

- ☐ Consent Agenda
☒ Regular Agenda



MEETING AGENDA ITEM COVER SHEET

Meeting Date: 6/4/2024

Title of Item to Appear on Agenda:

Present for APPROVAL Amendment No. 1 to the Contract Between The Board of Commissioners of the County of Albany, Wyoming by and through the Albany County & Prosecuting Attorney's Office and the University of Wyoming for a Restorative Justice Pre-Sentence Program

Contract Term:

Through July 31, 2026

Options:

Approve

Deny

Recommended Commission Action:

Approve the extension of the term

Included in Existing Budget: ☐ Yes ☐ No ☒ N/A

If No:

Cost:

Funding Source/Account(s):

Contact for Additional Information:

Jennifer Curran, Deputy County Attorney

Attachments:

AMENDMENT NO. 1
TO THE CONTRACT BETWEEN THE BOARD OF COMMISSIONERS OF THE
COUNTY OF ALBANY, WYOMING BY AND THROUGH THE ALBANY COUNTY &
PROSECUTING ATTORNEY'S OFFICE AND THE UNIVERSITY OF WYOMING
FOR A RESTORATIVE JUSTICE PRE-SENTENCING PROGRAM

The parties to the above-named Contract originally dated the 11th day of May 2023, do hereby amend the Contract as follows:

- 1) Pursuant to paragraph 2 of the Contract, the Parties agree to extend the Contract through July 31, 2026.

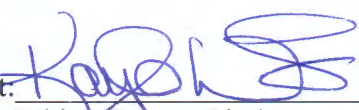
All other provisions of the Contract remain unchanged and are hereby ratified and affirmed. In the event of any inconsistency between the Contract and the Amendment, the terms of the Contract should be construed as final and binding.

IN WITNESS WHEREOF, the County has caused this Amendment to be signed and executed on its behalf by its Chairperson, and duly attested by the County Clerk. Chairperson and Albany County Attorney have signed and executed this Contract on the day and year corresponding to the signature below; and the University of Wyoming has signed and executed this Amendment the day and year corresponding to the signature below.

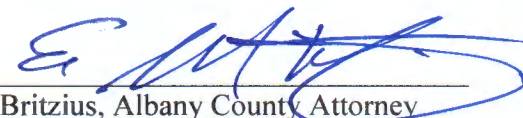
BOARD OF COMMISSIONERS OF THE COUNTY OF ALBANY, WYOMING:

By: 
Pete Gosar, Chairperson

06/04/2024
Date

Attest: 
Kayla White, County Clerk

ALBANY COUNTY ATTORNEY'S OFFICE:

By: 
E. Kurt Britzius, Albany County Attorney

6/11/24
Date

UNIVERSITY OF WYOMING:

Signature

Date

Name

Title

**CONTRACT BETWEEN THE BOARD OF COMMISSIONERS OF THE
COUNTY OF ALBANY, WYOMING BY AND THROUGH THE ALBANY COUNTY &
PROSECUTING ATTORNEY'S OFFICE AND THE UNIVERSITY OF WYOMING
FOR A RESTORATIVE JUSTICE PRE-SENTENCING PROGRAM**

Parties. This Contract is made and entered into this 17th day of May 2023 ("Effective Date"), by and between the Board of Commissioners of the County of Albany, Wyoming, a body corporate and political subdivision of the State of Wyoming (hereinafter referred to as "County"), by and through the Albany County Attorney's Office (hereinafter referred to as "County Attorney") whose address is 525 Grand Avenue, Suite 100, Laramie, Wyoming 82070 and the University of Wyoming ("hereinafter referred to as Service Provider"), whose address is 1000 E. University Ave., Dept. _____, Laramie, Wyoming 82071.

WHEREAS, the County desires to obtain the services of a Service Provider to provide services for an Adult Diversion Program for Albany County.

WHEREAS, Service Provider is able to and is desirous to provide such services according to the terms of this agreement.

NOW THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Contract, the parties agree as follows:

1. Purpose of Contract. The purpose of this Contract is for Service Provider to provide pretrial diversion services for specifically identified misdemeanors to University of Wyoming enrolled students aged seventeen (17) to twenty-five (25) years old, in lieu of criminal prosecution by the County Attorney in Albany County Circuit Court (the "Services").

