

JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: November 13, 2023

Agreement for Professional Services for Labor Relations; Braun Consulting
Group; January 1, 2024 — June 30, 2025

STATEMENT OF ISSUE: Staff requests approval by the Board of County Commissioners of the attached Agreement for Professional Services with Braun Consulting Group for an 18-month period, January 1, 2024 – June 30, 2025.

ANALYSIS: Robert Braun has ably provided labor relations services for Jefferson County since at least 1988, and has been our representative ever since unionization of the County workforce first began. He has negotiated and written all seven of our collective bargaining agreements since their inception until the 2023 negotiation cycle, helped establish our current health insurance for represented and non-represented employees and officials, and has represented the County in grievances, labor arbitrations, and investigations and has assisted on a wide range of human relations/personnel matters. His knowledge of labor law, the county and its labor history are important resources for the county.

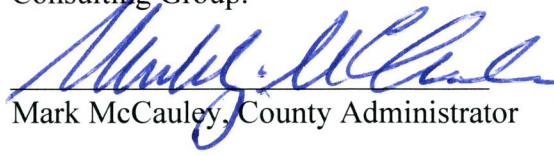
Under the proposed contract Mr. Braun will provide the County the following services in collaboration with the Jefferson County Prosecuting Attorney and County management:

1. Act as the County's designated labor relations consultant during labor negotiations relating to bargaining units, including development of labor strategy and negotiation of collective bargaining agreements;
2. Provide advice in the administration of collective bargaining agreements, labor relations and employment issues, including assisting in the resolution of potential and actual grievances and/or labor or employment claims, and arbitration of grievances;
3. Assist with evaluating and executing strategies for providing employee benefits;
4. Serve as an expert resource to County management on human resources, employment, and labor matters;
5. As requested by the County, perform personnel investigations, and prepare findings;

6. When requested, assist in completing help to design compensation adjustments to job classifications.
7. As requested by the County, 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.

FISCAL IMPACT: Compensation is a fixed cost retainer of \$2,500 per month throughout the contract period, plus \$225 per hour for work on agreed upon special projects. Maximum potential cost in 2024 is \$33,000 and in 2025 is \$17,000 for a total potential contract cost of \$50,000.

RECOMMENDATION: Approve the proposed Professional Services Agreement with the Braun Consulting Group.


Mark McCauley, County Administrator


Date

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (this Agreement) 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 ("County") and Braun Consulting Group; 1415 2nd Avenue, #909; Seattle, WA 98101 ("Contractor") to provide professional services in labor relations and human resources.

1. EFFECTIVE DATE OF CONTRACT

This Agreement shall be effective on January 1, 2024 and terminate on June 30, 2025.

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 the Jefferson County Prosecuting Attorney and County management: 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;
 - 2.1.1. Provide advice in the negotiation and administration of collective bargaining agreements, labor relations and employment issues, including assisting in the resolution of potential and actual grievances and/or labor or employment claims, and arbitration of grievances;
 - 2.1.2. Assistance in evaluating and executing strategies for providing employee benefits;
 - 2.1.3. Serve as an expert resource to County management on human resources, employment, and labor matters;
 - 2.1.4. As requested by the County, perform personnel investigations, and prepare findings;
 - 2.1.5. As requested by the County, 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 this Agreement according to standard industry practices and in conformity with state and federal law. Under no circumstances will the Contractor engage in any activities that are considered the practice of law in the State of Washington.

- 2.4. The Contractor will complete all work in a timely manner and in accordance with schedules as may be agreed to by the parties.

3. CONTRACT REPRESENTATIVES

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

Sarah Melancon, HR Director,
Jefferson County Administrator's Office
P.O. Box 1220
Port Townsend, WA 98368

Phone: (360) 385-9133
Email: SEMelancon@co.jefferson.wa.us

Contractor's Contract Representative

Bob Braun
Braun Consulting Group
1415 2nd Avenue, #909
Seattle, WA 98101

Phone: (206) 623-5155
Email: B.Braun@BraunConsulting.com

4. COMPENSATION

- 4.1. The compensation for routine services (Paragraphs 2.1.1-2.1.5) shall be \$30,000 (thirty thousand dollars) per year, not to exceed \$45,000, billed at a monthly retainer of \$2,500 (two thousand, five hundred dollars) per month.
- 4.2. For special projects (Paragraph 2.1.6) 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 special project work not to exceed the amount previously agreed to pursuant to Paragraph 2.1.5.

The total annual compensation for all services and costs under this Agreement, including both routine services, special projects and Professional Liability premium reimbursement combined, shall not exceed \$33,000 in 2024 and \$17,000 in 2025, except by prior written amendment to this Agreement, duly executed by both parties. All work performed consistent with this Agreement on or after January 1, 2024, but before execution of this Agreement, is hereby ratified.

