

Attachment C – Draft Contract

**STATE OF WASHINGTON
ADMINISTRATIVE OFFICE OF THE COURTS
1206 Quince Street SE
Post Office Box 41170
Olympia, Washington 98504-1170
and
Personal Services Contract
PSC _____**

THIS CONTRACT is entered into by and between the Washington State Administrative Office of the Courts, hereinafter referred to as “AOC”, and _____, hereinafter referred to as “Contractor”.

PURPOSE:

IN CONSIDERATION of the mutual promises and understandings contained in this contract, the Contractor and the AOC agree as follows:

STATEMENT OF WORK:

DELIVERABLES: The following deliverables are expected to be produced pursuant to the successful completion of the Statement of Work.

PERIOD OF PERFORMANCE: Unless otherwise amended in writing, the period of performance under this Contract shall be from _____ and shall end on _____.

COMPENSATION AND PAYMENT: The AOC shall pay the Contractor a maximum of _____ for services rendered, which includes all travel, lodging, and per diem related expenses. Payment to the Contractor will be made upon receipt by the AOC of a properly-completed Washington State invoice voucher (A-19). A properly completed form W-9 must be received and on file at the AOC before any payment is made. These forms shall include reference to this contract number - _____. No payment in advance or in anticipation of services to be provided under this Agreement shall be made by the AOC. Payment will be considered timely if made by the AOC within 30 days of invoice receipt date and completion and acceptance of said deliverables as described in the aforementioned Statement of Work Section.

The payment schedule will be as follows:

- Contractor will submit an invoice after the milestones set forth in the project plan have been completed by the Contractor and accepted by AOC as described in the aforementioned Statement of Work Section.
- All payment requests shall be submitted to AOC Financial Services, P.O. Box 41170, Olympia, WA 98504-1170.

DESIGNATED CONTACT: The following named individuals will serve as designated contacts for each of the parties, for all communications and billings regarding the performance of this Contract:

Contact for Contractor is:	Contact for AOC is:
Name:	Name: 1206 Quince Street SE
Title:	P.O. Box 41170
Address: Phone:	Olympia, WA 98504-1170
Fax:	Phone:
Email:	Fax: 360.956-5700
	Email:

BACKGROUND INVESTIGATION: The Contractor agrees that as a requirement of this contract the Contractor, and any employee, assistant, agent, or subcontractor of the Contractor completing work under this contract, may be required to provide results of a criminal background investigation. Such an investigation may include, but not be limited to, fingerprinting and criminal history records checks. The Contractor further agrees to cooperate fully with the AOC in completion of this requirement. Results of the investigation and/or failure of the Contractor to cooperate fully may be grounds for termination of this contract.

CONFIDENTIALITY AGREEMENT: The CONTRACTOR agrees that due to the fact that court case files and automated databases contain confidential, as well as public, information and that employees of the CONTRACTOR performing under this contract as a contract staff may access, read or handle confidential records to the extent required in and for the purpose of performing such assigned duties that employees of the CONTRACTOR will sign a confidentiality agreement (attached) safeguarding such information.

HARDWARE AND SOFTWARE USE: The Contractor shall ensure that its representatives have the hardware and software necessary to complete the engagement as identified in the scope of work. AOC will not supply hardware or software to the Contractor unless specifically agreed to in writing.

SET UP, WORKSTATION AND FACILITY FEES: AOC may provide workstations for the contract staff. AOC will charge the CONTRACTOR a workstation fee of \$___ for the first month and \$___ per month thereafter to cover costs for the workstations assigned. This amount shall be invoiced by the CONTRACTOR on a monthly basis as

a credit against invoiced charges to AOC. If the CONTRACTOR has performed no billable work during a month, the CONTRACTOR shall pay AOC the workstation fee, or with approval of AOC's Project Manager, arrange for an alternate payment method. Parking in the AOC employee parking lots is strictly prohibited. Parking may be arranged with the Econo Lodge directly across from AOC headquarters.

