

**DELAWARE COUNTY SPECIAL COMMISSIONER'S MEETING**  
**Monday, July 20 2018 @ 9:00 A.M.**  
**COMMISSIONER'S COURTROOM**  
**100 W. MAIN ST.**  
**MUNCIE, IN 47305**

ROLL CALL

Mr. Shannon Henry  
Mr. James King  
Ms. Sherry Riggan  
Mr. John Brooke, Attorney

**SERVICE AGREEMENT BETWEEN DELAWARE COUNTY  
AND DELAWARE COUNTY JUSTICE PARTNERS LLC.**

Mr. Joe Rhett, Attorney, said this is an agreement to get the design plans going before the Build Operate Transfer (BOT) agreement. This agreement will cover the initial design plan up until the BOT agreement is signed.

MOTION: Commissioner Henry made a motion to approve the agreement (see below).

SECOND: Commissioner Riggan

YEAS: Commissioner Riggan, Commissioner Henry, President King

July 18, 2018

**NOTICE OF SPECIAL MEETING**

The Delaware County Commissioners will meet in a Special Meeting:

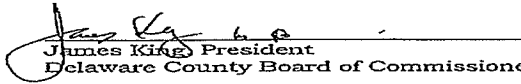
Friday, July 20, 2018

At 2:30 p.m.

In the Commissioner's Courtroom

100 W. Main Street, Room 309, Muncie, IN 47305

Said session shall be for discussion with respect to: Approve contract for services.

  
James King, President  
Delaware County Board of Commissioners

## AGREEMENT FOR SERVICES

This Agreement for Services (the "Agreement"), executed as of \_\_\_\_\_, 2018 (the "Effective Date"), by and between Delaware County, Indiana ("County"), and Delaware County Justice Partners, LLC, an Indiana limited liability company ("Service Provider"),

### RECITALS

WHEREAS, County has selected Service Provider as the successful proposer in connection with a project to develop, design, build, operate and finance the County's jail and justice center facility (the "Project");

WHEREAS, County and Service Provider have not yet entered into a project agreement in connection with the Project (a "Project Agreement");

WHEREAS, as an accommodation to County in order to meet the proposed timeline for the Project, County has requested that Service Provider commence the services described on Exhibit A (the "Services") prior to completion and execution of the Project Agreement and County has agreed to compensate Service Provider for such Services as set forth herein in the event that the Project does not reach a financial close;

WHEREAS, Service Provider and its respective team members have experience in providing the Services; and

WHEREAS, County and Service Provider desire to enter into this Agreement to formalize the terms and conditions upon which Service Provider shall perform the Services;

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, County and Service Provider agree as follows:

1. Services. Subject to the terms and conditions of this Agreement, Service Provider shall perform the Services. Service Provider shall be an independent contractor of County. The term of this Agreement shall be for the period: (a) commencing on the Effective Date; and (b) ending on the earlier of financial closing with respect to the Project or January 31, 2019 (the "Outside Date"), unless earlier terminated in accordance with the terms and conditions of this Agreement.

2. Payment. In the event there is a financial closing under the Project Agreement, all compensation for the Services shall be included in the Project Agreement. In the event the financial closing has not occurred by the Outside Date, as compensation in full for the Services, County shall pay to Service Provider One Million Dollars (\$1,000,000). Fifty percent (50%) of the payment will be billed net 30 upon fifty percent (50%) of completion of the project scope, and fifty percent (50%) upon completion of the project scope, unless a financial closing occurs prior to completion of the project scope. In such case, the final fifty percent (50%) of the payment for Services under this Agreement shall be included in the Project Agreement. If

financial closing occurs on or before January 31, 2019, any payment made by County shall be deducted from the compensation amount contained in the Project Agreement.

3. Performance. Service Provider shall perform the Services: (a) in coordination with County; (b) in accordance with the prevailing professional standards in Delaware County, Indiana area for similar services; and (c) in compliance with all applicable laws, statutes, and/or ordinances, and any applicable governmental rules, regulations, guidelines, orders, and/or decrees (collectively, the "Laws"). Prior to commencing the Services, Service Provider shall: (a) obtain all permits and approvals required by the Laws; and (b) obtain and maintain during performance of the Services, all professional licenses and certifications required by the Laws. Service Provider shall provide to County, upon request, copies of any and all such licenses and certifications. If performance of the Services requires the entry by Service Provider onto real estate not owned by County or Service Provider, then Service Provider shall be responsible for obtaining permission to enter onto such real estate.

