewhere in this Contract;
4. Impose actual or liquidated damages;
5. Suspend or bar Contractor from receiving future Solicitations or other opportunities;

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6. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

11.3 TERMINATION FOR CAUSE

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the DES shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the DES and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

11.4 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the Department of Enterprise Services, DES, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving thirty (30) calendar days or other appropriate time period written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and Accepted by the Purchaser prior to the effective date of Contract termination. Neither the DES nor the Purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the DES when it is in the best interest of the State of Washington.

11.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the DES and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the DES may terminate this Contract, in whole or in part, by seven (7) calendar days or other appropriate time period written notice to Contractor.

11.6 TERMINATION FOR NON-ALLOCATION OF FUNDS

If funds are not allocated to Purchaser(s) to continue this Contract in any future period, Purchasing Activity may terminate this Contract by seven (7) calendar days or other appropriate time period written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies,

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services and/or equipment including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. Purchasing Activity and/or Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed to permit Purchasing Activity to terminate this Contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

11.7 TERMINATION FOR CONFLICT OF INTEREST

DES may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the DES and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

11.8 TERMINATION BY MUTUAL AGREEMENT

The DES and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

11.9 TERMINATION PROCEDURE

In addition to the procedures set forth below, if the DES terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the DES and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the DES and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

1. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;

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3. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
4. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the contract had been completed, would have been required to be furnished to the Purchaser;
7. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the DES and/or the Purchaser has or may acquire an interest.

12 CONTRACT EXECUTION

12.1 PARTIES

This Contract ("Contract") is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services, DES, an agency of Washington State government ("DES" or "State") located at 1500 Jefferson Street SE, Olympia WA 98501, and [*Contractor*], a [*corporation/sole proprietor or other state business forms*] licensed to conduct business in the state of Washington ("Contractor"), located at [*Contractor address*] for the purpose of providing Intelligent Transportation System Equipment.

12.2 ENTIRE AGREEMENT

This Contract document and all subsequently issued amendments comprise the entire agreement between the DES and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled Contractor Commitments, Warranties and Representations, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

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1. The DES's Solicitation document #02612 with all attachments and exhibits, and all amendments thereto;
2. Contractor's response to the Solicitation #02612 dated *[date]*;

The terms and conditions contained on Purchaser's Order Documents, if used; and

All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of the Product to the Purchaser.

Order of Precedence:

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State of Washington statutes and regulations
2. Mutually agreed written amendments to this Contract
3. This Contract, Number 02612 and Award Letter
4. The DES's Solicitation document with all attachments and exhibits, and all amendments thereto
5. Accepted portions of Contractor's response to the Solicitation
6. Any other provision, term, or materials incorporated into the Contract by reference.

Conflict: To the extent possible, the terms of this Contract shall be read consistently.

Conformity: If any provision of this Contract violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

12.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail postage prepaid or via facsimile or by electronic mail, to the parties at the addresses and fax numbers, e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:

[Contractor]

Attn:

[Contractor's Representative]
[Contractor address]

[Phone:]

To DES at:

State of Washington
Department of Enterprise Services
DES

Attn:

Melanie Williams, Contract Administrator
1500 Jefferson Street SE
Olympia, WA 98501

Phone: (360) 407-9399

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[Fax:]

Fax: (360) 586-2426

[E-mail:]

E-mail: melanie.williams@des.wa.gov

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and DES further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

12.5 LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the DES or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

12.6 AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

12.7 COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

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SIGNATURE AND AWARD PAGE

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

MCC Use Only
This is a Partial award for: See Award Letter for Awarded Categories.
This Contract is effective this ____ day of _____, 2012.

Approved

Department of Enterprise Services
1500 Jefferson Street SE
Olympia, Washington 98501

Approved

[Contractor]

Signature

Signature

Melanie Williams Date

Print or Type Name Date

Title

Title

Approved

State of Washington
Michael Maverick, DES, Team 3 Unit Manager

Signature

o. Authorizing County Engineer to Sign Annual & Final Fiscal Reports for Federally Funded Projects

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: December 13, 2016	Execute Agreement _____	Consent Agenda _____ X _____
Subject: <u>Delegating signing authority on federal projects to Co. Engineer</u>	Pass Resolution _____ X _____	Public Hearing _____
Prepared by: slc	Pass Ordinance _____	1st Discussion _____
Reviewed by: MSR	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION

Federal grant requirements nationwide have now been consolidated and detailed in the Code of Federal Regulations (2 CFR 200). Part of the changes included in the CFR directly effects the signature authority on reimbursement requests for federally funded road projects.

2 CFR.415(a) now states that to ensure expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federally entity, which reads as follows:

“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements, and cast receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (US Code Title 18, Section 1001 and Title 31 Sections 3729-3730and 3801-3812).”

Effective December 1, 2016 all reimbursement requests for federally funded road projects are required to include the agency’s documentation confirming the individual signing the reimbursement request is authorized to legally bind the agency.

In order for the County Engineer to continue to sign these reports or vouchers requesting payment a resolution needs to be passed by the County Commissioners delegating the signing authority to the County Engineer.

SUMMARY

Federal grant requirements in the Code of Federal Regulations [2 CFR 200.415(a)] have been updated which include to ensure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification signed by an official who is authorized to legally bind the non-Federal entity (Benton County).

Effective December 1, 2016 all reimbursement requests for federally funded road projects are required to include the agency’s documentation confirming the individual signing the reimbursement request is authorized to legally bind the agency.

In order for the County Engineer to continue to sign these reports or vouchers requesting payment a resolution needs to be passed by the County Commissioners delegating the signing authority to the County Engineer.

RECOMMENDATION

Delegate the authority to legally bind Benton County when signing annual and final fiscal reports or vouchers requesting payment for Federally funded road projects to the Benton County Engineer.

FISCAL IMPACT

None.

MOTION

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF DELEGATING AUTHORITY TO LEGALLY BIND BENTON COUNTY WHEN SIGNING ANNUAL AND FINAL FISCAL REPORTS OR VOUCHERS REQUESTING PAYMENT FOR FEDERALLY FUNDED ROAD PROJECTS TO THE COUNTY ENGINEER

WHEREAS, federal grant requirements in the Code of Federal Regulations [2 CFR 200.415(a)] have been updated; and

WHEREAS, to ensure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification signed by an official who is authorized to legally bind the non-Federal entity (Benton County); and

WHEREAS, the Board of County Commissioners is the governing body for Benton County and is so authorized; and

WHEREAS, the Board of County Commissioners desires to delegate that authority for signing annual and final fiscal reports or vouchers requesting payment for federally funded road projects to the Benton County Engineer; **NOW, THEREFORE**,

BE IT RESOLVED that the Board of Benton County Commissioners delegates the authority to legally bind Benton County when signing annual and final fiscal reports or vouchers requesting payment for Federally funded road projects to the Benton County Engineer.

Dated this 13th day of December 2016.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Dec. 13, 2016</u>	Execute Agreement _____	Consent Agenda <u> X </u>
Subject: <u>Summit View Phase 11</u>	Pass Resolution <u> X </u>	Public Hearing _____
Prepared by: <u>TCH</u>	Pass Ordinance _____	1st Discussion _____
Reviewed by: <u>SLC</u>	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION

The plans for the above referenced project, having been signed by the County Engineer, are hereby presented for approval to the Board of County Commissioners.

* Note : Original signature sheet will be brought to commissioners meeting to be signed.

SUMMARY

Tri-City Development Corporation has submitted plans which have been approved by the Benton County Engineer. The plans are now being submitted to the Board of Benton County Commissioners, and the corresponding resolution authorizes the Chairman to sign the construction plans for Summit View Phase 11 with the road name Wallowa Road.

RECOMMENDATION

Staff recommends that the Commissioners sign the cover sheet, approving the project.

FISCAL IMPACT

None.

MOTION

Approve as part of consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY ROADS, RE: SUMMIT VIEW PHASE 11

WHEREAS, plans for the above referenced project, having been signed by the County Engineer, are hereby presented for approval to the Board of County Commissioners; **NOW, THEREFORE**

BE IT RESOLVED, that the plans be and hereby are approved and that the Chairman is authorized to sign the construction plans of Summit View Phase 11 with the roads named Wallowa Road.

Dated this 13th day of December 2016.

Chairman

Chairman Pro-Tem

Member

Attest: _____
Clerk of the Board

Constituting the Board of County
Commissioners of Benton County,
Washington

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Dec. 13, 2016</u>	Execute Agreement _____	Consent Agenda <u>X</u>
Subject: <u>ERR Fund Policy Update</u>	Pass Resolution <u>X</u>	Public Hearing _____
Prepared by: <u>gnd</u>	Pass Ordinance _____	1st Discussion _____
Reviewed by: <u>MSR</u>	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION

The Benton County Road Department operates the Equipment Rental and Revolving (ERR) Fund, through which vehicles and equipment are purchased, maintained, and replaced. The Board of County Commissioners adopted the current iteration of the ERR Fund policy in August 2014 (Res. 2014-635). Since then, the Benton County Road Department has identified means of furthering the ERR goals of optimizing departmental costs while maintaining the fund with respect to state statutes. Additionally, some language in the existing policy has been identified that could be clarified. To these ends, the Benton County Road Department has revised the ERR Fund policy.

SUMMARY

The Benton County Road Department has revised the ERR Fund policy, which details the means and methods by which vehicles and equipment are purchased, maintained, and replaced. These revisions should further clarify practices and optimize costs for departments that use the ERR Fund.

RECOMMENDATION

The County Engineer recommends that the Board rescind the existing ERR Fund policy (Res. 2014-635) and adopt the revised policy in its place.

FISCAL IMPACT

There is no fiscal impact from adopting the policy. Through execution of the policy, the Benton County Road Department aims to optimize costs for departments using the fund while remaining in compliance with state statutes. It is expected that this revision will help normalize ERR costs over time.

MOTION

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS, RE: ADOPTION OF A REVISED EQUIPMENT RENTAL AND REVOLVING (ERR) FUND POLICY AND THE RESCINDING OF AN EXISTING POLICY FOR SAME

WHEREAS, the Benton County Road Department operates the Equipment Rental and Revolving (ERR) Fund, through which vehicles and equipment are purchased, maintained, and replaced; and

WHEREAS, the Board of County Commissioners adopted Resolution 2014-635, which governs the operation of the ERR Fund; and

WHEREAS, through the operation of the ERR Fund, the Road Department has identified means of further optimizing costs for departments utilizing the ERR Fund and clarifying existing practices; and

WHEREAS, the Road Department has drafted a revision to the ERR Fund policy that incorporates these means; and

WHEREAS, the County Engineer recommends that the Board of County Commissioners rescind the previous policy and adopt the revised policy; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby rescinds Resolution 2014-635 regarding a policy for the ERR Fund; and

BE IT FURTHER RESOLVED, that the Board of County Commissioners hereby adopts the new ERR Fund policy.

Dated this 13th day of December, 2016

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

Orig.: Public Services
c: Road Department

G. DeJongh

**BENTON COUNTY ROAD DEPARTMENT
EQUIPMENT RENTAL AND REVOLVING FUND (ER&R)
Policy & Procedures**

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1. PURPOSE

This document will provide policies and procedures for administration of the ER&R Fund. (R.C.W.36.33A) directs every county to establish, by resolution, an "equipment rental and revolving fund", but does not provide specific policies for administering this fund. The Board of Commissioners created the Equipment Rental and Revolving Fund by Resolution #77-644 on December 29, 1977. The Board of Commissioners added current expense vehicles to the ER&R fund by Resolution# 90-127 on April 16, 1990.

- To manage, maintain, and repair equipment and vehicles; including parts, materials, fuels, and supplies, required by the County.
- To manage and maintain aggregate; pit and quarry operations and inventories.
- To manage, maintain, repair, and manufacture signs; including parts, materials, and supplies, required by the County.
- To identify procedures for establishing rates, service levels, replacement of equipment, and services provided within this fund.
- To establish cost containment procedures that, reflect proper fiscal management of these resources, and ensure proper equipment maintenance and replacement.
- To ensure the availability of safe, cost effective, and reliable vehicles and equipment that meet the County's needs.

2. APPLICABILITY

This policy applies to all Benton County offices, departments and to county officials (Elected Officials and County Administrator), and their employees, that utilize ER&R resources and services.

3. REVOLVING FUND FINANCIAL STRUCTURE

The ER&R fund is an internal service fund for accounting purposes, and structured, as required, to be self-sustaining. The goal is to establish rates that both optimize costs to the departments and offices of Benton County and maintain the aforementioned character of the ER&R fund. Revenue collected for replacement of equipment is the property of the ER&R fund and is not to be transferred to other funds. (Section 4.2e and 4.5 refers to credits and refunds.) They should be invested only in allowable investments. (See Attachment A) Part of the manager's responsibility is to assure the fund has adequate cash on hand to deal with potential catastrophic failures which could cause premature replacements, in addition to costs associated with normal operational and annual equipment replacement needs. Interest earned by the fund will be applied against overhead costs annually. The fund is structured by the "Budgeting Accounting and Reporting System" (BARS).

3.1 Fund revenues are based on:

- a. 0505 Vehicle rental rates (replacement cost)
- b. 0506 Equipment rental rates (replacement cost)
 - i. Inflation rate revenue
 - ii. Surcharge rate revenue
 - iii. Interest earned

3.2 Expenditure accounts:

- a. 8600 Rental vehicles and equipment repair
- b. 8300 Reimbursable repair
- c. 8400 Parts store inventory
- d. 8500 Fuel depot inventory
- e. 8200 Aggregate inventory
- f. 8900 Sign shop inventory
- g. 8690 Fringe benefits
- h. 8650 Overhead- shop small equipment, supplies, utilities, maintenance, etc.

4. VEHICLES AND EQUIPMENT RENTAL

4.1 Original Vehicle or Equipment purchase requests

- a. New, or in addition to the fleet, vehicle or equipment purchase requests will be made on the appropriate request form, provided by ER&R. The ER&R Manager will review the request and work with the office/department to provide the information needed for budget approval.
- b. The request must be authorized as a capital expenditure in the final biennium budget and signed by the appropriate Elected Official or County Administrator before it will be processed for resolution.
- c. If the decision made by the ER&R Manager is not acceptable to the county official, their reasons for disagreement, along with their specific request shall be given to the County Engineer and the County Administrator for review, their decision will be final.
- d. All Rental vehicles will be white in color and include the following standard accessories: fire extinguisher, first aid kit (users to keep stocked after original installation), and factory/dealership installed accessories ordered with vehicle or equipment. All additional equipment will be paid for by the requesting office/department.
- e. All heavy maintenance equipment shall come in the manufactures standard color or if color is specified, it shall be Fleet White.

4.2 Replacement of Vehicle or Equipment

- a. The ER&R Manager shall make the initial decision as to whether the vehicle or equipment qualifies for replacement. In an effort to keep rental rates cost effective, the ER&R Manager shall place an emphasis on purchase price, fuel efficiency, appropriate class size, make, and model when purchasing vehicles and equipment.
 - i. Vehicles - 100,000 miles and/or dependability and/or 10 years of age.
 - ii. Equipment - 8,000 hours and/or dependability and/or 10 years of age.
 - iii. If the decision made by the ER&R Manager is not acceptable to the county official, their reasons for disagreement, along with their specific request shall be given to the County Engineer and the County Administrator for review, their decision will be final,
- b. Replacement vehicles and equipment are to be of a similar size and value as the original vehicle or equipment.
- c. If the requested vehicle or equipment is an appreciable upgrade, a cost overrun contribution will be required from the requesting office/department and approval from the Elected Official or County Administrator.

- d. If the requested vehicle or equipment is traded-in before fully depreciated, the outstanding amount will be required from the requesting office/department to purchase the replacement.
- e. If the requested vehicle or equipment has been over collected for or is an appreciable downgrade, it will result in a balance refund back to the owning fund.
- f. A statement of transaction will be provided to the renting office/department when the account is settled.

