

# **CONTRACT WITH CLARK COUNTY GOVERNMENT**

**Contract Date:** \_\_\_\_\_

This Contract with Clark County Government (the “Contract” or “Agreement”) is a valid and binding contract signed by the Board of Commissioners of Clark County, Indiana (the "Board"), which has the authority under Indiana law to execute contracts in the name of Clark County, Indiana Government (the “County”), and which further has the authority to approve payments of claims and accounts chargeable to County. Except as expressly provided herein, or unless otherwise authorized in writing by the Board, no other instrument shall supersede, contradict, vary or supplement the terms of this Contract.

**1. Identification of Parties.** To the extent this Contract is executed by the Board for purposes relating to the official actions, decisions and authority of the Board, the signatures shown below comprise all of the required identification of parties that is necessary to create a binding legal effect when this instrument is signed. Where applicable, the Board shall designate (on signature page) such other offices of the County with whom this Contract is signed (“additional parties”). Any such other office/agency of the County so identified shall be authorized to oversee, manage and recommend payments being made by the Board for performances due under this Contract.

For purposes of this contract, the Vendor is identified, with name and address of principal office, along with telephone number for contact purposes as follows:

<u><b>Principal Office of Vendor</b></u>	
<b>Name:</b>	
<b>Address:</b>	
<b>Telephone No:</b>	
<b>Facsimile No:</b>	
<b>E-mail address:</b>	
<b>Cell Phone No:</b>	
<u><b>Vendor’s Authorized Principal Contact-Service of Process</b></u>	
<b>Name:</b>	
<b>Address:</b>	
<b>Telephone No:</b>	
<b>Facsimile No:</b>	
<b>E-mail address:</b>	
<b>Cell Phone No:</b>	

**2. Contract Price.** In consideration of the services to be performed for the benefit of the County or the Board (as shown on Exhibit A), Vendors shall be compensated the total sum of \$\_\_\_\_\_, payable in accordance with the payment schedule set forth in Exhibit B. All parties agree that Vendor shall be paid only in a manner approved by the Board and

consistent with the claims processing and payment schedules of the County. No interest or late charge shall be made applicable to any payments due Vendor under this Contract, unless specifically approved by the Board in writing due to exigent or unforeseeable circumstances.

**3. Scope of Services.** In consideration of the Board entering into this contract and authorizing payments hereunder pursuant to Exhibit B, the Vendor agrees to provide all services set forth in Exhibit A. All parties agree that performance of the services outlined on Exhibit B is an express condition precedent to any obligation of the Board to authorize any payment, in whole or in part, to Vendor. When payments are due Vendor, after completion of any phase of the services shown on Exhibit A, and at such payment times as are identified on Exhibit B, the Board's authorization for payment shall not be unreasonably withheld. However, the Board expressly retains the right to withhold payment from Vendor in cases of nonperformance or unsatisfactory performance of any aspect, or phase of Vendor's scope of services.

**4. Time.** Time is of the essence in this Contract. Vendor and Board specifically agree that the services outlined on Exhibit A are the expectation of the parties. The parties mutually agree that all services expected by the County, to be performed by Vendor, shall be fully complete no later than: \_\_\_\_\_, unless subsequently extended by written agreement between County and Vendor ("the Completion Date"). In cases of unreasonable delay, without satisfactory reasons being provided to the Board in writing, the Board retains the right to deduct a payment increment, from the schedule shown on Exhibit B, for each day that services remain incomplete or not performed after the Completion Date.

**5. Appropriation; Availability of Funds.** Vendor acknowledges that the validity and enforceability of county contracts in Indiana depend on the existence of an appropriation to fund the contract or the availability of funding sufficient to make payments thereunder. It is expressly agreed and acknowledged by Vendor that this Contract may be unilaterally terminated by the Board for non-existence, lapse or exhaustion of the appropriation or funding anticipated to exist at the time of execution hereof. If the Board implements the termination described in this paragraph, it shall not be required to pay any expectation or bargained-for payments described herein (and on any attachments) because of such failure of appropriation or fixed funding.

**6. General Provisions.**

**6.01 Independent Contractor.** The parties agree that Vendor is an independent contractor as that term is commonly used. As such, Vendor is solely responsible for all taxes and none shall be withheld from the sums paid to Vendor. Vendor acknowledges that it is not insured in any manner by County for any loss of any kind whatsoever. Vendor has no authority, express, or implied, to bind or obligate County to any third party or beyond the terms of this Contract in any manner.

