

# Jasper County, Iowa

**Joe Brock**

**Denny Carpenter**

**Doug Cupples**



**Board of Supervisors**

**Courthouse**

**PO Box 944**

**Newton IA 50208**

**Phone 641-792-7016**

**Fax 641-792-1053**

## **JASPER COUNTY BOARD OF SUPERVISORS AGENDA**

**[www.co.jasper.ia.us](http://www.co.jasper.ia.us)**

**December 12, 2017**

**9:30 a.m.**

### **Pledge of Allegiance**

- Item 1      Sheriff - John Halferty**
  - a) PREA Auditing Contract with K Boldt, LLC
  
- Item 2      Human Resources - Dennis Simon**
  - a) Employee Hiring Resolution – Elderly Nutrition
  
- Item 3      Basement Stop Leak – Jason Hartman**
  
- Item 4      Utilization of the County Purchase Card**
  
- Item 5      Opioid Litigation**
  
- Item 6      Jasper County Annex Building**
  - a) Lease Agreement for 114 W 4<sup>th</sup> St S, Newton, IA 50208
  - b) Shive-Hattery Professional Services Agreement
  
- Item 7      Board Appointments**
  
- Item 8      Approval of Board of Supervisors minutes for 12/5/17**

**PUBLIC INPUT & COMMENTS**

This contract is an agreement between K Boldt LLC and the Jasper County Sheriff's Office, Newton, Iowa for the purpose of conducting the PREA Audit of the Jasper County Jail Facility.

I. **PREA Auditing Standards.**

The Agency and the Auditor shall comply with the requirements set forth in the PREA auditing standards (28 C.F.R. §§115.401-05). *See Attachment 1.*

II. **Auditor**

a) **Designated Auditor.** The Auditor may employ or partner with other auditors or staff. However, there shall be one designated Auditor who shall be the responsible auditor for purposes of this Contract and the PREA auditing standards.

b) **Auditor Staff.** In addition to the Auditor, the following individuals may be present during the on-site portion of the audit to assist the auditor: N/A

c) **Auditor Expenses.** In addition the Auditor's fees set forth below, the Agency shall bear all reasonable fees and expenses of the Auditor incurs in the conduct of the audit. Travel, Meals, Lodging

d) **Auditor Fees.** The Auditor's fees for the initial audit and any required corrective action process as follows: The Auditor shall be compensated as follows based on \$75.00 per hour.

e) **Prohibition on Additional Compensation.** The Auditor shall not accept any compensation for the conduct of the audit not set forth in this Contract.

f) **Ex Parte Communication.** The Auditor shall be permitted to initiate and receive *ex parte* communications with the community stakeholders, the PREA Resource Center, the Department of Justice, inmates, detainees, and residents, and other interested parties.

g) **Auditor Responsibility and Authority.** The Auditor shall have the responsibility and authority to independently observe, assess, review, and report on the Agency's implementation and compliance with the National Standards. In order to accurately assess compliance at the facility, the Auditor shall: conduct an on-site inspection; observe programs and activities; interview pertinent administrators, professional staff, correctional staff, and contractors; individually interview a sample of inmates; review a sampling of videotapes from housing units; and conduct detailed reviews of inmate records and other pertinent documents and reports. The Auditor shall spend a sufficient amount of time at the facility in order to accurately assess day-to-day operations and conditions. The Auditor shall be responsible for independently verifying representations from the Agency regarding facility compliance.

h) **Delivery of Contract to PRC.** Upon finalization, the Auditor shall provide a copy of this Contract to the PREA Resource Center for purposes of tracking Auditor activity.

i) **Auditing Schedule.** The Auditor shall provide the Agency with a tentative schedule of activities during any on-site visits at least five days prior to arrival at the facility.

j) **Maintenance, Storage, and Return or Destruction of Records.** The Auditor shall take all reasonable steps to safeguard agency records and information retained pursuant to the audit. All electronic files shall be securely password-protected or encrypted. All paper records shall be maintained in a secure room or building, and within a locked case or cabinet. Upon conclusion of the Auditor's document retention period, the Auditor shall securely burn, shred, or otherwise destroy the retained records. The Auditor shall then notify the Agency, in writing, confirmation that such documents have been destroyed.

k) **Public Statements.** Except as required or authorized by the PREA auditing standards; federal, state, or local law; judicial order; this Contract; or as permitted by the Agency, the Auditor shall not make any oral or written public statements – including, but not limited to, statements to the press; conference presentations; lectures; or articles – with regard to: the status of the Agency's compliance or noncompliance with the PREA Standards, or any act or omission of the Agency or its agents, representatives or employees.