4.3 Rental Rates/Assessments

The rates/assessments for all vehicles and equipment will be developed by the ER&R Manager annually. The rates will be submitted to the County Engineer for approval. Rates shall reflect 100% of annual expenses, including inflation, labor and parts for repairs and service, insurance, indirect costs, and overhead. The proposed rates/assessments as part of the annual budget process will be considered along with ER&R service rates and submitted to the Board of County Commissioners for approval. The Board shall set the ER&R rates by resolution. Each office/department is responsible for purchasing fuel for the vehicles. Rental rates for non-Road Department vehicles are calculated per vehicle; Road Department vehicles and equipment will be grouped, when possible, with like units.

- a. Replacement Formula for non-Road Department Vehicle:
 - i. 10-year anticipated lifespan standard; deviations should be noted in rate matrix.
 - ii. Subtract salvage value of five percent (5%) of the original purchase price. Add four percent (4%) inflation for every year of anticipated operation. This is the Anticipated Replacement Need.
 - iii. Using Road Department records, determine the monies collected to date for the vehicles. Subtract this amount from the Anticipated Replacement Need. Divide the remainder by the number of years left in the anticipated lifespan of the vehicle. This is the annual replacement rate.
 - iv. Additional costs to specific vehicles, such as add-ons with a periodic fee, are added to the annual replacement rate. Payment of the total rate can be broken down based on concurrent approval of both the County Engineer and the user office/department head.
 - v. All maintenance expenses are budgeted annually and paid for on a monthly basis by the user office/department as services are performed. The ER&R Manager will estimate the annual maintenance costs for the user office/departments budget. A cost overrun contribution on estimated maintenance will be required by the user office/department.
 - vi. Salvage value is applied based on assumed recovery at the end of vehicle life, e.g., salvage for scrap, trade-in.
 - vii. Vehicles for which the Annual Replacement Need, less add-ons, has been paid in full will pay only for maintenance and the continued cost of said add-ons, but may be removed from service due to condition, dependability, or a repair cost that exceeds the value of the vehicle. Such determination will be decided by the ER&R Manager.
 - viii. For vehicles funded through current expense, an annual report will be presented to the Board that provides information on vehicle usage and condition.
- b. Replacement Formula for Road Department Vehicles and Equipment:
 - i. 10-year anticipated lifespan standard; deviations should be noted in rate matrix; all vehicles in a given grouping must have the same anticipated lifespan.
 - ii. Subtract salvage value of five percent (5%) of the original purchase price. Add four percent (4%) inflation for every year of anticipated operation. This is the Anticipated Replacement Need.
 - iii. A five (5)-year average* of annual expenses (including maintenance and overhead) from the previous five years is used to determine the Average

Annual Maintenance Cost. The Average Annual Maintenance Cost (multiplied by the anticipated lifespan of the vehicle or equipment) combined with the Anticipated Replacement Need provides the cost of the vehicle or equipment.

- iv. Using Road Department records, determine the monies collected to date for the vehicles. Subtract this amount from the cost of the vehicle. Divide the remainder by the number of years left in the anticipated lifespan of the vehicle or equipment. This is the annual cost of the vehicle or equipment.
- v. A five (5)-year average* of annual hours of use for each vehicle or piece of equipment from the previous five years should be drawn from Road Department records. Hours of use may be modified by the County Engineer if it appears that historic use of vehicles or equipment is not reflective of the anticipated level of work to be completed in the coming year. Like vehicles and equipment, based on type and use and approved by the County Engineer, are grouped together. Hours of use and hourly rates are averaged within each group. Due to the nature of the averaging, the rates are weighted.
- vi. Vehicles or equipment with add-ons with periodic fees, such as GPS units, will have said fee added to their group rate for said specific vehicle or equipment.
- vii. Salvage value is applied based on assumed recovery at the end of the vehicle or equipment's life, e.g., salvage for scrap, trade-in.
- viii. Equipment used by the Road Department will be charged by usage and pay on a monthly basis.

* *If, for whatever reason, the previous five years' data is not available, then the averages should be the greatest contiguous time period immediately preceding the year for which rates are being calculated. For example, if 2017 rates are being calculated, and records exist for 2014, 2015, and 2016 – but not for 2013 – then a three-year average would be used.*

4.4 Pool Vehicles

ER&R will provide pool vehicles for those offices/departments that don't have need for permanently assigned vehicles or for vehicles such as travel cars used periodically for group travel. Short-term rental rates shall be established by the ER&R Manager for these vehicles and invoiced to the office/department on a monthly basis as vehicles are used.

4.5 Inventory

If a vehicle or piece of equipment is no longer needed by the user office/department, it will be treated as surplus by the ER&R fund, and the ER&R fund will return the funds collected for replacement of said vehicle or equipment, plus surplus acquired, less ER&R documented administrative costs, to the owning fund.

If a vehicle or equipment is withdrawn from service after it has been fully depreciated and not replaced a refund that represents the original capital contribution will be credited to the owning fund.

5. PARTS STORES

5.1 Parts Inventory

Frequently used parts and supplies will be kept on hand as an inventory item; some items that are required to have on hand in case of emergencies to reduce down time will also be kept in inventory.

- a. Inventory purchases are funded through operating capital and costs shall be kept to a minimum. When a part is billed to a work order the revenue then returns to operating capital.
- b. Inventory pricing is established by the ER&R Manager and based on cost plus a percentage to recover administration, maintenance, and overhead costs of the parts stores. The rates will be reviewed annually.

6. MECHANIC SHOPS

The goal of the mechanic shops is to provide a professional and courteous service to county agencies, to reduce repair costs, to reduce down time, and ensure the availability of vehicles and equipment.

6.1

The ER&R preventive maintenance and repair program will be in compliance with Federal Motor Carrier Regulations,

- a. ER&R vehicles will be maintained by ER&R shops.
- b. All County Owned vehicles and equipment will be serviced and maintained by ER&R shops. The shop foreman and/or the ER&R Manager will consult with the office/department on specialized work and outsourcing of repairs as well as determining the need for emergency road services.
- c. Maintenance and repair costs will include parts, fluids, labor, and overhead. (Does not include fuel).
- d. At a regularly scheduled service, ER&R personnel will conduct an annual inspection, condition evaluation, and review usage on each vehicle.
- e. If a county vehicle has not been through the shop for a service within 12 months, it will be scheduled for a full vehicle, wheels off inspection.

6.2 Shop Rate

- a. Hourly Rate for Service: Shop rates will be set by the ER&R Manager and County Engineer based on wages, benefits, and overhead costs, and approved by the Board of Benton County Commissioners annually.
- b. Overtime: Shop rates for work done outside regular working hours will be paid at the labor cost for the shop employee at time and a half or double time per hour, according to the CBA, plus overhead cost per hour.
- c. Service Call Outs: In addition to the hourly service rate (see a. and b. above) equipment rental for the service vehicle used shall be invoiced at the current rental rate.

6.3 ER&R Service Intervals

Vehicles will be serviced every 4,000 miles. Equipment will be serviced every 250 hours or as factory manual states or sooner. All class A and airbrake vehicles will be on an annual DOT inspection program. For reimbursable accounts the ER&R Manager will work with offices/departments that own vehicles and outside contract customers, to determine service intervals and repair needs for vehicles and equipment.

6.4 Offices/Department Responsibility

- a. The user office/department is responsible for managing vehicle usage and to schedule services. Delivery to and pick-up from the shop by the user will reduce maintenance costs.
- b. All vehicles and equipment need to remain clean, both inside and outside. Any wash or vacuum costs will be paid by the office/department.
- c. Pay any traffic infractions and toll fees.
- d. Fuel purchases made to operate the vehicle or equipment,
- e. Wrecked or damaged vehicles or equipment, in which service is lost prior to its depreciated life, will be the responsibility of the office/department to pay the difference in costs to replace or repair it.

6.5 Auxiliary Accessories

ER&R shall recover costs for all auxiliary vehicle accessories at the time of purchase and installation, rather than recovering costs over life of vehicle or equipment i.e., snow tires, chains, etc.

7. FUEL DEPOT

7.1 Bulk Diesel Fuel (Road Department)

- a. Inventory purchases are funded through operating capital. ER&R will follow bid procedures or piggyback onto existing bid contracts for fuel, fuel delivery, and service contracts to secure competitive pricing.
- b. Inventory pricing is established by the ER&R Manager, based on cost plus a percentage to recover administration, maintenance, and overhead costs. The rates will be reviewed annually.
- c. Fuel will be charged against a vehicle or equipment. The revenue returns to operating capital.

7.2 Unleaded fuel (Road Department)

- a. Unleaded fuel will be supplied by outside vendor card lock system. ER&R will follow bid procedures or piggyback onto existing bid contracts for fuel and service contracts to secure competitive pricing. ER&R shall maintain an accurate fuel card inventory.
- b. Fuel is included as part of the five (5)-year Average Annual Maintenance Cost as described in Section 4.3.

8. PITS AND QUARRIES

Pit and quarry operations (crushing operations, stock piling, open new pits, etc.) are funded by operating capital. When the rock is loaded out of stock piles and charged to roads, jobs, projects, etc., the revenue returns to operating capital.

8.1 Unit Prices

Unit prices for pit run and reject will be established by the ER&R Manager to recover the costs of permits, administration, maintenance, and overhead costs. Rates will be reviewed annually.

8.2 Rates for Manufactured Products

Rates for manufactured products will be established by the ER&R Manager based on unit contract prices, stockpile costs, plus a percentage to recover administration, maintenance, and overhead costs. Rates will be reviewed annually.

8.3 Storage

Storage of road equipment and supplies will be allowed as long as they meet the pit permit and management requirements. Road crews will coordinate their use of pits with the ER&R Manager. The Roads and ER&R operations shall jointly be responsible for security and ongoing cleanup and organization of the pit and quarry sites.

9. SIGN FABRICATION SHOP

The goal of the sign fabrication shop is to provide a professional and courteous service to county agencies, to expeditiously respond to repair calls, to reduce repair costs, and down time.

9.1 Shop Rate

See Section 6.2; shop rate is the same.

9.2 Inventory

Sign blanks, posts, anchors, and graphic materials will be kept on hand as an inventory item. Inventory purchases are funded through operating capital and costs shall be kept to a minimum. When an item is billed to a road or a project the revenue then returns to operating capital. Inventory pricing is established by the ER&R Manager and based on cost plus a percentage to recover administration, maintenance, and overhead costs of the items. The rates will be reviewed annually.

10. FACILITY RENTAL AND CONSTRUCTION

10.1 Facility Space Rental Rate

Facility space rental rate will be established by the ER&R Manager to recover the costs of supplies, cleaning of spaces, utilities, general maintenance and over head of existing structures.

10.2 Cost Distribution

ER&R will determine appropriate cost distribution for facility rental, so that it is charged against the appropriate fund.

ATTACHMENT A

References

- RCW 35.21.088 Equipment Rental Fund
- RCW 36.32.210 Inventory of County Capitalized Assets
- RCW 36.33A.010 Equipment Rental and Revolving Fund - Establishment-Purpose
- RCW 36.33A.020 Use of Fund by Other Offices, Departments, or Agencies
- RCW 36.33A.030 Administration of Fund
- RCW 36.33A.040 Rates for Equipment Rental
- RCW 36.33A.050 Deposits in Fund
- RCW 36.33A.060 Accumulated Moneys
- RCW 43.09.210 Local Government Accounting

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Dec. 13, 2016</u>	Execute Agreement _____	Consent Agenda <u>X</u>
Subject: <u>ERR Rates – Non-Road</u>	Pass Resolution <u>X</u>	Public Hearing _____
Dept. <u>Vehicles</u>	Pass Ordinance _____	1st Discussion _____
Prepared by: <u>gnd</u>	Pass Motion _____	2nd Discussion _____
Reviewed by: <u>MSR</u>	Other _____	Other _____

BACKGROUND INFORMATION

The Benton County Road Department operates the Equipment Rental and Revolving (ERR) Fund, through which vehicles and equipment are purchased, maintained, and replaced. The Board of County Commissioners adopted the current iteration of the ERR Fund policy in December 2016. The Benton County Road Department, in accordance with the current iteration of the ERR Fund policy, calculated 2017/2018 rental rates for non-Road Department vehicles. These include the rental rate on the vehicle, as well as a surcharge for any applicable addition (e.g., GPS). Per the adopted policy, vehicle rental rates are to be adopted by the Board of County Commissioners.

SUMMARY

The Benton County Road Department has calculated 2017/2018 rental rates for non-Road Department vehicles, in accordance with the current iteration of the ERR Fund policy. Per said policy, the rates must be adopted by the Board of County Commissioners in order to take effect.

RECOMMENDATION

The County Engineer recommends that the Board adopt the 2017/2018 rental rates for non-Road Department vehicles.

FISCAL IMPACT

Adoption of these rates will have no direct fiscal impact. The rates are those used as assessments by the County offices and departments that utilize the ERR Fund when preparing their respective budgets.

MOTION

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS, RE: ADOPTION OF EQUIPMENT RENTAL AND REVOLVING (ERR) FUND RENTAL RATES FOR NON-ROAD DEPARTMENT VEHICLES

WHEREAS, the Benton County Road Department operates the Equipment Rental and Revolving (ERR) Fund, through which vehicles and equipment are purchased, maintained, and replaced; and

WHEREAS, the Board of County Commissioners adopted the current policy that governs the operation of the ERR Fund on December 13, 2016; and

WHEREAS, through said policy, the Road Department calculated rental rates for non-Road Department vehicles for the 2017/2018 biennium, which were used by County departments and offices as assessments in the establishment of their respective budgets; and

WHEREAS, per said policy, rental rates must be adopted by the Board of County Commissioners; and

WHEREAS, the County Engineer recommends that the Board of County Commissioners adopt the proposed rates; **NOW, THEREFORE**,

BE IT RESOLVED, that the Board of County Commissioners hereby adopts the proposed 2017/2018 non-Road Department vehicle rental rates, per the ERR Fund policy.

Dated this 13th day of December, 2016

Chairman of the Board.

Chairman Pro-Tem.

Member.

Attest: _____
Clerk of the Board

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

Orig.: Public Services
c: Road Department

G. DeJongh

2017-2018 VEHICLE MAINTENANCE ESTIMATE - RENTAL ASSESSMENT

DEPARTMENT	VEHICLE #	DESCRIPTION	4894	4894		4593	4593
			2017	2018		2017	2018
INS. MANAG. 0075							
replace 18'	1074D	06' impala	\$242.34	\$266.57		\$0.00	
	NEW	18 escape		\$235.84			\$3,718.64
			\$242.34	\$502.41		\$0.00	\$3,718.64
PLANNING 0062							
replace 18'	1066D	04' taurus	\$328.42	\$361.62		\$0.00	
	1095	12' escape	\$235.84	\$259.42		\$1,498.00	\$1,498.00
	NEW	18 escape		\$235.84			\$3,718.64
		TOTAL	\$564.26	\$856.88		\$1,498.00	\$5,216.64
POOL VEHICLE 0060							
	512D	07' impala	\$187.00	\$205.70			
	513D	07' impala	\$187.00	\$205.70			
	521D	08' impala	\$187.00	\$205.70			
	R1080	07' impala	\$187.00	\$205.70			
		TOTAL	\$748.00	\$822.80			
PROSECUTOR 0065							
	R-1075	06' impala	\$242.34	\$266.57		\$0.00	\$0.00
	1100	13' impala	\$242.34	\$266.57		\$2,729.40	\$2,729.40
	1112	16' escape	\$235.84	\$259.42		\$3,864.16	\$3,864.16
		TOTAL	\$720.52	\$792.56		\$6,593.56	\$6,593.56
SUP. COURT 0057							
	R1069	05' crownvic	\$187.00	\$205.70		\$0.00	\$0.00
SOLID WASTE 0076							
	1079D	07' f-250	\$251.17	\$276.29		\$39.77	\$39.77
TREASURER 0067							
	1092	11' impala	\$187.18	705.89		\$1,036.67	\$1,036.67

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Dec. 13, 2016</u>	Execute Agreement _____	Consent Agenda <u>X</u>
Subject: <u>ERR Rates – Road Dept. Vehicles and Equipment</u>	Pass Resolution <u>X</u>	Public Hearing _____
Prepared by: <u>gnd</u>	Pass Ordinance _____	1st Discussion _____
Reviewed by: <u>MSR</u>	Pass Motion _____	2nd Discussion _____
	Other _____	Other _____

BACKGROUND INFORMATION

The Benton County Road Department operates the Equipment Rental and Revolving (ERR) Fund, through which vehicles and equipment are purchased, maintained, and replaced. The Board of County Commissioners adopted the current iteration of the ERR Fund policy in December 2016. The Benton County Road Department, in accordance with the current iteration of the ERR Fund policy, calculated 2017 operational rates for Road Department vehicles and equipment. These include the rental rate on the vehicle, as well as maintenance and fuel costs. Per the adopted policy, vehicle and equipment operational rates are to be adopted by the Board of County Commissioners.

