

RESOLUTION NO. 2017-21

**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BENTON CITY TO SIGN THE AMENDED PROFESSIONAL SERVICES AGREEMENT BETWEEN BRENDA WILLIAMS AND THE CITY OF BENTON CITY FOR THE SERVICES OF A SUMMER RECREATION PROGRAM COORDINATOR**

**WHEREAS**, the City of Benton City has found that there is a desire and a need for a summer recreation program that will offer classes and activities for children and adults; and

**WHEREAS**, Ms. Brenda Williams has expressed the qualifications and the desire to undertake the position of Summer Recreation Program Coordinator; and

**WHEREAS**, the City of Benton City has determined that Ms. Brenda Williams is qualified for the Summer Recreation Program Coordinator position and wishes to contract with Ms. Williams as an independent contractor to provide services related to such position; and


**WHEREAS**, the City of Benton City wishes to add the provision to the contract that it will provide funds for the Coordinator to obtain insurance. NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON**, hereby resolves as follows:

That the Mayor of the City of Benton City, Washington, is hereby authorized and directed to sign the Amended Professional Services Agreement between Ms. Brenda Williams and the City of Benton City for the services of a Summer Recreation Program Coordinator, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and to take all necessary steps required to complete this transaction.

**ADOPTED** this 20 day of June, 2017, by the City Council of the City of Benton City, Washington, and signed in authentication of its passage this 20 day of June, 2017.

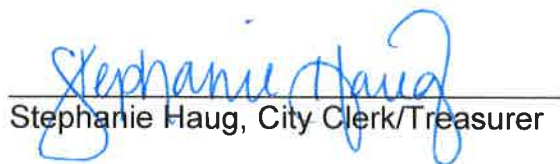
Resolution 2017-21 filed and recorded in the office of the City Clerk of the City of Benton City, Washington, this 20 day of June, 2017.



Linda Lehman, Mayor

Attest:

Approved as to Form:



Stephanie Haug, City Clerk/Treasurer



Leland B. Kerr, City Attorney

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
SUMMER PROGRAM COORDINATOR**

**THIS AGREEMENT** is made and entered into between the City of Benton City, a Washington Municipal Corporation, hereinafter referred to as "City", and Brenda Williams, hereinafter referred to as "Independent Contractor."

**RECITALS**

**WHEREAS**, the City desires to have certain services and/or tasks performed as set forth below requiring specialized skills, training, equipment, and other supportive capabilities; and

**WHEREAS**, the Independent Contractor represents that it is qualified and possesses sufficient skills, experience, equipment, and necessary capabilities, including technical and professional expertise, when required, to perform the services and/or tasks as set forth in this Agreement upon which the City is relying.

**NOW, THEREFORE**, in consideration of the mutual covenants, and performances contained herein, the parties agree as follows:

1. **Scope of Services.** The Independent Contractor shall perform such services and accomplish such tasks, including the furnishing of all labor, materials, and equipment necessary for full performance thereof, as identified and designated as Independent Contractor's Responsibilities throughout this Agreement, and as more particularly described in Scope of Work detailed in Exhibit A, attached hereto and incorporated herein (the "Project").
2. **Term.** This Project shall begin on June 1, 2017, and promptly be completed by August 31, 2017.
3. **Compensation and Payment.**
  - 3.1 Payment for services provided hereunder shall be made following the performance of such services. Such payment shall be full compensation for work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to complete the Project.
  - 3.2 No payment shall be made for any services rendered by the Independent Contractor except for services identified and set forth in this Agreement except as may be authorized by a prior written supplemental agreement approved by the City.
  - 3.3 The City shall pay the Independent Contractor for work performed under this Agreement upon timely submitted invoices detailing work performed and

expenses for which reimbursement is sought. The City shall approve all invoices before payment is issued. Payment shall occur within thirty (30) days of receipt and approval of an invoice.

3.4 The City shall pay the Independent Contractor for such services as follows:

[X] Fixed Sum: A total of \$2,000.00 for all work performed and expenses incurred under this Agreement, with the exception of documented background check fees, which shall be reimbursed to the Independent Contractor upon the City's receipt of such documented expense.

3.5 The City shall provide funds to the Independent Contractor to procure insurance as required in Section 13 of this agreement. Any deposit that is returned at the completion of the program shall be returned to the City by the Independent Contractor.