4. Work Product. All works of authorship fixed in any tangible medium of expression by or for Service Provider or its officers, employees, agents, or subcontractors in the course of performing the Services, including, without limitation, 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, but excluding any attorney work-product and communications between Service Provider and its attorneys (collectively, the "Work Product"), shall be deemed to be works for hire and, in the event that the payment described in Section 2 is paid to Service Provider, upon such payment of County's payment to Service Provider in full all amounts due and payable to Service Provider hereunder, shall be the property of County and Service Provider will provide all Work Product promptly to County. If the Project reaches financial closing, Work Product shall be treated in accordance with the Project Agreement. Notwithstanding anything in this Agreement to the contrary, Service Provider shall: (a) retain all rights in and to its know-how, methods, techniques, discoveries, concepts, and ideas, whether patentable or not, and whether possessed by Service Provider prior to or acquired by or for Service Provider in the performance of the Services and/or this Agreement; and (b) retain all rights in and to all works of authorship fixed in a tangible medium of expression that were made, created, or acquired by or for Service Provider prior to the effective date of this Agreement. County acknowledges that any works, items, materials, or other matters developed, created, or invented by personnel of Service Provider or any of its officers, employees, agents, or subcontractors not substantively involved in performing the Services shall be presumed: (a) not to be Work Product; and (b) to remain the sole and exclusive property of Service Provider (or such officer, employee, agent, or subcontractor).

5. Relationship. The employees of Service Provider: (a) are (and shall be considered for all purposes to be) the employees or contractors of Service Provider; and (b) are not (and shall not be considered for any purpose to be) the employees or contractors of County. Accordingly, County shall have no obligations or liabilities with respect to such employees, who shall look exclusively to Service Provider to discharge all obligations and duties as their employer or principal. Subject to Section 13, Service Provider shall indemnify and hold harmless County from and against all claims, suits, judgments, liabilities, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees and court costs) that result

from any claim for wages, benefits, or otherwise by any agent, employee, or contractor of Service Provider. The indemnities set forth in this Section shall survive the expiration or earlier termination of this Agreement.

6. Assignment and Subcontracting. Service Provider shall not assign this Agreement without the prior written consent of County, which consent may be withheld in County's sole discretion. County may assign this Agreement without the prior written consent to any agency or instrumentality thereof. County otherwise shall not assign this Agreement without the prior written consent of Service Provider, which consent may be withheld in Service Provider's sole discretion. In the event that any subcontractors are engaged by Service Provider, Service Provider shall remain solely responsible for managing, directing, and paying the person or persons to whom such responsibilities or obligations are subcontracted or delegated. County shall have no obligation whatsoever toward such persons. Service Provider shall take sole responsibility for the quality and quantity of any services rendered by such persons. In the event of any assignment, subcontracting, or delegation in accordance with this Section, County or Service Provider shall remain liable to Service Provider or County, respectively, for the performance such obligations. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of County.

7. Nondiscrimination. In connection with the performance of this Agreement, Service Provider shall not discriminate against any employee, applicant for employment, and/or other person in the subcontracting and/or performance of the Services with respect to hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of race, age, color, religion, sex, disability, national origin, or ancestry. No notice or cure period shall apply with respect to the obligation of Service Provider under this Section, and a default under this Section shall be an immediate event of default.

8. E-Verify. Service Provider certifies it is enrolled in and verifies the work eligibility status of all newly hired employees of Service Provider in the Indiana offices through the E-Verify program. Pursuant to I.C. 22-5-1.7-11, Service Provider is not required to verify the work eligibility status of all newly hired employees of Service Provider through the E-Verify program if the E-Verify program no longer exists.

9. Conflict of Interest. Service Provider certifies and warrants to County that neither Service Provider nor any of its officers, agents, employees, or subcontractors who participate in the performance of any Services has any conflict of interest with County.

10. Debarment. Service Provider 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 "State"). 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 Service Provider. Service Provider certifies, by entering into this Agreement, that it does not engage in investment activities in Iran as more particularly described in Indiana Code § 5-22-16.5. Service Provider shall provide immediate

written notice to County if, at any time after entering into this Agreement, Service Provider learns that its certifications were erroneous when submitted, or Service Provider 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 Indiana Code § 5-22-16.5, or 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. Service Provider 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.

