

**PROFESSIONAL SERVICES CONTRACT
FOR
BIRKMAN TRAINING**

Contract #2023 Great Places & Spaces

THIS CONTRACT is made and entered into this day between **GREAT PLACES & SPACES**, an organization, hereinafter called the "CONTRACTOR," and PACIFIC COUNTY, a municipal corporation of the State of Washington, hereinafter called the "COUNTY."

WHEREAS, the COUNTY Health & Human Services Department desires to conduct Birkman Assessments and Training for their staff and CONTRACTOR has the necessary skills, expertise, and experience to facilitate said assessment and training, as set forth herein.

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

1. **SCHEDULE OF SERVICES AND PAYMENT.** CONTRACTOR will conduct Birkman Assessments for all department staff and provide training at the workshop which will occur on June 28, 2023 in Pacific County, WA. The training content, schedule, and payment are outlined in **Exhibit A- Training Agenda & Budget and Exhibit B- Budget & Payment.**
3. **EMPLOYEES OF CONTRACTOR.** CONTRACTOR shall not employ anyone in fulfillment of this Contract who is required to register as a sex offender under Chapter 9A.44.130 RCW or who has been prohibited from contact with a vulnerable adult under Chapter 74.34.130 RCW.
4. **RELATIONSHIP OF PARTIES.** It is understood by the parties that CONTRACTOR is an independent contractor with respect to COUNTY, and is not an employee of COUNTY. COUNTY shall not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of CONTRACTOR or its employees.
5. **FEDERAL, STATE, AND LOCAL PAYROLL TAXES.** No federal or state income tax, or payroll tax of any kind shall be withheld or paid by COUNTY on behalf of CONTRACTOR or the employees of CONTRACTOR. No employees of CONTRACTOR shall be treated as employees with respect to services performed hereunder for federal or state tax purposes. CONTRACTOR shall be solely responsible for paying any and all taxes, FICA, worker's compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit-sharing, and other benefits for CONTRACTOR and its employees, servants, and agents.
6. **WORKERS' COMPENSATION.** No workers' compensation insurance shall be obtained or paid for by COUNTY concerning CONTRACTOR or the employees of CONTRACTOR. CONTRACTOR shall comply with workers' compensation laws concerning CONTRACTOR and the employees of CONTRACTOR.
7. **FRINGE BENEFITS.** Because CONTRACTOR is an independent business, neither CONTRACTOR nor any employees of CONTRACTOR shall be eligible for or participate in any employee pension, health or fringe benefit plan of COUNTY.
8. **TERMINATION.** This Contract may be terminated by either party, with or without cause, upon written notice provided on or before May 15, 2023. After May 15, 2023, this Contract may only be terminated upon good cause shown that was outside the control of the parties hereto.

9. **RETURN OF RECORDS.** Upon termination of this Contract, CONTRACTOR shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in CONTRACTOR'S possession or under CONTRACTOR'S control and that are the COUNTY'S property.
10. **ASSIGNMENT/SUBCONTRACTORS.** CONTRACTOR's obligations under this Contract may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the COUNTY. CONTRACTOR shall not subcontract any part of the work to be performed under this Contract or assign this Contract without the specific written consent of the COUNTY.
11. **COMPLIANCE WITH LAWS.** CONTRACTOR shall be solely responsible for complying with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations, and the orders and decrees of any court, or administrative bodies or tribunals in any manner affecting the performance of this Contract, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination, and licensing laws and regulations.
12. **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 CONTRACTOR are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONTRACTOR agrees to make them promptly available to the COUNTY. If the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR (a) of the request and (b) of the date that such information will be released to the requester unless the CONTRACTOR obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONTRACTOR 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 CONTRACTOR to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONTRACTOR for releasing records not clearly identified by the CONTRACTOR as confidential or proprietary. The COUNTY shall not be liable to the CONTRACTOR for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction. CONTRACTOR 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 CONTRACTOR relating to its performance of this contract. This includes any lawsuit filed by a third party for the CONTRACTOR's allegedly improper release of confidential or proprietary information pursuant to a public records request.
13. **OWNERSHIP.** Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONTRACTOR or the CONTRACTOR's subcontractors or consultants for delivery to the COUNTY under this Agreement shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the

time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONTRACTOR uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONTRACTOR and is not "work made for hire" within the terms of this Agreement.

14. INDEMNIFICATION/HOLD HARMLESS

- A. Indemnification by Contractor.** To the fullest extent permitted by law, the CONTRACTOR 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. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the CONTRACTOR, its employees, agents or volunteers or CONTRACTOR's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with the performance of this Contract; or 3) liability based upon the CONTRACTOR'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONTRACTOR 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 CONTRACTOR shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefits act or other employee benefit act, and the CONTRACTOR hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to the COUNTY to enter into the Contract, are reflected in the CONTRACTOR'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 the CONTRACTOR's indemnity obligations under the Contract.
- C. Survival of Contractor's Indemnity Obligations.** The CONTRACTOR agrees all CONTRACTORS' indemnity obligations shall survive the completion, expiration, or termination of this Contract.