FEMA operational rates, being those equipment costs recoverable by the County during work covered under 42 USC § 5121, *et seq.*, shall be those adopted by the Federal Emergency Management Agency at the time that the work is performed.

SUMMARY

The Benton County Road Department has calculated 2017 operational rates for Road Department vehicles, in accordance with the current iteration of the ERR Fund policy. FEMA operational rates, which are applicable under certain emergency situations, shall be those adopted by the Federal Emergency Management Agency at the time that the work is performed. Per said policy, the rates must be adopted by the Board of County Commissioners in order to take effect.

RECOMMENDATION

The County Engineer recommends that the Board adopt the 2017 operational rates, including the policy for charging FEMA operational rates, for Road Department vehicles and equipment.

FISCAL IMPACT

Adoption of these rates will have no direct fiscal impact. The rates were used by the Road Department as the basis for operating the equipment and performing necessary construction and maintenance operations. FEMA operational rates will be recovered by the County in the event of applicable emergency work.

MOTION

Approve as part of the consent agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS, RE: ADOPTION OF EQUIPMENT RENTAL AND REVOLVING (ERR) FUND OPERATIONAL RATES FOR ROAD DEPARTMENT VEHICLES

WHEREAS, the Benton County Road Department operates the Equipment Rental and Revolving (ERR) Fund, through which vehicles and equipment are purchased, maintained, and replaced; and

WHEREAS, the Board of County Commissioners adopted the current policy that governs the operation of the ERR Fund on December 13, 2016; and

WHEREAS, through said policy, the Road Department calculated operational rates for Road Department vehicles and equipment for the 2017 calendar year, which were used by the Road Department for consideration of the cost of construction and maintenance operations using specific vehicles and equipment during the 2017 calendar year; and

WHEREAS, FEMA operational rates, being those equipment costs recoverable by the County during work covered under 42 USC § 5121, *et seq.*, shall be those adopted by the Federal Emergency Management Agency at the time that the work is performed; and

WHEREAS, per said policy, rates must be adopted by the Board of County Commissioners; and

WHEREAS, the County Engineer recommends that the Board of County Commissioners adopt the proposed rates, including the policy for charging FEMA operational rates; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of County Commissioners hereby adopts the proposed 2017 Road Department vehicle and equipment operational rates, per the ERR Fund policy; and

BE IT FURTHER RESOLVED, that the Board of County Commissioners hereby directs the County Engineer to charge the FEMA operational rates in effect at the time of work performed under applicable emergency conditions covered under 42 USC § 5121, *et seq.*

Dated this 13th day of December, 2016

Chairman of the Board.

Chairman Pro-Tem.

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

Attest: _____
Clerk of the Board

Vehicle No.	Description	Estimated Annual Usage	Estimated Hourly Rental Rate
ALL-WHEEL MOTOR GRADERS			
0540	772G MOTOR GRADER KE	750.00	\$ 63.37
0544	772G MOTOR GRADER PR	620.00	\$ 75.82
		GROUP RATE	\$ 69.01
BACKHOES			
0545	420E Tractor-Loader-	380.00	\$ 20.49
0546	420E Tractor-Loader-	385.00	\$ 7.67
		GROUP RATE	\$ 14.04
BROOMS			
0555	Side Cast Broom- Pro	210.00	\$ 22.07
0556	Side Cast Broom- Ken	330.00	\$ 21.38
		GROUP RATE	\$ 21.64
CONVEYORS			
0420	HYDRAULIC TRUCK CONV	60.00	\$ 17.38
0458	TRUCK CONVEYOR BOX	60.00	\$ 19.60
0459	TRUCK CONVEYOR BOX	60.00	\$ 19.60
		GROUP RATE	\$ 19.08
DAILY DRIVERS			
0525	SURVEY CREW Model W3	1570.00	\$ 4.88
0538	COUNTY ENGINEER	1405.00	\$ 3.45
0548	2013 White Ford F250	1265.00	\$ 5.08
0549	2013 White Ford F250	830.00	\$ 6.11
0558	Ford F150 4WD-Superi	1280.00	\$ 2.21
0559	Ford F150 4WD- Super	1030.00	\$ 5.18
0560	Ford F250 4WD Engine	960.00	\$ 4.28
0579	Ford Explorer-Matt R	1400.00	\$ 4.02
NEW	REPLACE - Ford Explorer W/F150 CC 0538	1405.00	\$ 3.56
NEW	REPLACE - Ford F250 0548	1265.00	\$ 3.17
		GROUP RATE	\$ 4.32
DE-ICING TANKS			
0480	500 GAL. DE-ICER-Pro	40.00	\$ 8.63
0481	500 GAL.DE-ICER TANK	70.00	\$ 4.93
0502	200 GALLON-DE ICER T	40.00	\$ 18.59
		GROUP RATE	\$ 9.50
DIESEL TRUCKS			
0532	REG CAB-PROSSER SHOP	665.00	\$ 8.30
0541	ROCK RAKE PU A-2	375.00	\$ 36.75
0582	Ford F350 1 Ton Rock	285.00	\$ 2.04
0520	1 Ton Flatbed - Kenn	255.00	\$ 189.69
0542	ROCK RAKE PU A-2	370.00	\$ 35.16
		GROUP RATE	\$ 41.76
ENGINEERING			
0487	EXT CAB 4X4 1/2 TON	810.00	\$ 5.25

0507	REG CAB 1/2 T 4x4 PU	710.00	\$ 6.38
0526	1/2 TON REG CAB-	340.00	\$ (1.31)
0533	ENGINEERING-JEFF LIN	345.00	\$ 14.41
NEW	REPLACE - 2003 Chevy 1500 0487	810.00	\$ 4.94
NEW	REPLACE - 2006 Chevy 3/4 Ton 4x4 0507	710.00	\$ 5.64
0543	2012 FORD F450 XL SU	475.00	\$ 20.15
0554	2013 Ford 450 Flatbe	200.00	\$ 17.80
		GROUP RATE	\$ 8.99
	FORKLIFTS	<i>Annual Rate</i>	
0501	FORKLIFT	\$ 4,068.59	\$ -
0514	FORKLIFT-Kennewick S	\$ 4,490.84	\$ -
		GROUP RATE	\$ -
	FLATBED TRAILERS		
0442	TRAILER	60.00	\$ 32.73
0551	OM12-2E FLATBED TILT	101.00	\$ 15.00
0552	30TDT-3SC FLATBED TI	170.00	\$ 45.83
NEW	NEW - OM12-2E FLATBED TILT	101.00	\$ 9.91
		GROUP RATE	\$ 28.17
	HEAVY TRAILERS		
0418	HEAVY HAUL TRAILER	50.00	\$ 189.34
0419	20 YD-TRAILER	50.00	\$ 96.17
0432	WATER TANK TRAILER	70.00	\$ 42.11
		GROUP RATE	\$ 97.88
	MISCELLANEOUS		
0390	TOWABLE TRASH PUMP	70.00	\$ 28.93
0452	DOUBLE DRUM VIBR ROL	105.00	\$ 125.01
0474	Fith Wheel Tractor (repurposed 2015)	295.00	\$ 2.00
0495	ROLLER	60.00	\$ 102.89
0506	CHIPPER	280.00	\$ 26.81
0536	2009 JET RODDER (PUR	80.00	\$ 312.89
0537	Engineer's Lab Trail	165.00	\$ 55.22
0539	SIGN TRUCK	650.00	\$ 9.72
0578	Total Station-Contro	315.00	\$ 36.11
0583	'06 Frtlnr w/new Etn	100.00	\$ 207.64
	12-YD DUMP TRUCKS		
0563	12 YD Dump Truck	400.00	\$ 93.63
0564	12 YD Dump Truck	335.00	\$ 112.87
0565	12 YD Dump Truck	380.00	\$ 101.34
0570	12 YD Dump Truck	200.00	\$ 186.52
0571	12 YD Dump Truck	200.00	\$ 180.43
0572	12 YD Dump Truck	200.00	\$ 191.66
		GROUP RATE	\$ 130.85
	LOADERS		
0484	FRONT LOADER	200.00	\$ 116.27
0553	2013 John Deere 624K	200.00	\$ 161.49

		GROUP RATE	\$ 135.56
	MOTOR GRADERS		
0469	MOTOR GRADER	510.00	\$ 63.04
0492	MOTOR GRADER-KENNEWI	695.00	\$ 53.32
0500	MOTOR GRADER	490.00	\$ 80.55
NEW	REPLACE - Cat 160H MG 0492	695.00	\$ 51.45
NEW	REPLACE - 2001 Volvo MG 0469	510.00	\$ 71.51
		GROUP RATE	\$ 64.12
	PATCHING TRUCKS		
0407	THERMOLAY PATCH KING	600.00	\$ 28.61
0490	PATCH TRUCK/PATCH KI	550.00	\$ 41.75
NEW	REPLACE - Patch Truck 0407	600.00	\$ 42.91
		GROUP RATE	\$ 34.70
	POOL CARS		
0512	ERR POOL CAR A-1		#DIV/0!
0513	ERR POOL CAR A-1		#DIV/0!
0521	ERR POOL CAR A-2		#DIV/0!
NEW	REPLACE - Pool Car 0512		#DIV/0!
NEW	REPLACE - Pool Car 0513		#DIV/0!
NEW	REPLACE - Pool Car 0521		#DIV/0!
NEW	NEW - Pool Car	33.00	\$ 151.69
NEW	NEW - Pool Car	33.00	\$ 151.69
		GROUP RATE	#DIV/0!
	10-YD PUP TRAILERS		
0566	10 YD Pup trailer	115.00	\$ 56.17
0567	10 YD Pup trailer	200.00	\$ 18.62
0568	10 YD Pup trailer	135.00	\$ 28.01
0573	10 YD Pup trailer-Pr	85.00	\$ 81.90
0574	10 YD Pup trailer-Pr	35.00	\$ 240.22
0575	10 YD Pup trailer-Pr	100.00	\$ 65.52
		GROUP RATE	\$ 52.43
	ROAD VEHICLES		
0522	PROSSER ROAD CREW	525.00	\$ 8.30
0523	PROSSER ROAD CREW	705.00	\$ 6.10
0528	3/4 T REG CAB-ROAD C	665.00	\$ 6.74
0529	3/4 TON REG CAB-KENN	830.00	\$ 5.34
0530	3/4 T REG CAB-PROSS	720.00	\$ 6.06
0547	2013 White Ford F250	1230.00	\$ 4.94
0550	'13 White Ford F250-	400.00	\$ 14.80
NEW	REPLACE - 3/4 Pick Up W/1 Ton CC 0528	665.00	\$ 10.32
		GROUP RATE	\$ 6.60
	ROCK RAKE		
0424	ROCK RAKE	225.00	\$ 3.83
0425	ROCK RAKE	500.00	\$ 1.74
0489	ROCK RAKE - Kennewic	225.00	\$ 9.65
		GROUP RATE	\$ 4.04

SPRAY BED TANKS			
0447	1000 GALLON WEED SP	345.00	\$ 18.12
0462	1000 GALLON WEED SPR	540.00	\$ 12.98
		GROUP RATE	\$ 14.99
5-YD and 6-YD DUMP TRUCKS			
0534	5YD DUMP-KENNEWICK C	150.00	\$ 77.07
0535	5YD DUMP-KENNEWICK C	150.00	\$ 336.20
0561	6 YD Dump Truck	220.00	\$ 6.68
0562	6 YD Dump Truck	220.00	\$ 107.47
		GROUP RATE	\$ 89.36
SHOP TRUCKS			
0443	A-1- SHOP TRUCK	200.00	\$ 31.72
0476	R-TRK -A-2 Shop Serv (repurposed 2015)	200.00	\$ 34.51
		GROUP RATE	\$ 33.24
SPREADERS			
		<i>Annual Rate</i>	
0477	TAILGATE ROCK SPREAD	327.33	\$ -
0478	TAILGATE ROCK SPREAD	327.33	\$ -
0479	TAILGATE ROCK SPREAD	327.32	\$ -
		GROUP RATE	\$ -
SPRAY TRUCKS			
0509	CHASSIS/SCE SPRAY TA	540.00	\$ 21.87
0518	SPRAY TRUCK CHASSIS-	345.00	\$ 36.33
		GROUP RATE	\$ 27.69
TRACTOR MOWERS			
0505	TRACTOR/MOWER-PROSSE	430.00	\$ 81.60
0511	TRACTOR MOWER - KENN	400.00	\$ 80.88
		GROUP RATE	\$ 81.27
WHEEL COMPACTORS			
0580	Articulated wheel co	325.00	\$ 6.84
0581	Articulated wheel co	170.00	\$ 18.33
NEW	NEW - Walk-N-Roll Comp Att.	240.00	\$ 16.69
NEW	NEW - Walk-N-Roll Comp Att.	170.00	\$ 23.56
		GROUP RATE	\$ 15.48
WATER TRUCKS			
0461	WATER TRUCK OMCO TAN	440.00	\$ 37.59
0468	WATER TRUCK/OMCO TAN	450.00	\$ 50.62
0557	Water Truck-Kennewic	635.00	\$ 58.85
		GROUP RATE	\$ 50.32

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF CUSTODY
DEPARTMENT NUMBER 120.

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

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
523.620	1817	Custody Officer	\$ 3,800	523.292	1935	Holiday	\$ 1,600
				523.295	1935	Holiday	\$ 2,200
TOTAL			\$3,800	TOTAL			\$3,800

Explanation:

To appropriate funding in Sheriff Custody for Holiday Pay

Prepared by:

Date:

Approved

Denied

Date: _____

_____ Chairman

_____ Member

_____ Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF PATROL
DEPARTMENT NUMBER 121.

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

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.231	3201	Vehicle Fuel	\$ 900	521.231	2102	Social Security	\$ 800
521.242	4180	Legal Services	\$ 700	521.231	2106	Uniform Laundry	\$ 100
				521.242	2102	Social Security	\$ 700
TOTAL			\$1,600	TOTAL			\$1,600

Explanation:

To appropriate funding for Wages & Benefits in the Sheriff Patrol.

Prepared by:

Date:

Approved

Denied

Date: _____

_____ Chairman

_____ Member

_____ Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF PATROL
DEPARTMENT NUMBER 121.

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

Dated this _____ day of _____, _____

Chairman of the Board

Member

Member

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

Attest: _____
Clerk of the Board

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.210	3201	Vehicle Fuel	\$ 11,600	594.210	6408	Capital Outlay	\$ 11,600
TOTAL			\$11,600	TOTAL			\$11,600

Explanation:

To appropriate funding for the purchase of a Cellebrite UFED Touch 2, cellphone forensic extraction devise. It is a hardware and software device used to extract and analyze cellphone data.

