

**AGREEMENT FOR CONSULTING SERVICES  
BETWEEN  
PACIFIC COUNTY  
AND  
ERICKSON MCGOVERN, PLLC, ARCHITECTS**

THIS AGREEMENT is entered into as of January 11, 2022 by and between Pacific County ("County") and **Erickson McGovern Architects** ("Consultant").

- A. The County desires to engage the Consultant to perform certain technical, professional, and/or other services described in this Agreement ("Services"), including the Services described in Exhibit A.
- B. The Consultant represents that it is in all aspects qualified and capable of performing the Services, has an established record of providing the type of services covered by this Agreement, and is not contractually or otherwise financially associated with the County.
- C. The employees of the Consultant assigned to this Project who will be responsible for the Services are: **Raymond Mow, Principal**. The employee of the Consultant who represents the Consultant on this Project, who has authority to bind the Consultant, and who shall not be changed without the County's written consent, is **Raymond Mow, Principal**.
- D. The County's Project representative is **Paul Plakinger, Management and Fiscal Analyst**. All communications from the Consultant to the County shall be through this Project representative or his designee.
- E. The County agrees to pay the Consultant a fee ("Fee") for the Services and Reimbursable Expenses on the basis specified in Article 5.
- F. The Consultant warrants that it has secured and will maintain for the duration of this Agreement plus one year insurance in the minimum amounts specified as follows:

<u>Type of Insurance</u>	<u>Each Occurrence</u>	<u>Aggregate</u>
Worker's Compensation	(Covered by State of Washington)	
Comprehensive General Liability	\$1,000,000.00	\$2,000,000.00
Comprehensive Automobile Liability	\$1,000,000.00	\$1,000,000.00
Errors and Omissions	\$1,000,000.00	\$2,000,000.00
Employers Liability (Stop Gap)	\$1,000,000.00	\$1,000,000.00

The Consultant must name the County as an additional insured. The Consultant agrees that its liability insurance shall be primary and non-contributory to the County's and that Consultant's liability insurance policy shall so state.

## **AGREEMENT**

### **1. Contractual Relationship**

- a. **Independent Consultant.** The Consultant shall be and operate as an independent Consultant and shall have exclusive control over and responsibility for the conduct of all personnel performing the Services. The Consultant shall perform the Services in accordance with its own methods and in an orderly and professional manner. The Consultant is not an officer, agent, or employee of the County for any purpose, and is not authorized on behalf of the County to enter into any agreements, to waive or modify any provisions of the County's contracts with third parties, to receive or accept contractual notice, to authorize payment, or to accept or approve any change in the Contract Sum or Contract Time as set forth in the Contract Documents.
- b. **Benefits.** The County shall not be responsible for fringe benefits, withholding, paying of any taxes on behalf of Consultant or Consultant's employees or agents, or remuneration above the amount stipulated in this Agreement.

### **2. Scope of Service**

- a. **Services.** The Consultant shall perform Services pursuant this Agreement as more fully described in Exhibit A. Any terms in Exhibit A that are inconsistent with this Agreement and any limitations or reductions of liability in Exhibit A are void unless each such term is initialed by both parties.
- b. **Performance.** All of the Services will be performed by or through the Consultant in a satisfactory, proper and professional manner, and with skill and diligence. None of the Services shall be subcontracted without prior written approval of the County. At the time of performance, the Consultant shall be properly licensed, equipped, organized and financed to perform the Services.
- c. **Correction.** The Consultant shall, at no cost to the County, promptly and satisfactorily correct and/or complete any Services found to be defective, incomplete, or not in conformity with the requirements of this Agreement. If the Consultant fails to initiate corrections within fifteen (15) days of receipt of written notice from the County, the County may do so, by contract or otherwise, and recover (e.g., by offset against the compensation otherwise payable under this Agreement) from the Consultant the reasonable costs it incurred. The obligations of the Consultant to correct nonconforming Services shall not in any way limit any other obligations of the Consultant. The County's right to make corrections and charge the Consultant for them is in addition to any other rights and remedies available to the County under this Agreement or otherwise by law and shall in no event be construed or interpreted as obligating the County to make any correction of defective or nonconforming Services.

- d. Compliance. The Consultant shall comply, and shall contractually require that the Services of all its subconsultants to comply, with applicable federal, state and local laws, regulations, codes and orders.
- e. Conflicts. The Consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner with the performance of the Services. The Consultant will not employ any person in the performance of this Agreement having any such interest.

