

## PERSONAL SERVICES CONTRACT TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between FRANKLIN COUNTY, a political subdivision, with its principal offices at 1016 North 4<sup>th</sup> Avenue, Pasco, WA 99301 (hereinafter "COUNTY"), and **[name of contractor and contractor's legal form, i.e. "Inc" or "LLC" if applicable]**, with its principal offices at **[contractor's address]**, (hereinafter "CONTRACTOR").

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

### 1. CONTRACT DOCUMENTS

This Contract consists of the following documents **[This Section should list any exhibits and/or attachments used]**:

- a. **[Terms and Conditions;]**
- b. **[Exhibit A, Scope of Work; and]**
- c. **[Exhibit B, Compensation.]**

### 2. DURATION OF CONTRACT

The term of this Contract shall begin **[insert either "immediately upon execution by the COUNTY" or insert alternate date]**, and shall expire on **[date]**. 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. **[In this Section, describe the services to be performed, or attach an exhibit, usually labeled "Exhibit A" and titled "Scope of Work" or "Scope of Services". If an exhibit(s) is used, then use the following language for this section:]** A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit "A, Scope of Work", which is attached hereto and incorporated herein by reference.
- b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.

- c. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.
- d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.
- e. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

#### **4. CONTRACT REPRESENTATIVES**

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

- a. For CONTRACTOR: **[Insert name and mailing address, email address, telephone number, facsimile number.]**
- b. For COUNTY: **[Insert name and mailing address, email address, telephone number, facsimile number.]**

#### **5. COMPENSATION**

For the services performed hereunder, the CONTRACTOR shall be paid as follows:

- a. **[In this Section, describe the compensation to be paid, or attach an exhibit, usually labeled "Exhibit B" and titled "Compensation" or "Budget". A third alternative is to combine Scope of Services and Compensation in one attachment, Exhibit A, and title it "Scope of Services and Compensation". If an exhibit(s) is used, then use the following language for this section:]** A detailed description of the compensation to be paid by the COUNTY is set forth in Exhibit B, "Compensation", which is attached hereto and incorporated herein by reference.
- b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed \$\_\_\_\_\_ including sales tax.
- c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

- d. The CONTRACTOR may, in accordance with **[Exhibit B]**, submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt.
- e. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- f. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.
- g. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

## **6. AMENDMENTS AND CHANGES IN WORK**

- a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties' authorized representatives. 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, caused by or arising out of the CONTRACTOR'S acts, errors or omissions in the performance of this Contract. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents.
- 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 Legal Liability:** Prior to the start of work under this Contract, the CONTRACTOR, if he, she or it is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than one million dollars (\$1,000,000) per occurrence, loss or person. If the policy contains a general aggregate or policy limit it

shall be at least two times the incident, loss or person limit.

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 bodily injury or property damage. 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 including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract. The policy shall state that coverage is claims made, and state the retroactive date. CONTRACTOR is also required to buy claims made professional liability insurance for a period of 36 months after completion of this Contract, which can be satisfied by the continuous purchase of the above referenced insurance or an extended reporting period policy. 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. 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, employers liability, commercial liability or commercial umbrella liability insurance.

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.

Certain work or services under this Contract may require insurance coverage for long shore or harbor workers other than seaman as provided in the Long Shore and Harbor Workers Compensation Act [33 U.S.C.A. Section 901 et seq.]. Failure to obtain coverage in the amount required by

law may result in civil and criminal liabilities. CONTRACTOR is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. CONTRACTOR is responsible for all civil and criminal liability that may arise from the failure to maintain such coverage.

Certain work or services under this Contract may require insurance coverage for seamen injured during employment resulting from the negligence of the owner, master or fellow crew members as provided in 46 U.S.C.A. Section 688. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. CONTRACTOR is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with that Act. CONTRACTOR is responsible for all civil and criminal liability that may arise from the failure to maintain coverage.

- 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) for wrongful death, bodily injury, personal injury and property damage, subject to limits of not less than one million dollars (\$1,000,000) per occurrence. The general aggregate limit shall apply separately to this Contract and be no less than two million dollars (\$2,000,000).

The general commercial liability policy will contain an endorsement naming the COUNTY, its officials, officers, employees and agents as an additional insured (CG2010) and an endorsement that specifically states that CONTRACTOR's 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]. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent; provided, coverage will be no more restrictive than would be provided under a standard commercial general liability policy and will include contractual liability coverage.

If CONTRACTOR has any employees, CONTRACTOR also shall maintain employers liability insurance with limits of not less than one million dollars (\$1,000,000) each incident for bodily injury by accident or one million dollars (\$1,000,000) each employee for bodily injury by disease.