l) **Testimony.** Except as required or authorized by the terms of this Contract, or by permission of the Agency, the Auditor shall not testify in any litigation or proceeding with regard to the status of the Agency's compliance or noncompliance with the National Standards; or any act or omission of the Agency or its agents, representatives or employees, unless otherwise lawfully compelled to do so. If the Auditor is lawfully compelled to provide such information, the Auditor shall promptly notify the Agency.

m) **Conflict of Interest.** The Auditor shall not accept employment or provide consulting services that would present a conflict of interest with his or her responsibilities under this Contract, with the PREA auditing standards, or with auditor ethical guidance provided by the PREA Resource Center or the Department of Justice, including, but not limited to, being employed or retained by the Agency for purposes other than PREA auditing during the three-year period prior to the audit, or during the three-year period subsequent to the audit.

n) **Auditor Independence.** Neither the Agency, nor any employee or agent of the Agency, shall have any supervisory authority over the Auditor's activities, reports, findings, or recommendations.

o) **Termination of the Auditor.** The Auditor may be terminated if the Agency and the Department of Justice agree and upon good cause shown. Good cause shall include, among other things; any violation of the PREA Standards; or federal, state, or local law, which reasonably calls into question the Auditor's fitness to continue serving as the Auditor.

p) **Audit Report Delivery.** The Auditor shall provide the audit report to the Agency head and the facility superintendent within 30 calendar days of the conclusion of the auditor's on-site visit. If there are no standards requiring corrective action, the audit report shall be considered final.

q) **Corrective Action Process.** If the audit report indicates that corrective action is required, the Auditor and the Agency shall work to promptly and jointly develop a corrective action plan toward achieving compliance with all standards. The corrective action plan shall contain a timeline for specific minimal remedial measures the Agency shall take to achieve compliance within a 180-day corrective action period. The Agency shall deliver, and the auditor shall review and comment upon, deliverables provided to the auditor pursuant to the corrective action timeline. The Auditor shall issue his or her report at the conclusion of the 180-day corrective action period, or earlier if compliance has been achieved before the end of the corrective action period. Under no circumstances shall the final report be issued more 180 days from the original due date.

### III. **The Agency**

a) **Tentative Audit Timeline.** The Parties tentatively agree that the initial on-site visit for the audit will occur April 24-25, 2018.

b) **Maintenance of Documentation and Information.** Any and all of the documentation (including electronic documentation) required by the National Standards shall be maintained and secured by the Agency. The Auditor is authorized to request, review, and retain all such documentation prior to, during, and after the on-site visit.

c) **Auditor Access.** The Agency shall ensure that the Auditor have access to the facility, documentation (including electronically-stored information), personnel, and inmates, consistent with the auditing standards, until the issuance of the final report.

d) **Posting of Auditor Contact Information.** The Agency shall ensure that auditor contact information, together with a statement of confidentiality, shall be conspicuously displayed in all inmate housing units of the facility to be audited, for the six-week period prior to the on-site visit.

e) **External Advocacy Organizations.** The Agency shall work in good faith to identify and provide the Auditor with contact information for community-based or victim advocates who may have insight into relevant conditions in the facility, in order to permit the Auditor to fulfill his or her obligations under 28 C.F.R. § 115.401(o).

f) **Access to External Investigative Personnel.** The Agency shall make best efforts to obtain and provide information and personnel from external investigative entities relevant to compliance with the National Standards to the Auditor.

g) **Auditor Workspace and Electronics.** During any on-site visit, the Agency shall provide the auditor with reasonable workspace, and shall permit the auditor to maintain a laptop computer, mobile telephones, and/or a PDA within that workspace.

h) **Publication of Audit Report.** The Agency shall publish the final audit reports on the Agency website within 14 days of receipt of the reports.

i) **Retaliation Safeguards.** The Agency agrees that it shall not retaliate against any person because that person has provided any information or assistance to the Auditor, has filed or will file a complaint, or has participated in any other manner in the conduct of the Audit. The Agency agrees that it shall timely and thoroughly investigate any allegations of retaliation in violation the National Standards or this Contract and take corrective action identified through such investigations.

j) **Mandatory and Discretionary Reporting Information.** The Agency shall determine whether, and to what extent, the Auditor is legally a mandatory or discretionary reporter of inmate abuse in the relevant jurisdiction, and the Agency shall provide such information to the Auditor prior to the on-site visit. The Agency shall also inform the Auditor contact information for the entity or entities that may legally accept any discretionary or mandatory reporting.