### 3. **Personnel**

- a. The Consultant will secure at its own expense all personnel, material and equipment required to perform the Services. These personnel shall not be employees of, or have any contractual relationship with the County or its contractors, and they shall be experienced, fully qualified and authorized under applicable law to perform their portion(s) of the Services.
- b. No employee of the Consultant may be present on site if he or she has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 RCW or Chapter 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another jurisdiction. The Consultant shall remove from the Services any employee or other person who has engaged in such actions or who the County reasonably considers objectionable at no cost to the County. Failure to comply with these requirements is grounds for immediate termination of the Agreement.
- c. The Consultant may designate and appoint subconsultants after conferring with the County regarding their selection. The Consultant shall not appoint a subconsultant to which the County has a reasonable objection. The Consultant shall incorporate the provisions of this Agreement and a scope of Services consistent with the requirements of the Project into the contracts with subconsultants. Any subcontracting of any of the Services shall not relieve the Consultant from its responsibility for the performance of the Services in accordance with the terms of this Agreement.
- d. The Consultant shall, upon request, provide the County with an accounting of any Services that are subcontracted by the Consultant, including the Services performed by the subconsultant, the amounts paid to the subconsultant, and such other information as the County may reasonably request. The County is not obligated to make any payment to any subconsultant or to reimburse the Consultant for such payments, since the amount thereof is taken into account in determining the compensation payable to the Consultant under this Agreement.

4. **Time of Performance**

Time is of the essence. The Services shall be undertaken so as to assure their expeditious completion. The Services shall be completed by, and the Agreement shall remain in effect until, the Completion Date unless cancelled prior to that date pursuant to this Agreement.

5. **Compensation**

- a. Fee. The County agrees to pay the Fee for Services satisfactorily rendered. Any costs incurred by the Consultant in excess of the Fee are the responsibility of the Consultant unless approved in writing by the County prior to being incurred.

Compensation for Services of the Consultant shall be on an hourly basis at the rates listed in Exhibit A. The Compensation for Services, including any subconsultants, shall not exceed **\$40,000**, without the prior written approval of the County. This does not include structural, mechanical, or electrical design.

- b. Compensation for Changes in Services. Additional compensation for a pre-authorized Change in Services shall be paid as agreed in writing prior to commencement of the Services. The Consultant will not, however, be entitled to additional compensation for Services incurred because of the fault of the Consultant or not pre-authorized.
- c. Payment. The Consultant will submit a reasonably detailed monthly written request for payment and a progress report certifying that it has performed the designated Services under the Agreement, and that it is entitled to receive the amount requested. Payment will be made on the basis of the actual Services approved as completed. All invoices shall be on a form provided or approved by the County. The County will pay the Consultant within thirty (30) days of receipt of the request and report. Payments due and owing but unpaid shall bear interest at the Bank of America Prime Rate plus 2% after thirty (30) days. Acceptance of final payment of the Fee by the Consultant shall release, waive, and forever discharge the County from any and all claims, liens, demands, and liabilities arising from or in any way connected to the Project or this Agreement, unless the Consultant identifies such controversy or claim, with specificity and in writing, on Consultant's final request for payment.

6. **Changes in Services**

The County may, at any time, require changes in the scope of the Services. A Change in Services, including any increase or decrease in the Consultant's compensation and/or time of performance, will be incorporated in written amendments to this Agreement when mutually agreed upon in advance by both parties.

7. **Indemnification by Consultant**

To the fullest extent permitted by law, the Consultant agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any action or omission, negligent or otherwise, of the Consultant, its employees, agents or volunteers or Consultant's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Consultant's or its subcontractors' use of, presence upon or proximity to the property of the County. This indemnification obligation of the Consultant shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the County. This indemnification obligation of the Consultant shall not be limited in any way by the Washington State Industrial Insurance Act RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Consultant hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Consultant are a material inducement to County to enter into the Agreement, are reflected in the Consultant's compensation, and have been mutually negotiated by the parties.

**Participation County – No Waiver.** The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Consultant's indemnity obligations under the Contract.

**Survival of Consultant's Indemnity Obligations.** The Consultant agrees all Consultant's indemnity obligations shall survive the completion, expiration or termination of this Contract.

8. **Insurance**

- a. Certificates and Endorsements. The Consultant shall, at its own cost, maintain in full force and effect, with limits no less than the amounts set forth in the Agreement, a policy of comprehensive/commercial general liability insurance on an occurrence form. The Consultant shall not commence performance of Services under this Agreement until all required insurance has been obtained and a certificate and endorsements have been submitted to the County. A certificate of insurance and endorsement shall be submitted upon execution of this Agreement that reflects the insurance required above, identifies the County as additional insured (except professional liability and workers' compensation) and indicates that the insurance is primary and non-contributing. The insurance policy shall bear an endorsement that the policy shall not be cancelled or the policy limits reduced by endorsement below the coverage required by this Agreement for any reason other than nonpayment of premiums except upon thirty (30) day's prior notice to the

County and only after ten (10) days' prior written notice for non-payment of premiums. All insurance is to be provided by insurance companies with an A.M. Best's rating of not less than A VIII. The insurance requirement shall not reduce the obligations of the indemnification agreement set out in Article 7. Lapse of coverage or failure to furnish satisfactory evidence of insurance is cause for termination of this Agreement.