**6.02 Subcontracting**

**6.02(a) Approval Required.** The parties agree that Vendor shall not subcontract, assign or delegate any portion of this Contract or the services to be performed hereunder without prior written approval of County. In the event that County approves of any such subcontracting, assignment or delegation, Vendor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. County shall have no obligation whatsoever toward such persons. Vendor shall take *sole* responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Vendor of any responsibility for performing under this Contract.

**6.02(b) Minority, Women and Veterans Participation.** To the extent Vendor uses subcontractors or other agents in the performance of services under this Contract, Vendor shall either:

Use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's' Business Enterprises, and three (3%) Veteran's Business Enterprises in the performance of services under this Contract; or

Demonstrate a good faith effort to achieve such percentages or such lesser percentages as may be authorized in writing by the Board.

Violation of this Subsection shall constitute a material breach of this Agreement.

**6.03 Necessary Documentation.** Vendor certifies that it will furnish County, if requested, any and all documentation, certifications, authorizations, licenses, permits, or registrations required by the laws or rules and regulations of the County, other units of local government, the State of Indiana, and the United States. Vendor further certifies that it is and will remain in good standing with such government agencies and that it is now and will maintain its licenses, permits, registrations, authorizations, or certifications, as applicable, in full force and effect during the term of this Contract. Failure of Vendor to comply with this paragraph shall constitute a material breach of this Contract.

**6.04 Confidentiality.**

**6.04(a)** The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Vendor understands that the information provided to it or obtained from County during the performance of its services is confidential and may not, without prior written consent of County, be disclosed to a person not in County's

employ except to employees or agents of Vendor who have a need to know in order to provide the services. Further, Vendor's work product generated during the performance of this Agreement is confidential to County. The failure to comply in all material respects with this section shall be considered a material breach of this Agreement. Confidential information shall not include information, that: (a) was known by Vendor at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Vendor; (c) is made known to Vendor by a third person who does not impose any obligation of confidence on Vendor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Vendor shall provide notice to County prior to such disclosure; or (e) information that is independently developed by Vendor without references to the confidential information.

**6.04(b)** Vendor shall not, under any circumstances, release information provided to it by, or on behalf of, County that is required to be kept confidential by County pursuant to Indiana law except as contemplated by Section 6.03(a), above.

**6.04(c)** Vendor acknowledges that County will not treat this Agreement as confidential information, but will disclose the Agreement pursuant to public records requests and may post the Agreement on the County website. Use by the public of any document or the information contained within this Agreement shall not be considered an actionable breach of this Agreement by the County.

**6.05** **Records; Audit.** Vendor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Vendor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by County or any other authorized representative of the County. Copies thereof, if requested, shall be furnished at no cost to County.

**6.06** **Ownership.**

**6.06(a)** "Works" means works of authorship fixed in any tangible medium of expression by Vendor or its officers, employees, agents or subcontractors in the course of performing the services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, notes, specifications, drawings, flow charts, memoranda, correspondence, records, notebooks, documentation, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.

**6.06(b)** Works made or created by Vendor, either solely or jointly with County, in the course of Vendor's performance of services under this Agreement shall be deemed to be works for hire and are and shall be the exclusive property of County. At County's request, Vendor will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in County. Without the prior written consent of County, Vendor shall not use, copy or prepare derivative works of the Works, or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Vendor shall be responsible for loss or damage to the Works while they are in Vendor's possession or control. Any loss or damage shall be restored at Vendor's expense. County shall have free and unlimited access to the Works at all times and, upon demand, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Vendor shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards.

**6.06(c)** Vendor shall retain all rights in and to its know-how, methods, techniques, discoveries, concepts, and ideas, whether patentable or not, and whether possessed by Vendor prior to or acquired by Vendor during the performance of this Agreement. Vendor also shall retain all rights in and to all works of authorship fixed in a tangible medium of expression which were made, created or acquired by Vendor prior to the effective date of this Agreement ("Pre-Existing Works"), provided that a listing of such Pre-Existing Works is attached to this Agreement.

**6.07 Insurance.**

Vendor shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and County from the claims set forth below which may arise out of or result from Vendor's operations under this Agreement, whether such operations be by Vendor or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

- 1) Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work;
- 2) Claims for damages because of bodily injury and personal injury, including death; and,
- 3) Claims for damages to property.