Prepared by:

Date:

Approved

Denied

Date: _____

_____ Chairman

_____ Member

_____ Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF TRAFFIC
DEPARTMENT NUMBER 125.

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

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.700	3135	Maintenance Repair supplies	\$ 1,600	521.700	1523	Deputy	\$ 200
				521.700	1919	Deputy	\$ 800
				521.700	2104	Retirement	\$ 600
TOTAL			\$1,600	TOTAL			\$1,600

Explanation:

To appropriate funding for wages, primarily related to premium pays such as field training deputies

Prepared by:

Date:

Approved

Denied

Date: _____

Chairman

Member

Member

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, SHERIFF TRAFFIC
DEPARTMENT NUMBER 125.

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

BENTON COUNTY LINE ITEM TRANSFER

Dept Name:

Dept Nbr:

Fund Name:

Fund Nbr:

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
521.700	5119	EDC 800 Mhz user fees	\$ 3,300	521.700	3201	Vehicle Fuel	\$ 19,800
521.700	5120	Secomm	\$ 850				
521.700	5133	800 Mhz System upgrade	\$ 14,050				
594.210	6410	Capital Outlay vehicles	\$ 1,600				
TOTAL				TOTAL			
\$19,800				\$19,800			

Explanation:

To appropriate funding for vehicle fuel (Diverted Road)

Prepared by:

Date:

Approved

Denied

Date: _____

_____ Chairman

_____ Member

_____ Member

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Dec. 13, 2016</u>	Execute Contract	<u>X</u>
Subject: <u>Agreement w/LexisNexis</u>	Pass Resolution	<u>X</u>
Prepared by: <u>L. Small</u>	Pass Ordinance	_____
Reviewed by: <u>Ryan Lukson</u>	Pass Motion	_____
	Other	_____
	Consent Agenda	<u>X</u>
	Public Hearing	_____
	1st Discussion	_____
	2nd Discussion	_____
	Other	_____

BACKGROUND INFORMATION/ SUMMARY

Under Federal Law, Benton County is required to provide an adequate law library or adequate assistance from persons trained in the law for inmates within the jail.

The Benton County Sheriff’s Office has a service contract with LexisNexis for an External Hard Drive (EHD) system that meets the requirements to provide case law and revised codes for Washington State to inmates within the Benton County Jail for a service contract amount of \$625.00 plus WSST per month, with a termination date of December 31, 2016.

Both parties wish to renew the agreement for External Hard Drive (EHD) services to inmates within the Benton County Jail for a contract amount of \$625.00 plus WSST per month, with a termination date of December 31, 2017.

RECOMMENDATION

Approve the attached Resolution and renewal letter agreement between Benton County and LexisNexis for a contract amount of \$625.00 plus WSST, with a term beginning January 1, 2017 and terminating December 31, 2017.

APPROVED AS TO FORM

Ryan Lukson, DPA

FISCAL IMPACT

Service rates were approved in the 2017/2018 budget process to be paid out of Dept 120.

MOTION

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF RENEWING THE SERVICE CONTRACT AND ADDENDUM BETWEEN BENTON COUNTY AND LEXISNEXIS FOR AN EXTERNAL HARD DRIVE PRISON SOLUTIONS FOR CASE LAW AND REVISED CODES OF WASHINGTON STATE TO BE PROVIDED TO INMATES WITHIN THE BENTON COUNTY JAIL

WHEREAS, per Resolution 2015-110 dated January 27, 2015, the Board of Benton County Commissioners entered into a service contract with LexisNexis, a division of Reed Elsevier, Inc. and Matthew Bender & Company, Inc., Albany, NY for the External Hard Drive (EHD) systems that meets the requirements to provide case law and revised codes for Washington State to inmates within the Benton County Jail for a service contract amount of \$625.00 per month plus WSST; and

WHEREAS, per Resolution 2015-218 dated March 17, 2015, the Board of Benton County Commissioners approved the renewal of the contract between Benton County and LexisNexis to a termination date of December 31, 2015; and

WHEREAS, per Resolution 2015-753 dated October 20, 2015, the Board of Benton County Commissioners approved the renewal of the contract between Benton County and LexisNexis to a termination date of December 31, 2016; and

WHEREAS, both parties would like to continue the service and renew the current External Hard Drive (EHD) system for a contract amount remaining at \$625.00 per month plus WSST with an expiration date of December 31, 2017; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves renewing the current contract between Benton County and LexisNexis, a division of Reed Elsevier, Inc. and Matthew Bender & Company, Inc., Albany, NY, for the External Hard Drive (EHD) system for a contract amount of \$625.00 per month plus WSST; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board to sign the attached Renewal Letter Agreement between LexisNexis and Benton County; and

BE IT FURTHER RESOLVED, said renewal shall begin January 1, 2017 and shall terminate December 31, 2017.

Dated this _____ day of _____, 2016.

Chairman of the Board

Attest.....
Clerk of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington

**RENEW YOUR LEXISNEXIS® PRISON SOLUTION
ORDER NOW BY SIGNING THIS LETTER AGREEMENT**

Thank you for using LexisNexis as your provider of legal research materials for correctional facilities. We are dedicated to giving you efficient and cost-effective solutions, including the *Shepard's®* Citations Service.

Currently you are using the LexisNexis services pursuant to the Prison Solution Order (the "Order") that allows you to use selected information relevant to your needs in exchange for a fixed monthly commitment. The Order offers you access to comprehensive content and ease-of-use. However, your LexisNexis service under this Order will expire soon.

By signing below, you may extend the term for the following period at the monthly commitment rate indicated below:

Customer Name:	Benton County	Account Number:	0099706902
-----------------------	---------------	------------------------	------------

Extension Period		Monthly Commitment	
Beginning	<u>1/1/2017</u>	to	<u>12/31/2017</u>
			\$ 625.00
Beginning	<u> </u>	to	<u> </u>
			\$
Beginning	<u> </u>	to	<u> </u>
			\$

Customer hereby certifies that they have _____ number of licenses

These changes will be effective on 1/1/2017. Except as expressly stated above, all other terms of the Order will remain unchanged and unaffected by this letter agreement.

If you have any questions about your new rate or would like to see a comparison of other pricing options, please contact me, your account representative, at:

Kim Shields, Esq.
Client Manager - Corrections
Phone: 573-673-4230
Fax: 866-293-4261

kim.shields@lexisnexis.com

If you agree with the new monthly commitment and extended term, then please print this message, provide the information requested for the total number of terminals/licenses/locations then sign and date. Upon completion, return the signed letter agreement to me at the fax number listed above. In order for these changes to be effective on the date listed above, please sign and return this letter agreement no later than the 20th of December.

If you do not respond to this letter, please be advised that the Order will expire at the end of the current commitment period and you will no longer receive updated materials.

Customer Name: Benton County

Authorized Signature: _____

Print Name: Shon Small, Chairman

Title: Benton County Commissioner

Date: _____

Approved As to Form:



Ryan J. Lukson, Civil DPA

z. Payment to Surplus Ammo & Arms, LLC for Swat Equipment

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Dec. 13, 2016</u> Subject: <u>Authorizing Payment to Surplus Ammo & Arms, LLC</u> Prepared by: <u>L. Small</u> Reviewed by: <u>Cdr Law</u>	Execute Contract _____ Pass Resolution <u> X </u> Pass Ordinance _____ Pass Motion _____ Other _____	Consent Agenda <u> X </u> Public Hearing _____ 1st Discussion _____ 2nd Discussion _____ Other _____

BACKGROUND INFORMATION/ SUMMARY

The Benton County Sheriff’s Office purchased (2) two CQB11 KMR-A Carbine Rifle-11 and associated accessories as needed to replace aging equipment that is due for replacement for the Benton County/Tri-City Regional SWAT Team (SWAT) from Surplus Ammo & Arms, LLC, Tacoma, WA in the amount of \$2,535.44.

The following week, the Incident Commander was seeking pricing to purchasing (2) two Advanced Target Pointer Illuminator Aiming Lights (ATPIAL) for SWAT and Surplus Ammo & Arms, LLC had the lowest price, which was in the amount of \$2,701.94.

Due to these two separate purchases being bought from the same vendor, the Auditor’s Office is requesting a Resolution authorizing payment to Surplus Ammo & Arms, LLC, as the amount being paid is totaling over \$5,000.

RECOMMENDATION

Approve the attached Resolution authorizing payment to Surplus Ammo & Arms, LLC for invoice 1181 in the amount of \$2,535.44 and invoice 1211 in the amount of \$2,701.94.

FISCAL IMPACT

Said expenditures will be paid from the 2015/2016 budget, department 121 line item 3501.

MOTION

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING PAYMENT TO SURPLUS AMMO & ARMS, LLC FOR THE PURCHASE OF SWAT EQUIPMENT FOR THE BENTON COUNTY SHERIFF'S OFFICE

WHEREAS, the Benton County Sheriff's Office purchased (2) two CQB11 KMR-A Carbine Rifle-11 and associated accessories as needed to replace aging equipment that is due for replacement for the Benton County/Tri-City Regional SWAT Team (SWAT) from Surplus Ammo & Arms, LLC, Tacoma, WA in the amount of \$2,535.44; and

WHEREAS, the following week the Incident Commander was seeking pricing to purchasing (2) two Advanced Target Pointer Illuminator Aiming Lights (ATPIAL) for SWAT and Surplus Ammo & Arms, LLC had the lowest price, which was in the amount of \$2,701.94; and

WHEREAS, due to these two separate purchases being bought from the same vendor, the Auditor's Office is requesting a Resolution authorizing payment to Surplus Ammo & Arms, LLC, as the amount being paid is totaling over \$5,000; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington, the Board hereby approves the payment to Surplus Ammo & Arms, LLC for Invoice 1181 in the amount of \$2,535.44 for the purchase of (2) two CQB11 KMR-A Carbine Rifle-11 and associated accessories; and

BE IT FURTHER RESOLVED, the Board hereby approves the payment to Surplus Ammo & Arms, LLC for Invoice 1211 in the amount of \$2,701.94 for the purchase of (2) two Advanced Target Pointer Illuminator Aiming Lights.

Dated this _____ day of _____, 2016.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

Orig: Sheriff's Office
cc: Auditor

P.O. # 544-1111605



Surplus Ammo & Arms, L.L.C.

102 Puyallup Ave. Suite B
Tacoma, WA 98421
253 301 0642

Invoice

Date	Invoice #
11/10/2016	1181

PAID
11/10/2016

Bill To Benton PD	Ship To Benton PD ATTN: Jon Law 7122 W. Okanogan Pl. #B Kennewick, WA 99336
-----------------------------	--

P.O. No.	Terms	Ship Date	Ship Via	Pre-Paid
	Per Invoice	11/8/2016	UPS	11-10-2016

Description	Qty	Rate	Amount
CQB11 KMR-A Carbine 11.5" Standard Government Profile	2	1,133.67	2,267.34T
Shipping Fee (per rifle)	2	10.00	20.00T
BCM KMR RAILS SECTION 4 INCHE POLYMER	2	10.49	20.98T
BCM KeyMod 5.5" Nylon Rail Section Black	2	12.49	24.98T
Shipping Fee	1	9.99	9.99T

Quote good for 30 Days	Subtotal	\$2,343.29
	Sales Tax (8.2%)	\$192.15
	Total	\$2,535.44
	Payments/Credits	-\$2,535.44
	Balance Due	\$0.00

P.O. 564-11221602

895117



Surplus Ammo & Arms, L.L.C.

102 Puyallup Ave. Suite B
Tacoma, WA 98421
253 301 0642

Invoice

Date	Invoice #
11/21/2016	1211

PAID
11-22-2016

Bill To
Benton PD

Ship To
Benton PD ATTN: Jon Law 7122 W. Okanogan Pl. #B Kennewick, WA 99336

P.O. No.	Terms	Ship Date	Ship Via	Pre-Paid
Email	Per Invoice	11/18/2016	Best Way	11/22/2016

Description	Qty	Rate	Amount
ATPIAL PEQ/15 standard power, Black	2	1,236.49	2,472.98T
Shipping Fee	1	14.99	14.99T

Quote good for 60 days	Subtotal	\$2,487.97
	Sales Tax (8.6%)	\$213.97
	Total	\$2,701.94
	Payments/Credits	-\$2,701.94
	Balance Due	\$0.00

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>			
Meeting Date: <u>Dec. 13, 2016</u> Subject: <u>MOU w/ US Marshal – Eastern District of WA</u> Prepared by: <u>L. Small</u> Reviewed by: <u>Ryan Lukson</u>	Execute Contract <u> X </u> Pass Resolution <u> </u> Pass Ordinance <u> </u> Pass Motion <u> </u> Other <u> </u>		Consent Agenda <u> X </u> Public Hearing <u> </u> 1st Discussion <u> </u> 2nd Discussion <u> </u> Other <u> </u>	

BACKGROUND INFORMATION/ SUMMARY

The United States Marshal Service (USMS) has been granted authority to direct and coordinate permanent US Marshal Services Violent Offender Task Forces consisting of Federal, state, and local law enforcement for the purpose of locating and apprehending fugitives.

The Benton County Sheriff’s Office (BCSO) has a detective who is part of the Joint Law Enforcement Operations Task Force (JLEO) for the United States Marshal.

In past years, the Sheriff has signed the Memorandum of Understanding (MOU) between Benton County Sheriff’s Office and US Marshal Eastern District of Washington for reimbursement, if funding is available, for overtime, travel, training, vehicle purchases, fuel, supplies or equipment incurred by the state or local investigators who provide support to USMS Joint Law Enforcement Task Forces.

BCSO received the attached MOU indicating that Benton County qualifies for funding reimbursement for the fiscal year 2017 in an amount up to \$10,557.10, for services and expenses mentioned above.

Attached is a Resolution to inform the Benton County Commissioners of the MOU between the two parties and to authorize the Benton County Sheriff’s signature on the MOU for said reimbursement.

RECOMMENDATION

Approve the attached Resolution, authorizing the Benton County Sheriff’s signature on the attached Memorandum of Understanding for the Joint Law Enforcement Operations Task Force between the Benton County Sheriff’s Office and US Marshal Eastern District of Washington for a reimbursement back to Benton County for an amount up to \$10,557.10.

APPROVED AS TO FORM

Ryan Lukson has declined to approve as to form with concerns of potential liability with involvement to this task force, as Benton County does not direct or control the daily operations of any of the task force members, including the BCSO deputy assigned the Marshals Office.

FISCAL IMPACT

FY 2017 Overtime Reimbursements

MOTION

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE BOARD OF BENTON COUNTY COMMISSIONERS AUTHORIZING THE BENTON COUNTY SHERIFF'S SIGNATURE ON THE MOU BETWEEN BENTON COUNTY SHERIFF'S OFFICE AND UNITED STATES MARSHAL - EASTERN DISTRICT OF WASHINGTON FOR THE JOINT LAW ENFORCEMENT OPERATIONS TASK FORCE FOR FY 2017

WHEREAS, the United States Marshal Service (USMS) has been granted authority to direct and coordinate permanent USMS Violent Offender Task Forces consisting of Federal, state, and local law enforcement for the purpose of locating and apprehending fugitives; and

WHEREAS, the Benton County Sheriff's Office has a detective who is part of the Joint Law Enforcement Operations Task Force (JLEO) for the United States Marshal; and

WHEREAS, reimbursement is granted by the USMS, if funding is available, for 1) overtime incurred by the state or local investigators who provided full time support to USMS joint law enforcement task forces; or 2) travel, training, purchase or lease of police vehicles, fuel, supplies or equipment for state and local investigators in direct support of state and local investigators; and

WHEREAS, the attached obligation document and Memorandum of Understanding outlines the amount of reimbursement to Benton County Sheriff's Office in the amount up to \$10,557.10 for the period of October 19, 2016 to September 30, 2017; and

WHEREAS, the Benton County Sheriff recommends moving forward with the attached MOU between the Benton County Sheriff's Office and US Marshal Eastern District of Washington and have the Board of Commissioners authorize the Sheriff's signature on the attached MOU; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the Memorandum of Understanding for the Joint Law Enforcement Operations Task Force between Benton County Sheriff's Office and US Marshal Eastern District of Washington for a reimbursement to Benton County for an amount up to \$10,557.10 for the period of October 19, 2016 to September 30, 2017; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Benton County Sheriff's signature on the MOU between United States Marshal Service and Benton County Sheriff's Office.