- d. **Automobile Liability:** [This section requires either the 1<sup>st</sup> or 2<sup>nd</sup> blank

**be checked by the COUNTY if CONTRACTOR'S services involve the use of vehicles by CONTRACTOR or the transportation of COUNTY employees or third parties].**

The CONTRACTOR shall maintain automobile liability insurance as follows:

\_\_\_ The CONTRACTOR shall maintain Business Automobile Liability Insurance with a limit of not less than One Million Dollars (\$1,000,000.00) each accident combined Bodily Injury and Property Damages. Coverage shall include owned, hired, and non-owned automobiles.

-OR-

\_\_\_ The CONTRACTOR shall maintain Automobile Liability Insurance or equivalent form with a limit of not less than One Hundred Thousand Dollars (\$100,000.00) each accident combined Bodily Injury and Property Damage. The aggregate limit shall be at least Three Hundred Thousand Dollars (\$300,000.00). If a personal lines Automobile Liability policy is used to meet this requirement, it must include a business rider and must cover each vehicle to be used in the performance of this Contract and the certificates of insurance must evidence these conditions have been met. If the CONTRACTOR will use non-owned vehicles in performance of this Contract, the coverage shall include owned, hired and non-owned automobiles.

-OR-

\_\_\_ Not Applicable.

**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.
- (2) The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY, its officials, officers, employees or agents 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.
- (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, except for professional liability under Section **[8(a)]**, shall be written on an Occurrence Policy form. Professional liability insurance on a Claims Made form shall have a retroactive date prior to or coincident with the effective date of this Contract.

f. **Verification of Coverage and Acceptability of Insurers:** All insurance required under this Contract shall be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class 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 Franklin 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) The CONTRACTOR shall furnish the COUNTY with properly executed and unaltered Acord form certificates of insurance and, if requested, a signed policy endorsement(s) which shall clearly evidence all required insurance prior to commencing work under this Contract. The certificates will, at a minimum, list limits of liability and coverage. For any professional liability insurance, the CONTRACTOR agrees that the insurance contract will not be canceled or allowed to expire except on twenty-eight (28) days prior written notice to the COUNTY by the CONTRACTOR. For other insurance policies, CONTRACTOR shall not cancel or allow the

insurance contract to expire except on forty-five (45) days prior written notice to the COUNTY. CONTRACTOR shall also instruct the insurer to give the COUNTY forty-five (45) days advanced written notice of any cancellation by the insurer. The certificate or endorsement shall not limit or negate the insurer's obligation as required by law to notify the COUNTY as an additional insured of cancellation.

- (2) The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the COUNTY, its officials, officers, employees, or agents as an additional insured.
- (3) Certificates of insurance shall show the certificate holder as "Franklin County" and include "c/o" the COUNTY'S Contract Representative. The address of the certificate holder shall be shown as the current address of the COUNTY'S Contract Representative.
- (4) If the CONTRACTOR or any subcontractor or sub-subcontractor has any employees, CONTRACTOR shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Franklin County that CONTRACTOR is currently paying workers compensation.
- (5) All written notices under this Section **[8]** and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY at the following address:  
  
Franklin County Prosecuting Attorney's Office  
Attn: Risk Manager  
1016 North 4<sup>th</sup> Avenue  
Pasco, Washington 99301
- (6) The CONTRACTOR or its broker shall immediately provide a copy of any and all insurance policies specified in this Contract upon request of the Franklin County Risk Manager.
- (7) If CONTRACTOR is self-insured for worker's compensation coverage, evidence of its status as a self-insured entity shall be provided to COUNTY. If requested by COUNTY, CONTRACTOR must describe its financial condition and the self-insured funding mechanism.

## 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 costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.
- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.
- d. **[May want to insert additional language in this Section, after discussing with a Deputy Prosecuting Attorney, if the CONTRACTOR requests termination rights].**

## 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's authorized representatives.
- 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 signed by the waiving party's authorized representatives, 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 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 age, sex, marital status, sexual orientation, race, creed, religion, color, national origin, honorably discharged veteran or military status, disability, or any other protected status.

### **TITLE VI ASSURANCES**

During the performance of this AGREEMENT, the CONTRACTOR, for itself, its assignees, and successors in interest agrees as follows:

**1. Compliance with Regulations:** The CONTRACTOR shall comply with the Regulations relative to non-discrimination in federally assisted programs of the COUNTY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.

**2. Non-discrimination:** The CONTRACTOR, with regard to the work performed during this AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-CONTRACTORS, including procurement of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when this AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.

**3. Solicitations for Sub-CONTRACTORS, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONTRACTOR for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub- CONTRACTOR or supplier shall be notified by the CONTRACTOR of the CONTRACTOR'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.