#### **4. Reports and Inspections.**

4.1 The Independent Contractor at such times and in such forms as the City may require, shall furnish to the City such statements, records, studies, surveys, reports, data, and information as the City may request pertaining to matters covered by this Agreement.

4.2 The Independent Contractor shall, at any time during normal business hours and as often as the City or the Washington State Auditor may reasonably deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the City, or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The City shall receive a copy of all audit reports made by the agency or firm as to the Independent Contractor's activities. The City may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Independent Contractor's activities which relate, directly or indirectly, to this Agreement. Independent Contractor shall be provided a copy of such reports.

4.3 The Independent Contractor, during the term of this Agreement, shall obtain all permits and registration documents necessary for the performance of its work and for the execution of services at its own expense, and shall maintain its validity. Upon request, the Independent Contractor shall deliver to the City copies of these licenses, registration documents, and permits or proof of their issuance or renewal.

4.4 Independent Contractor shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement, and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid

pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review, or audit as provided above.

- 4.5 The Independent Contractor shall retain all books, records, documents or other material relevant to this Agreement for three (3) years after its expiration. Independent Contractor agrees that the City, or its designee, shall have full access and right to examine any of said materials at all reasonable times during this period.

## **5. Ownership and Use of Documents.**

- 5.1 All research, tests, surveys, preliminary data, information, drawings and documents made, collected, or prepared by the Independent Contractor for performing the services subject to this Agreement, as well as any final product, collectively referred to as "work product", shall be deemed as the exclusive property of the City, including copyright as secured thereon. Independent Contractor may not use them except in connection with the performance of the services under this Agreement or with the prior written consent of the City. Any prior copyrighted materials owned by the Independent Contractor and utilized in the performance of the services under this Agreement, or embedded in with the materials, products and services provided thereunder, shall remain the property of the Independent Contractor subject to a license granted to the City for their continued use of the products and services provided under this Agreement. Any work product used by the Independent Contractor in the performance of these services which it deems as "confidential", "proprietary", or a "trade secret" shall be conspicuously designated as such.
- 5.2 In the event of Independent Contractor's default, or in the event that this Agreement is terminated prior to its completion, the work product of the Independent Contractor, along with a summary of the services performed to date of default or termination, shall become the property of the City, and tender of the work product and summary shall be a prerequisite to final payment under this Agreement. The summary of services provided shall be prepared at no additional cost, if the Agreement is terminated through default by the Independent Contractor. If the Agreement is terminated through convenience by the City, the City agrees to pay Independent Contractor for the preparation of the summary of services provided.

## **6. Public Records.**

- 6.1 Independent Contractor acknowledges that the City is an agency subject to Chapter 42.56 RCW "Public Records Act." All preliminary drafts or notes prepared or gathered by the Independent Contractor, and recommendations of the Independent Contractor are exempt prior to the acceptance by the City or its prior public citation by the City in connection with City action.

- 6.2 If the Independent Contractor becomes a custodian of public records of the City and request for such records is received by the City, the Independent Contractor shall respond to the request by the City for such records within five (5) business days by either providing the records, or by identifying in writing the additional time necessary to provide the records with a description of the reasons why additional time is needed. Such additional time shall not exceed twenty (20) working days unless extraordinary good cause is shown.
- 6.3 In the event the City receives a public records request for protected work product of the Independent Contractor within its possession, the City shall, prior to the release of any protected work product or as a result of a public records request or subpoena, provide Independent Contractor at least ten (10) business days prior written notice of the pending release and to reasonably cooperate with any legal action which may be initiated by the Independent Contractor to enjoin or otherwise prevent such release.

**7. Independent Contractor Relationship.**

- 7.1 The parties intend that an independent contractor relationship is created by this Agreement. The City is interested primarily in the results to be achieved; subject to the scope of services and the specific requirements of this Agreement, the implementation of services will lie solely with the discretion of the Independent Contractor. No agent, employee, officer or representative of the Independent Contractor shall be deemed to be an employee, agent, officer, or representative of the City for any purpose, and the employees of the Independent Contractor are not entitled to any of the benefits or privileges the City provides for its employees. The Independent Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, officers, subcontractors or representatives during the performance of this Agreement.
- 7.2 In the performance of the services provided in this Agreement, Independent Contractor is an independent contractor with full authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.
- 7.3 The Independent Contractor shall comply with all State and Federal laws including, but not limited to:
- 7.3.1 The definition requirements of RCW 50.04.140 (Employment Security).
- 7.3.2 RCW 51.08.195 (Industrial Insurance).
- 7.3.3 Obtain a City of Benton City business license.