First & Last Month Charge: The workstation fee shall be prorated for the first and last month of use as follows: for the number of workstations used by CONTRACTOR multiplied by the number of days of use. The result of this will be divided by the number of days in the month; this will equal the prorated charge for that month.

Workstation Termination: AOC shall have the right to unilaterally terminate the CONTRACTOR's workstation assignment at anytime.

Failure to Pay: If the CONTRACTOR fails to credit or pay a monthly workstation fee to AOC, the parties specifically agree that AOC shall have the right to deduct the workstation fee from the invoiced amount and authorize the corrected invoice for payment or take other action deemed appropriate.

CONTRACTOR staff must abide by all AOC rules, policies and regulations pertaining to AOC telephone and network usage including internet access and e-mail as well as AOC rules, policies and regulations pertaining to AOC facilities. If applicable, CONTRACTOR staff will be allowed to place local calls and calling-card calls on the telephones assigned to them as well as to accept long distance calls but may not accept collect calls. Abuse of internet access, telephone and e-mail protocols will constitute a breach of this contract. CONTRACTOR staff must follow all state and federal laws regarding non-discrimination and appropriate workplace behavior. Failure to do so will be considered a breach of this contract and warrant the immediate dismissal of the offending CONTRACTOR staff.

SITE SECURITY: CONTRACTOR staff shall conform in all respects with physical, fire or other security regulations while on AOC premises. Failure to comply with safety regulations may be grounds for revoking or suspending security access to these facilities. AOC reserves the right and authority to immediately revoke security access to CONTRACTOR staff for any real or threatened breach of this provision. Upon reassignment or termination of any CONTRACTOR staff, CONTRACTOR agrees to promptly notify AOC.

RIGHTS AND OBLIGATIONS: All rights and obligations of the parties to this Contract will be subject to and governed by the terms of this contract and the General Terms and Conditions attached as Appendix A, which is incorporated by reference as part of this contract.

ORDER OF PRECEDENCE: All attached Exhibits and Appendices are by this reference hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations
- This Basic Contract in conjunction with attachments
- The Contractor's proposal dated _____.

- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

COUNTERPARTS: If requested, this contract may be executed in duplicate, and each party shall consider each duplicate an original copy of this contract for all purposes. Each party agrees that a facsimile (FAX) or scanned transmission of any original document shall have the same effect as the original. Any signature required on an original shall be completed and sent to the other party, as applicable, when a facsimile or scanned copy has been signed. The parties agree that the signed facsimile or scanned copies of documents shall be appended thereto, integrated with, and given full effect as if an original.

ENTIRE AGREEMENT: This contract contains all the terms and conditions agreed upon by the parties. All items incorporated in this agreement by reference are attached. No other understandings, oral or otherwise, regarding this contract shall be considered to exist or to bind any of the parties to this agreement unless otherwise stated in this contract.

AUTHORITY TO BIND: The signatories to this contract represent that they have the authority to bind their respective organizations to this contract.

AGREED:

WASHINGTON STATE
ADMINISTRATIVE OFFICE
OF THE COURTS

Signature

Signature

Printed Name

Printed Name

Title

Date

Title

Date

**Washington State
Administrative Office of the Courts
1206 Quince Street SE
PO Box 41170
Olympia, Washington 98504-1170**

**Appendix A
GENERAL TERMS AND CONDITIONS
Personal Services Contract – PSC _____**

ADVANCE PAYMENTS PROHIBITED: No payment in advance or in anticipation of services to be provided under this contract shall be made by the AOC.

CHANGES AND MODIFICATIONS: Any change or modification to this contract must be in writing and signed by both parties.

COVENANT AGAINST CONTINGENT FEES: The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for commissions, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for purposes of securing business. The AOC shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such AOC, percentage, brokerage or contingent fee.

