

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Mark McCauley, County Administrator

FROM: Amanda Hamilton, County Clerk

DATE: August 5, 2024

SUBJECT: Scanning Services Agreement

STATEMENT OF ISSUE: The Clerk's Office has already completed an imaging project with Modus in 2022, digitizing microfilmed court records. This current agreement is for cloud storage and retrieval of our approximately 1.3 million images on 400 GB of storage that Modus still has access to from our conversion project. We received all of the images on a 5-terabyte portable hard drive. There is currently not enough storage available to house our images on Laserfiche, and it is unclear when we will be able to move forward with storing our images locally.

ANALYSIS: This vault services agreement will enable all of our staff to access the cloud and print from their computer, as opposed to plugging in the one shared drive. This backup would safeguard against loss or corruption of our 'original' images on the drive until we can arrange to upload the documents locally.

FISCAL IMPACT: The proposed cost is \$2400 for the first year if paid in advance. The agreement allows for month to month services at a cost of \$250-\$275 per month if it proves prudent to maintain vault services beyond the first year. The Clerk's Office will make every effort to absorb this cost into the existing 2024-25 Clerk's Office budget.

RECOMMENDATION: Please review and sign this Agreement for Services.

REVIEWED BY:


Mark McCauley, County Administrator

8/11/24
Date

CONTRACT REVIEW FORM

Clear Form

(INSTRUCTIONS ARE ON THE NEXT PAGE)

CONTRACT WITH: MODUS TECHNOLOGY, INC

Contract No: MODUS2024

Contract For: Cloud Storage of Superior Court Documents Term: 1 year option to extend

COUNTY DEPARTMENT: County Clerk
Contact Person: Amanda Hamilton
Contact Phone: 360-385-9128
Contact email: amanda.hamilton@co.jefferson.wa.us

AMOUNT: \$2,400

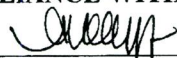
Revenue: _____
Expenditure: _____
Matching Funds Required: _____
Sources(s) of Matching Funds: _____
Fund # 001 050
Munis Org/Obj CL51230 480000

PROCESS:

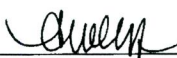
☒ Exempt from Bid Process
☐ Cooperative Purchase
☐ Competitive Sealed Bid
☒ Small Works Roster
☐ Vendor List Bid
☐ RFP or RFQ
☐ Other: _____

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒ N/A: ☐  7/30/2024
Signature Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☒ N/A: ☐  7/30/2024
Signature Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 8/1/2024.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 7/30/2024.
PAO assisted with revisions to the contract.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

Scanning Services Agreement

This Scanning Services Agreement ("this Agreement") is by and between Modus Technology, Inc. ("Service Provider") and Jefferson County on behalf of the Jefferson County Clerk ("Customer" and together with Service Provider, the "Parties", and each a "Party").

WHEREAS Service Provider has the capability and capacity to provide certain scanning services; and

WHEREAS Customer desires to retain Service Provider to provide the said services, and Service Provider is willing to perform such services under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer agree as follows:

1. Effective Date. The effective date of this Agreement is the date the last Party signs this Agreement.

2. Services. Service Provider shall provide to Customer the services set out in one or more statements of work. The initial Statement of Work is attached hereto as **Exhibit A**. Additional Statements of Work shall be deemed issued and accepted only if signed by the Parties. Any additional Statement(s) of Work shall be governed by the terms and conditions of this Agreement.

3. Fees and Expenses.

3.1 In consideration of the provision of the Services by the Service Provider, Customer shall pay the fees set out in Statement of Work. Payment to Service Provider of such fees and the reimbursement of expenses pursuant to this Section 3 shall constitute payment in full for the performance of the Services. Unless otherwise provided in the applicable Statement of Work, said fee will be payable within 30 days of receipt by the Customer of an invoice from Service Provider.

3.2 Customer shall be responsible to pay all taxes, however designated, that are levied or imposed by reason of the transactions contemplated by this Agreement, including without limitation all sales, use, transfer, privilege, excise and other taxes and duties, whether international, national, state or local, excluding, however, taxes based on Service Provider's net income.

3.3 Customer shall reimburse Service Provider for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Service Provider does not waive by the exercise of any rights hereunder), Service Provider shall be entitled to suspend the

provision of any Services if the Customer fails to pay any amounts when due hereunder and such failure continues for 10 days following written notice thereof.