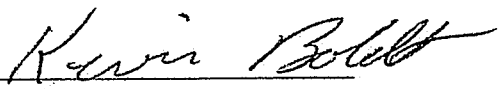
k) **Primary Points of Contact.** The Agency shall provide the Auditor with a list of primary points of contact (PPC) with respect to staff of all relevant disciplines within the agency and the facility (e.g., mental health care, investigations, and housing classification).

**IV. Standard Contract Provisions**

a) **Conflict with PREA Standards.** If any provision of this contract is found to be inconsistent with the PREA auditing standards, the auditing standards shall prevail.

\_\_\_\_\_  
Sheriff or designee  
Jasper County Sheriff's Office  
Newton, Iowa

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kevin Boldt  
K Boldt LLC  
PO Box 278  
Gilbertville, IA 50634  
319-240-1022

\_\_\_\_\_  
11-17-17  
Date

Attest: \_\_\_\_\_  
Dennis Parrott, Auditor

**28 C.F.R. § 115.401 Frequency and scope of audits.**

(a) During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once.

(b) During each one-year period starting on August 20, 2013, the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited.

(c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues.

(d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit.

(e) The agency shall bear the burden of demonstrating compliance with the standards.

(f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type.

(g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.

(h) The auditor shall have access to, and shall observe, all areas of the audited facilities.

(i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information).

(j) The auditor shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request.

(k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators.

(l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited.

(m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees.

(n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.

(o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

**28 C.F.R. § 115.402 Auditor qualifications.**

(a) An audit shall be conducted by:

(1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government);

(2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or

(3) Other outside individuals with relevant experience.

(b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.

(c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.

(d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

**28 C.F.R. § 115.403 Audit contents and findings.**

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review.

(b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards.

(c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

(d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

(e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice.

(f) The agency shall ensure that the auditor's final report is published on the agency's website if it has one, or is otherwise made readily available to the public.

#### **28 C.F.R. § 115.404 Audit corrective action plan.**

(a) A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.

(b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance.

(c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

(d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

(e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

#### **28 C.F.R. § 115.405 Audit appeals.**

(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.





5500 Westown Parkway, Suite 190  
West Des Moines, IA 50266  
PHONE: 515.244.7181  
FAX: 515.244.6397  
www.lowacounties.org



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Humboldt County Auditor

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Black Hawk County Auditor

**ISAC Executive Director**

William R. Peterson

November 21, 2017

Re: Opioid Litigation – Action Requested

Dear County Board Chair:

There has been much discussion in recent weeks at both the national, state, and local level regarding the challenges relating to the growth in the number of individuals who have become addicted to opioids and the impacts of that addiction. It has been described as a national epidemic. This is a very important issue for Iowa counties, as all entities expend significant resources in fighting this terrible problem. There is a potential for litigation against certain pharmaceutical companies to hold them responsible for their role in creating the opioid epidemic. The Iowa State Association of Counties (ISAC) Board of Directors is encouraging counties to consider joining in a statewide and nationwide litigation effort being led by the Crueger Dickinson and Simmons Hanly Conroy litigation team. The ISAC Board adopted the following resolution at its regular Board meeting on Friday, November 17, 2017:

The ISAC Board encourages their member counties to immediately support litigation proposed by Crueger Dickinson and Simmons Hanly Conroy to enjoin litigation to hold certain pharmaceutical firms responsible for damages to the public in misrepresenting the safety of using opioids. The ISAC Board encourages the boards of supervisors to sign a resolution to that effect so that Iowa counties may present a unified front at the federal level. The ISAC Board further directs ISAC staff to facilitate this process. Moved by Mark Sybesma, seconded by Burlin Matthews, approved unanimously. (Action by ISAC Board of Directors on Friday, November 17, 2017)

The ISAC Board believes it is important for counties in Iowa to join counties in other states to form a unified front on this litigation. It is their hope that Iowa counties can be an example of strength in this unified and coordinated effort.

Crueger Dickinson and Simmons Hanly Conroy is proposing to undertake this effort on behalf of the counties on a contingent fee basis. The firms will cover all costs. There will be no out-of-pocket expenditure for Iowa counties to join this effort. However, there is an understanding that counties will likely devote some staff time in assisting the firms with damages calculations and data collection. The amount of time is not exactly clear yet, but it should not be overly burdensome.