7.4 The City may, at its sole discretion, require the Independent Contractor to remove any employee, agent or subcontractor from working on this Project who, in the City's sole discretion, may be detrimental to the City's interest.

**8. Indemnification.**

8.1 The Independent Contractor shall defend, indemnify, and hold harmless the City, its officers, officials, agents, employees, and volunteers from any and all claims and causes of action, including, but not limited to, actions of law or administrative proceedings for all injuries to persons or damages to property, and all losses, damages, demands, suits, judgments, including attorney fees, arising out of, or as a result of, or in connection with the work performed under this Agreement, and caused or occasioned in whole or in part by reason of errors, negligent acts or omissions of the Independent Contractor or its subcontractors in the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City, its officers, employees, agents, and volunteers.

8.2 Should a Court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injuries or damages to property caused by or resulting from the concurrent negligence of the Independent Contractor, and the City, its officers, employees, agents and volunteers, the Independent Contractor's liability and obligation to defend hereunder shall only be the proportionate extent of the Independent Contractor's negligence.

8.3 It is further agreed that the indemnification provided herein constitutes the Independent Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

8.4 No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

8.5 This indemnification shall include damages, penalties and attorney fees sustained as a result of Independent Contractor's delayed or failed performance of Section 6 above.

8.6 This waiver has been mutually negotiated by the parties, and the provisions of this section shall survive the expiration or termination of this Agreement.

**9. Nondiscrimination -- Title VI Assurances.** During the performance of this Agreement, the Independent Contractor, for itself, its assignees, and successors in interest agrees as follows:

9.1 Compliance with Regulations. The Independent Contractor shall comply with the Regulations relative to Nondiscrimination in federally assisted programs of the City, Title 49, Code of Federal Regulations, Part 21, as they may be amended

from time to time (hereinafter referred to as "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

During the performance of this Agreement, the Independent Contractor, for itself, its assignees, and successors in interest agrees to comply with the following regulations:

Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-Aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et seq.)

Civil Rights Restoration Act of 1987  
(Public Law 100-259)

American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

9.2 Nondiscrimination. The Independent Contractor, with regard to the work performed during the Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Independent Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 or the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

9.3 Solicitations for Sub Contractors, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiations made by the Independent Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Independent Contractor of the

Independent Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

- 9.4 Information and Reports. The Independent Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by City, State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an Independent Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Independent Contractor shall so certify to the City, State or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- 9.5 Sanctions for Noncompliance. In the event of the Independent Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such Agreement sanction as it, the State or the FHWA may determine to be appropriate, including, but not limited to: withholding or payments to the Independent Contractor under the Agreement until the Independent Contractor complies; and/or cancellation, termination, or suspension of the Agreement, in whole or in part.
- 9.6 Incorporation of Provisions. The Independent Contractor shall include the provisions of paragraphs 10.1.1 through 10.1.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Independent Contractor shall take such action with respect to any subcontractor or procurement as the City, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event an Independent Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Independent Contractor may request the City and the State enter into such litigation to protect the interests of the City and the State and, in addition, the Independent Contractor may request the United State enter into such litigation to protect the interests of the United State.
10. **Covenant Against Contingent Fees.** The Independent Contractor warrants that it has not employed nor retained any company, firm, or person, other than a bona fide employee working exclusively for the Independent Contractor, to solicit or secure this Agreement; and that it has not paid or agreed to pay any company, person or firm, other than a bona fide employee working exclusively for the Independent Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to terminate this Agreement.
11. **Assignment and Subcontracting.**



- 11.1 The City has awarded this Agreement to the Independent Contractor due to its unique qualifications to perform these services. The Independent Contractor shall not assign (or subcontract other than as specifically identified in Exhibit A) its performance under this Agreement or any portions of this Agreement without the prior written consent of the City, which consent must be sought at least thirty (30) days prior to the date of any proposed assignment.
- 11.2 Any work or services assigned or subcontracted hereunder shall be subject to each provision of this Agreement including Section 6, Public Records; Section 10, Nondiscrimination; proper bidding procedures where applicable; and all local, State and Federal statutes, ordinances and guidelines.
- 11.3 Any technical or professional service subcontract not listed in this Agreement, must have prior written approval by the City
- 11.4 Any and all subcontractors must comply with vetting process and background check requirements as specified in Exhibit A.