Dated this _____ day of _____, 2016

Chairman

Member

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

Attest: _____
Clerk of the Board

INSTRUCTIONS: See last page for detailed instructions.

SECTION 1: OBLIGATION

DOCUMENT CONTROL #: M-17-D85-O-000040

SECTION 2: PARTICIPATING AGENCIES

Notification to state and local agencies of funding provided in support of Joint Law Enforcement Operations, pursuant to the Memorandum of Understanding (MOU) between:

Benton County Sheriff's Office

and

Eastern District of Washington (85)

All other terms and conditions of the MOU remain the same.

SECTION 3: PERIOD OF PERFORMANCE

October 19, 2016 to September 30, 2017

SECTION 4: APPROPRIATION DATA

FISCAL YEAR	ORGANIZATION	FUND	PROJECT	SOC / PURPOSE	DOLLAR AMOUNT
2017	D85	AFF-B-OP	JLEOTFS4	25302 - TFO Overtime	\$10,557.10
Total Obligation Amount:					\$10,557.10

SECTION 5: DESCRIPTION OF OBLIGATION

Funds provided for the authorized OT pay for Task Force Officers (TFO) assigned to the Pacific Northwest Violent Offender Task Force (PNVOTF) for the period of 10/19/16 - 09/30/2017.

Authorized amount to date: \$10,557.10

SECTION 6: CONTACT INFORMATION

DISTRICT/RPTF CONTACT:

Name: Sousu Robert Doty
Phone: 509-323-3613
E-mail: robert.doty@usdoj.gov

STATE/LOCAL CONTACT:

Name: Steven Keane, Sheriff
Phone: _____
E-mail: steven.keane@co.benton.wa.us

SECTION 7: AUTHORIZATION

USMS Representative - Certification of Funds:

Signature: Jacqueline Gabert Date: 12-1-16
Jacqueline Gabert, Administrative Officer

Chief Deputy or RPTF Commander - Obligation Approval:

Signature: Ben Haraseth Date: 12/1/16
Ben Haraseth, Acting CDUSM

Reimbursement of overtime work shall be consistent with the Fair Labor Standards Act. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-1811-12, Step 1, of the general pay scale for the RUS. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted monthly or quarterly on a fiscal year basis, and which provides the names of the investigators who incurred overtime for the Task Force during the quarter; the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator.

Departmental Representative - Acknowledgement:

Signature: [Signature] Date: 12/6/16

United States Marshals Service
Violent Offender Task Force – Memorandum of Understanding

PARTIES AND AUTHORITY:

This Memorandum of Understanding (MOU) is entered into by the
Benton County Sheriff's Office

and the United States Marshals Service (USMS) pursuant to 28 U.S.C. § 566(e)(1)(B). As set forth in the Presidential Threat Protection Act of 2000 and directed by the Attorney General, the USMS has been granted authority to direct and coordinate permanent USMS Violent Offender Task Forces consisting of Federal, state, and local law enforcement authorities for the purpose of locating and apprehending fugitives. The authority of the USMS to investigate fugitive matters as directed by the Attorney General is set forth in 28 USC § 566. The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC § 561(g) and 28 CFR 0.111. The authority of United States Marshals and Deputy U.S. Marshals, "in executing the laws of the United States within a State . . . [to] exercise the same powers which a sheriff of the State may exercise in executing the laws thereof" is set forth in 28 USC § 564. Additional authority is derived from 18 USC § 3053 and Office of Investigative Agency Policies Resolutions 2 & 15. (*See also*) "Memorandum for Howard M. Shapiro, General Counsel, Federal Bureau of Investigation" concerning the "Authority to Pursue Non-Federal Fugitives", issued by the U.S. Department of Justice, Office of Legal Counsel, dated February 21, 1995. (*See also*) Memorandum concerning the Authority to Pursue Non-Federal Fugitives, issued by the USMS Office of General Counsel, dated May, 1, 1995. (*See also*) 42 U.S.C. § 16941(a)(the Attorney General shall use the resources of federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements).

MISSION:

The primary mission of the task force is to investigate and arrest, as part of joint law enforcement operations, persons who have active state and federal warrants for their arrest. The intent of the joint effort is to investigate and apprehend local, state and federal fugitives, thereby improving public safety and reducing violent crime.

Each participating agency agrees to refer cases for investigation by the VOTF (Violent Offender Task Force). Cases will be adopted by the VOTF at the discretion of the District Chief Deputy. Targeted crimes will primarily include violent crimes against persons, weapons offenses, felony drug offenses, failure to register as a sex offender, and crimes committed by subjects who have a criminal history involving violent crimes, felony drug offenses, and/or weapons offenses. Upon receipt of a written request, the VOTF may also assist non-participating law enforcement agencies in investigating, locating and arresting their fugitives. Task force personnel will be assigned federal, state, and local fugitive cases for investigation. Investigative teams will consist of personnel from different agencies whenever possible. Participating agencies retain responsibility for the cases they refer to the VOTF.

Federal fugitive cases referred to the task force for investigation by any participating agency will be entered into the National Crime Information Center (NCIC) by the USMS or originating agency, as appropriate. State or local fugitive cases will be entered into NCIC (and other applicable state or local lookout systems) as appropriate by the concerned state or local agency.

SUPERVISION:

The VOTF will consist of law enforcement and administrative personnel from federal, state, and local law enforcement agencies. Agency personnel must be approved by the District Chief Deputy prior to assignment to the VOTF. Agency personnel may be removed at any time at the discretion of the District Chief Deputy.

Direction and coordination of the VOTF shall be the responsibility of the USMS District Chief Deputy. Administrative matters which are internal to the participating agencies remain the responsibility of the respective agencies. Furthermore, each agency retains responsibility for the conduct of its personnel.

A Task Force Advisory Committee, consisting of representatives of participating agencies and USMS district personnel, may be established at the discretion of the District Chief Deputy and will meet and confer as necessary to review and address issues concerning operational matters within the VOTF.

PERSONNEL:

In accordance with Homeland Security Presidential Directive 12, personnel assigned to the task force are required to undergo background investigations in order to be provided unescorted access to USMS offices, records, and computer systems. The USMS shall bear the costs associated with those investigations. Non-USMS law enforcement officers assigned to the task force will be deputized as Special Deputy U.S. Marshals.

Task force personnel may be required to travel outside of the jurisdiction to which they are normally assigned in furtherance of task force operations. State or local task force officers traveling on official business at the direction of the USMS shall be reimbursed directly by the USMS for their travel expenses in accordance with applicable federal laws, rules, and regulations.

REIMBURSEMENT:

If the Marshals Service receives Asset Forfeiture funding for either 1) overtime incurred by state and local investigators who provide full time support to USMS VOTF joint law enforcement task forces; or 2) travel, training, purchase or lease of police vehicles, fuel, supplies or equipment for state and local investigators in direct support of state and local investigators, the USMS shall, pending availability of funds, reimburse your organization for expenses incurred, depending on which category of funding is provided.

Reimbursement of overtime work shall be consistent with the Fair Labor Standards Act. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-1811-12, Step 1, of the general pay scale for the RUS. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper request for reimbursement which shall be submitted quarterly on a fiscal year basis, and which provides the names of the investigators who incurred overtime for the VOTF during the quarter; the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total quarterly cost.

The request for reimbursement must be submitted to the District Chief Deputy, who will review the request for reimbursement, stamp and sign indicating that services were received and that the request for reimbursement is approved for payment. Supporting documentation must accompany requests for reimbursement for equipment, supplies, training, fuel, and vehicle leases.

VEHICLES AND EQUIPMENT:

Notwithstanding the above, pending the availability of asset forfeiture funding and approval by the USMS in advance of any purchase, the USMS may acquire vehicles and equipment purchased in support of full time state and local investigators assigned to the VOTF involved in joint law enforcement operations. Such vehicle and equipment purchases are to be titled to the state or local law enforcement agency and must comply with requirements prescribed by the USMS pursuant to this MOU and applicable policies of the United States Department of Justice. Vehicles and equipment provided to state and local law enforcement agencies with asset forfeiture monies provided by the USMS must remain available for exclusive use of the task force officers assigned to the VOTF by the undersigned participant agency for the duration of the task force. Upon termination of the agreement, usage and disposition of such vehicles are at the discretion of the undersigned state or local law enforcement agency.

Pending the availability of funds and equipment, the USMS will issue USMS radios, telephones, and other communication devices to each task force officer to be used for official VOTF business. All equipment used by or assigned to task force officers by the USMS or an agency will remain the property of the agency issuing the equipment and will be returned to that agency upon termination of the task force, or upon agency request.

RECORDS AND REPORTS:

Original reports of investigation, evidence, and other investigative materials generated, seized, or collected by the VOTF shall be retained by the agency in the VOTF responsible for the case. However, evidence may be turned over to other law enforcement agencies as appropriate. Copies of investigative reports and other materials may be provided to other agencies in accordance with applicable laws, rules, and regulations. Task force statistics will be maintained in the USMS Justice Detainee Information System (JDIS) - Warrant Information Network (WIN). Statistics will be made available to any participating agency upon request.

INFORMANTS:

Pending the availability of funds, the USMS may provide funding for the payment of informants. However, all payments of informants utilizing USMS funding shall comply with USMS policy.

USE OF FORCE:

All members of the VOTF will comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-than-lethal devices, to include completing all necessary training and certification requirements. All members of the VOTF and their parent agencies will read and adhere to the DOJ Policy Statement on the Use Of Less-Than-Lethal Devices, dated May 16, 2011. Copies of all applicable firearms, deadly force, and less-than-lethal policies shall be provided to the District Chief Deputy and each concerned task force officer. In the event of a shooting involving task force personnel, the incident will be investigated by the appropriate agency(s).

bb. Contract w/Day Wireless Systems Management Corp. for Installation/Maintenance of Electronic Equipment

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>	
Meeting Date: <u>Dec. 13, 2016</u>	Execute Contract	<u>X</u>
Subject: <u>Contract w/ Day Management Corp. dba Day Wireless Systems</u>	Pass Resolution	<u>X</u>
Prepared by: <u>L. Small</u>	Pass Ordinance	_____
Reviewed by: <u>Ryan Lukson</u>	Pass Motion	_____
	Other	_____
	Consent Agenda	<u>X</u>
	Public Hearing	_____
	1st Discussion	_____
	2nd Discussion	_____
	Other	_____

BACKGROUND INFORMATION/ SUMMARY

Benton County Sheriff’s Office has utilized Day Management Corp. dba Day Wireless System, formally known as Washington Communications LLC, dba/Day Wireless Systems for many years to perform installation and maintenance of electronic equipment in vehicles as well as the hand held equipment carried by our deputies and corrections officers.

The Sheriff’s Office recommends entering into an agreement with Day Management Corp. dba/ Day Wireless Systems for services and support to county communication and public safety systems for calendar years 2017 and 2018 at the following rates:

- \$690.42/per month Jail Portable Maintenance Agreement
- \$90.00/hour for vehicle work and field travel time
- \$90.00/hour for all other technical service work
- \$120.00/hour Senior Tech
- \$150.00/hour for engineering design work
- All products and supplies quoted as required

RECOMMENDATION

Approve the Resolution and Contract attached hereto and authorize the Chairman of the Board to sign said the contract between Benton County and Day Management Corp., dba/Day Wireless Systems for a contract amount not to exceed \$325,000 including WSST.

PA APPROVAL

Ryan Lukson

FISCAL IMPACT

A contract amount not to exceed \$325,000 including WSST, with expenditures to be paid out of the appropriate Departments.

MOTION

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF A PERSONAL SERVICE CONTRACT BETWEEN BENTON COUNTY AND DAY MANAGEMENT CORP., DOING BUSINESS AS, DAY WIRELESS SYSTEMS FOR SERVICES AND SUPPORT TO COUNTY COMMUNICATION AND PUBLIC SAFETY SYSTEMS

WHEREAS, per Resolution 2012-677... the County need not advertise or follow a formal competitive bidding procedure for service contracts, but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost; and

WHEREAS, Benton County Sheriff's Office has utilized Day Management Corp. dba/Day Wireless Systems, formally known as Washington Communications LLC, dba/Day Wireless Systems, for many years to perform installation and maintenance of electronic equipment in vehicles as well as the hand held equipment carried by our deputies and corrections officers; and

WHEREAS, the Sheriff's Office recommends entering into an agreement with Day Management Corp. dba/ Day Wireless Systems for services and support to county communication and public safety systems for calendar years 2017 and 2018 at the following rates:

- \$690.42/per month Jail Portable Maintenance Agreement
- \$90.00/hour for vehicle work and field travel time
- \$90.00/hour for all other technical service work
- \$120.00/hour Senior Tech
- \$150.00/hour for engineering design work
- All products and supplies quoted as required

NOW, THEREFORE

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board concurs with the Sheriff's Office recommendation and hereby awards the personal service contract to Day Management Corp., dba/Day Wireless Systems at the above rates with a total amount not to exceed \$325,000 including WSST; and

BE IT FURTHER RESOLVED, the Board authorizes the Chairman to sign the attached Personal Service Contract between Benton County and Day Management Corp., dba/Day Wireless Systems; and

BE IT FURTHER RESOLVED the term of the attached contract commences January 1, 2017 and expires on December 31, 2018.

Dated this _____ day of _____, 2016

Chairman of the Board

Member

Attest: _____
Clerk of the Board

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

**BENTON COUNTY
PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS**

This Contract is made and entered into by and between **BENTON COUNTY**, political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **DAY MANAGEMENT CORP., doing business as DAY WIRELESS SYSTEMS**, an Oregon corporation authorized to do business in the State of Washington, with its principal offices at 4700 SE International Way, Milwaukie, OR 97222 (hereinafter "CONTRACTOR").

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

1. CONTRACT DOCUMENTS

This Contract consists of the following documents:

- a. Terms and Conditions, (this document)
- b. Exhibit A, (85 Jail Portable Radio serial numbers)

2. DURATION OF CONTRACT

The term of this Contract shall begin January 1, 2017 and shall expire on December 31, 2018. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

The CONTRACTOR shall perform the following services:

- a. The provision of services and equipment in support of COUNTY's communication and public safety systems; to include radios and radio parts & peripherals (for mobile radios, patrol portable radios, and for jail portable radios detailed in Exhibit A), emergency equipment, and other parts necessary for the outfitting & equipping of COUNTY vehicles, boats, and aircraft.
- b. CONTRACTOR further agrees to provide ongoing maintenance, for the equipment described in section 3a, which shall include the labor and parts required to repair equipment, which has become defective through normal wear and usage. The equipment will be maintained by the CONTRACTOR in accordance with these

standards:

1. Motorola parts of equal quality will be used.
 2. Oil, water, dust and foreign substances will be removed from the equipment.
 3. The equipment will not be subject to mechanical abuse.
 4. The equipment will be maintained at the levels necessary to provide the required communication.
 5. Routine maintenance procedures will be followed.
 6. All maintenance work will be done by qualified technicians. The equipment will be inspected and adjusted periodically and as often as required.
- c. The COUNTY shall notify the CONTRACTOR in the event of the failure or malfunction of the unit. If the CONTRACTOR fails to repair the unit within a reasonable time, the COUNTY shall notify the CONTRACTOR in writing. After said notice from the COUNTY to the CONTRACTOR, the CONTRACTOR shall be liable for any interruption or interference affecting the use of or transmission through the equipment maintained to the extent of a pro rate allowance based on the monthly maintenance fee for the time such interruption or interference is attributable to the fault of the CONTRACTOR.
- d. 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.
- e. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- f. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- g. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.
- h. COUNTY makes no representation that it will use CONTRACTOR as its sole provider for the services provided hereunder. COUNTY has the sole discretion to contract and use other providers for the above listed services.