- 4.3. 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. An invoice that requests compensation under Paragraphs 4.3 and 4.4 shall be accompanied by documentation of task or hours performed or actual premium costs paid to maintain the Professional Liability coverage required by this Agreement. The County generally will pay such an invoice within 30 days of receiving it.
- 4.4. 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.

5. AMENDMENTS

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

6. HOLD HARMLESS AND INDEMNIFICATION

The Contractor will, to the extent of the insurance coverage required in Section 7, 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 Agreement.

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 this Agreement 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 this Agreement. 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 this Agreement, the coverage will include owned, hired, and non-owned automobiles.

- 7.4. Professional Liability Insurance. The Contractor shall maintain professional liability insurance on a form acceptable to Jefferson County Risk Management in the amount of not less than \$1 million per occurrence and \$3 million in the aggregate.

7.4.1. If the professional liability insurance held by the Contractor to insure the Contractor regarding the work to be performed under this Agreement provides coverage on a claims-made basis, then each such professional liability insurance policy must have a Retroactive Date of, or prior to, the effective date of this Agreement. For each such claims-made policy accepted by the County, a supplemental extended reporting period (SERP) shall be purchased, at Contractor's sole expense, with an extended reporting period of not less than three (3) years in the event the insurance policy is cancelled, non-renewed, switched to an occurrence form, retroactive date advanced, or there is any other event triggering the right to purchase a SERP insurance policy during the term of this Agreement or thereafter.

7.4.2. The Contractor agrees Contractor's insurance obligation to provide professional liability coverage shall survive the completion or termination of this Agreement for a minimum period of three years.

- 7.5. Miscellaneous Insurance Provisions.

7.5.1. 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.

7.5.2. 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.

7.5.3. 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.

7.5.4. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees, and agents.

- 7.5.5. 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.
- 7.5.6. It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County (including its marital communities, 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 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 marital communities, 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 all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Contractor or its subcontractors.
- 7.5.7. The Contractor shall 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 shall 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.
- 7.5.8. Verification of Coverage and Acceptability of Insurers.
- 7.5.8.1 The Contractor shall 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.
- 7.5.8.2 The Contractor shall furnish the County with properly executed certificates of insurance and all signed related policy endorsements which shall clearly evidence all insurance required in this Section within 10 days after the effective date of this Agreement. Certificates of insurance shall show the certificate holder as Jefferson County and indicate "care of" the appropriate County's contract representative. The certificate(s) shall, at a minimum, list limits of liability and coverage. The certificate(s) shall 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.

7.5.8.3 The Contractor shall furnish the County with evidence that the additional insured provision required above has been met.

7.5.8.4 Failure to comply with the insurance provisions of this Agreement shall allow the County to suspend payments to the Contractor at the County's sole discretion.

7.5.8.5 If applicable, the Contractor shall 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.

7.5.8.6 Written notice of cancellation or change shall 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

8. TERMINATION

8.1. The County may terminate this Agreement in whole or in part at its sole discretion. The County may terminate this Agreement upon giving the Contractor 10 business days' written notice. In that event, the County shall pay the Contractor for all authorized costs incurred by the Contractor in performing this Agreement up to the date of such notice, subject to the other provisions of this Agreement.

8.2. If funding for the underlying project or matter is withdrawn, reduced, or limited in any way after this Agreement is signed or becomes effective, the County may immediately terminate this Agreement notwithstanding any other termination provision in this Agreement. Termination under this provision shall 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 shall be paid.

8.3. If the Contractor breaches any of its obligations under this Agreement and fails to cure the breach within 10 business days of written notice to do so by the County, the County may terminate this Agreement. In that event, the County shall 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 shall 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.

8.4. In the event this Agreement is terminated by the County prior to December 31 of the contract year or June 30, 2025, Contractor may submit a closing invoice at not more

than \$225.00 per hour for documented excess hours spent on services provided under Section 2 during the preceding twelve months that exceed the calculated number of hours in that same period derived by dividing the total compensation paid under Paragraphs 4.1, 4.2 and 4.3 during that twelve months by a rate of \$225.00 per hour, as illustrated by the formulas below.

Closing invoice \$225.00 x Excess Hours,
where

Excess Hours = [Actual # Hours worked under Section 2 in Prior 12 months]
— [(Total Paid under Paragraphs 4.1, 4.2 & 4.3 in Prior 12 months)/\$225.00
per hour]

Upon verification of the closing invoice and its supporting documentation, County will pay the closing invoice within 45 days.

9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- 9.1. The Contractor shall perform under this Agreement using only its bona fide employees or agents, and the obligations and duties of the Contractor under this Agreement shall 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 this Agreement.