11. Notice. All notices required to be delivered hereunder shall be in writing, and shall be deemed to have been delivered when: (a) delivered in person; (b) sent by facsimile, with electronic confirmation of receipt; or (c) sent by nationally recognized overnight carrier; in any case addressed as follows: (a) to County at Board of Commissioners of Delaware County, Indiana, 100 W. Main Street, Room 309, Muncie, Indiana 47305, Attn: President, with a copy to John Brooke, Brooke-Stevens P.C., 112 E. Gilbert Street, Muncie, Indiana 47305; and (b) to Service Provider at: 10401 North Meridian Street, Suite 401, Indianapolis, Indiana 46280, Attn: Brad Baffin/Troy Woodruff, with a copy to Ice Miller LLP, Attn: Thomas A. John, One American Square, Suite 2900, Indianapolis, Indiana 46282. Either party may change its address for notice by written notice delivered to the other party as provided in this Section. Notwithstanding the foregoing, County orally may provide to Service Provider any notice required or permitted by this Agreement; provided that such notice also shall be delivered as required by this Section within 10 business days after the date of such oral notice.

12. Force Majeure. If Service Provider or County is unable to perform, satisfy, or observe any of its respective obligations under this Agreement as a result of any cause that is not within the reasonable control of Service Provider or County, respectively, and does not result from the fault or negligence of Service Provider or County, respectively (including, without limitation, unusually inclement weather, acts of God, the unusual unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of public utility providers), then: (a) such performance, satisfaction, or observance shall be excused for the period of days that such performance, satisfaction, or observance is delayed or prevented; and (b) the deadlines for performance, satisfaction, or observance, as applicable, shall be extended for the same period.

13. Limitation of Liability. Notwithstanding anything in this Agreement to the contrary, the liability of Service Provider on account of any actions, damages, claims, liabilities, costs, expenses, and/or losses (collectively, the "Claims") in any way arising out of, related to, or in connection with this Agreement and/or the Services shall be limited to the total amount of fees theretofore paid to Service Provider, together with any earned but unpaid fees. In no event shall Service Provider be liable for consequential, special, indirect, incidental, punitive, or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs) unless resulting from the negligence of Service Provider. This Section shall apply regardless of the form of the Claims asserted, whether in contract, statute, tort, or otherwise. The terms and conditions of this Section shall survive the termination or expiration of this Agreement. Service Provider shall carry professional liability insurance in an amount not less

than \$1,000,000 per claim and \$1,000,000 aggregate for all claims for negligent performance and shall maintain the coverage for a period of three (3) years after termination of this Agreement.

14. Third-Party Usage. Any advice, recommendations, information, deliverables, or Work Product provided to County under this Agreement is: (a) for the sole use of County; and (b) not intended to be, and shall not be, relied upon by any third party. Except to the extent required by Law, County shall not disclose or permit access to such advice, recommendations, information, deliverables, or Work Product to any third party without Service Provider's prior written consent, which consent shall not be withheld unreasonably.

15. Active Files. Service Provider may use models, electronic files, and spreadsheets with embedded macros created by Service Provider in providing the Services. If County requests a working copy of any such model, electronic file, or spreadsheet, then Service Provider, at its discretion, may make the same available to County for County's internal use only, in which case the same shall be considered a deliverable hereunder. County shall be responsible for obtaining the right to use any third-party products necessary to view, use, or operate such model, electronic file, or spreadsheet.

16. Vendors. County acknowledges that, in connection with the performance of the Services, Service Provider uses vendors to provide, at Service Provider's direction, administrative and/or clerical services to Service Provider. In the performance of such services, vendors may have limited access to information, including, without limitation, confidential information, received by Service Provider from or at the request or direction of County. County consents to Service Provider's disclosure to a vendor and the use by such vendor of data and information, including, without limitation, confidential information, received from or at the request or direction of County for the purposes set forth herein. Service Provider will be responsible and/or liable for any violation of law by vendors used by Service Provider.

17. Disputes. In the event of a dispute under this Agreement and/or with respect to the Services, the parties, prior to exercising any other rights or remedies hereunder, shall use commercially reasonable efforts to resolve such dispute as promptly as practical, which efforts shall include adequate notice to the other of the matter in dispute. If, despite such efforts, such dispute remains unresolved, then the parties shall engage a qualified, independent mediator to mediate the dispute in a prompt and timely manner. The costs of mediation shall be shared equally by the parties. If such mediation is unsuccessful, then either party may pursue any remedy available to such party at law or in equity, except as may be expressly limited by this Agreement. The parties agree that, in the event of a lawsuit on this Agreement: (a) they shall waive the right to a jury trial, if any; and (b) the state courts in Delaware County, Indiana shall be the venue for, and have jurisdiction over, the lawsuit. If either party retains an attorney to enforce or interpret this Agreement or to bring or defend an action arising from or relating to this Agreement, then the party prevailing in any litigation shall be entitled to recover its reasonable attorneys' fees and court costs incurred in connection with such litigation. The terms and conditions of this Section shall survive the expiration or earlier termination of this Agreement.

