

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Philip Morley, County Administrator

FROM: Leslie Locke, Deputy Clerk of the Board

DATE: January 6, 2014

SUBJECT: AGREEMENT re: Labor Relations and Human Resources Consulting Services; In the Amount not to exceed \$30,000 per year; Braun Consulting Group

STATEMENT OF ISSUE:

Bob Braun of Braun Consulting Group has served as Jefferson County's human resources/personnel consultant since 1989. His expertise in this field has been invaluable to the County over the years as evidenced by his effective performance of the following services: developing labor strategy, negotiating and preparing multiple collective bargaining agreements, conducting salary studies, performing medical plan reviews, creating job descriptions, and collaborating with County staff in resolving a variety of personnel matters involving grievances, employment law claims, investigations, mediation and arbitration; including preparing findings of fact and law.

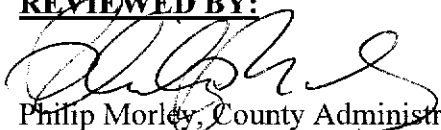
FISCAL IMPACT:

Monthly Retainer = \$2,000
Special Projects = \$250 per hour
Not to Exceed \$30,000 per year

RECOMMENDATION:

Approve AGREEMENT re: Labor Relations and Human Resources Consulting Services; In the Amount not to exceed \$30,000 per year; Braun Consulting Group

REVIEWED BY:


Philip Morley, County Administrator

01/06/14
Date

CONTRACT FOR PROFESSIONAL SERVICES

This Contract for Professional Services (the Contract) is entered into by Jefferson County, a political subdivision and municipal corporation of the State of Washington, having its principal offices at 1820 Jefferson Street; P.O. Box 1220; Port Townsend, WA 98368 (hereinafter "County") and Braun Consulting Group; 1326 Fifth Avenue; Seattle, WA 98101 (hereinafter "Contractor") to provide professional services in labor relations and human resources.

SECTION 1. EFFECTIVE DATE OF CONTRACT

The Contract shall be effective on January 1, 2014 and terminate on December 31, 2018. Any extension of services beyond December 31, 2018 shall require a new contract that is approved and executed in writing by both parties.

SECTION 2. SERVICES TO BE PROVIDED

- 2.1 In full and fair exchange of the consideration provided herein, Contractor agrees to provide County the following services in collaboration with County management:
- a. Act as the County's designated labor relations representative in labor negotiations relating to bargaining units, including development of labor strategy and negotiation of collective bargaining agreements;
 - b. Provide County management advice in the administration of collective bargaining agreements, labor law and employment law, including assisting in the resolution of potential and actual grievances and/or labor or employment law claims, and arbitration of grievances;
 - c. Assistance in evaluating and executing strategies for providing employee benefits;
 - d. Serve as an expert resource to County management on human resource, employment and labor matters;
 - e. Personnel Investigations: as requested by County management, perform personnel investigations and prepare findings of fact and law;
 - f. Contractor may provide "special project" support or work products that involve substantial extra work, as jointly agreed and that have prior written authorization by the County, including the County setting an upper limit on cost.
- 2.2 The Contractor agrees to provide its own labor and materials.
- 2.3 The Contractor will perform the work specified in the Contract according to standard industry practices and in conformity with state and federal law.
- 2.4 The Contractor will complete its work in a timely manner and in accordance with schedules as may be agreed to by the parties.

SECTION 3. CONTRACT REPRESENTATIVES

- 3.1 The County and the Contractor will each have a contract representative. A party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

County's Contract Supervisor

Erin Lundgren, HR Manager,
Jefferson County Administrator's Office
P.O. Box 1220; Port Townsend, WA 98368
Phone: (360) 385-9100
Email: elundgren@co.jefferson.wa.us

Contractor's Contract Representative

Bob Braun
Braun Consulting Group
1326 Fifth Avenue
Seattle, WA 98101
Phone: (206) 623-5155
Email: B.Braun@BraunConsulting.com

SECTION 4. COMPENSATION

- 4.1 The compensation for routine services (Paragraphs 2.1a.-e.) shall be \$24,000 (twenty four thousand dollars) per year, billed at a monthly retainer of \$2,000 (two thousand dollars) per month. For special projects (Paragraph 2.1f.) performed with prior County authorization, Contractor may charge by task or at an hourly rate of not more than \$225.00 per hour, with the cost for the special project not to exceed the amount previously agreed to pursuant to Paragraph 2.1f. The total annual compensation for all services under this contract, including both routine services and special projects combined, shall not exceed \$30,000 per year, except by prior written amendment to this Contract, duly executed by both parties.
- 4.2 The Contractor may submit an invoice to the County Administrator once a month for payment of work completed to date. Subject to the other provisions of the Contract, then County generally will pay such an invoice within 30 days of receiving it.
- 4.3 If the Contractor fails to perform any substantial obligation and the failure has not been cured within 10 business days following notice from the County, the County may, in its sole discretion and upon written notice to the Contractor, withhold all monies due the Contractor, without penalty, until such failure to perform is cured.