CONFLICT OF INTEREST: The AOC may, by written notice to the Contractor, terminate this contract if it is found after due notice and examination by the AOC that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, the AOC shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the AOC provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

GOVERNING LAW: This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The Contractor by execution of this contract acknowledges the jurisdiction of the courts of the state of Washington in this matter.

INDEMNIFICATION: The Contractor shall defend, protect, and hold harmless the state of Washington, the AOC, or any employees thereof, from and against all claims, suits or actions arising from the Contractor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which

constitute an infringement of any copyright, patent, trademark or tradename through use or reproduction of material of any kind.

INDEPENDENT CAPACITY OF THE CONTRACTOR: The Contractor and his or her employees or agents performing under this contract are not employees or agents of AOC. The Contractor will not hold himself/herself out to be an officer or employee of AOC or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to an employee under Chapter 28B.16 RCW or Chapter 41.06 RCW or which would accrue to an employee of the Judicial Branch specifically exempted by Chapter 41.06 RCW. **Conduct and control of the work will be solely with the Contractor.**

INDUSTRIAL INSURANCE COVERAGE: Prior to performing work under this agreement, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required by an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this contract. Should the Contractor fail to secure industrial insurance or fail to pay premiums, as may be required under Title 51 RCW, the AOC may deduct the amount of premiums and any penalties owing from the amounts payable to the Division of Industrial Insurance. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by the AOC.

The AOC will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor or any Subcontractor or employee of the Contractor which might arise under the industrial insurance laws during the performance of duties and services under this contract. If the Washington State Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Contractor; the Contractor shall indemnify the AOC and guarantee payment of such amounts.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

TREATMENT OF ASSETS: Title to all property furnished by the AOC shall remain in the AOC. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AOC upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the AOC upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AOC in whole or in part, whichever first occurs.

Any property of the AOC furnished to the Contractor shall, unless otherwise provided herein or approved by the AOC, be used only for the performance of this contract.

The Contractor shall be responsible for any loss or damage to property of the AOC which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

Upon loss or destruction of, or damage to, any AOC property, the Contractor shall notify the AOC thereof and shall take all reasonable steps to protect that property from further damage.

The Contractor shall surrender to the AOC all property of the AOC prior to settlement upon completion, termination or cancellation of this contract.

LIMITATION OF AUTHORITY: Only the Contracting Officer or the Contract Officer's delegates (delegation to be made in writing prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract on behalf of the AOC. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Contracting Officer or his or her delegate.

NONASSIGNABILITY: Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor.

NONDISCRIMINATION: During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS: In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the AOC. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

REGISTRATION WITH DEPARTMENT OF REVENUE: The Contractor shall complete registration with the State of Washington, Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

LICENSING, ACCREDITATION AND REGISTRATION: The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards necessary for the performance of this contract.

RIGHTS IN DATA: The Contractor shall own all rights, title and interest in and to all materials developed and delivered under this contract. The Contractor grants to the AOC and to the Office of the Administrator of the Courts (AOC) an irrevocable, royalty-

free, perpetual license to copy, use, distribute, and modify all materials developed and delivered under this contract for the use and benefit of the judicial branch of the Washington State government. This license does not include the right to sub-license, sell or otherwise transfer the materials or any rights to the materials to any other person or organization for any purpose without the express written authorization of the Contractor.

Materials provided by the AOC to the Contractor remain the sole property of the AOC and cannot be used by the Contractor for purposes beyond this contract without the express written authorization of the AOC.

RECORDS, DOCUMENTS, AND REPORTS: The Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AOC, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other material relevant to this contract for six years after settlement, and make them available for inspection by persons authorized this provision.

RIGHT OF INSPECTION: The Contractor shall provide right of access to its facilities to the AOC, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAFEGUARDING OF INFORMATION: The use or disclosure by the Contractor of any information obtained as a result of performance under this contract concerning the AOC or the Court for any purpose not directly connected with the administration of the AOC's, the Court's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by written consent of the AOC or the Court.

