

**PROFESSIONAL SERVICES CONTRACT
FOR
LEGAL SERVICES**

THIS PROFESSIONAL SERVICES Contract is made effective as of the 1st day of February, 2022 by and between Pacific County, a political subdivision of the State of Washington, (hereinafter COUNTY), and Ingram, Zelasko & Goodwin, LLP (collectively hereinafter ATTORNEY). COUNTY and ATTORNEY are hereinafter referred to as the parties and each a party. In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

WHEREAS, Pacific County and Erik Kupka and Zach Edwards of Ingram, Zelasko & Goodwin, LLP desire to enter into an agreement to provide Legal Services in accordance with the provisions set forth in the Contract below; and

WHEREAS, ATTORNEY is in the business of providing legal services; and

WHEREAS, the COUNTY desires to contract with ATTORNEY for the provision of legal services in the matter of Driscoll v. Pacific County under cause number 13-2-00493-0 as set forth herein; and

WHEREAS, the COUNTY desires the ATTORNEY to consult on other civil related matters referred to ATTORNEY by the COUNTY; and

WHEREAS, ATTORNEY desires to provide the requisite legal services in accordance with the provisions here; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties agree as follows:

1. DURATION OF CONTRACT

The term of this Contract shall begin on February 1, 2022 and shall remain in effect unless terminated as provided herein. Either party may terminate this contract, as provided under Section 10.

This contract may be further amended from time to time, as agreed in writing by the parties consistent with the provisions herein. No amendment, modification or renewal shall be made to this Contract unless set forth in a written Contract Amendment, signed by an authorized representative of each party. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

2. ATTORNEY OBLIGATIONS

a. ATTORNEY represents that they are qualified and possess the necessary expertise, knowledge, training, and skills, and have the necessary qualifications to perform the services set

forth in this Contract. ATTORNEY further represents that they are licensed in the State of Washington and in good standing.

b. ATTORNEY shall represent the COUNTY's interests in all cases set forth herein, and in connection therewith to consult with the COUNTY, consult with witnesses, make such investigations as are deemed necessary, take depositions, and prepare all papers and/or pleadings that should be drawn, prepared or filed in this action, and to represent COUNTY in any trial that may take place. ATTORNEY shall also act on COUNTY's behalf in connection with any proposed settlement, provided that no final settlement shall be made without prior consent or approval by the COUNTY.

c. ATTORNEY agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the County.

d. ATTORNEY shall perform according to standard industry practice of the work specified by this Contract.

e. ATTORNEY shall, from time to time, during the progress of the work, confer with the County Prosecutor regarding the progress of the litigation or other civil matters. At the County's request, the ATTORNEY shall prepare and present status reports on its work.

3. COUNTY OBLIGATIONS

a. The COUNTY will pay ATTORNEY an hourly compensation of Three Hundred Twenty-Five Dollars (\$325) for the services performed.

b. The COUNTY will provide a complete copy of any relevant files to ATTORNEY including but not limited to: copies of all pleadings filed through the date of commencement of this contract, any discovery materials, relevant correspondence, and other relevant documents.

4. PAYMENT PROVISIONS

a. ATTORNEY shall be paid upon submission of an approved invoice. In the event of any errors or omissions by ATTORNEY in the performance of any work required under this Contract, ATTORNEY shall make any and all necessary corrections without additional compensation. All work submitted by ATTORNEY shall be certified by ATTORNEY and checked for errors and omissions.

b. The COUNTY shall pay ATTORNEY for services after receipt of an approved invoice and will remit payment within thirty days from the date of approval.

c. No payment shall be made for any work performed by ATTORNEY, except for work identified and set forth in this Contract. ATTORNEY shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY. Unless otherwise provided for in this Contract, ATTORNEY will not be paid for any invoices presented for payment prior to the execution of the Contract or after its termination.

d. In the event ATTORNEY has failed to perform any obligation under this Contract and such failure has not been cured within ten days following notice from the COUNTY, then COUNTY may, in its sole discretion, upon written notice to ATTORNEY, withhold any and all monies due and payable to ATTORNEY, without penalty, until such failure to perform is cured or otherwise adjudicated.