ISAC staff has been directed to assist in the facilitation of this process. Attached is a sample authorizing resolution for your county to adopt as well as information about the opioid epidemic. A sample engagement letter is also included. Please send the signed resolution to Erin Dickinson of the Crueger Dickinson firm, and Paul Hanly of the Simmons Hanly Conroy firm, [ekd@cruegerdickinson.com](mailto:ekd@cruegerdickinson.com). She will follow-up by sending a county-specific engagement letter, which will subsequently need to be signed and returned. It is important that all of these steps are completed as soon as possible.

Erin Dickinson of the Crueger Dickinson firm, and Paul Hanly of the Simmons Hanly Conroy firm, recently briefed Iowa county attorneys at their annual business meeting in early November. If your county attorney was unable to participate and you have any questions or concerns with the attached documents or the litigation in general, please reach out to Erin Dickinson at 414.210.3767. Kristi Harshbarger and I will be happy to answer questions as well.

Thank you for your consideration of this critical issue. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "William R. Peterson". The signature is written in a cursive style with a long horizontal line extending to the right.

William R. Peterson  
Executive Director  
Iowa State Association of Counties  
Email: [bpeterson@iowacounties.org](mailto:bpeterson@iowacounties.org)  
Phone: 515.244.7181

CC: Erin Dickinson, Crueger Dickinson  
County Supervisors  
County Auditor  
County Attorney  
County Sheriff



Crueger  
Dickinson



SIMMONS HANLY CONROY  
A NATIONAL LAW FIRM

**vonBriesen**

von Briesen & Breen, PC | Attorneys at Law



# COMBATTING THE OPIOID EPIDEMIC

LITIGATION ON BEHALF OF COUNTY GOVERNMENTS

# THE OPIOID EPIDEMIC: A PUBLIC HEALTH CRISIS

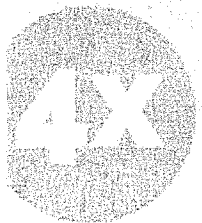
Opioid addiction and abuse have reached epidemic levels over the past decade. Indeed, on March 22, 2016, the FDA recognized opioid abuse as a "public health crisis" that has a "profound impact on individuals, families and communities across our country."<sup>1</sup>

In the last decade, the epidemic has exploded. From 1999 to 2013 the amount of opioids dispensed in the United States quadrupled.

In 2013, nearly 207 million opioid prescriptions were written. A year later, that number grew to 259 million.

Those sales are big business for the pharmaceutical companies that manufacture and sell opioids including Purdue, Teva, Janssen, Cephalon and Endo (referred to as "Pharma"). In 2015 alone, the sale of opioids generated nearly \$10 Billion in revenue for Pharma.

Sales and profits have grown dramatically over the past several decades.

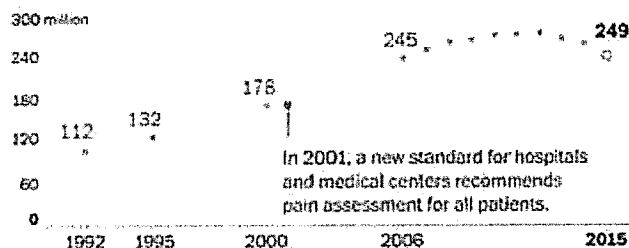


From 1999 to 2013,  
the amount of  
prescription  
opioids dispensed  
in the U.S. nearly  
**quadrupled.**

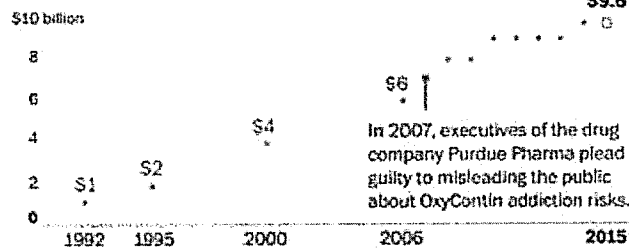
## Tracking opioid use and sales

The opioid-drug market has grown dramatically over the past 25 years.

### Total prescriptions filled in the United States



### Total U.S. sales



Source: IMS Health<sup>2</sup>

THE WASHINGTON POST

<sup>1</sup> <http://www.fda.gov/newsevents/newsroom/pressannouncements/ucm1491739.htm>

<sup>2</sup> [https://www.washingtonpost.com/national/the-drug-industrys-answer-to-opioid-addiction-more-pills/2016/10/15/181a529c-8ac4-11e6-b1f0-d53f592f176e\\_story.html?utm\\_term=.2d1327bf59ae](https://www.washingtonpost.com/national/the-drug-industrys-answer-to-opioid-addiction-more-pills/2016/10/15/181a529c-8ac4-11e6-b1f0-d53f592f176e_story.html?utm_term=.2d1327bf59ae)

This spike in sales has had devastating and catastrophic effects. 2015 Data from the National Survey on Drug Use and Health showed that in the year 2013 over a third of the people in the United States had used prescription opioids with a significant number suffering from addiction as a result.