18. Disclosure. The parties acknowledge and agree that: (a) Service Provider is not an "investment advisor" under the U.S. Investment Advisers Act of 1940, and the rules and regulations adopted thereunder; (b) neither the execution of this Agreement nor any subsequent

agreement is intended to: (i) be a municipal or other securities offering; or (ii) create a securities financing; (c) Service Provider is not recommending an action to the County as the municipal entity or obligated person and the Services provided are not intended to be and should not be construed as "Advice" within the meaning of Section 15B of the Securities Exchange Act of 1934; and (d) Service Provider is not acting as a municipal advisor to the County and does not owe a fiduciary duty pursuant to Section 15B of the Exchange Act.. The County acknowledges that it has consulted such municipal advisors, tax advisors, and/or attorneys as it deems to be necessary or appropriate in connection with the foregoing.


18. Miscellaneous. Time is of the essence of this Agreement. Unless "business day" is specified, the term "day" as used herein means a calendar day. The term "business day" means any day other than a Saturday, Sunday, or federal or State holiday. If the last date for any act to be performed hereunder falls on a Saturday, Sunday, or federal or State holiday, then the time for performance shall be extended to the next business day. This Agreement is the final expression of the complete agreement between County and Service Provider. There are no oral representations, warranties, agreements, or promises pertaining to the Services and the other subject matter hereof not incorporated in writing in this Agreement. The section headings herein are for convenience and shall not be considered in any way to affect the interpretation of this Agreement. This Agreement shall: (a) bind, and inure to the benefit of, County and Service Provider and their respective successors and assigns; and (b) be governed by, and construed in accordance with, the laws of the State. This Agreement shall not be construed to create a contractual relationship with, give rights or benefits to, or create a cause of action in favor of, anyone other than the parties hereto. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that the Agreement may have been prepared primarily by counsel for one of the parties, it being recognized that both County and Service Provider and their respective counsel have contributed substantially and materially to the preparation of this Agreement. The invalidity or unenforceability of any term or condition of this Agreement shall not affect the other terms and conditions, and this Agreement shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. Each of the undersigned represents that he or she has: (a) the authority to bind County or Service Provider, as applicable; and (b) the proper power and authority to execute this Agreement. All Exhibits referenced in this Agreement are attached hereto and incorporated herein by reference. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of such counterparts shall together constitute but one and the same instrument. A facsimile or email transmission of a duly-executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms hereof.

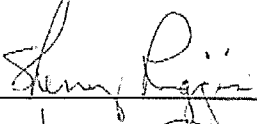
(Signature page to follow.)

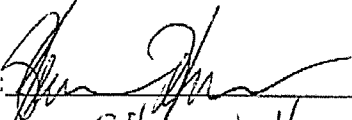


IN WITNESS WHEREOF, County and Service Provider have executed this Agreement as of the Effective Date.

COUNTY:  
DELAWARE COUNTY, INDIANA

By:   
Printed: James King  
Title: Commissioner

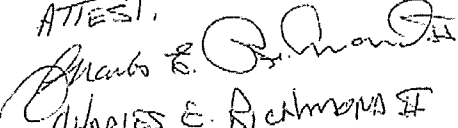
By:   
Printed: Sherry Reed  
Title: Commissioner

By:   
Printed: SHANNON HENRY  
Title: Commissioner

SERVICE PROVIDER:

DELAWARE COUNTY JUSTICE PARTNERS,  
LLC

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:  
  
CHARLES E. RICHMOND II  
Chief Deputy Auditor

## EXHIBIT A

### DESCRIPTION OF THE SERVICES


Service Provider shall perform the following scope of services under this Agreement:

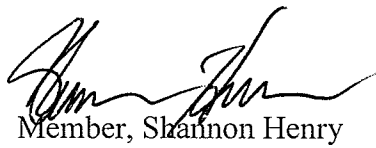
1. One hundred percent (100%) schematic design and design development services related to the design of a jail and justice center facility (the "Project"). Schematic design will be delivered by August 31, 2018.
2. Construction management services, including but not limited to the following:
  - a. Estimating;
  - b. Bid development and implementation;
  - c. Quality assurance and quality control;
  - d. Value engineering recommendations; and
  - e. Guaranteed maximum price generation.
3. Preconstruction services for a term not to extend beyond the Outside Date, including program management of architectural design and engineering services, construction management services, development of bid process, development of the full scope of improvements and services the County desires to include.

MOTION: Commissioner Henry made a motion to recess.  
SECOND: Commissioner Riggini  
YEAS: Commissioner Riggini, Commissioner Henry, President King

*Signature is still needed for Delaware County Justice Partners, LLC.*

  
President, James King

  
Vice President, Sherry Riggini

  
Member, Shannon Henry

 AUDITOR