Vendor's insurance shall be not less than the amounts shown below:

- A. Commercial General Liability (Occurrence Basis)

Bodily Injury, personal injury, property damage,  
Contractual liability, product/completed operations

Each Occurrence Limit	\$1,000,000.00
Damage to Rented Premises	\$100,000.00 (each occurrence)
Medical Expense Limit	\$5,000.00
Personal and Advertising Injury Limit	\$500,000.00
General Aggregate Limit	\$2,000,000.00 (Other than Products Completed Operations)

NOTE: GENERAL AGGREGATE TO APPLY PER PROJECT

	Products/Completed Operations	\$1,000,000.00
B.	Auto Liability	\$1,000,000.00 (combined single limit) (owned, hired & non-owned)
	Bodily injury & property damage	\$1,000,000.00 each accident
C.	Excess/Umbrella Liability	\$1,000,000 (each occurrence and aggregate)
D.	Worker's Compensation & Disability Statutory	
E.	Employer's Liability	
	Bodily Injury Accident	\$100,000 each accident
	Bodily Injury by Disease	\$100,000 each employee
	Bodily Injury by Disease	\$500,000 policy limit

F. [Reserved for Professional Liability or additional riders as needed]

**6.07(a)** Certificates of Insurance, naming the County as an "additional insured," (A. B. and C. only) showing such coverage then in force (but not less than the amount shown above) shall be filed with County prior to commencement of any work. These certificates shall contain a provision that the policies and the coverage afforded will not be canceled until at least thirty (30) days after written notice has been given to County.

**6.07(b)** With the prior written approval of County, Vendor may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced. Vendor shall be responsible for all deductibles.

**6.07(c)** Nothing in the above provision shall operate as or be construed as limiting the amount of liability of Vendor to the above enumerated amounts.

--OR--

**Insurance.** Pursuant to agreement from all parties, in light of the nature of this Agreement, (i.e. personal and professional services), no insurance shall be required.

**6.08 Termination for Cause or Convenience.**

**6.08(a)** If Vendor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then County may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Vendor shall be given (1) not less than ten (10) calendar days written notice of County's intent to terminate, and (2) an opportunity for consultation with County prior to termination. In determining the amount of final payment to be made to Vendor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by County to be incurred by reason of Vendor's default.

**6.08(b)** This Agreement may be terminated in whole or in part in writing by County for County's convenience; provided that Vendor is given (1) not less than ten (10) calendar days written notice of intent to terminate and (2) an opportunity for consultation with County prior to termination. If

County terminates for convenience, Vendor's compensation shall be equitably adjusted.

**6.08(c)** Upon receipt of notice of termination for default or for County's convenience Vendor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to County all Works and such other information, materials or documents as may have been accumulated by Vendor in performing this Agreement, whether completed or in process.

**6.08(d)** If, after termination for Vendor's default, it is determined that Vendor was not in default, the termination shall be deemed to have been made for the convenience of County. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Section 6.08(b) and the recovery of such price adjustment shall be Vendor's sole remedy and recovery.

**6.09 Termination for Failure of Funding.** Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by County are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then County shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance this Agreement shall terminate and become null and void effective as of the last day of the fiscal period for which appropriations were received. County agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

**6.10 Indemnification.** Vendor agrees to indemnify, defend, and hold harmless the County and their respective officers, agents, officials and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission or breach of any provision of this Agreement by Vendor or any of its officers, agents, employees or subcontractors regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. County shall not provide such indemnification to Vendor, provided, however, that Vendor shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of County.

**6.11 Notice.** Any notice required to be sent under this Agreement shall be sent by



internationally recognized overnight courier, certified mail, or other delivery method which provided confirmation of receipt and shall be directed to the address below (or such other persons and/or addresses as any party may indicate by giving notice to other party):

The Board of Clark County Commissioners  
501 E. Court Ave.  
Room 404  
Jeffersonville, IN 47130

- 6.12 Disputes.** Vendor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with County. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Vendor and County may otherwise agree in writing. Should Vendor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by County or Vendor as a result of such failure to proceed shall be borne by Vendor, and Vendor shall make no claim against the County for such costs. County may withhold payments on disputed items pending resolution of the dispute.
- 6.13 Non-discrimination.** Vendor and its officers, agents, employees, and subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- 6.14 Conflict of Interest.**
- 6.14(a)** Vendor certifies and warrants to County that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with County.
- 6.14(b)** For purposes of compliance with IC 36-1-21, Vendor certifies and warrants to County that Vendor, or a person who wholly or partially owns Vendor, is not a relative, as that term is defined by IC 36-1-21-3, of any member of either the Board of Commissioners of Clark County, Indiana or the County Council of Clark County, Indiana.
- 6.15 Non-contingent Fees.** Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty County

shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**6.16 Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party’s reasonable control (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

**6.17 Applicable Laws; Forums.**

**6.17(a)** Vendor agrees to comply with all applicable federal, state and local laws rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by County and Vendor to determine whether the provisions of the Agreement require formal modification.