As described below, these dramatically increased sales and the spike in abuse and resultant deaths directly corresponds to Pharma's decision to market opioids for long-term use despite their known addictive effects.

**37.8%** Americans used prescription opioids  
(91.8 MILLION PEOPLE)

**4.7%** misused them  
(11.5 MILLION PEOPLE)

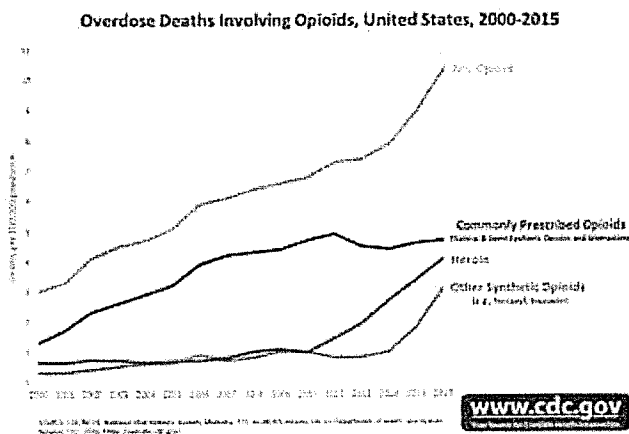
**.8%** had a use disorder  
(1.9 MILLION PEOPLE)

**PHARMA'S ROLE IN CREATING THE OPIOID EPIDEMIC**

Opioids were historically used to provide effective treatment for short-term pain management. Controlled studies of the safety and efficacy of opioids were limited to short-term use. Pharma knew the limitations of the controlled studies. However, Pharma knew that profits could sky rocket if they were able to market and sell opioids for long-term use, including to treat chronic pain. In order to expand their market and achieve a dramatic increase in profits, Pharma decided to create a false marketing campaign designed to give the medical community and the public the false impression that opioids were safe and efficacious for long-term use. This false marketing campaign began in the late 90s, but exponentially increased starting in about 2006 and continues to the present.

Pharma was successful.

Additionally, deaths from opioids dramatically spiked with increased sales:



SINCE 1999

Prescription sales of opioids have **quadrupled**

IN 2010

**254 million** opioid prescriptions were written

IN 2013

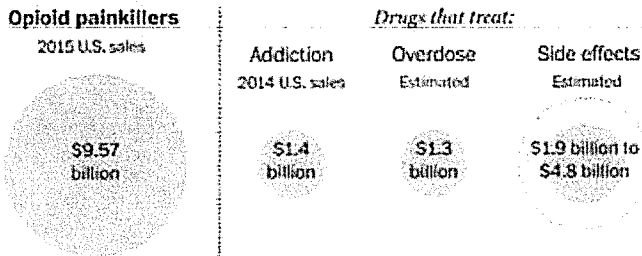
**37.4%** of the population had been prescribed Opioids



Not only has the Pharma industry profited from selling opioids but companies have also profited from treating the effects. As illustrated in a recent Washington Post article, the profits have been enormous:

**Drugs to treat the effects of drugs**

The nearly \$9.6 billion industry around opioid pain management has begotten a number of new billion-dollar markets for addiction, overdose and side effects such as constipation.



Sources: IMS Health, Cerdence Research, Transparency Market Research, One Equity Research<sup>4</sup>

THE WASHINGTON POST

been covering the opioid epidemic and resulting litigation. (Several recent examples have been included in the attached Appendix, Tab 2).

**HOLDING PHARMA ACCOUNTABLE: CLAIMS**

Lawsuits seek to hold opioid manufacturers accountable for the costs communities incur as a result of the opioid epidemic.

Lawsuits have alleged that Pharma and a select group of doctors worked together to create a false impression of the safety and efficacy of opioids for long term use. Allegations are that Pharma and the doctors misled the medical community and consumers into believing that opioids were non-addictive and were a viable option for treatment of chronic pain. Legal claims have included:

- Misrepresentation
- Consumer Fraud/Violation of Consumer Protection Statutes
- False Advertising
- Nuisance
- Civil RICO

Different cases have taken different approaches, but the facts and allegations are similar. A sample of one of the Complaints, filed by Suffolk County, New York is included in the attached Appendix (Tab 3).

**COUNTIES BEAR THE COSTS**

While Pharma was raking in profits, county governments have been forced to spend a significant amount of money combatting this epidemic. Costs to counties include health care costs, addiction and treatment costs, social costs, programming, training and education costs, criminal justice and victimization costs and lost productivity.