4. CONTRACT REPRESENTATIVES

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

- a. For CONTRACTOR: Patrick Lund, Service Manager
2608 W. Sylvester,
Pasco, WA 99301
(509)547-8502
PLund@daywireless.com

- b. For COUNTY: Lisa Small, Contract Coordinator
7122 W. Okanogan Place Bldg. B
Kennewick, WA 99336
(509) 735-6555 ext. 3880
Lisa.Small@co.benton.wa.us

5. COMPENSATION

For the services described in Section 3, the CONTRACTOR shall be paid as follows:

- a. Service Rates:

\$90.00/hour for vehicle work and field travel time
\$90.00/hour for all other technical service work
\$120.00/hour Senior Tech
\$150.00/hour for engineering design work
All products and supplies quoted as required.
The compensation rate for the jail portable maintenance units described in Exhibit A shall be \$690.42 per month.

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

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

of receipt.

- d. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- f. Unless otherwise provided in this Contract or any exhibits 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, 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, which are caused in whole or in part by any act or omission, negligent or otherwise, of CONTRACTOR or its subcontractors, which arise in connection with the work performed under this Contract, or are 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, its officers, officials, employees or agents.

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

8. INSURANCE

- a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-

subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

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

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

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

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

The CONTRACTOR will provide commercial general liability

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

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

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

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

d. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.
2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**
7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.
8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.
9. Compensation and/or payments due to CONTRACTOR under this Agreement are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

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

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington 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 CONTRACTOR, 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 CONTRACTOR's insurance and shall not contribute to it.
2. Certificates of Liability Insurance, with endorsements attached, are to be provided to the County's Contract Representative referenced in Section 4.
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 at the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

9. TERMINATION

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

the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in 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 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 or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.
- d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law which are now or may be enacted during the term of this Contract.
- e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

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

15. NONDISCRIMINATION

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

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, all forms of electronic media, and 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, 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 there from 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 or at the end of the job using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

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

18. DISPUTES

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

instructions and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

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

20. CHOICE OF LAW, JURISDICTION AND VENUE

- a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

21. SUCCESSORS AND ASSIGNS

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

22. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be

in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

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

24. NOTICES

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

25. CUSTODY OF VEHICLES

The parties understand that in order to accomplish the work required by this agreement, CONTRACTOR will have the need to take temporary custody of marked law enforcement patrol cars for periods of time. Accordingly, the parties agree that the custody of the patrol cars will be subject to the following conditions:

- a. All patrol cars that are left in the custody of CONTRACTOR shall not contain firearms or ammunition of any sort - representatives of the Benton County Sheriff's Office have responsibility to ensure that firearms and ammunition are removed from the cars when they are left in CONTRACTOR's custody. Additionally, CONTRACTOR shall immediately notify the Benton County Sheriff's Office if it discovers any firearms or ammunition within the cars while work is being done;
- b. CONTRACTOR shall ensure that only those trusted, fulltime employees who are required to do work under this contract shall have access to the patrol cars or to the keys which access same and shall not permit any third parties or sub-contractors to have access to patrol cars or keys without prior written permission from COUNTY;
- c. During all times when CONTRACTOR is not actively working on

patrol cars, said patrol cars shall be fully locked, any available alarm or anti-theft systems shall be activated, and the cars shall be stored in a secure location protected by, at a minimum, locked fencing, and the keys which access same shall be in a locked, secured location;

- d. If CONTRACTOR or any of its employees discovers that any patrol cars in its custody are missing, it shall immediately notify the Benton County Sheriff's Office On-Duty Patrol Supervisor through contacting SECOMM at (509) 628-0333 and ensuring contact and notification is made;
- e. CONTRACTOR and its employees shall not operate any patrol car in its custody anywhere outside of CONTRACTOR's property without first obtaining the express permission of the Patrol Captain at (509) 735-6555 Ext. 3283 or his designee. The only exception is for incidental traveling along a portion of a roadway for purposes of moving patrol cars from one portion of CONTRACTOR's premises to another portion of CONTRACTOR's premises as necessitated by the work being done pursuant to this agreement;
- f. If it becomes necessary to test-drive any patrol car in CONTRACTOR's custody for the purposes of testing or verifying work being done pursuant to this agreement, CONTRACTOR shall first obtain the express permission of the Patrol Captain at (509) 735-6555 Ext. 3283 or his designee.
- g. In the same manner as stated in the indemnification provisions (Section 7) of this agreement, CONTRACTOR shall indemnify COUNTY for any claims, liability, attorney's fees, judgments, expenses or costs whatsoever, related in any way to claims or lawsuits filed as a direct result of CONTRACTOR's use of any patrol car.

25. SURVIVABILITY

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

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an

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

27. PUBLIC RECORDS ACT

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

This section was intentionally left blank

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representative and is effective January 1, 2017.

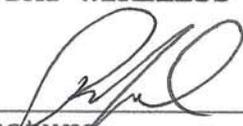
DATED: _____

DATED: 12/6/16

BENTON COUNTY

DAY MANAGEMENT CORP.
DBA/DAY WIRELESS SYSTEMS

Shon Small, Chairman
Benton County Commissioner



Signature
Patrick Lund
Service Manager

Print Name and Title

Approved as to Form:



Ryan J. Lukson
Civil Deputy Prosecuting Attorney

EXHIBIT A

XTS2500 Portable radios: serial numbers defined below

205CFT3893, 205CFT3896, 205CFT3897, 205CFT3891

205CFT3892, 205CFT3898, 205CFT3895, 205CFT3890

205CFT3894, 205CGD1970, 205CGD1960, 205CGD1962

205CGD1967, 205CGD1964, 205CGD1963, 205CGD1966

205CGD1968, 205CGD1969, 205CGD1965, 205CJK4278

205CHD1136, 205CJM6149, 205CJM6150, 205CJM6151

205CJM6152, 205CJM6153, 205CJM6154, 205CJM6155

205CJM6156, 205CJM6157, 205CJM6158, 205CJM6159

205CJM6160, 205CJM6161, 205CJM6162, 205CJM6163

205CJM6164, 205CJM6165, 205CJM6166, 205CJM6167

205CJM6168, 205CJM6169, 205CJM6170, 205CJM6171

205CJM6172, 205CJM6173, 205CJM6174, 205CJM6207

205CJM6175, 205CJM6176, 205CJM6177, 205CJM6178

205CJM6179, 205CJM6180, 205CJM6181, 205CJM6182

205CJM6183, 205CJM6184, 205CJM6185, 205CJM6186

205CJM6187, 205CJM6188, 205CJM6189, 205CJM6190

205CJM6191, 205CJM6192, 205CJM6193, 205CJM6194

205CJM6195, 205CJM6196, 205CJM6197, 205CJM6198

205CJM6199, 205CJM6200, 205CJM6201, 205CJM6202

205CJM6203, 205CJM6204, 205CJM6205, 205CJM6206

205CJK4273, 205CJK4274, 205CJK4275, 205CJK4276

205CJK4277

<u>AGENDA ITEM</u>	<u>TYPE OF ACTION NEEDED</u>		
Meeting Date: <u>Dec. 13, 2016</u>	Execute Contract	_____	Consent Agenda <u>X</u>
Subject: <u>Furniture Purchase</u>	Pass Resolution	<u>X</u>	Public Hearing _____
Prepared by: <u>L. Small</u>	Pass Ordinance	_____	1st Discussion _____
Reviewed by:	Pass Motion	_____	2nd Discussion _____
	Other	_____	Other _____

BACKGROUND INFORMATION/ SUMMARY

The Benton County Sheriff's Office wishes to replace the timeworn furniture in the training room located in the Benton County Sheriff's Office.

The Benton County Sheriff's Office has purchased Haworth furniture from Brutzman's in the past, is pleased with the functionality and durability of the furniture, and desires to keep the same brand of furniture.

The Benton County Sheriff's Office solicited the following companies from the MRSC Vendor's List to provide a quote for said furniture with the following results:

- Brutzman's Office Solutions, Richland, WA (\$15,616.57 including W.S.S.T, shipping & installation)
- Pacific Office Solutions, Yakima, WA – Declined
- Keeney's Office Supply, Inc., Redmond, WA – Did not respond
- Accurate Installation & Design, Everett, WA – Did not respond
- Quantum Solutions, LLC, Spokane, WA – Did not respond
- Southwest Office Supply, Portland, OR – Did not respond

Brutzman's Office Solutions is the only company who submitted a proposal and is a distributor for Haworth furniture.

RECOMMENDATION

Approve the attached Resolution authorizing the purchase of Haworth furniture for training room located within the Benton County Sheriff's Office to Brutzman's Office Solutions, Kennewick, WA with the amount of \$15,616.57 including WSST, shipping & installation, with the total amount not to exceed \$16,000.00 for any acceptable overages, incidentals and other unanticipated cost.

FISCAL IMPACT

Said expenditures were approved in the 2015/2016 budget process and will be paid from Departments 120 & 121 from the 2015/2016 budget.

MOTION

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING AND AWARDING THE PURCHASE OF HAWORTH FURNITURE TO BRUTZMAN’S OFFICE SOLUTIONS FOR THE BENTON COUNTY SHERIFF’S OFFICE TRAINING ROOM

WHEREAS, per Resolution 2012-677, the Benton County Procurement, Leasing and Contracting Policy, Section 2.2.2 outlines the requirements for purchases or leases between \$5,000 and \$24,999 requiring written quotations from at least three (3) vendors on the vendor list; and

WHEREAS, the Benton County Sheriff’s Office wishes to replace the tables and chairs in the training room located in the Sheriff’s Office; and

WHEREAS, the Benton County Sheriff’s Office has purchased Haworth furniture from Brutzman’s in the past, is pleased with the functionality and durability of the furniture, and desires to keep the same brand of furniture; and

WHEREAS, the Benton County Sheriff’s Office solicited the following companies from the MRSC Vendor’s List to provide a quote for said furniture with the following results:

- Brutzman’s Office Solutions, Richland, WA (\$15,616.57 including W.S.S.T, shipping & installation)
- Pacific Office Solutions, Yakima, WA – Declined
- Keeney’s Office Supply, Inc., Redmond, WA – Did not respond
- Accurate Installation & Design, Everett, WA – Did not respond
- Quantum Solutions, LLC, Spokane, WA – Did not respond
- Southwest Office Supply, Portland, OR – Did not respond

WHEREAS, Brutzman’s Office Solutions is the only company who provided a proposal and is a distributor for Haworth furniture; and

WHEREAS, the Benton County Jail Lieutenant reviewed the quote for completeness and recommends awarding the purchase of said furniture identified within the attached quote to Brutzman’s Office Solutions, Richland, WA in the amount of \$15,616.57 including WSST, shipping, & installation; **NOW THEREFORE**,

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington, hereby authorizes the purchase of Haworth furniture identified in the attached quote for the training room located within the Benton County Sheriff’s Office to Brutzman’s Office Solutions, Richland, WA with the amount of \$15,616.57 including WSST, shipping & installation to be paid directly to Haworth, Inc., with the total amount not to exceed \$16,000.00 for any acceptable overages, incidentals and other unanticipated cost.

Dated this _____ day of _____, 2016.

Chairman of the Board

Member

Member

Constituting the Board of Commissioners
of Benton County, Washington.

Attest.....
Clerk of the Board

Orig: Sheriff’s Office
cc: Auditor, Brutzman’s, Purchase file

Quote

BRUTZMAN'S OFFICE SOLUTIONS

P.O. BOX 6044

KENNEWICK, WA 99336-0044

phone:(509) 735-0300

FAX:(509) 735-0330

sold to:

BENTON CO. SHERIFF'S OFFICE

7122 W. OKANAGON PL. BLDG. B

KENNEWICK , WA 99336

order number: 0000824287

customer number: 7356555

telephone number: ()735-6555 ext:

fax number: (509)222-3745

page number: 1

order date: 12/05/2016

ship to:

7122 W. OKANAGON PL. BLDG. B

KENNEWICK , WA 99336

special comments/instructions:

purchase order	customer representative	invoice terms	sales representative			
	ANGIE 735-8388 X3218	NET 10TH PROX	KEN BRUTZMAN			
quantity	mfg/product number	product description	unit price	net price	unit	amount
15	PTT TARA-2460-LTSNCH4A H_AD,HP_AD,TR_J,TR_F	HAWORTH ITEM Planes,Table,Rt,Lam,24"x60",Tm3,Std,Co:None,Train,Cst - Flip	1286.01 / 1	540.12 / 1	EA	8,101.80
30	HAE M600-2112 1X_2,TR_F	HAWORTH ITEM Improv,4Leg, Side chair, Uph Plstc Bk,Arm,Hrd Cstrs,	543.71 / 1	190.27 / 1	EA	5,708.10
		INSTALLATION SERVICES				570.00

*****NOTES*****

>Pricing per U.S. Communities contract #55603/AA.

>FOB Point: Destination.

	14,379.90
sales tax	1,236.67
total	15,616.57

Public Agency Name: Benton County
Roster Type: Vendor Roster
Date: 12/01/2016
Time: 12:01 pm
Main-Category: General Goods
Sub-Category: Furniture, Office Equipment and Furniture

Vendor Roster Businesses:

Accurate Installation & Design
BRUTZMAN'S OFFICE SOLUTIONS
Keeney's Office Supply, Inc
Pacific Office Solutions
Quantum Solutions, LLC
Southwest Office Supply

<u>AGENDA ITEM</u>		<u>TYPE OF ACTION NEEDED</u>	
Meeting Date:	<u>12/13/2016</u>	Execute Contract	<u> </u>
	Line Item		
Subject:	<u>Transfers</u>	Pass Resolution	<u> X </u>
Prepared by:	<u>Eileen Hewitt</u>	Pass Ordinance	<u> </u>
Reviewed by:	<u> </u>	Pass Motion	<u> </u>
		Consent Agenda	<u> X </u>
		Public Hearing	<u> </u>
		1st Discussion	<u> </u>
		2nd Discussion	<u> </u>
		Other Business	<u> </u>

BACKGROUND INFORMATION

Department 108 request to transfer funds within current expense budget to cover shortfall in salaries and benefits.

SUMMARY

Department 108 WSU Extension request to transfer funds to cover shortfall in salaries and benefits. There are adequate funds available to transfer. No additional funds are being requested.

MOTION

In the matter of County funds RE: Transfer of funds within current expense fund number 0000-101, Department 108. Be it resolved funds shall be transferred as outlined in Exhibit "A" attached hereto.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN
CURRENT EXPENSE FUND NUMBER 0000-101, DEPARTMENT NUMBER 108.

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 _____, _____ 2016

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, LSK

Prepared by: Eileen Hewitt

BENTON COUNTY LINE ITEM TRANSFER

Dept Name: WSU Extension

Dept Nbr: 108

Fund Name: Current Expense

Fund Nbr: 0000-101

TRANSFER FROM:

TRANSFER TO:

BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT	BASE SUB (6 digit)	LINE ITEM (4 digit)	LINE ITEM NAME	AMOUNT
571.210	1905	Temporary Help	\$2,914	571.210	1256	Secretary	\$2,914
571.210	1905	Temporary Help	\$609	571.210	2103	Medical Insurance	\$609
571.210	1905	Temporary Help	\$3,238	571.210	2104	Retirement	\$3,238
TOTAL			\$6,761	TOTAL			\$6,761

Explanation:

The transfer is needed to cover the shortfall seen in salaries and benefits. We have adequate funds available in our temporary help line item to cover these transfers.