5. ATTORNEY AS INDEPENDENT ATTORNEY

a. ATTORNEY services shall be furnished by ATTORNEY as an independent ATTORNEY and not as an agent, employee or servant of the COUNTY. The ATTORNEY specifically has the right to direct and control ATTORNEY's own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. ATTORNEY acknowledges that the entire compensation for this Contract is set forth in Section 3 of this Contract, and ATTORNEY is not entitled to any COUNTY benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Pacific County employees.

c. ATTORNEY shall have and maintain complete responsibility and control over any associated attorney or co-counsel who works with ATTORNEY on the case. No associate or co-counsel, employee, agent or representative of the ATTORNEY shall be or deem to be or act or purport to act as an employee, agent or representative of the COUNTY.

d. ATTORNEY shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may during the term of this Contract be enacted as to all persons employed by ATTORNEY and as to all duties, activities and requirements by ATTORNEY in performance of this Contract.

e. The ATTORNEY agrees to immediately remove any of its employees, representatives or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY's Contract representative or designee.

f. No portion of this contract may be subcontracted to a third party by ATTORNEY without prior written approval of the COUNTY.

6. NON-DISCRIMINATION IN CLIENT SERVICES

ATTORNEY, its assignees, or delegates shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran or military status, sexual orientation or the presence of any sensory, mental, or physical disability. Implementation of this provision shall be consistent with RCW 49.60.400.

7. INSURANCE

Without limiting the ATTORNEY indemnification of COUNTY, and prior to commencement of this Contract, ATTORNEY shall obtain, provide and maintain during the term of this Contract, policies or insurance of the type and amounts described below and in a form satisfactory to the COUNTY.

a. **General Liability Insurance.** ATTORNEY shall maintain commercial general liability insurance with at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

b. **Professional Liability (Errors & Omissions) Insurance.** ATTORNEY shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and ATTORNEY agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Contract.

c. **Workers' Compensation Insurance.** ATTORNEY shall, at its own expense, maintain Workers' Compensation Insurance (statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

d. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONTRACTOR or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONTRACTOR hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

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

8. INDEMNIFICATION/HOLD HARMLESS

a. **Indemnification by ATTORNEY.** To the fullest extent permitted by law, the ATTORNEY 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 ATTORNEY, its employees, agents or volunteers or ATTORNEY's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting

from, or in connection with ATTORNEY's performance of this Contract; or 3) are based upon ATTORNEY'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of ATTORNEY 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 ATTORNEY 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 ATTORNEY hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of ATTORNEY are a material inducement to COUNTY to enter into the Contract, are reflected in ATTORNEY's compensation, and have been mutually negotiated by the parties.

b. 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 ATTORNEY's indemnity obligations under the Contract.

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

9. 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 ATTORNEY are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the ATTORNEY agrees to make them promptly available to the COUNTY. If the ATTORNEY 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 ATTORNEY 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 ATTORNEY 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 ATTORNEY (a) of the request and (b) of the date that such information will be released to the requester unless ATTORNEY obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If ATTORNEY 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 ATTORNEY to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to ATTORNEY for releasing records not clearly identified by ATTORNEY as confidential or proprietary. The COUNTY shall not be liable to ATTORNEY for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

10. TERMINATION

a. Termination for Convenience: Either party may terminate this Agreement, in whole or in part, at any time, upon thirty (30) days written notice by Certified Mail to the other party at the address set forth below.

i. In the event that the contract is terminated for convenience, the COUNTY shall pay the ATTORNEY for all costs incurred by ATTORNEY in performing the Contract up to the termination date specified in the notice. Payment shall be made in accordance with Section 4 of this Contract.

b. Termination by Necessity: In the event that Federal, State or COUNTY funding is provided for this project, and that funding is withdrawn, reduced or limited in any way after the effective date of this Contract and prior to normal completion, the County may elect to suspend or terminate this Contract, in whole or in part, as a termination for convenience with a ten calendar day notice to ATTORNEY, to the extent possible, subject to renegotiation at the County's discretion under those new funding limitations and conditions. Termination or suspension under this paragraph shall be effective upon the date specified in the written notice of termination or suspension sent by the County to ATTORNEY. After the effective date, no charges incurred under this Contract are allowable.