**COUNTIES AND STATES FILE LAWSUITS**

A number of government entities have brought litigation against the Pharma companies for their role in creating the Opioid Epidemic. This includes the State of Kentucky, the State of Ohio, the City of Chicago and counties in New York, West Virginia and Illinois. More and more cases are filed every week. A chart summarizing the current litigation is attached in the Appendix hereto (Tab 1). Additionally, major news outlets have

<sup>4</sup> [https://www.washingtonpost.com/national/the-drug-industrys-answer-to-opioid-addiction-more-pills/2016/10/15/161a529c-8a04-11e6-b1f0-d53f592f176e\\_story.html?hpid=hp\\_hp-top-table-main-drug-addiction%3Aopioid%3Ahomepage%2Fstory&hpid=hp\\_hp-top-table-main-drug-addiction%3Aopioid%3Ahomepage%2Fstory](https://www.washingtonpost.com/national/the-drug-industrys-answer-to-opioid-addiction-more-pills/2016/10/15/161a529c-8a04-11e6-b1f0-d53f592f176e_story.html?hpid=hp_hp-top-table-main-drug-addiction%3Aopioid%3Ahomepage%2Fstory&hpid=hp_hp-top-table-main-drug-addiction%3Aopioid%3Ahomepage%2Fstory)



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## WHAT ARE THE DOLLAR FIGURES?

While it is still early in the investigation into the exact costs to counties, states and municipalities, costs of the Opioid Epidemic are staggering. Indeed, in 2016 researchers from the CDC estimated the annual economic burden of prescription opioid abuse in the U.S. at \$78.4 Billion. The study further broke down this cost as follows:

### LOST PRODUCTIVITY

**\$42 Billion** (53.3%)

### HEALTH INSURANCE

**\$26.1 Billion** (33.3%)

### CRIMINAL JUSTICE

**\$7.6 Billion** (9.7%)

### SUBSTANCE ABUSE TREATMENT

**\$2.8 Billion** (3.6%)

5

While the CDC study did not attempt to estimate damages to county governments, the economic impact is significant and, to date, unreimbursed by Pharma.

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5 Florence CS, Zhou C, Luo F, Xu L. The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013. *Medical Care*. October 2016. 54(10): 901 – 906.

## FREQUENTLY ASKED QUESTIONS



### WHAT IS THE OPIOID LITIGATION AND WHY DOES IT AFFECT COUNTIES?

State and local governments around the country have begun to file lawsuits against several major manufacturers (Purdue, Janssen, Endo, Cephalon and others) (referred to as "Pharma") for their role in creating the Opioid Epidemic. These manufacturers flooded the market with highly addictive drugs, claiming they were safe and efficacious for long term use, manufactured studies to support these false claims and knowingly misrepresented the addictive nature of these drugs. As a result of these misrepresentations, millions of Americans lives have been impacted or destroyed (commonly referred to as the "Opioid Epidemic"). The Opioid Epidemic has in turn imposed huge costs on both county and state governments around the country including health care costs, substance abuse, treatment and prevention costs, criminal justice costs and productivity costs.



### WHAT IS THE ECONOMIC IMPACT OF THE OPIOID EPIDEMIC?

While it is still early in the investigation, studies have analyzed the economic impact of the Opioid Epidemic. In the most recent major study, published in 2016 by CDC researchers, the annual estimated economic burden of prescription opioid abuse in the United States was determined to be \$78.4 Billion. Of that number the economic impact broke down as follows:

#### LOST PRODUCTIVITY

**\$42 Billion (53.3%)**

#### HEALTH INSURANCE

**\$26.1 Billion (33.3%)**

#### CRIMINAL JUSTICE

**\$7.6 Billion (9.7%)**

#### SUBSTANCE ABUSE TREATMENT

**\$2.8 Billion (3.6%)**

Predictably, as the epidemic has worsened, so has the economic burden. Indeed, a similar study in 2007 found the annual economic impact was \$55.7 Billion. And a recent 2017 study funded by the U.S. Department of Health and Human Services found that more than one third of U.S. civilian, noninstitutionalized adults reported prescription opioid use, with substantial numbers reporting misuse and use disorders. As the problem has worsened since 2013, it is expected that the impact has correspondingly worsened.

<sup>6</sup> Florence CS, Zhou C, Luo F, Xu L. The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013. *Medical Care*, October 2016, 54(10): 901 - 906



#### **WHAT IS THE GOAL OF THE OPIOID LITIGATION?**

To hold Pharma responsible for their role in creating the Opioid Epidemic and to return to the counties the money spent battling the epidemic and the expense of other critical programming. While it is unrealistic to think that the lawsuit will solve the problem, Pharma should be responsible for funding solutions to a problem they created.