Prepared by: Eileen Hewitt *Eileen Hewitt*

Date: 11/23/16

Approved

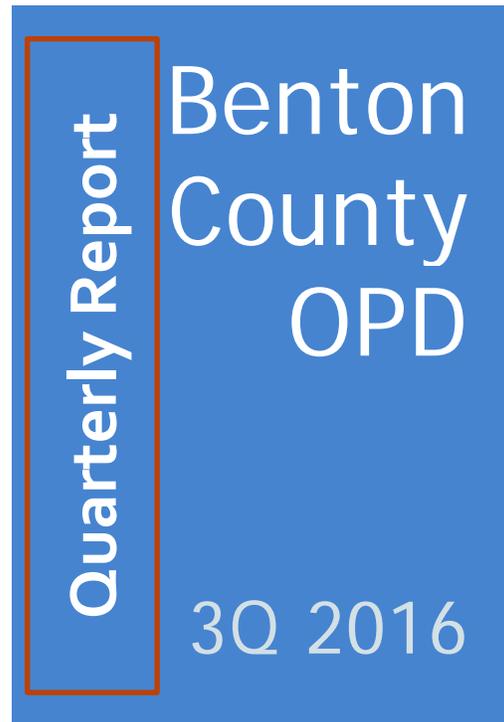
Denied

Date: _____

Chairman

Member

Member



WHAT'S GOING ON

WHAT WE'RE TRYING TO DO BETTER

Notable Trends

Here are the top management trends for Benton County public defense services in 2016.

District Court caseloads are increasing while filings drop

District Court public defender caseloads are on the rise. While this, alone, may not be newsworthy, what is notable is the fact that this rise comes amid steep reductions in local and state-wide case filings. *See page 4 for more and page 8 for full caseload data.*

Comparison of 2014 and 2016 for Jan-Aug	
-13.7%	Reduction in Benton County criminal cases filed.
-6.3%	Reduction in State-wide criminal cases filed.
+9.3%	Increase in Benton County public defender caseload.

Juvenile Court criminal cases continue to decline

The criminal caseload in juvenile court continues to follow a state-wide downward

trend that has been persisting for past many years.

Mental health issues continue to be a huge concern

Mental health issues continue to be a significant driving factor in public defense cases. Increasing number of cases involve mental health issues: either relating to **competency** to stand trial or **capacity** to commit the alleged crime. *See page 6 for more.*

Performance Standards Metrics show solid performance

Analysis of Performance Standards Metrics, collected since August, 2015, show that public defender performance is solid. Motions are being filed and argued, trials are being held, and clients are regularly visited in jail and juvenile detention. *See page 8 for details.*

Violent crime rate trends below state average

Benton County's violent felony filing rate continues to trend below state average this year, continuing a multi-year trend. *See page 5 for details.*



Saving Money on Experts

Expert services can be a large, unpredictable expense. To save money, we've negotiated "public defense" rates with regional experts in return for a steady volume of our cases.

Page 2



dImage by Luis Llerna @ Unsplash.com

Smarter Data Verification

Fiscal responsibility is one of our top two priorities. We are constantly improving our data verification systems so that caseload counts (and therefore compensation) is as accurate as possible.

Page 4

Smarter Data Verification

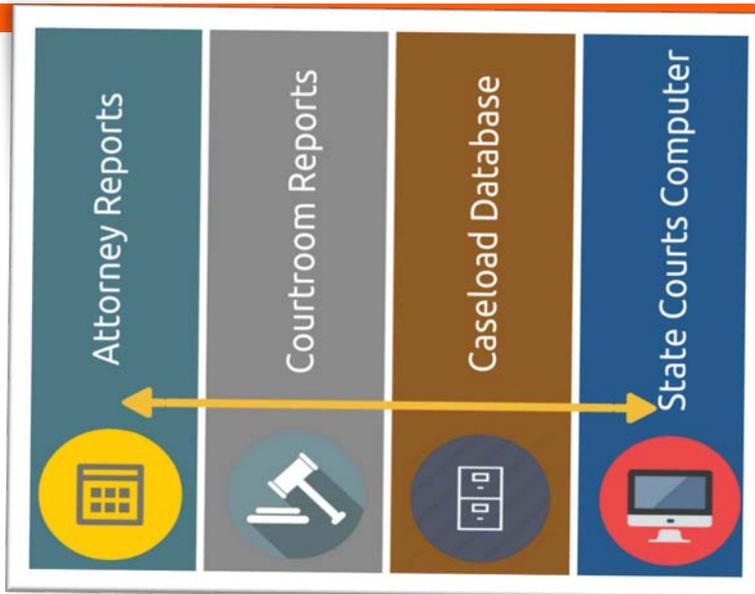
Fiscal responsibility is one of our two primary mission goals. Since compensation of contract attorneys is directly tied to their caseloads, caseload Data Verification is something we strive to do with the highest levels of accuracy possible.

Our Data Verification process has evolved significantly since the days when Benton County paid compensation simply based on attorney reports. Internal audits we conducted often showed many problems including multiple attorneys claiming compensation for the same case; attorneys mistakenly claiming cases they were not assigned; and failure to report when private counsel was hired for their assigned cases.

Today, we are confident that our four step Data Verification system allows us to verify our caseload data with the highest accuracy possible.

1 Attorney Reports

Data Verification starts with caseload reports generated by attorneys themselves. These reports are submitted with attorneys



4 State Courts Computer

All conflicts are resolved using the State Courts Computer System which is regarded as the final authority on appointment of cases.

attesting to their accuracy under penalty of perjury.

2 Courtroom Reports

At the same time, we receive reports directly from the courtroom and enter attorney caseloads from that source into our internal caseload database.

3 Caseload Database

Our custom developed caseload database includes features that prevent double-entry of cases so that compensation will be paid only once on any given case. The database also flags and conflicts between attorney reports and courtroom reports.

FAST FACTS

6,123

Cases tracked and verified using our Caseload Database in 2015

Key Staff Person:

Denise Gerry, OPD's Office Manager, is in charge of the Data Verification Program.

FAST FACTS

37%

Estimated savings on Mental Health expert costs from combination of reduced fees and expedited reimbursements from DSHS

Saving money with experts

Even though overall case filings are down almost across the board, factors including increased case complexity and mental health



concerns continue to require significant investment in expert services.

The Cost of Experts

Contrary to investigators, State public defense standards don't allow us to dictate the use of certain investigators in public defense cases. Instead, funding agencies (such as OPD in Benton County's case), are allowed to place reasonable parameters on the maximum funding that will be allowed. Historically, this is how expert funding was approached: a funding limit was approved and public defenders were free to go to the open market to seek an expert.

Open Market Caveat

The difficulty with this traditional model is twofold. First, experts, many of whom are used to working with private attorneys, are

expensive – and getting increasingly so. Second, the quality of experts on the open market can vary a great degree and when we use them only on an occasional basis, there is little opportunity for dialog to improve how they can help us on our cases.

A Better Solution

We’ve developed a better solution for working with experts we call the Screened Expert Program. Similar to the system in place for public defense investigators (where we have a select number of investigators under contract), we’ve contacted experts and negotiated special “public defense rates” while also conducting basic screening to qualify them for their stated field of expertise. Furthermore, in order to get the most favorable rates possible, we’ve taken on many of the logistical aspects of their services such as scheduling, and have also “batched” cases so that experts have been able to attend to multiple cases with just one trip to the Tri-Cities.

Feedback and Training Opportunities

An additional benefit of forging a closer relationship with our experts is the training and development opportunities. Seeing an expert on a regular basis (including during court hearings as they come up) allows us to provide them with valuable feedback that will make them better experts for us (and other attorneys too, no doubt). At the same time, experts are often happy to assist us with our training for public defenders and are regularly featured as guest presenters during in-house training Continuing Legal Education (“CLE”) seminars.

Success with Mental Health

This program has, so far, been used primarily with mental health cases where we’ve developed working relationships with two mental health evaluators to help us with cases where there is a need to either conduct a second competency evaluation or to conduct a diminished capacity evaluation.

Reimbursements from the State

An additional benefit of the Screened Expert Program and the close working relationships it forges is how easily we are now able to qualify for state reimbursement of costs.

State law requires DSHS to reimburse Benton County for a certain amount of the costs of competency evaluations. To qualify for the reimbursement, however, requires billing to be done in a certain way that is not the norm for privately hired mental health

experts. Unfortunately, with “open market” evaluations it can be difficult to make sure that the evaluation billing is done correctly. The predictable billing process of experts in our Screened Expert Program has made it much easier for us to qualify for state reimbursement. The result has been quick reimbursements and lots more of it.

Key Success Metrics – Mental Health Services

14 days	Maximum lead time for evaluations (shorter for in-custody or emergency evaluations)
\$15,020	In reimbursements received from DSHS as of Sept
\$12,900	In estimated savings on expert’s fees
32	Evaluations conducted in 2016 as of Sept

The Screened Expert Program has represented the best of private sector “win-win” partnerships. Benton County receives faster service, lower rates and training resources. Experts receive a steady volume of work and valuable feedback on their services.

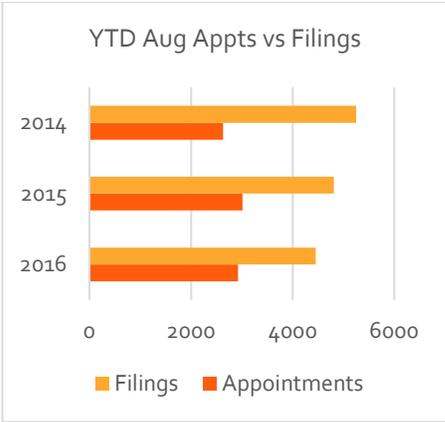


Figure 1 District Court Caseload trend

Filings vs. Appointments: What's the Difference?

In this report, you will often see references to the terms "filings" and "appointments." These two terms are very different and can explain differences in caseload reports from OPD and other sources.

Filings – Total number of criminal cases filed regardless of whether they are resolved without needing a defense attorney, defended by a private attorney, or appointed to a public defender.

Appointment – The subset of Filings that are actually appointed to public defenders.

FAST FACTS

2014 rate

50%

Of cases filed in District Court were assigned a public defender Jan-Aug 2014.

2016 rate

66%

Of cases filed in District Court were assigned a public defender Jan-Aug 2016.

The District Court Defense Unit is the largest Unit in the Office of Public Defense. We staff this Unit with 17 contract defenders and one staff defender, and handle all aspects of legally mandated public defense services in District Court including defense of new criminal cases and probation violations, initial arraignment representation, and representation for mental health court. In addition to cases filed by the Benton County Prosecutor's Office, we also provide legally mandated public defense cases on all cases filed in District Court by the cities of Kennewick, Richland, West Richland and

good number of these defenders (who take partial contracts and are paid "by the case" only), it is difficult to fine tune the appointment of cases so that contract defenders who are paid a monthly rate for "up to" a maximum caseload get exactly that caseload and no less.

Mental health evaluations on the rise

2016 saw the start of the much awaited Mental Health Court in Benton County. This has been a much needed program for the mentally ill defendants in District Court.

Focus on District Court

Prosser.

Major issues in 2016

This year, the two major issues of concern in District Court have been:

1. A public defender caseload that is rising and trending opposite from criminal case filing trends.
2. A tighter talent pool

Caseloads are rising

As shown in figure 1, the public defender caseload in District Court is exhibiting an unusual phenomenon. It is **rising** (by almost double digits) while local and state-wide District Court criminal case filings are actually **dropping** significantly.

Tighter talent pool

Benton County is increasingly facing competition from nearby jurisdictions (such as Yakima County and now Pasco and Franklin County) for District Court contract defenders. At the same time, some of these other jurisdictions have chosen to increase contract public defense compensation (for example, the City of Pasco apparently now pays \$72,000 a year for District Court public defense contracts, beating out Benton County's 2016 rate of \$69,648.60 by over 3%).

The combination of these factors has made it increasingly difficult to recruit public defense contractors for our District Court unit. While an increase in compensation has been slated for 2017 and 2018 that will bring compensation up to par with that of City of Pasco contract defenders, this may not be enough to do much more than just keep up.

The biggest problem with this tighter talent pool lies in difficulty with recruiting "conflict and overflow" contract defenders. Without a

Even so, mental health issues continue to be a serious concern in cases and mental health evaluations for District Court cases are frequently requested. In fact, of the 3,167 cases assigned to public defenders in 2016 as of Sept 30, 66 of them (or 2.1 %) resulted in competency evaluations and another ____ resulted in a need for a capacity evaluation (where the defendant is evaluated to decide whether a mental illness made them less able to form criminal intent).

FAST FACTS

2.1%

Of District Court cases appointed to public defenders from Jan-Aug, 2016 needed a **mental health competency evaluation**.

Superior Court

So far this year, the caseload trend in Superior Court is quite different than in District Court. While Benton County's filing rate change between 2014 and 2016 of -10.4% easily beats the state-wide rate of +5.4%, this didn't fully translate into reduced appointments to public defenders. In fact, the reduction in appointments to public defenders over this time was only a modest -6.3%.

Comparison of 2014 and 2016 for Jan-Aug	
-10.4%	Reduction in Benton County criminal cases filed.
+5.4%	Reduction in State-wide criminal cases filed.
-6.3%	Increase in Benton County public defender caseload.

FAST FACTS



84%

Of cases filed in Superior Court were assigned a public defender Jan-Aug 2014.



88%

Of cases filed in District Court were assigned a public defender Jan-Aug 2016.

3.3%

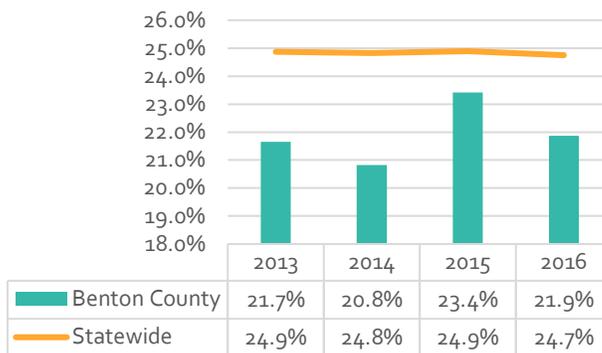
Of Superior Court cases appointed to public defenders from Jan-Aug, 2016 needed a **mental health competency evaluation**.

What Types of Cases are we Seeing?

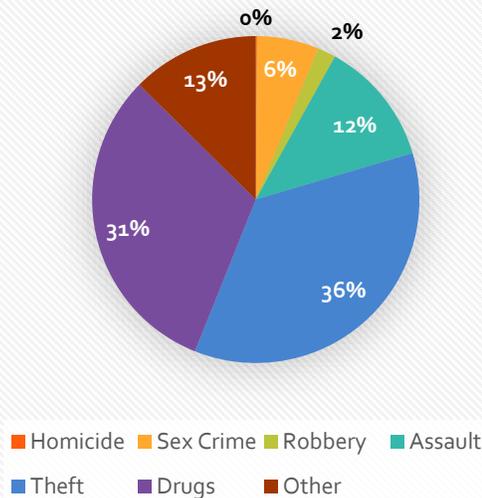
Benton County has been very fortunate in the past year to see only one homicide case filed and a violent crime rate that is persistently below state average (see chart below).

Overall, roughly a third of cases filed in Superior Court are drug offenses and another third are theft related offenses. The remaining third is split between violent crime (22% so far in 2016) and other crimes.

Percentage of Superior Court cases that are violent person-crimes Jan-Aug



Superior Court Filings YTD Aug 2016



"Benton County is fortunate to have a violent felony crime filing rate that has been persistently below the statewide average."

Major Challenges in Superior Court?

Undoubtedly mental health issues are some of the top challenges to public defense services in Superior Court. With 3.3% of cases needing a competency evaluation and this number increasing every year for the past few years, this is a major problem with far-reaching consequences and no good solutions in sight.