4. Warranty.

4.1 Service Provider warrants that it shall perform the Services:

4.1.1 In accordance with the terms and subject to the conditions set out in the respective Statement of Work and this Agreement.

4.1.2 Using personnel of commercially reasonable skill, experience, and qualifications.

4.1.3 In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

4.2 SERVICE PROVIDER MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 4.1, ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

5. Confidentiality. Service Provider shall treat all documents and information provided to it for the performance of Services herein as confidential information ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Service Provider's breach of this Section 5; (b) is or becomes available to Service Provider on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information. Service Provider shall: (i) protect and safeguard the confidentiality of the Confidential Information with at least the same degree of care as the Service Provider would protect its own confidential information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Confidential Information, or permit it to be accessed or used, for any purpose other than to perform its obligations under this Agreement; and (iii) not disclose any such Confidential Information to any person or entity, except to the Service Provider's Group who need to have access to the Confidential Information to assist the Service Provider, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

If the Service Provider is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Customer of such requirements to afford Customer the opportunity to seek, at Customer's sole cost and expense, a protective order or other remedy. For purposes of this Section 5 only, Service Provider's Group shall mean the Service Provider's employees, officers, volunteers, agents, and attorneys.

6. Ownership of Data. Customer through the Jefferson County Clerk maintains complete

and sole ownership of the data that is uploaded to Modus Vault services.

7. Term and Termination.

7.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Statement(s) of Work unless sooner terminated pursuant to Section 7.2 or Section 7.3.

7.2 Either Party may terminate this Agreement, effective upon 30 days' written notice to the other Party.

7.3 Notwithstanding anything to the contrary, Service Provider may immediately terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder: (a) and such failure continues for 10 days after Customer's receipt of written notice of nonpayment; or (b) more than two time[s] in any six-month period.

7.4 In the event this Agreement or any Statement(s) of Work are terminated by either Party pursuant to this Section 7, Customer shall pay for all Services performed and expenses incurred up to the effective date of termination. Customer shall have no right to use or exploit in any manner, the deliverables related to the Statement(s) of Work unless Customer has paid the full fees related thereto.

8. Indemnity. Service Provider shall defend, indemnify and hold Customer, its officers, officials, employees, agents and volunteers (and their marital communities) harmless from any claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of Service Provider in performance of this Agreement, except for injuries and damages caused by the sole negligence of Customer. Should a court of competent jurisdiction determine this Agreement is subject to RCW 4.24.115 if liability for damages occurs arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Service Provider and Customer, its officers, officials, employees, agents and volunteers (and their marital communities) Service Provider's liability, including the duty and cost to defend, shall be only for Service Provider's negligence. It is further specifically understood that the indemnification provided constitutes Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. This section shall survive the expiration or termination of this Agreement.

9. General Insurance Requirements.

9.1 Insurance coverage shall be evidenced by one of these methods:

9.1.1 Certificate of insurance; or,

9.1.2 Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

9.2 Any deductibles or self-insured retention shall be declared to and approved by Customer before the approval of this Agreement by Customer. At the option of Customer, the insurer shall reduce or eliminate deductibles or self-insured retention, or Service Provider shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

9.3 Failure of Service Provider to take out or maintain any required insurance shall not relieve Service Provider from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations about indemnification of Customer.

9.4 Service Provider's insurers shall have no right of recovery or subrogation against Customer, its officers, officials, employees, agents and volunteers (and their marital communities), it being the intention of the Parties that the insurance policies so affected shall protect all the Parties and shall be primary coverage for all losses covered by the above described insurance.

9.5 Insurance companies issuing Service Provider's insurance policy or policies shall have no recourse against Customer, its officers, officials, employees, agents and volunteers (and their marital communities) for payment of any premiums or for assessments under any form of insurance policy.

9.6 All deductibles in Service Provider's insurance policies shall be assumed by and be at the sole risk of Service Provider.

9.7 Any judgments for which Customer may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to Service Provider until Service Provider shall furnish additional security covering such judgment as may be determined by Customer.

9.8 Any coverage for third Party liability claims provided to Customer by a "Risk Pool" created under Ch. 48.62 RCW shall be non-contributory regarding any insurance policy Service Provider shall provide to comply with this Agreement.