SECTION 5. AMENDMENTS

- 5.1 This Contract may be amended only by mutual written agreement which has been duly executed by both parties.

SECTION 6. HOLD HARMLESS AND INDEMNIFICATION

6.1 The Contractor will, to the extent of Section 7. Insurance coverage, hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts or omissions arising outside of his good-faith performance of authorized, lawful County business pursuant to this Contract.

SECTION 7. INSURANCE

7.1 **Workers' Compensation.** If required by Title 51, Revised Code of Washington, the Contractor will maintain workers' compensation insurance and will provide evidence of such coverage to the Jefferson County Risk Management Division.

7.2 **Commercial General Liability.** The Contractor will maintain commercial general liability for bodily injury, personal injury and property damage, subject to a limit of not less than \$1 million per occurrence. The general aggregate limit will apply separately to the Contract and be no less than \$2 million. The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of the Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard commercial general liability policy, including contractual liability coverage.

7.3 **Automobile Liability.** The Contractor will maintain automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 each accident combined bodily injury and property damage. The aggregate limit will be at least \$1,000,000. If the Contractor will use non-owned vehicles in performance of the Contract, the coverage will include owned, hired, and non-owned automobiles.

7.4 Miscellaneous Insurance Provisions.

A. The Contractor's liability insurance provisions will be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents. Any third-party liability coverage provided to the County by its participation or membership in a joint self-insurance "Risk Pool" pursuant to Ch. 48.62 RCW shall be non-contributory.

B. The Contractor's commercial general liability insurance and automobile liability insurance will include the County, its officers, officials, employees and agents as an additional insured. Contractor will supply complete copies of any endorsements listed on any record or certificate indicating the County is an additional insured.

- C. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will contain no specific limitations on the scope of protection afforded to the County as an additional insured.
- D. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees and agents.
- E. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, subject to the limits of the insurer's liability.
- F. It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Contractor or its subcontractors.
- G. The Contractor will maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements scheduled to expire before completion of services will be renewed before expiration. If the Contractor's liability coverage is written as a claims-made policy, then the Contractor must evidence the purchase of an extended-reporting period or "tail" coverage for a three-year period after completion of the services.

7.5 Verification of Coverage and Acceptability of Insurers.

- A. The Contractor will place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-VII, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or reinsurers licensed in the State of Washington.
- B. The Contractor will furnish the County with properly executed certificates of insurance and all signed related policy endorsements which will clearly evidence all insurance required in this Section within 10 days after the effective date of the Contract. Certificates of insurance will show the certificate holder as Jefferson County and indicate "care of" the appropriate County's contract representative. The certificate(s) will, at a minimum, list limits of liability and coverage. The certificate(s) will provide that the underlying insurance contract may not be canceled, or allowed to expire, except on 30-days' prior written notice to the County. Any certificate or endorsement limiting or negating the insurer's obligation to notify the County of cancellation or changes must be amended so as not to negate the intent of this provision.

- C. The Contractor will furnish the County with evidence that the additional-insured provision required above has been met.
- D. Failure to comply with the insurance provisions of this Contract will allow the County to suspend payments to the Contractor at the County's sole discretion.
- E. If applicable, the Contractor will request that the Washington State Department of Labor and Industries, Workers Compensation Representative, send written verification to Jefferson County that the Contractor is currently paying workers' compensation.
- F. Written notice of cancellation or change will be made to the County at the following address:
 - Jefferson County Administrator's Office
 - ATTN: Risk Management Division
 - P.O. Box 1220
 - Port Townsend, WA 98368

SECTION 8. TERMINATION

- 8.1 The County may terminate the Contract in whole or in part at its sole discretion. The County may terminate the Contract upon giving the Contractor 10 business days' written notice. In that event, the County will pay the Contractor for all authorized costs incurred by the Contractor in performing the Contract up to the date of such notice, subject to the other provisions of the Contract.
- 8.2 If funding for the underlying project or matter is withdrawn, reduced or limited in any way after the Contract is signed or becomes effective, the County may immediately terminate the Contract notwithstanding any other termination provision in the Contract. Termination under this provision will be effective upon the date specified in the written notice of termination sent by County to the Contractor. No costs incurred after the effective date of the termination will be paid.
- 8.3 If the Contractor breaches any of its obligations under the Contract, and fails to cure the breach within 10 business days of written notice to do so by the County, the County may terminate the Contract. In that event, the County will pay the Contractor only for the costs of services accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor will bear all costs and expenses incurred by the County in completing the work and all damages sustained by the County by reason of the Contractor's breach.