- b. The County's specification or approval of the insurance in this Agreement or of its amount shall not relieve, limit or decrease the liability of the Consultant under the Agreement or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Agreement, indemnification, or applicable law provisions. The Consultant may, at its expense, purchase larger coverage amounts or additional insurance.

## 9. **Dispute Resolution**

- a. Mediation. Any dispute arising out of or relating to this Agreement, or the breach thereof, shall first be subject to mediation. To initiate the mediation process, a party shall submit a written mediation request to the other party. If the parties are unable to agree to a mediator within thirty (30) days after the receipt of the written request for mediation, either party may submit a request for mediation to the American Arbitration Association ("AAA").
- b. Mediation Procedure. The mediation shall be conducted using the Construction Mediation Rules of the AAA. A principal of the Consultant and the designee of the County, must attend the mediation session. To the extent there are other parties in interest, such as subconsultants, contractors, and/or designers, their representatives, with full authority to settle the claim and with authority to adjust pre-existing settlement authority if necessary, shall also attend the mediation session in person. Each party shall share the costs of mediation equally.
- c. Litigation. The Consultant may not bring litigation unless it has been properly addressed in the above dispute resolution procedure.
- d. No Waiver. The requirements of this Article cannot be waived except by an explicit written waiver signed by both parties.
- e. Maintenance of Responsibilities. The parties shall diligently carry on their respective obligations and responsibilities and maintain the schedule of this Agreement during any dispute resolution proceedings, unless otherwise agreed by both parties in writing.
- f. Waiver of Consequential Damages. The Consultant and the County waive consequential damages against one another for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's

termination of this Agreement. This waiver does not, however, include third-party claims under Article 7.

10. **Suspension and Termination**

- a. Suspension by the Consultant. If any undisputed amount remains due and owing after a period of ninety (90) days from the date the Consultant submits a monthly invoice, the Consultant may cease performing Services on the Project until all undisputed monies due are paid in full. The Consultant will not incur any liability for damages due to delay as a result of stopping performance of Services due to the County's failure to pay undisputed amounts for Services rendered.
- b. Suspension by the County. The County may, at its option, suspend all or a portion of the Services by notifying the Consultant in writing, and the Consultant shall be compensated for Services performed prior to notice of the suspension. When the Services are resumed more than thirty (30) days after suspension, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's Services, and the Consultant's Fee for the remaining Services and the time schedules shall be equitably adjusted.
- c. Termination by Consultant. Should the County fail substantially to perform in accordance with the terms of this Agreement through no fault of the Consultant, the Consultant may terminate this Agreement by giving written notice and specifying the effective date of the termination at least twenty-one (21) days after notice, during which period the County shall have the right to cure.
- d. Termination by County. The County may, at its option, terminate all or a portion of the Services not then performed under this Agreement at any time with or without cause by notifying the Consultant in writing. All finished or unfinished documents, reports, information, data, drawings, maps, models, photographs, studies, and other work product given to, prepared or assembled by or for the benefit of the Consultant under this Agreement shall, at the option of the County, thereupon become the County's property.
- e. Compensation. The County shall be liable to the Consultant for the Consultant's just and equitable compensation for all Services to the extent satisfactorily completed prior to termination, but this compensation shall not exceed the percentage of total Services satisfactorily completed at the time of termination times the total compensation payable under this Agreement. In no event shall the County be liable for any consequential or incidental damages, including but not limited to loss of profit on this or other projects or of reputation incurred by the Consultant as a result of such termination.

11. **Miscellaneous**

- a. Assignment. The Consultant shall not let, assign or transfer this Agreement, or any interest in it or part of it including claims hereunder, without the prior written consent of the County.
- b. Governing Law. This Agreement shall be governed by the internal laws of the State of Washington, without regard to its choice-of-law provisions.
- c. Nondiscrimination. The Consultant shall comply with all applicable provisions of RCW 49.60 as well as other applicable state, local and federal civil rights laws.
- d. Tobacco. The Consultant shall comply with the County's policy that no tobacco products may be used on County property.
- e. Drug-Free Workplace. The Consultant shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplaces. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Project.
- f. Material Created During Performance of the Agreement. All data, designs, drawings, tracings, artwork, plans, layouts, programs, flow charts, specifications, computer software, documentation, work product, notes, and any and all memoranda, including but not limited to, physical and electronic copies, and any and all written information that may be developed, produced, prepared, or designed by the Consultant in connection with the Services to be performed hereunder, shall be the joint property of the Consultant and the County, shall be available to the County at all times, and may be used by the County for any purpose without additional compensation to the Consultant. To the extent that the Consultant asserts any rights or establishes any claim under design or copyright laws, such rights shall also accrue to the County. Upon the termination or completion of the Agreement, any and all material referred to in this Article, together with all copies in the Consultant's possession, custody, or control, shall be promptly transferred and delivered to the County, upon the County's request.
- g. Notices. Any notice or demand required under this Agreement will be in writing, and will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt. Either party may change the address to which notice are sent by sending written notice of such change of address to the other party.
- h. Entire Contract. This Agreement constitutes the entire agreement between the County and the Consultant and supersedes any prior oral or written statements or agreements. To the extent that the Consultant has provided a proposal to perform these consulting Services and such proposal includes the terms and conditions (such as "standard" terms and conditions) that are not specific to the Services performed on this Project or includes limitations of liability, indemnification or