**12. Termination.**

- 12.1 Termination for Convenience. Either party may terminate this Agreement for any reason upon giving the other party no less than ten (10) calendar days written notice in the advance of the effective date of such termination.
- 12.2 Termination for Cause. If the Independent Contractor fails to perform in the manner called for in this Agreement, or if the Independent Contractor fails to comply with any other provisions of this Agreement and fails to correct such noncompliance within five (5) calendar days of written notice thereof, the City may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Independent Contractor setting forth the manner in which the Independent Contractor is in default. The Independent Contractor will only be paid for services for complying with the terms of this Agreement.

**13. Insurance.** The Independent Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Independent Contractor, its agents, representatives, employees, or subcontractors. The Independent Contractor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Independent Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

- 13.1 Minimum Scope of Insurance. Independent Contractor shall obtain insurance of the types described below:

- 13.1.1 Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 13.1.2 Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Independent Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.
- 13.2 Minimum Amounts of Insurance. Independent Contractor shall maintain the following insurance limits:
- 9.2.1 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- 9.2.2 Commercial General Liability insurance shall be written with limits no less than:
- \$1,000,000 each occurrence;  
 \$2,000,000 general aggregate.
- 13.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:
- 13.3.1 The Independent Contractor's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Independent Contractor's insurance and shall not contribute with it.
- 13.3.2 The Independent Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- 13.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- 13.5 Verification of Coverage. Independent Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the

insurance requirements of the Independent Contractor before commencement of the work.

- 13.6 Notice of Cancellation. The Independent Contractor shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.
- 13.7 Failure to Maintain Insurance. Failure on the part of the Independent Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Independent Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Independent Contractor from the City.
- 13.8 City Full Availability of Independent Contractor Limits. If the Independent Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Independent Contractor, irrespective of whether such limits maintained by the Independent Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Independent Contractor.

**14. General Provisions.**

- 14.1 For the purpose of this Agreement, time is of the essence.
- 14.2 Notice. Notice provided for in this Agreement shall be sent by:
  - 14.2.1 Personal service upon the Project Administrators.
  - 14.2.2 Certified mail to the physical address of the parties, or by electronic transmission to the e-mail addresses designated for the parties below.
- 14.3 The Project Administrator for the purpose of this Agreement shall be:
  - 14.3.1 For the City:
    - Mayor Linda Lehman
    - City Hall
    - 708 9<sup>th</sup> Street
    - Benton City, WA 99320

14.3.2 For the Independent Contractor: Brenda Williams  
1106 Odin Ave  
Benton City, WA 99320  
brendawilliams99352@gmail.com

**15. Dispute Resolution.**

15.1 This Agreement has been and shall be construed as having been made and entered into and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington.

15.2 In the event of a dispute regarding the enforcement, breach, default, or interpretation of this Agreement, the Project Administrators, or their designees, shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with both parties waiving the right of a jury trial upon trial de novo, with venue placed in Benton City, Franklin County, Washington. The substantially prevailing party shall be entitled to its reasonable attorney fees and costs as additional award and judgment against the other.

**16. Nonwaiver.** Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement, shall not constitute a waiver of any other similar event or other provision of this Agreement.

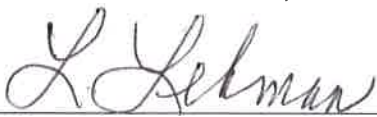
**17. Integration.** This Agreement between the parties consist in its entirety of this document and any exhibits, schedules or attachments verified by initials as a part of Exhibit A. Any modification of this Agreement or change order affecting this Agreement shall be in writing and signed by both parties.


**18. Authorization.** By signature below, each party warrants that they are authorized and empowered to execute this Agreement binding the City and the Independent Contractor respectively.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the day and year first written above.


CITY OF BENTON CITY, WASHINGTON

INDEPENDENT CONTRACTOR

By:   
Linda Lehman, Mayor

By:   
Brenda Williams

**ATTEST:**

  
Stephanie Haug, City Clerk

**APPROVED AS TO FORM:**

  
Leland B. Kerr, City Attorney