1.1. The intention of this agreement is to support the replacement of the charging and prosecution of young people who are arrested for specifically identified misdemeanors with Restorative Justice Pre-Sentencing Program ("RJPP"), which relies on community-based, Restorative Community Conferencing ("RCC" or "conference" or "circle"). In an RJPP program, a young person accused of a crime meets face-to-face with the impacted party, through a RCC. Family members and/or caregivers and other support people of both the young person and the impacted party are also present. During that RCC, all RJPP program participants develop a consensus-based plan by which the young person makes things as right as possible for their 1) impacted party, 2) family/caregiver, 3) community, and 4) self. Because this is a pre-charge model, when the young person completes the plan, charges are never filed.

1.2. By creating spaces where young people can make amends directly to the people they have harmed, the RJPP program helps participants understand the harm. The process also creates a space for participants to listen and respond to the needs of the impacted party, the person who caused harm, and their communities; to encourage accountability through personal reflection and collaborative planning; to integrate the youth who caused harm into the community as a valuable and contributing member; to empower families and/or caregivers to address wrongdoing; and to create caring climates that support healthy families and communities.

2. Term of Contract. The term of the Contract is from April 1, 2023 through March 31, 2024, unless this Contract is otherwise terminated pursuant to the termination provision contained within this Contract. This Contract may be renewed by agreement of both parties in writing, subject to the required approvals. There is no right, or expectation of renewal and any renewal will be determined at the discretion of County. Any RJPP case that commenced under the terms of this agreement will be governed by the terms of this agreement, even if the agreement has been terminated. Commencement is determined by the University of Wyoming's receipt of the case from the referring entity.

3. Responsibilities of Service Provider.

3.1. If the University of Wyoming does not have the appropriate staffing to take a case or cases, they will notify the COUNTY ATTORNEY'S OFFICE.

3.2. The University of Wyoming will contact the COUNTY ATTORNEY'S OFFICE when they are prepared to take a new case or set of cases. The charging Deputy County and Prosecuting Attorney or other attorneys from the COUNTY ATTORNEY'S OFFICE are also welcome to contact the University of Wyoming when a case seems appropriate for the RJPP program, although this is not expected.

3.3. The COUNTY ATTORNEY'S OFFICE will receive a brief case status memorandum from the University of Wyoming every four weeks that provides the following information: which cases are enrolled, which cases have completed the conference, which cases have completed the plan, and which cases are being returned. If a plan is completed, the case is considered successfully resolved and the COUNTY ATTORNEY'S OFFICE agrees to not file charges. If, at any point, the University of Wyoming deems the case inappropriate for the RJPP program, the case will be returned to the COUNTY ATTORNEY'S OFFICE for disposition. In such instances, the COUNTY ATTORNEY'S OFFICE shall not require the University of Wyoming to disclose the reason for returning the case prior to completing the RJPP process.

3.4. The entire RJPP process is expected to be completed within ten (10) months from the date of referral, with the exception of specific cases that require time extensions and approval from all signed parties.

4. Responsibilities of County.

4.1. The COUNTY ATTORNEY'S OFFICE shall, taking into consideration the University of Wyoming's capacity, refer to RJPP the cases that are permitted by law for diversion and have the impacted party's consent to participate in the RJPP resolution process. Referred cases should ideally have at least one identifiable impacted party. However, a small number of cases may ultimately proceed without the impacted party's presence and could instead include a surrogate impacted party, preferably of the impacted party's choosing. In some cases, there may not be an identifiable impacted party and RJPP can rely on trained community members to participate in the process and speak to larger community impacts.

4.2. Cases in which there is clear evidence of guilt—where the responsible young person acknowledges that they have done wrong—are best for RJPP. The COUNTY

ATTORNEY'S OFFICE agrees that it will not first require young people accused of causing harm to admit guilt prior to referring the individual's case to the University of Wyoming. The COUNTY ATTORNEY'S OFFICE further agrees that RJPP is not meant to serve as an investigation tool.