10. INDEPENDENT CONTRACTOR

- 10.1. The Contractor's services shall 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 this Agreement. 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 this Agreement is set forth in the compensation provisions of this Agreement and the Contractor is not entitled to any County benefits, including, but not limited to: retirement, 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 shall have and maintain complete responsibility and control over all its subcontractors, employees, agents, and representatives. No subcontractor, employee,

agent, or representative of the Contractor shall be or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County.

11. NONDISCRIMINATION

The Contractor, its assignees, delegates or subcontractors shall not discriminate against any person in performance of any of its obligations under this Agreement 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.

12. OWNERSHIP AND PRESERVATION OF RECORDS

- 12.1. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Agreement shall be owned by the County. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights.
- 12.2. It is important that the Consultant make its paper files and electronically stored information available to the County's lawyers and, if discovery requests are later issued to the County in litigation, available to the lawyers representing any other parties.
- 12.3. The Consultant shall retain both paper documents and electronically stored information relating to work performed under this Agreement, and that are in the Consultant's custody or control, for a period of at least six years after termination of this Agreement, or for documents and information related to a collective bargaining agreement that expires after the termination of this Agreement, retain the related documents and information for at least six years after the termination of the collective bargaining agreement.
- 12.4. The Consultant agrees to preserve paper records and electronically stored information relating to the work being performed under this Agreement, including but not limited to email, electronic calendars, financial spreadsheets, Word documents, and other electronically stored information created and/or stored on the Consultant's computer. The above list is not exhaustive and only is intended to give examples of the types of records the Consultant should retain.
- 12.5. The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of this Agreement.

13. DISPUTES

Differences, disputes and disagreements between the Contractor and the County arising under or out of this Agreement shall 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 shall be decided by the County Administrator. All rulings, orders, instructions, and decisions of the County Administrator which are consistent with the purposes, terms and conditions of this Agreement shall be final and conclusive.

14. PROSECUTING ATTORNEY MUST BE CONSULTED FOR LEGAL ADVICE

The Contractor shall seek legal advice from the Jefferson County Prosecuting Attorney or his or her designee on all legal issues related to the work being performed under this Agreement.

15. GENERAL TERMS AND CONDITIONS

15.1. Controlling Law. It is understood and agreed that this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed in accordance with the laws of the United States, the State of Washington, and the County of Jefferson, as if applied to transactions entered into and to be performed wholly within Jefferson County, Washington between Jefferson County residents. No party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Agreement.

15.2. Litigation/Jurisdiction/Venue.

15.2.1. Should either party bring any legal action, each party in such action shall bear the cost of its own attorney's fees and court costs.

15.2.2. All such court action shall take place and be vested solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

15.3. No Waiver. The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of this Agreement, 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 this Agreement later.

15.4. Tax Payments. The Contractor shall 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.

15.5. Personnel Removal. The Contractor agrees to remove immediately any of its subcontractors, employees, agents, or representatives from assignment to perform services under this Agreement upon receipt of a written request to do so from the County Administrator.

- 15.6. Compliance with Applicable Laws. The Contractor and its subcontractors, employees, agents, and representatives shall comply with all applicable federal, state, and local laws, rules, and regulations in their performance under this Agreement.
- 15.7. Successors and Assigns. The County, to the extent permitted by law, and the Contractor each bind themselves, and all their partners, successors, executors, administrators and assigns in respect to all the terms and conditions of this Agreement.
- 15.8. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid, or unenforceable, 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 this Agreement did not contain the provision held to be invalid. If any provision of this Agreement conflicts with any statutory provision of the State of Washington, the provision shall be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 15.9. Entire Agreement. The parties acknowledge that this Agreement is the complete expression of their agreement regarding the subject matter of this Agreement. Any oral or written representations or understandings not incorporated in this Agreement are specifically excluded.
- 15.10. Modification of this Agreement. This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of all the parties.
- 15.11. No Third-party Beneficiaries. The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.
- 15.12. Signature in Counterparts. The parties agree that separate copies of this Agreement may be signed by each of the parties and this Agreement shall have the same force and effect as if all the parties had signed the original.
- 15.13. Facsimile and Electronic Signatures. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.
- 15.14. Arms-Length Negotiations. The parties agree that this Agreement has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.
- 15.15. Ratification. All work performed by Consultant consistent with this Agreement on or after January 1, 2023 but before this Agreement's execution is hereby ratified.
- 15.16. 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 representative's provision of this Agreement. 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 Agreement to be executed this _____ day of November 2023.

(SIGNATURES FOLLOW ON NEXT PAGE)

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

BRAUN CONSULTING GROUP

Greg Brotherton, Chair

Date

Bob Braun

Date

Attest:

Carolyn Gallaway, CMC
Clerk of the Board

Date

Approved as to Form:



November 8, 2023

Philip C. Hunsucker
Chief Civil Deputy Prosecuting Attorney

Date