#### **WHAT KINDS OF COSTS WOULD A LAWSUIT SEEK TO RECOVER?**

The counties would seek repayment for the costs they have expended related to the Opioid Epidemic. Those costs include but are not limited to:

- County funded healthcare costs for employees and dependents related to opioid addiction, substance abuse treatment, hospitalizations, etc.
- County funded programs for residents for prevention, treatment, health visits, substance abuse programs etc.
- Criminal Justice and law enforcement costs associated with opioids
- Loss of county employee productivity related to opioid abuse and addiction
- General societal mayhem and opioid related death costs



#### **WHAT IS THE REASON THE COUNTIES SHOULD GET INVOLVED IN THE OPIOID LITIGATION?**

The only way to recover any of the significant costs the counties have faced as a result of Pharma's role in the Opioid Epidemic is to bring suit. Any county that does not get involved risks receiving no recovery. While recovery in this type of litigation is not certain, one certain way to get nothing is to stay out of the litigation.



#### **WHAT IF THE COUNTIES DO NOT GET INVOLVED?**

Counties who do not get involved will not get a recovery in the event that there is one.



#### **WHO WILL PAY FOR THE LITIGATION?**

The counties will not be asked to bear the costs of the Opioid Litigation. The law firms proposing to represent the counties will work on a contingent fee basis (only getting paid out of a portion of the recovery if there is one) and bearing all costs of the litigation.



#### **WHAT WILL BE EXPECTED OF A COUNTY BRINGING SUIT?**

Counties bringing suit will be expected to participate in some significant ways, the most major of which is document collecting and information gathering to support the county's claim for costs associated with the Opioid Epidemic. The team of private attorneys will work on site with county employees to help identify, gather and assemble this information; however, county employee time will also be necessary. Affected departments will likely be Health and Human Services, Human Resources, Medical Examiner/Coroner, District Attorney's Office, Office of the Sheriff, Circuit Courts, Department of Administration.



**WHAT IS THE REASON TO COORDINATE EFFORTS  
ACROSS COUNTIES IN THE LITIGATION?**

It will be very important to coordinate efforts both among counties in each state and between counties nationally. Government entities will face a well-financed, well-funded and coordinated defense from Pharma. Unless a critical mass of counties not only file suit and coordinate efforts, it is a safe bet that Pharma will simply continue to fight each individual case without contemplating a resolution.



**WILL THE STATE BE INVOLVED AND HOW WILL  
THAT IMPACT THE COUNTIES AND THEIR ABILITY  
TO RECOVER?**

The State of Ohio has brought suit and other states are contemplating suit. It is safe to assume that state governments will bring similar suits. The states and counties will have separate damages, however, and the counties should be able to recover even if the states bring suit. As the tobacco litigation demonstrated, there is no reason to expect that the counties can simply let the states file suit and wait for their portion of the states' recovery. The best way for the counties to protect their interests is to pursue their own litigation.



Crueger  
Dickinson



SIMMONS HANLY CONROY  
A NATIONAL LAW FIRM

von Briesen

von Briesen & Roper, L.L.P. Attorneys at Law

## Contact us

**ERIN DICKINSON**

Crueger Dickinson LLC  
ekd@cruegerdickinson.com  
414 210 3767

**CHARLES CRUEGER**

Crueger Dickinson LLC  
cjc@cruegerdickinson.com  
414 210 3900

**PAUL J. HANLY, JR.**

Simmons Hanly Conroy LLC  
phanly@simmonsfirm.com  
212 784 6401

**ANDREW T. PHILLIPS**

von Briesen & Roper  
aphillips@vonbriesen.com  
414 287 1570



October \_\_\_\_, 2017

VIA EMAIL

[NAME OF COUNTY]

**RE: *Engagement of Simmons Hanly Conroy LLC, Crueger Dickinson LLC, and von Briesen & Roper, s.c. as Counsel in Relation to Claims Against Opioid Manufacturers***

Dear [NAME OF COUNTY]:

The purpose of this letter (“Engagement Letter”) is to set out in writing the terms and conditions upon which the law firms of Simmons Hanly Conroy LLC, Crueger Dickinson LLC and von Briesen & Roper, s.c., (collectively “Counsel”) will provide legal services to [NAME OF COUNTY] (“County”) in relation to the investigation and prosecution of certain claims against the following manufacturers and other parties involved with the manufacture of opioid medications: Purdue Pharma L.P., Purdue Pharma Inc., The Purdue Frederick Company, Inc., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Endo Health Solutions Inc., Endo Pharmaceuticals, Inc. (collectively “Opioid Manufacturers”). Depending upon the results of initial investigations of the facts and circumstances surrounding the potential claim(s), there may be additional parties sought to be made responsible and/or certain of the aforementioned parties may be removed from the potential claim.