4.3. The COUNTY ATTORNEY'S OFFICE understands that any information learned in the RJPP program (including pre-circle/pre-conference meetings and the post-conference, plan completion phase) is confidential and will not be accessible. Should the COUNTY ATTORNEY'S OFFICE gain access to any information via any aspect of the RJPP program, the COUNTY ATTORNEY'S OFFICE agrees that such information will be treated as confidential ("Confidential Information") and shall not be used against any participant accused of a crime in any juvenile or criminal proceeding or determination of probation violations. The COUNTY ATTORNEY'S OFFICE agrees not to subpoena information or testimony from RJPP facilitators or other the University of Wyoming staff or otherwise ask them to share Confidential Information learned in matters that involve any individual who participates in the RJPP process. The COUNTY ATTORNEY'S OFFICE also agrees not to subpoena or otherwise interview/investigate other RJPP participants (e.g., individuals who participated in prep meetings or in the circle/conference itself) to testify about any Confidential Information that is learned through the RJPP program. Finally, the COUNTY ATTORNEY'S OFFICE agrees that a young person's agreement to participate in RJPP, or the failure of a case to successfully resolve through RJPP, will not be introduced into any juvenile or criminal proceedings for any purpose including for impeachment purposes.

4.4. Additionally, in cases with co-defendants, if all co-defendants meet the eligibility criteria, all co-defendants should be referred to the RJPP program. In cases where some co-defendants do not meet the eligibility criteria and cannot be referred, the fact that other co-defendants are participating in RJPP cannot be mentioned in any pleadings, probation reports, court proceedings, trials, or plea negotiations for the co-defendants not referred to RJPP.

4.5. The confidentiality agreements, above, apply regardless of whether the case is referred to RJPP through community-based organizations, faith-based organizations, schools, police departments, probation, the COUNTY ATTORNEY'S OFFICE, courts, or individuals.

4.6. It is understood that the COUNTY ATTORNEY'S OFFICE may charge and/or prosecute responsible young people based on information gathered before, after, or otherwise outside of the RJPP program if, and only if, the case is returned to the COUNTY ATTORNEY'S OFFICE uncompleted (that is, prior to the responsible young person completing the plan to make things right). If an uncompleted case is returned to the COUNTY ATTORNEY'S OFFICE, neither charges nor dispositions can be escalated.

4.7. When a case has been referred through a law enforcement mechanism—namely school police departments, municipal police departments, probation, or the COUNTY ATTORNEY'S OFFICE—the COUNTY ATTORNEY'S OFFICE agrees to delay prosecution for 10 months from the date of the referral to the RJPP program and only to prosecute if the case is returned to the referring agency. Subject to state and local law, this time period can be extended upon agreement of all signed parties if the RJPP program needs to extend beyond 10 months. This provision is related only to the specific case referred to the RJPP program and has no bearing on

additional or previous crimes the young person may have committed. This provision is intended solely to delay prosecution of a case referred for RJPP pre-charge until a reasonable time has been allotted to resolve the case through the RJPP program.

4.8. The County shall consult with and advise Service Provider, as necessary, about the requirements of this Contract.

4.9. The County shall monitor and evaluate Service Provider's compliance with the conditions set forth in this Contract.

5. Responsibilities of Both Parties.

5.1. Because studies show that young persons who reoffend are most successful in the RJPP program, the COUNTY ATTORNEY'S OFFICE and the University of Wyoming agree to refer/accept cases of young persons with prior records, adjudications of delinquency, deferred adjudications, including those with more than one prior offense, and cases that result in a current term of probation. Neither the existence of prior offenses nor current probation status on priors shall be used as a basis for declining to refer to or precluding a young person from participating in the RJPP program.

5.2. The COUNTY ATTORNEY'S OFFICE and the University of Wyoming will refer/accept young people who have prior or active dependent petitions, as long as the young person meets the other criteria for referral. Dependency shall not be used as a basis to decline to refer to or preclude a young person from participating in the RJPP program.

5.3. If a young person was referred to an RJPP program in the past, regardless of whether they enrolled in or completed the RJPP process, they are still eligible to be referred if the new case meets the referral criteria.