9.9 Customer may, upon Service Provider's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation otherwise due to Service Provider.

9.10 Service Provider shall provide a copy of all insurance policies specified in this Agreement.

9.11 Written notice of cancellation or change in Service Provider's insurance required by this Agreement shall reference the project name and agreement number and shall be mailed to Customer at the following address: Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.

9.12 Service Provider's liability insurance provisions shall be primary and noncontributory regarding any insurance or self-insurance programs covering Customer, its officers, officials, employees, agents and volunteers (and their marital communities).

9.13 Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to Customer, its officers, officials, employees, agents and volunteers (and their marital communities).

9.14 Service Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except regarding the limits of the insurer's liability.

9.15 Service Provider shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance coverage for subcontractors shall be subject to all the requirements stated in this Agreement. The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.

9.16 Service Provider shall maintain all required insurance policies in force from the time services commence until services are completed. Certificates, insurance policies, and endorsements expiring before completion of services shall be promptly replaced.

9.17 Service Provider 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-, 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 re-insurers licensed in the State of Washington.

9.18 Certificates of insurance as required by this Agreement shall be delivered to Customer within fifteen (15) days of execution of this Agreement.

9.19 Customer shall be named as an "additional insured" on all insurance policies required by this Agreement.

9.20 Service Provider shall furnish Customer with properly executed certificates of insurance that, at a minimum, shall include:

9.20.1 The limits of overage;

9.20.2 The project name and agreement number to which it applies;

9.20.3 The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368, and,

9.20.4 A statement that the insurance policy shall not be canceled or allowed to expire except on thirty (30) days prior written notice to Customer.

9.21 To the extent a certificate of insurance lists or refers to any endorsements solely by name, description or number it shall be the responsibility of Service Provider to obtain and provide to the Jefferson County Risk Management full and complete copy of the texts of such endorsements.

9.22 If the proof of insurance or certificate indicating Customer is an "additional insured" to an insurance policy obtained by Service Provider refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of Service Provider to obtain the full text of that endorsement and forward that full text to Customer.

10. Commercial General Liability Insurance.

10.1 Service Provider shall maintain commercial general liability coverage on a form acceptable to Jefferson County Risk Management for bodily injury, personal injury, and property damage, with a limits of not less than in the amount of at least \$2 million per occurrence, for bodily injury, including death, and property damage.

10.2 The commercial general liability insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:

10.2.1 Broad form property damage, with no employee exclusion;

10.2.2 Personal injury liability, including extended bodily injury;

10.2.3 Broad form contractual/commercial liability, including completed operations and product liability coverage;

10.2.4 Premises – operations liability (M&C);

10.2.5 Independent contractors and subcontractors;

10.2.6 Blanket contractual liability; and,

10.2.7 Employers liability or stop gap coverage.

10.3 Customer, its officers, officials, employees, agents and volunteers (and their marital communities) shall be named as an additional insured Party under this insurance policy.

11. Worker's Compensation (Industrial Insurance). Service Provider shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to Jefferson County Risk Management, upon request. Worker's compensation insurance covering all employees with limits meeting all state and federal laws. This coverage shall extend to any subcontractor without their own worker's compensation and employer's liability insurance. Service Provider expressly waives by mutual negotiation all immunity and limitations on liability, regarding Customer, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise apply in the case of such claim. If Customer incurs any costs to enforce this section, all cost and fees shall be recoverable from Service Provider.

12. Limitation of Liability.

12.1 IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.2 IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE LESSER OF \$5,000 OR THE AGGREGATE AMOUNTS PAID TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

13. Entire Agreement. This Agreement, including and together with any related Statements of Work, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The Parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Statement of Work, the terms and conditions of this Agreement shall supersede and control.

14. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15. Amendments. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

16. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17. Assignment, Successors and Assigns. The Parties shall not assign their rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other party. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

18. Relationship of the Parties. The relationship between the Parties is that of independent contractors. The details of the method and manner for performance of the Services by Service Provider shall be under its own control, Customer being interested only in the results thereof. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

19. Controlling Law. It is understood and agreed this Agreement is entered into in the State of Washington. This Agreement shall be governed by and construed under 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.