c. Termination for Breach: If ATTORNEY breaches any of its obligations hereunder, and fails to cure the breach within ten calendar days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the County shall pay the ATTORNEY only for the costs of services accepted by the County, in accordance with Section 5 of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the ATTORNEY shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of ATTORNEY's breach. If, subsequent to termination, it is determined for any reason that (1) ATTORNEY was not in default, or (2) ATTORNEY's failure to perform was not its fault or its sub Attorney's fault or negligence, the termination shall be deemed to be a termination for convenience.

11. ADDRESSES OF PARTIES

Michael Rothman
Pacific County Prosecuting Attorney
300 Memorial Dr.,
South Bend, WA 98586

Erik M. Kupka
Ingram, Zelasko, & Goodwin, LLP
120 E. 1st Street
Aberdeen, WA 98520

12. COMPLIANCE WITH LAWS:

a. ATTORNEY, in performance of this Contract, agrees to comply with all applicable Federal, State, and local laws or ordinances, applicable to the representation.

b. ATTORNEY assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to ATTORNEY and all of ATTORNEY's employees, if any, engaged in the performance of work under this agreement. ATTORNEY shall furnish to the COUNTY, on its request, a certificate or other evidence of compliance with all State or Federal laws concerning contributions, taxes, and payroll assessments. In addition, ATTORNEY agrees to pay any and all taxes or assessments of whatever nature or kind levied or assessed as a consequence of the work performed or on the compensation to be paid under this contract.

13. RIGHT OF SUPERVISION AND INSPECTION

The COUNTY or its authorized representatives may, at reasonable times, inspect and audit the file and records of ATTORNEY relating to the performance of this Contract. This includes work of ATTORNEY, any associate or co-counsel or any other person or entity that performed connected or related work under this Contract. Such inspection and audit shall occur in Pacific County, Washington, or other reasonable locations that the COUNTY selects. ATTORNEY shall supply or permit the COUNTY to copy such books and records. ATTORNEY shall retain all files and records created in the performance of this contract for no less than the minimum period required for retention of legal files and records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the mandatory retention period.

14. DISPUTES

Differences between ATTORNEY and 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 unresolved dispute relating to the quality or acceptability of performance or compensation due the ATTORNEY shall be submitted to binding arbitration pursuant to RCW 7.04A et seq.

15. 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 Pacific County, Washington.

16. CONFIDENTIALITY

ATTORNEY, its employees, agents, and co-counsel shall maintain the confidentiality of all information provided by the COUNTY or acquired by ATTORNEY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of

competent jurisdiction. ATTORNEY shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

17. SEVERABILITY

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

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

c. Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of this Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

18. ENTIRE CONTRACT

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

19. 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 Section 11. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served.

20. SURVIVABILITY

The terms and conditions contained in this Contract which, by their sense and context, are intended to survive the completion, expiration or termination of this Contract shall survive. Surviving terms include, but are not limited to: Hold Harmless and Indemnification, Third Party Claims Handling, Termination, Right of Supervision and Inspection, Disputes, Choice of Law, Jurisdiction and Venue, Confidentiality, and Severability.

[SIGNATURE PAGE TO FOLLOW]

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

ATTORNEY
Ingram, Zelasko & Goodwin, LLP

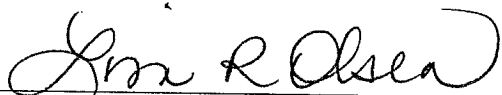
Erik Kupka Date


Zachary Edwards Date

PACIFIC COUNTY
PROSECUTING ATTORNEY

Michael Rothman WSBA#

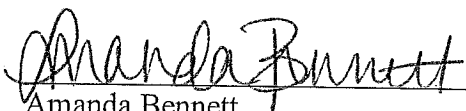
BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON


Lisa Olsen, Chair


Frank Wolfe, Commissioner


Mike Runyon, Commissioner

ATTEST

 3/10/2022
Amanda Bennett Date
Clerk of the Board