**6.17(b)** This agreement shall be construed and enforced in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of Clark County, Indiana. Suit if any, shall be brought in the State of Indiana, County of Clark, and Vendor waives any objection to venue.

**6.18 Waiver.** County’s delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of County’s rights or remedies.

**6.19 Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full for and effect.

**6.20 Attorneys’ Fees.** Vendor shall be liable to County for reasonable attorneys’ fees

incurred by County in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Vendor, or from Vendor's failure to fulfill any provisions or responsibility provided herein.

**6.21 Successors and Assigns.** County and Vendor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Vendor shall not assign, sublet or transfer its interest in this Agreement without the written consent of County. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of County.

**6.22 Authority to Bind Vendor.** Notwithstanding anything in this Agreement to the contrary, the signatory for Vendor represents that he/she has been duly authorized to execute agreements on behalf of Vendor and has obtained all necessary or applicable approval from the home office of Vendor to make this Agreement fully binding upon Vendor when his/her signature is affixed and accepted by County.

**6.23 Debarment and Suspension.**

**6.23(a)** Vendor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Vendor.

**6.23(b)** Vendor certifies, by entering into this Agreement, that it does not engage in investment activities in Iran as more particularly described in IC 5-22-16.5.

**6.23(c)** Vendor shall provide immediate written notice to County if, at any time after entering into this Agreement, Vendor learns that its certifications were erroneous when submitted, or Vendor is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.

**6.23(d)** Vendor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.

**6.24** **Compliance with E-Verify Program.** Pursuant to IC 22-5-1.7, Vendor shall enroll in and verify the work eligibility status of all newly hired employees of Vendor through the E-Verify Program (“Program”). Vendor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

**6.24(a)** Vendor and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Vendor or its subcontractor subsequently learns is an unauthorized alien. If Vendor violates this Section 5.24, County shall require Vendor to remedy the violation not later than thirty (30) days after County notifies Vendor. If Vendor fails to remedy the violation within the thirty (30) day period, County shall terminate this Contract for breach of contract. If County terminates this Contract, Vendor shall, in addition to any other contractual remedies, be liable to County for actual damages. There is a rebuttable presumption that Vendor did not knowingly employ an unauthorized alien if Vendor verified the work eligibility status of the employee through the Program.

**6.24(b)** If Vendor employs or contracts with an unauthorized alien but the county determines that terminating the contract would be detrimental to the public interest or public property, County may allow the contract to remain in effect until County procures a new Vendor.

**6.24(c)** Vendor shall, prior to performing any work, require each subcontractor to certify Vendor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Vendor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Vendor determines that a subcontractor is in violation of this Section 5.24, Vendor may terminate its contract with the subcontractor for such violation.

**6.24(d)** Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming Vendors enrollment in the Program, unless the Program no longer exists, shall be filed with County prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with the County.

**6.25** **Key Persons.** The parties agree that the work described in the Agreement to be

performed by Vendor is a personal service, highly professional in nature, and that the identity of the individual who is to be personally responsible for such work is of prime importance to County. The parties therefore agree that in the event of the death or disability of Vendor, or, if Vendor is a firm, partnership, or corporation, in the event of the death, or disability or termination of employment of anyone understood to be personally responsible for the work described in this Agreement, County may, without penalty and in its discretion, terminate this Agreement, and make its own new Agreement with any other party for completion of the work herein described.

**7. Resolution of Disputes, Jurisdiction and Venue.** The parties mutually agree that the suits and venue of all legal disputes, whether seeking relief at law or in equity, shall be the Circuit Court of Clark County or any Superior Court of Clark County. Vendor expressly waives any objection to venue in Clark County. Vendor acknowledges the right to seek legal advice of its own choosing with respect to waiver of this right to seek a change of venue from Clark County. Both parties shall retain the right, in the event of litigation, to seek a change of judge, consistent with the Indiana Rules of Trial Procedure.

A. As an express condition precedent to either party filing litigation because of a disagreement arising out of this Contract, the parties expressly agree to engage in at least one (1) good faith effort of Mediation pursuant to the Rules of the Indiana Supreme Court for Alternative Dispute Resolution (“ADR”). In such cases, the parties shall endeavor to agree on a person to serve as mediator of the dispute and that person shall be authorized to fix the location and date of mediation sessions.