20. Litigation/Jurisdiction/Venue. Should either Party bring any legal action, each Party in such action shall pay for its own attorney's fees and court costs. The venue for any legal action shall be solely in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW 36.01.050.

21. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic

transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

22. Public Records Act. Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, must be kept or indexed as a public record under the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), Service Provider agrees to maintain all records constituting public records and to produce or assist Customer in producing such records, within the time frames and parameters in state law. Service Provider also agrees that upon receipt of any written public records request, Service Provider shall, within two business days, notify Customer by providing a copy of the request per the notice provisions of this Agreement. This Agreement, once executed, will be a "public record" subject to production to a third Party if it is requested under the Washington Public Records Act, Chapter 42.56 RCW (as may be amended).

(SIGNATURES APPEAR ON NEXT PAGE)

JEFFERSON COUNTY WASHINGTON

MODUS TECHNOLOGY, INC.

Board of County
Commissioners Jefferson
County, Washington

By: _____

Kate Dean, Chair

Date

By: _____

Alex Coffey, President

Date

By: _____

Greg Brotherton, Commissioner

Date

By: _____

Heidi Eisenhour, Commissioner Date

SEAL:

ATTEST:

Carolyn Gallaway, CMC

Date

Clerk of the Board

Approved as to form



July 30, 2024

Philip C. Hunsucker,

Date

Chief Civil Deputy Prosecuting Attorney

STATEMENT OF WORK - EXHIBIT A

Jefferson County Clerk ("Customer") and Address:	Modus Technology, Inc. ("Service Provider"):
Jefferson County Clerk 1820 Jefferson Street, Port Townsend, Wa. 98368	Modus Technology, Inc. 1420 NW Gilman Blvd. #2562 Issaquah, Wa. 98027
Jefferson County Clerk Contact	Modus Technology, Inc. Contact
Name: Amanda Hamilton Signature Initials: Title: Clerk Telephone: 360-385-9125 Email: Amanda.Hamilton@co.jefferson.wa.us	Name: Marty Skognes Signature Initials: MS Title: Account Representative Telephone: 509-290-0450 Email: mskognes@modustechnology.com

This Statement of Work -EXHIBIT A is in accordance with and is hereby made a part of the Scanning Services Agreement between Customer and Service Provider (the "Agreement"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement. In the event of a conflict among the terms and conditions of this Statement of Work and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall govern and control such conflict. The following services will be performed by Service Provider.

1. Description of Services: Import and upload 16mm film reel images to Modus Vault services that were scanned, indexed and converted by Modus Technology.
2. Deliverables: Import and upload Jefferson County film images to a digital format and archive to Modus Vault Services for retrieval and backup services.
3. Fees:
 - SCANNING AND MODUS VAULT SERVICES FEE SCHEDULE
 - SCANNING OF IMAGES/FILM – DOES NOT APPLY
 - PREP OF RECORDS – DOES NOT APPLY
 - INDEX OF RECORDS – DOES NOT APPLY
 - USB/FLASH DRIVE OF RECORDS – IF REQUESTED - \$150.00
 - PICKUP/DELIVERY FEES – DOES NOT APPLY

- SHREDDING OR RECORDS – DOES NOT APPLY
- CLOUD DOCUMENT MANAGEMENT - MODUSVAULT FEES
- Monthly Hosting Fee \$250.00 - \$275.00 RANGE/ PER MONTH
- Additional Gigabytes – DOES NOT APPLY
- Estimated Monthly Cost To Host Jefferson County Clerk Data - \$200.00 per month (advance payment terms)

Fees and rates will remain set for the first 12 months of the Agreement. Thereafter, rates are subject to change upon 90 days' notice to Customer. Customer will accept or reject Service Provider's rate change proposal within 30 days of receipt of the proposal.

5. Expenses – N/A

Customer agrees to reimburse Service Provider for certain expenses incurred in performance of the services, including:

- shredding expenses: DOES NOT APPLY

6. Invoice Schedule: QUARTERLY OR MONTHLY BILLING OF SERVICES - TBD

7. Invoice Contact: **Amanda Hamilton** - All invoices relating to this SOW shall be submitted to **Amanda Hamilton** at **Jefferson County Clerk's Office** for processing on behalf of Customer.

The Effective Date of this Statement of Work the same as the Agreement.