5.4. If a young person is currently in the RJPP program and is arrested for an unrelated offense, so long as that offense also meets the RJPP referral criteria, that case shall also be referred to the RJPP program. In instances where the new case is not otherwise RJPP eligible, but involves less serious charges than the existing RJPP case, the new case may be held in abeyance if the existing RJPP process is successfully completed, and no petitions will be filed for either case.

5.5. Once a young person's case is referred to the RJPP program, the University of Wyoming retains sole discretion to return the case back to the referring agency. The COUNTY ATTORNEY'S OFFICE agrees that once the case is referred to the University of Wyoming the referral cannot be undone by the COUNTY ATTORNEY'S OFFICE without good cause.

5.6. Where cases have been referred through non-law enforcement mechanisms, such as school district disciplinary entities or community-based organizations, the COUNTY ATTORNEY'S OFFICE may not be aware that RJPP is in progress. If any party to this agreement learns that the COUNTY ATTORNEY'S OFFICE has initiated prosecution of a case referred to the RJPP program, the entity will contact the COUNTY ATTORNEY'S OFFICE to alert them to the ongoing RJPP process. All parties to the agreement agree that when cases are being resolved through the RJPP program, RCC should be the sole forum for resolving the matter.

5.7. Nothing in the agreement shall be interpreted in a manner inconsistent with state or local law governing mandatory reporting. Because mandatory reporting requirements may be in conflict with the RJPP program, all RJPP facilitators at the University of Wyoming shall be trained on their reporting requirements and all participants in the program shall be warned that certain information cannot be held in confidence under Wyoming state law.

6. General Provisions.

6.1. **Amendments.** Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

6.2. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the Second Judicial District, Albany County, Wyoming.

6.3. **Compliance with Laws.** Service Provider shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.

6.4. **Ethics.** Service Provider shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, et seq.), and any and all ethical standards governing Service Provider's profession.

6.5. **Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

6.6. **Independent Service Provider.** Service Provider shall function as independent Service Provider for the purposes of this Contract and shall not be considered an employee of County for any purpose. Service Provider shall assume sole responsibility for any debts or liabilities that may be incurred by Service Provider in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing Service Provider to incur any obligation of any kind on the behalf of County or its staff. Service Provider agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to County employees will inure to the benefit of Service Provider or Service Provider's agents and/or employees as a result of this Contract.

6.7. Governmental Immunity. County and Service Provider do not waive their sovereign or governmental immunity by entering into this Contract and specifically retain immunity and all defenses available to County and Service Provider as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other state law.

6.8. Termination of Contract. Either party may terminate this Contract at any time, for any reason or no reason, upon ninety (90) days' written notice of termination. This Contract terminates at the end of the ninety (90) day notice period.

6.9. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of the Contract are intended only to assist the parties in determining and performing their obligations under this Contract. The parties to this Contract intend and expressly agree that only parties' signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.

6.10. Kickbacks. Service Provider certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Service Provider breaches or violates this warranty, County may, at its discretion, terminate this Contract without liability to County or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

6.11. Nondiscrimination. Service Provider shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 et seq.), and the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, et seq. Service Provider shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of this Contract.

6.12. Americans with Disabilities Act. Service Provider shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, et seq., and/or any properly promulgated rules and regulations related thereto.

6.13. Assignment/Contract Not Used as Collateral. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Service Provider shall not use this Contract, or any portion thereof, for collateral for any financial obligation.

6.14. Indemnification. Neither party shall indemnify, defend, or hold harmless the other for any cause of action, or claim or demand arising out of this agreement. Each party shall be responsible for their own negligent actions or omissions.

6.15. Liaison and Notice. The following are the designated representatives for County and Service Provider.

6.15.01. County's designated representative is E. Kurt Britzius Albany County and Prosecuting Attorney, whose address is 525 Grand Avenue, Suite 100, Laramie, Wyoming 82070; telephone number (307) 721-2552 and email address: ebritzius@co.albany.wy.us.

6.15.02. The Service Provider's representative is _____ whose address is _____, telephone number (307) _____ and email address: _____.