B. The parties shall each pay fifty percent (50%) of the mediation expense, unless otherwise expressly agreed in writing at the mediation session. The parties expressly agree that they each shall be required to pay their own attorney’s fees and court costs, respectively, in the event that litigation is filed that results in any judgment for any party. The sole and only exception to the obligation of each party to pay their own fees and costs shall be when the court where the litigation is filed makes an express written finding and determination that any party to the litigation acted in a frivolous, groundless or unreasonable manner in asserting or defending a claim, or in continuing to assert and defend a claim after the positions so asserted or defended became patently unreasonable and groundless. In such cases of such findings, the court may order assessment of attorney fees and costs against the party found to have acted in such a manner.

C. In the parties are unable to agree on the person to be named mediator, any party may issue a written request to the Circuit Court of Clark County, requesting said court to set a panel of three (3) potential mediators from the southern Indiana area to serve in that capacity. The Vendor shall strike first from the panel of potential mediators, the Board shall strike second and the person remaining on the panel shall be selected to be the Mediator, if the person so selected agrees to serve in that capacity.

D. The parties expressly agree that litigation may only be filed after the above-referenced attempt at formal Mediation has been completed and exhausted without

successful resolution. By expressly providing for ADR, it is expressly agreed and understood by the parties that the process known as binding arbitration shall not be required of either of them as an express term or condition precedent for resolving any disputes under this contract.

E. If the person/Mediator remaining unstricken declines appointment, the court shall be requested to reissue new panels of three (3) potential Mediators, as often as is necessary, until a person selected accepts the appointment as Mediator.

**8. Complete Integration/Other Attachments.**

A. In addition to Exhibits A and B, the parties expressly agree that proof of insurance or surety shall be attached hereto and incorporated herein as Exhibit C.

B. Whenever the cases arises where Vendor asserts there are “additional specifications” to supplement the scope of services, the parties expressly agree that such “additional specifications” shall be considered terms of this Contract if, and only if, they provide technical, insurance or other non-legal terminology and language and are approved in a separate writing executed by both parties.

C. Nothing in the nature of asserting, offering or proffering legal terms, obligations or conditions that may be contained in documents incorporated as “additional specifications” shall have any binding effect on the Board, unless the Board, through its authorized officer, specifically signs and dates any applicable page documents asserted to be “additional specifications.”

D. This Contract is a complete integration, inclusive of Exhibits A through C. No other document, instrument, verbal statement, representation or claimed understanding of any party may be asserted to vary, modify, supplement or contradict the terms of this Contract and Exhibits A through C, unless such other matter is expressly signed by all parties hereto and identified as a “supplement to the Contract.”

E. In the event that any material conflict arises between the terms of this Contract, the attachments, or any subsequently approved additional specifications, the terms of this Contract shall control.

**9. Prohibited Attachments.** Vendors are specifically prohibited from attaching promotional materials, letters of past work experience or other exhibits/attachments to this Contract, beyond Exhibit C, unless specifically approved by the Board in writing. Unilateral attachments made by Vendor, not so approved by the Board renders any obligations of the Board hereunder voidable, in the Board’s sole discretion.

**10. Contract Date.** The effective date of this Contract is shown on the first page hereof under the heading “Contract Date:\_\_\_\_\_.” The parties mutually agree that this is the effective starting date of their Contract obligations.

**11. Form Not Applicable to Certain Vendors.** The parties hereto expressly agree that the Board may elect to use different, optional forms of contract with contact accountants and attorneys who perform ongoing services to the Board and that such election does not create any legal rights, remedies, claims or defenses to assert against the Board in the event of dispute, mediation, litigation or appeal regarding this Contract.

**12. Governing Law.** The parties expressly agree that the law of the state of Indiana shall, in all circumstances, be the governing law for purposes of interpretation of this contract and/or any mediation or enforcement action hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

*[VENDOR NAME]*

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**THE BOARD OF CLARK COUNTY COMMISSIONERS**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM AND LEGALITY:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print: \_\_\_\_\_

**APPROVED AS TO AVAILABILITY OF FUNDING:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**SOURCE OF FUNDING:** \_\_\_\_\_

**OTHER OFFICE AND SIGNATURE FOR WHOM THIS CONTRACT IS EXECUTED:**

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ATTEST:

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Auditor of Clark County, Indiana

**PERMITTED ATTACHMENTS**

- A. Services to be performed/scope of services/required state forms  
(use "A-2," "A-3" etc. to meet this requirement)
- B. Payment schedule
- C. Proof of insurance/bond/surety when applicable (use "C-1," "C-2,"  
etc.

**No other attachments permitted**