SECTION 9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- 9.1 The Contractor will perform under the Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under the Contract will not be assigned, delegated or subcontracted to any other person or firm without the prior express written consent of the County.
- 9.2 The Contractor warrants that it has not paid, nor has it agreed to pay, any company, person, partnership or firm, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Contract.

SECTION 10. INDEPENDENT CONTRACTOR

- 10.1 The Contractor's services will be furnished by the Contractor as an independent contractor and not as an agent, an employee or a servant of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in the Contract. The Contractor shall perform the contracted work. Any designee shall have prior County approval to substitute for the contracted representative.
- 10.2 The Contractor acknowledges that the entire compensation for the Contract is set forth in the compensation provisions of the Contract and the Contractor 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 Jefferson County employees.
- 10.3 The Contractor will have and maintain complete responsibility and control over all of its subcontractors, employees, agents and representatives. No subcontractor, employee, agent or representative of the Contractor will be or be deemed to be, or act or purport to act, as an employee, agent or representative of the County.

SECTION 11. NONDISCRIMINATION

- 11.1 The Contractor, its assignees, delegates or subcontractors will not discriminate against any person in performance of any of its obligations under the Contract on the basis of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification.

SECTION 12. OWNERSHIP OF MATERIALS/WORKS PRODUCED

12.1 All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under the Contract will be "works for hire" as defined by the U.S. Copyright Act of 1976 and will be owned by the Contractor. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights.

SECTION 13. DISPUTES

13.1 Differences, disputes and disagreements between the Contractor and the County arising under or out of the Contract will be brought to the attention of the County at the earliest possible time so that the matter may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County Administrator. All rulings, orders, instructions and decisions of the County Administrator will be final and conclusive.

SECTION 14. CONFIDENTIALITY

14.1 The Contractor, its employees, subcontractors and their employees will maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of the Contract, except upon the prior express written consent of the County or upon an order entered by a court of competent jurisdiction. The Contractor will promptly give the County Administrator written notice of any judicial proceeding seeking disclosure of such information, as well as any contacts by citizens, proponents or interested parties as to matters before the contractor.

14.2 The County is a political subdivision of the State of Washington and as such is subject to Ch. 42.56 RCW, the Public Records Act, which requires disclosure of non-exempt documents and records to a person or entity that requests such documents or records.

SECTION 15. CHOICE OF LAW, JURISDICTION AND VENUE

15.1 The Contract will be construed as having been made and delivered within the State of Washington, and it is agreed by each party that the Contract will be governed by the laws of the State of Washington, both as to its interpretation and performance.

15.2 Any action of law, suit in equity or other judicial proceeding arising under or out of the Contract may be instituted and maintained only in Superior Court for Jefferson County.

SECTION 16. MISCELLANEOUS

16.1 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the Contract, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the Contract at a later time.

- 16.2 **Tax Payments.** The Contractor will pay all applicable federal, state and local taxes, fees (including licensing fees) and other amounts including, but not limited to, the employer's portion of any taxes that arise from compensation owed or paid to employees, agents or representatives of the Contractor or are otherwise mandated by Title 26 U.S.C.
- 16.3 **Personnel Removal.** The Contractor agrees to remove immediately any of its subcontractors, employees, agents or representatives from assignment to perform services under the Contract upon receipt of a written request to do so from the County Administrator.
- 16.4 **Legal Compliance.** The Contractor and its subcontractors, employees, agents and representatives will comply with all applicable federal, state and local laws, rules and regulations in their performance under the Contract. The Contractor shall be entitled to seek legal advice from the Jefferson County Prosecuting Attorney or his or her designee to the extent that the Prosecuting Attorney or his or her designee can provide such legal advice in a manner consistent with the applicable rules governing a lawyer's conduct.
- 16.5 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of the Contract. The Contractor will retain for audit purposes all Contract-related records for at least six years after termination of the Contract.
- 16.6 **Successors and Assigns.** The County, to the extent permitted by law, and the Contractor each bind themselves, their partners, successors, executors, administrators and assigns to the other party to the Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Contract.
- 16.7 **Severability.** If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 16.8 **Entire Agreement.** The parties acknowledge that the Contract is the complete expression of their agreement regarding the subject matter of the contract. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.

16.9 **Notices.** Any notices will 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 the contract representatives provision of the Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed this _____ day of January, 2014.

Attest: **JEFFERSON COUNTY
BOARD OF COMMISSIONERS**

Carolyn Avery
Deputy Clerk of the Board

John Austin, Chair

Date

Approved as to Form:

BRAUN CONSULTING GROUP

David Alvarez 12/19/13

David Alvarez
Deputy Prosecuting Attorney

[Signature]

Bob Braun, Principal

12/19/2013

Date