15. INSURANCE. Without limiting the CONTRACTOR'S indemnification of COUNTY, and prior to commencement of this Contract, CONTRACTOR 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.** CONTRACTOR shall maintain commercial general liability insurance with coverage 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.

16. ATTORNEY'S FEES/COST OF SUIT AND VENUE. If either party files suit to enforce this Contract, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

- A. Disputes.** Differences 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

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 their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue**.

- B. Choice of Law, Jurisdiction and Venue.** 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.

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.

- C. Severability.** 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.

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.

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

- 17. CONTRACT PROVISIONS.** Payments due to the Provider/Contractor under this Agreement are expressly conditioned upon the Provider's/Contractor's strict compliance with all insurance requirements under this Agreement. Payment to the Provider/Contractor shall be suspended in the event of non-compliance. Upon receipt of evidence of full compliance, payments not otherwise subject to withholding or set-off will be released to the Provider/Contractor.
- 18. DISPUTES.** Differences between 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 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 the right to seek judicial relief.
- 19. AMENDMENT.** This Contract may be modified or amended if the amendment is made in writing and is signed by both parties.
- 20. APPLICABLE LAW.** This Contract shall be governed by the laws of the State of Washington. The venue of any litigation between the parties relating to this Contract shall be the Superior Court of Pacific County, WA.
- 21. NON-WAIVER.** The failure of either party to exercise any of its rights under this Contract for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

22. **NOTICES.** All notices required or permitted under this Contract shall be in writing via email, read receipt requested to:

For COUNTY:

Pacific County Health & Human Services Department
Katie Lindstrom
koien@co.pacific.wa.us

For CONTRACTOR:

Great Places and Spaces
Phyllis Horner
leaderswisdom@gmail.com

Either party may change such address from time to time by providing written notice to the other in the manner set forth above.

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 the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

23. **ENTIRE AGREEMENT.** This Contract contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Contract supersedes any prior written or oral agreements between the parties.

DATED THIS _____ DAY OF _____, 2023.

CONTRACTOR: Great Places & Spaces

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Phyllis Horner, PHD

Lisa Olsen, Chair

Jerry Doyle, Vice Chair

David Tobin, Commissioner

APPROVED AS TO FORM:

ATTEST:

Prosecutor's Office

WSBA #

Amanda Bennett
Clerk of the Board

Date

Exhibit A- Training Agenda

TRAINING CONTENT AND SCHEDULE

Time Est.	Topic	Method	Comments
9 am – 9:45	Introduction. Describe components of Birkman	Objectives Ground rules and flow of time (respect, listen, speak up, honor differences, and look for the benefit to self and team) Describe 4 components, usual, need and stress.	The objectives for this Birkman session: <ul style="list-style-type: none"> • Appreciate the four distinct personality types represented by the Birkman Colors • Understand the external (usual/stress) and internal (needs) parts of your personality. • Be able to verbalize what you need from your leaders and teammates, in order for you to be at your most productive self. • How to use this in your career.
9:45 – 10:45	Birkman Team Map – Interests, Usual, Need and Stress	Using activities and questions to explore team similarities and differences and how to honor each person.	Discuss overall team results. Ask for areas of alignment and possible conflict.
Break			
11 am – 12:30 pm	Specific Behaviors for Team and Individuals	Thought Physical Energy Self-Consciousness Social Energy	Using exercises and team results, plus small groups and insight questions for each area. Focus on how these results show up in the organization and how to best optimize.
Lunch			
1:15 – 2:45	Personal: Birkman Insight Reports	Pair up with another person.	Personal Short Story about how I am seen, my needs and how stress looks. Effect of interests on my work, how I handle conflict, and how I build trust with others.
2:45 – 3:15 pm	Q&A/ Insights	Each person shares a personal insight, and then for team/others	Listen and acknowledge.
3:15 – 3:30 pm	Wrap up	Themes, applications	Discuss how to use your results in any situation or career chapter of your life.

Individuals will receive their Individual Signature Report and their Advanced Summary Report. The team reports (Map and Graph) will not be shared ahead of the meeting but will be sent afterward.

EXHIBIT B- BUDGET & PAYMENT

No prepayment is required. Final payment shall be NET 30 made upon satisfactory completion of the workshop. Hours/Fees included in this contract are as follows:

Run Birkman reports	25 x \$ 165	\$ 4,125
Analysis and Team Map		\$ 650
Conduct session	Session plus travel time	\$ 3,400
Debrief Session	Within one week of team session, included	\$ 0
Travel	Air via Southwest Est	\$ 800
	Hotel 2 nights not to exceed 260/night incl taxes	\$ 520
	Car rental 2.5 days	\$ 150
	Total	\$ 9,645