6.15.03. All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

6.16. Insurance. County is protected by the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, et seq., and certify that that it is a member of the Wyoming Association of Risk Management (WARM) pool or the Local Government Liability Pool (LGLP), Wyo. Stat. § 1-42-201, et seq., and shall provide a letter verifying their participation in the WARM or LGLP to the University of Wyoming.

6.17. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect and either party may attempt to renegotiate the terms affected by the severance.

6.18. Limitation of Payment. County's obligation to pay Service Provider for services of Service Provider pursuant to this Contract is conditioned upon the availability of County's funds which are allocated to pay Service Provider. If funds are not allocated and available to pay the Service Provider for these services, County may terminate this Contract at the end of the period for which the funds are available. County shall notify Service Provider at the earliest possible time if Service Provider will or may be affected by a shortage of funds. No liability shall accrue to County in the event this provision is exercised, and County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit County to terminate this Contract in order to acquire similar services or use from another party. Service Provider shall be paid for the use by County provided and expenses incurred prior to receipt of any such notification that County was terminating the Contract because of a shortage of funds.

6.19. Confidentiality. All records and reports shall be maintained in a confidential file not available to the public and the contents thereof shall not be disclosed to any person outside the Service Provider services without a court order. Service Provider shall comply

with the confidentiality rules contained in 42 U.S.C. 290dd-2, 42 C.F.R. part 2 and W.S. 35-2-606, as applicable.

6.20. Ownership of Documents/Work Product. All final documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Contract are always the property of the County. Upon termination of this Contract, County is entitled to a copy of all records or data generated or kept by Service Provider in its performance of this Contract.

6.21. Notice and Approval of Proposed Sale or Transfer of Service Provider. Service Provider shall provide County with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of Service Provider. Such notice shall be provided in accordance with the notice provision of this Contract. If County determines that the proposed merger, consolidation, sale, or transfer of assets is not consistent with the continued satisfactory performance of Service Provider's obligations under this Contract, then County may, at its option, terminate or renegotiate the Contract.

6.22. Warranty. Service Provider warrants that it:

- 6.22.01.** Has the power and authority to enter into Contract;
- 6.22.02.** Has the ability to perform the agreed upon services;
- 6.22.03.** Shall provide suitable resources and equipment to perform work in accordance with agreed services;
- 6.22.04.** Will endeavor to provide the services herein on a timely basis consistent with the difficulty and scope of services to be provided;
- 6.22.05.** Shall perform services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and
- 6.22.06.** Is responsible for the professional quality, technical accuracy and coordination of all personal training and other services furnished by Service Provider under this Contract.

6.23. Extension. Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be requested by the Service Provider and following approval by County shall be effective only after it is reduced to writing and executed by all parties to the Contract. Any Contract to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will

be different during the extension than they were under the original Contract, a detailed description of those duties.

6.24. Award of Related Contracts. County may undertake or award supplemental or successor Contracts for work related to this Contract. Service Provider shall cooperate fully with other Service Providers and County in all such cases.

6.25. Entirety of Contract. This Contract represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and Contracts, whether written or oral.

6.26. Time is of the Essence. Time is of the essence in all provisions of the Contract.

6.27. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect and either party may attempt to renegotiate the terms affected by the severance.

6.28. Titles Not Controlling. Titles of paragraphs are for reference only and shall not be used to construe the language in this Contract.

6.29. Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach.

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IN WITNESS WHEREOF, the County has caused this Contract to be signed and executed in its behalf by its Chairperson, and duly attested by the County Clerk, Chairperson and Albany County Attorney have signed and executed this Contract, the day and year first written above; and Service Provider has signed and executed this Contract, the day and year corresponding to the signature below.

BOARD OF COMMISSIONERS OF THE COUNTY OF ALBANY, WYOMING:

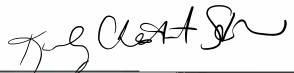
By: 
Pete Gosar, Chairperson

Attest: 
Kayla White, County Clerk

ALBANY COUNTY ATTORNEY'S OFFICE

By: 
E. Kurt Britzius

UNIVERSITY OF WYOMING

By: 

Date: 8/31/23

Printed Name: Kimberly Chestnut Steich

Title: Vice President of Student Affairs