attorneys' fees provisions, such terms and conditions are not a part of this Agreement except to the extent explicitly accepted in writing by the County. The Recitals are a part of and are incorporated into the Agreement.

- i. Accounting. Upon request, the Consultant shall provide the County with an accounting of Services, which shall detail the Services performed, the amounts paid to any subconsultants (supported by copies of all paid invoices) and such other information as the County may reasonably request. Upon request, the Consultant shall provide the County with access to the books and records related to the Services of Consultant and its subconsultants for inspection, audit, and reproduction.
- j. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Consultant are needed for the County to respond to a request under the Act, as determined by the County, the Consultant agrees to make them promptly available to the County. If the Consultant considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Consultant shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Consultant and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Consultant (a) of the request and (b) of the date that such information will be released to the requester unless the Consultant obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Consultant fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Consultant to claim any exemption from disclosure under the Act. The County shall not be liable to the Consultant for releasing records not clearly identified by the Consultant as confidential or proprietary. The County shall not be liable to the Consultant for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Consultant agrees to indemnify and, to the greatest extent legally possible, to hold harmless the County in any action by a third party due to the negligence, recklessness or intentional actions by the Consultant relating to its performance of this contract. This includes any lawsuit filed by a third party for the County's allegedly improper release of confidential or proprietary information pursuant to a public records request.

IN WITNESS WHEREOF, representatives of both the Consultant and the County executed this Agreement on the date(s) so noted below.

CONSULTANT  
ERICKSON MCGOVERN

BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON

\_\_\_\_\_  
Raymond Mow, Principal      Date

\_\_\_\_\_  
Lisa Olsen, Chair

\_\_\_\_\_  
Frank Wolfe, Commissioner

\_\_\_\_\_  
Mike Runyon, Commissioner

ATTEST:

\_\_\_\_\_  
Amanda Bennett, Assistant Clerk of the Board      Date

APPROVED AS TO FORM

\_\_\_\_\_  
Pacific County Prosecutor's Office      WSBA#

## Exhibit A

### SCOPE OF SERVICES AND COMPENSATION

#### SCOPE OF SERVICES

##### Phase 1

Work with Pacific County public officials and/or their designees to complete feasibility study for renovating/upgrading of certain County facilities including:

Courthouse-300 Memorial Drive, South Bend. Create a single point of entry that will also connect the jail entrance to the courthouse entrance. Review site modifications that may need to occur. Create an ADA compliant restroom that could be part of the entry vestibule or inside the courthouse.

Courthouse Annex-1216 West Robert Bush Drive, South Bend. Evaluate the current department layout and see if an interior rearrangement could improve space efficiency. Review the possible use of the “second floor”.

Blue Building-318 North 2<sup>nd</sup> Street, Long Beach. Perform a building analysis to determine what improvement may be needed to accommodate future county uses.

Department of Public Works Office-211 North Commercial Street, Raymond. Evaluate the current department layout and see if an interior rearrangement could improve space efficiency. Also review for life and safety concerns related to the 2<sup>nd</sup> floor.

Phase 2 work shall include:

- Scope Analysis
- Site Planning
- Phasing
- Schematic design
- Cost Estimates

Other facilities may be included with mutual agreement from both parties. Additional phases may be added upon completion of Phase 1. Scope of Services and Compensation for additional phases will be negotiated at that time.

## COMPENSATION

<b>Erickson McGovern PLLC</b> Billing Rate Schedule Calendar Year 2022		
<b>Classification</b>	<b>Names</b>	<b>Hourly Rate</b>
Principal		\$230.00
Associate Principal		\$185.00
Project Manager		\$175.00
Project Architect		\$165.00
Architectural Designer		\$140.00
Construction Administrator		\$175.00
IT Coordinator / Production Manager		\$130.00
CAD/REVIT Drafting		\$105.00
Administrative		\$85.00
<b>Reimbursable Expenses</b>		
	Copies (8.5 x 11)	\$0.18 / sheet
	Copies (24 x 36)	\$4.00 / sheet
	Copies (30 x 42)	\$5.00 / sheet
	Mileage	\$0.62 / mile