Mental Health

Mental health continues to be a significant concern our office. The number of OPD-funded mental health evaluations continues to increase year over year (reaching a level that is 17% higher than last year's total number when this year is still three months from being over). Furthermore, even though this is the first year that competency evaluations conducted by Eastern State Hospital has been tracked (so

Competency vs Capacity; Eastern State Hospital vs OPD-funded. How it all works.

The area of mental health evaluations in criminal cases can often be confusing. Here is a primer.

Competency Evaluation – These evaluations are ordered when there is a reason to doubt that a defendant is *competent to stand trial or to aid and assist his/her attorney.*

Capacity Evaluation – These evaluations are requested when there is a reason to believe that a defendant was mentally ill or otherwise impaired and therefore unable to form the requisite criminal intent for the charged crime.

Eastern State Hospital Funded Evaluation – In the case of competency evaluations, the first step is always to have Eastern State Hospital fund and conduct an initial evaluation. These are almost always conducted by staff psychiatrists from the Hospital.

OPD-Funded – OPD funds two types of evaluations. First, OPD will fund a “second opinion” competency evaluation if the public defender disagrees with the findings in the initial Eastern State Hospital evaluation. Second, OPD will also fund all evaluations requested to evaluate a defendant’s capacity.

no trends can be established) the number of such evaluations is much higher than expected.

How did things get so bad?

The main cause behind the recent, multi-year trend in mental health problems appears to be reduced levels of state funding. According to [Mental Health America](#), Washington State’s funding for mental health services is among the lowest in the nation. As a result (and confirmed by anecdotal information from local providers) many mental health consumers with known, diagnosed mental health problems find themselves unable to access either treatment or medication, decompensate, and spiral back into the criminal justice system.

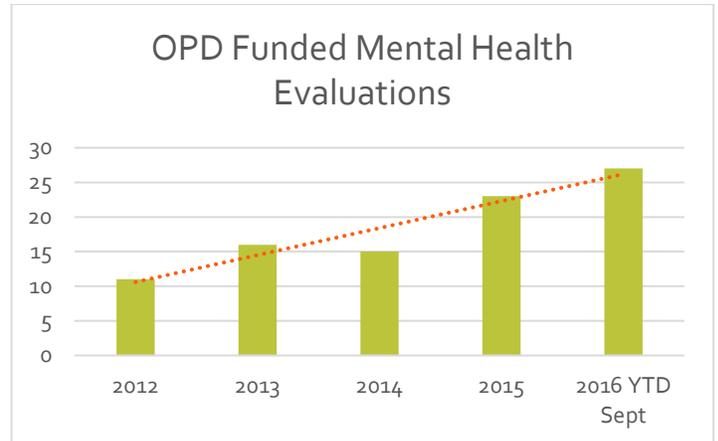
What’s being done about it? Litigation...

Locally, OPD has implemented a Screened Expert program. This program has succeeded in providing timely, quality, mental health evaluation services at a reduced cost.

On a state-wide basis, the issue of timely evaluation has been addressed with litigation. Specifically, backlogs at both Eastern State Hospital and Western State Hospital had been resulting in defendants waiting for extended periods of time, sometimes many weeks, for competency evaluations. These long waits were leading to health and safety issues for the defendants, public safety issues (when the

defendants were not in custody) and legal issues relating to the violation of defendant rights.

The State Hospital backlogs were ultimately resolved with litigation. In 2015, the case class action lawsuit *Trueblood et al v. DSHS*, ultimately resulted in a federal consent decree that required competency evaluations to be provided within seven days. While this was a positive development, problems continued to be seen at the local court level. This resulted in continued litigation on an individual case basis by our public defenders and even resulted in threats of Contempt of Court by Benton County Superior Court. Ultimately, starting in mid-2016, a triage system was established by the State Hospitals which appears to now be successful in addressing the issue of timely evaluations.



How does this affect public defenders?

Having a growing caseload of clients with mental health problems is a significant issue for public defenders. Here are some of the issues:

- Clients with mental health concerns are harder to work with and present numerous legal and ethical challenges that cause even simple cases to become complex and cause complex cases to drag on for long periods of time.
- Clients with mental health concerns are a safety risk to public defenders during meetings both in and out-of-custody.
- Clients with mental health concerns require significantly more resources to defend (including the use of experts such as mental health evaluators).
- Public defenders are increasingly caught in dilemmas resulting from their minimal mental health training (ie they often don't have the training or experience necessary to have a good understanding of when they need the assistance of an expert).

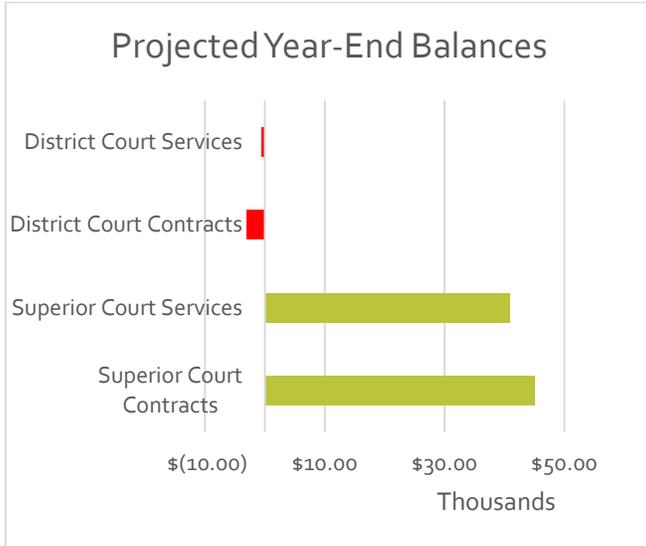
What is OPD doing?

The best thing we can do as a public defense office to help public defenders with this issue is to make sure they have what they need to do their jobs. Specifically, we are committed to making sure that public defenders have **resources and training**. Resources includes not just access to good quality, competent, experts that can assist with mental health issues on a case-by-case basis, but also the advice of more seasoned public defenders who can advise less experienced public defenders on mental health issues. Training on mental health issues, with a particular emphasis on helping public defenders develop best practices on **when** they should seek the help of experts, and giving them the insight into **how** best to work with experts, will also be one of the primary focuses of our in-house training program for the coming biennium.

Financial Update

End of Biennium Forecast

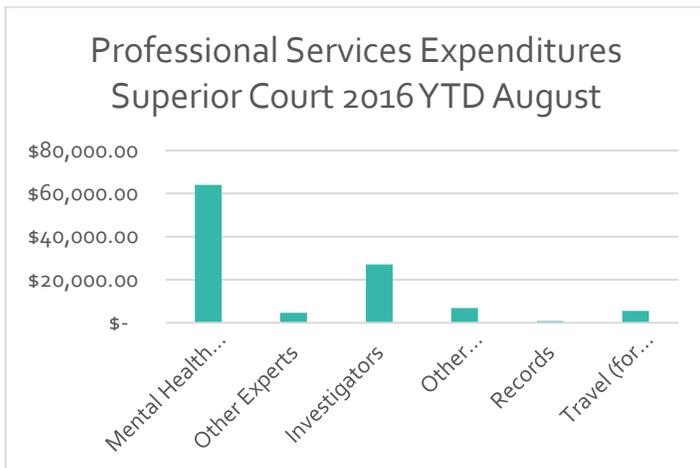
Barring any unusual expenses in the last quarter of the biennium, we forecast a net surplus for the end of the biennium. Some minor readjustment across line items may be necessary though.



Projections based on financials as of end of Sept, 2016.

Superior Court professional services spending break-down

Our spending so far this year breaks down as follows (as of September 30, 2016):



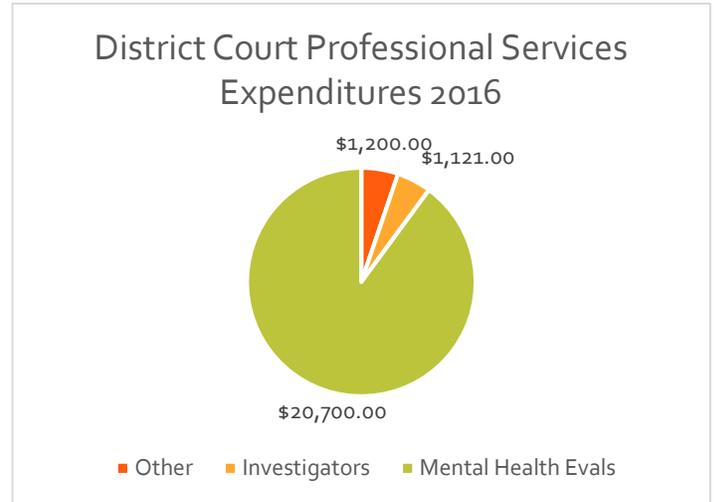
With no hourly (homicide or 2/3-strike) cases in the last biennium, spending has been lower than average for these services.

Importance of District Court professional services line item underscored

This past biennium, we requested that District Court delegate authority to approve miscellaneous professional services to support public defense cases to us. This was done because of increasingly frequent instances of District Court declining requests for funding (often even for such pressing needs as mental health evaluations) citing a lack of funding in their department. We were concerned that this lack of

access to professional services funding in District Court was not only a disservice to vulnerable clients, but also a potential source of county liability.

As it turns out, this newly created and funded line item was utilized quite a bit during the 2015-2016 biennium with the majority of it being used for mental health evaluations. **As such, we continue to believe that this line item is very important to have in place to support our District Court public defense services.**



"We were concerned that this lack of access to professional services funding in District Court was not only a disservice to vulnerable clients, but also a potential source of county liability"

Performance Standards Monitoring

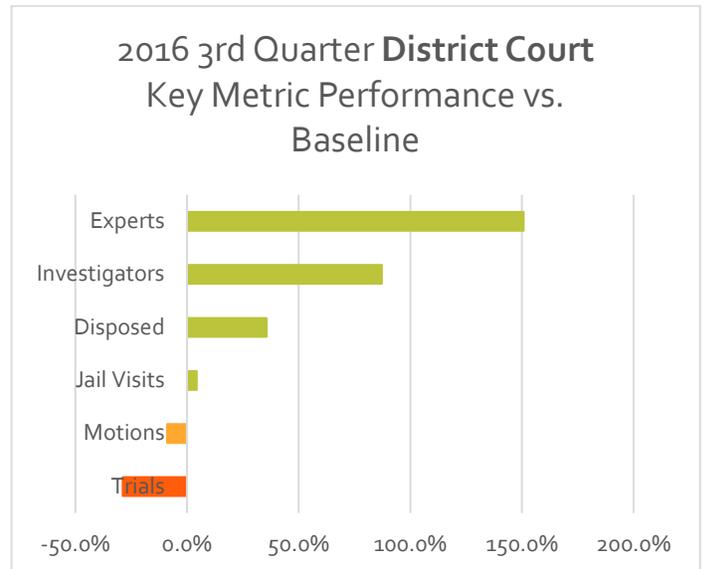
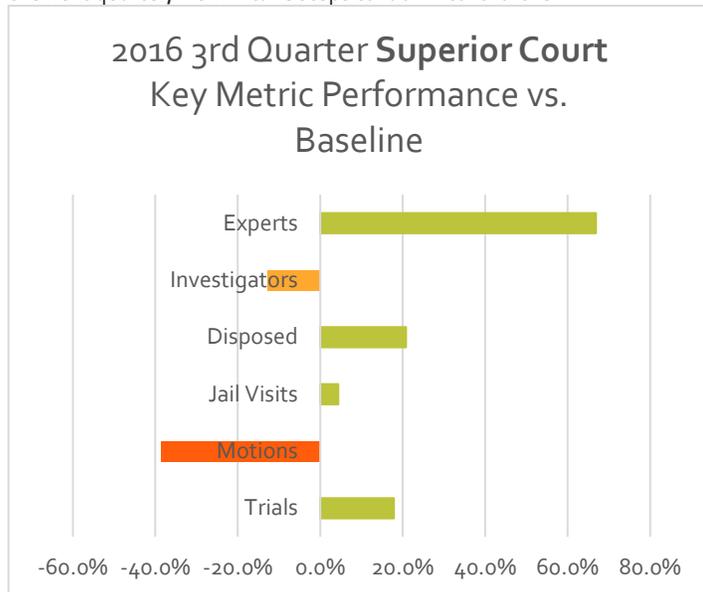
Quality representation is our top mission goal. However, with our local system of hybrid staffing (we have a combination of fully employed staff defenders and private attorneys under contract) sometimes gauging attorney effectiveness can be difficult. This is difficult because of the volume of cases involved (we defended well in excess of 6,000 cases last year in adult and juvenile courts). It is also important to find the balance between exercising too much control over contractors (which can result in them being found to be "quasi employees" under the law) and exercising too little oversight (and therefore having no accountability).

Performance Standards Monitoring: Our Approach

Our approach to the quality representation quandary is to use a system we call Performance Standards Monitoring ("PSM"). Implemented in 2015 after almost a one-year ramp-up, PSM combines regular collection and monitoring of objective performance data with routine in-court observation to get a complete picture of public defender performance. Please see [our Quality Control Whitepaper](#) to learn more about Performance Standards Monitoring.

Superior Court Performance

In Superior Court, Performance Standards showed strong results when compared with baseline data with most metrics showing a healthy increase. Use of investigators was down slightly while motion filings were down significantly. If the motion filings metric remains down in the next quarter, we will take steps to look into it further.



District Court Performance

Performance Standards were also strong in District Court where expert and investigator usage, and cases disposed of at trial readiness saw significant increases. There was a modest decrease in motions and a notable decrease in trials. If the decrease in trials continues, we will look into it further.

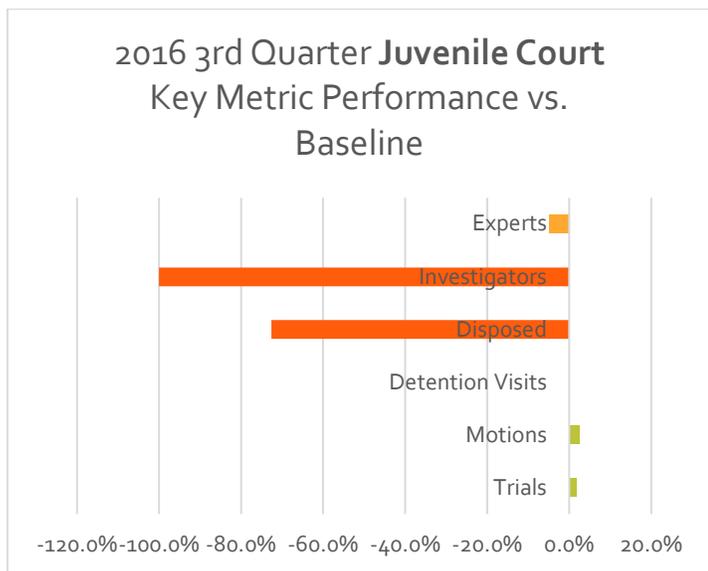
Juvenile Court Performance

Performance Standards collection in Juvenile Court started later than in adult courts. Therefore only three quarters of data has been collected. For this reason, a number of the measures in the Juvenile Court Performance chart below are probably less reliable than their

Performance Baselines. The data displayed in the charts on this page are based on performance this quarter as compared with **performance baselines**. **Performance baselines** are calculated by averaging the available monthly data for the first year and a half of data collection. A positive percentage in the comparison chart means that the performance this quarter was better than baseline (by the indicated percentage). A negative percentage in the comparison chart means that the performance this quarter was worse than baseline (again, by the indicated percentage).

counterparts in adult court. One performance measure, Use of Investigators, does appear to be consistently low over the last three quarters. We will be discussing this issue with the juvenile public defenders to make sure that there aren't any issues underlying trend about which we should be concerned.

2016 3rd Quarter Juvenile Court Key Metric Performance vs. Baseline



How to learn more

If you would like to learn more about Benton County OPD's operations or anything you've seen in this report, please visit our website:

BentonCountyDefense.org

Or contact us:

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