**4. Information and Reports:** The 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 the COUNTY, the STATE, or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR shall so certify to the COUNTY, the STATE, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

**5. Sanctions for Non-compliance:** In the event of the CONTRACTOR'S non-compliance with the non-discrimination provisions of this AGREEMENT, the COUNTY shall impose such AGREEMENT sanctions as it, the STATE, or the FHWA may determine to be appropriate, including, but not limited to:

- Withholding of payments to the CONTRACTOR under this AGREEMENT until the CONTRACTOR complies, and/or;
- Cancellation, termination, or suspension of this AGREEMENT, in whole or in part.

**6. Incorporation of Provisions:** The CONTRACTOR shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any sub-CONTRACTOR or procurement as the STATE, the COUNTY, or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-CONTRACTOR or supplier as a result of such direction, the CONTRACTOR may request the COUNTY enter into such litigation to protect the interests of the STATE and/or the COUNTY and, in addition, the CONTRACTOR may request the United States enter into such litigation to protect the interests of the United States.

## **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 therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

- b. **[For Design/Construction Contracts: All design work done by the CONTRACTOR shall be done on AutoCAD, release 12 or higher or other systems mutually agreed upon, an electronic copy of which shall be submitted to the COUNTY upon request and/or at the end of the job. Should a construction project result from the work of the CONTRACTOR, the record drawings from the CONTRACTOR shall be transposed onto the electronic design drawings and submitted to the COUNTY.]**
- c. An electronic copy of all word processing documents shall be immediately 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 officials, officers, employees and agents, from and against any claimed action, cause or demand brought against the COUNTY, its officials, officers, employees and agents 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 alternative relief as outlined below.

Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the Parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through the alternative dispute resolutions as listed

below.

#### **A. NEGOTIATION**

The Parties shall first attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at negotiation between the Parties or their designees.

#### **B. MEDIATION**

If the Parties are unable to resolve the dispute via negotiation, the Parties shall next attempt to resolve any controversies or disputes arising out of or relating to this Agreement through a good faith attempt at mediation as outlined in RCW 7.07. The mediation shall be conducted by a mediator that is mutually agreed upon by the Parties. Each party will pay its own attorneys' fees and costs and the cost of the mediator shall be equally split by the Parties.

#### **C. ARBITRATION**

1. Any controversy or claim arising out of or relating to this Agreement that is not resolved through mediation shall be resolved by final and binding arbitration pursuant to RCW 7.04A. Demand for arbitration shall be made in writing to the other party and shall be brought within three (3) years after the initial occurrence giving rise to the claim, dispute, or issue for which the arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature.

2. The arbitration shall be held in Franklin County before a single arbitrator selected by the Agreement of the parties. If the parties cannot agree upon an arbitrator within fifteen (15) days after the demand for arbitration is made, the arbitrator shall be selected by a judge in the Superior Court of Franklin County in accordance with the procedures set out in RCW 7.04A.110.

3. Unless the parties agree otherwise in writing, the arbitration hearing shall occur no later than sixty (60) days after the date the arbitrator is appointed.

4. The parties agree that, with the exception of the circumstances set out in RCW 7.04A.230, the arbitrator's decision shall be binding, final and not appealable to any court of law.

5. Each party shall pay its own costs of arbitration including attorneys' fees. The arbitrator's fee and any administrative expenses imposed by the arbitrator shall be shared equally by the parties.

### **19. CONFIDENTIALITY**

The CONTRACTOR, its employees, subcontractors, and their employees shall

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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's authorized representatives 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 Franklin 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. SURVIVABILITY**

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

## **26. LITIGATION HOLD NOTICE**

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

**28. ACKNOWLEDGMENT**

CONTRACTOR acknowledges that the Franklin County Courthouse, Public Safety Building, facilities, and its offices and departments therein, contain records and information that is confidential or privileged by operation of law. As a result the CONTRACTOR acknowledges and agrees that in the course of performing this Contract its employees or agents shall at all times refrain from engaging in any activities that would expose them to, or others to, such confidential or privileged information.

SAMPLE

The parties to this Contract have executed this Contract to take effect as of the date written below.

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

**FRANKLIN COUNTY BOARD OF COMMISSIONERS**

**CONTRACTOR**  
**[Name of Contractor]**

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
[Print Name]

\_\_\_\_\_  
Chair Pro-Tem

Its \_\_\_\_\_

\_\_\_\_\_  
Member

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

Attest: \_\_\_\_\_ Clerk of the Board

Form of Contract pre-approved October  
2019 by:

Deputy Prosecuting Attorney, Franklin  
County