SAVINGS: In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AOC may terminate the contract under the "Termination for Convenience" clause, without the five day notice requirement, subject to renegotiation under those new funding limitations and conditions. Under this scenario, Contractor shall have the right to bill and will be paid for completed deliverables as set forth in the Statement of Work.

SEVERABILITY: If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

SUBCONTRACTING: Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval from the AOC.

TERMINATION:

- A. **Termination for Default:** The AOC may, by written notice, terminate this contract, in whole or in part, for failure of the Contractor to perform any of the obligations or provisions required by the contract. In the event of default, the Contractor shall be liable for damages as authorized by law, including but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time; Provided, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or Subcontractor's control, fault, or negligence, the termination shall be deemed to be a Termination for Convenience. Contractor shall be liable for any damages that results from termination of this contract due to failure to meet the deadlines and criteria in attached schedule B.
- B. **Termination for Convenience:** Except as otherwise provided in this contract, either party may terminate this contract by providing written notice of such termination to the other specifying the effective date thereof, at least five (5) calendar days prior to such date. If this contract is so terminated, the AOC shall be liable only for payment for deliverables completed and accepted prior to the effective date of termination.

TERMINATION PROCEDURE: Upon termination of this contract, the AOC, in addition to any other rights provided in this contract, shall require the Contractor to deliver to the AOC any property specifically produced or acquired for the performance of such part of the contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AOC shall pay to the Contractor the agreed upon price for deliverables completed and accepted by the AOC (as defined in the Statement of Work Section of this contract), and the amount agreed upon by the Contractor and the AOC for (i) completed work and services for which no separate price is stated, (ii) other property or services which are accepted by the AOC, and (iii) the protection and preservation of property, unless the termination is for default, in which case the parties to this Contract shall mutually determine the extent of liability of the AOC.

The rights and remedies of the AOC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. After receipt of notice of termination, and except as otherwise directed by the AOC, the Contractor shall:

- A. Stop work under this contract on the date and to the extent specified, in the notice;

- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- C. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts;
- D. Transfer title to the AOC and deliver in the manner, at the times, and to the extent directed by the AOC any property which, if the contract had been completed, would have been required to be furnished to the AOC;
- E. Complete performance of such part of work as shall not have been terminated by the AOC; and
- F. Take such actions as may be necessary, or as the AOC may direct, for the protection and preservation of the property related to this contract which is in possession of the Contractor and in which the AOC has or may acquire an interest.

WAIVER: Waiver of any default of any term or condition of this contract shall not be deemed to be a waiver of any other prior or subsequent default. Waiver of breach of any provision of the contract shall not be deemed a waiver of any other or subsequent breach and shall not be construed as a modification of the terms of this contract unless stated to be such in writing, signed by the both parties to this contract and attached to the original contract.

AMERICAN WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35: The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ACCESS TO DATA: In compliance with Chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to AOC, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, recommendations of the Contractor's reports, including computer models and methodology for those models.

PUBLICITY: The Contractor agrees to submit to the AOC all advertising and publicity matters relating to this contract in which AOC's name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of AOC.

PERSONALITY RIGHTS: AOC must obtain the Contractor's prior approval before use of the Contractor's name, voice, signature, photograph or other likeness in conjunction

with services provided under this Agreement and to videotape or audio record the presentation. Such approval shall not be unreasonably withheld.

PRIVACY PROTECTION: Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The AOC reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the Contractor through this contract. The monitoring, auditing or investigating may include but is not limited to “salting” by the AOC. Salting is the act of placing a record containing unique but false information into a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the AOC for any damages related to Contractor's sole unauthorized use of personal information.

LIMITATIONS ON LIABILITY: The parties agree that neither the Contractor nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Review of Contractor's Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the Contractor or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, Purchaser, or their respective subcontractors.

If delays are caused by a subcontractor without its fault or negligence, the Contractor shall not be liable for damages for such delays, unless the services to be performed

were obtainable on comparable terms from other sources in sufficient time to permit the Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

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