This Engagement Letter shall apply solely and exclusively to the services set forth herein in relation to the investigation and Lawsuit, as defined below. This Engagement Letter does not govern, nor does it apply to, any services of either Counsel unrelated thereto.

**SCOPE OF SERVICES**

Counsel will work with County in the collection of information necessary to form a good faith basis for filing a claim against the Opioid Manufacturers. County hereby authorizes Counsel to file a lawsuit against one or all of the Opioid Manufacturers (“Lawsuit”) upon the terms and conditions set forth herein.

**RESPONSIBILITIES**

Counsel will prosecute the Lawsuit with diligence and keep County reasonably informed of progress and developments, and respond to County’s inquiries. County understands and agrees that all fees paid to Counsel shall be as set forth in this Engagement Letter. County agrees to cooperate with Counsel in the gathering of information necessary to investigate and prosecute the Lawsuit. County further understands and agrees that the law firm of von Briesen & Roper, s.c., shall not be identified on any pleading as counsel of record for County in relation to the Lawsuit, but shall be available to assist County and Counsel in relation to the Lawsuit.

The following additional terms apply to the relationship between County and Counsel:

- A. Counsel shall remain sufficiently aware of the performance of one another and the performance to ascertain if each firm’s handling of the Lawsuit conforms to the Rules

of Professional Conduct. Counsel shall be available to County regarding any concerns on the part of County relating to the performance of Counsel. Counsel shall at all times remain ethically and financially responsible to the County for the services of Counsel set forth herein.

- B. As set forth below, County's responsibility for attorney fees and expenses is contingent upon the successful outcome of the Lawsuit, as further defined below. Counsel have agreed in writing as to the appropriate split of attorney fees and expenses. Specifically, in the event of a Recovery (as defined below), the attorney fees will be split between the law firms as follows:

| <u>Firm Name</u>          | <u>Percentage of Fees if Successful</u> |
|---------------------------|---|
| Local Counsel             | 5%                                      |
| von Briesen & Roper, s.c. | 10%                                     |
| Crueger Dickinson LLC     | 42.5%                                   |
| Simmons Hanly Conroy LLC  | 42.5%                                   |

The split of attorneys' fees between Counsel may be subject to change. In the event of such an amendment, the County will be notified in writing of that amendment.

- C. Counsel and County understand and agree that Counsel will all be considered attorneys for County. As such, each and all of Counsel will adhere to the Rules of Professional Responsibility governing the relationship between attorney and client.

#### **ACTUAL AND POTENTIAL CONFLICTS OF INTEREST AND WAIVER OF CONFLICT**

As County is aware, Counsel contemplate entering into the same arrangement as that set forth in this Engagement Letter with other counties and municipalities in Wisconsin and elsewhere. Counsel believe that the goals and objectives of County are aligned with the goals and objectives of all other counties and municipalities with respect to the Lawsuit. Counsel do not believe that to achieve the goals of the Lawsuit, either County or another county or municipality must take a position that is adverse to the interests of the other. However, to the extent any issue may arise in this matter about which County disagrees with another county or municipality, and one of you may wish to pursue a course that benefits one but is detrimental to the interest of the other, we cannot advise County or assist County or any other county or municipality in pursuing such a course. That is to say, Counsel cannot advocate for County's individual interests at the expense of the other counties or municipalities that Counsel represent in a Lawsuit. Counsel do not believe that this poses a problem because County's interests are currently aligned with the other counties and municipalities that are or may be in the Lawsuit. Counsel are confident that their representation of County will not be limited in this matter by representation of any other county or municipality, but County should consider these consequences of joint representation in deciding whether to waive this conflict.

In addition to the material limitation discussed above, there are other consequences for County in agreeing to joint representation. Because each county or municipality would be a client of Counsel, Counsel owe equal duties of loyalty and communication to each client. As such, Counsel must share

all relevant information with all counties and municipalities who are clients in relation to the Lawsuit and Counsel cannot, at the request of one county or municipality, withhold relevant information from the other client. That is to say, Counsel cannot keep secrets about this matter among the counties and municipalities who are clients of Counsel with respect to the Lawsuit. Also, lawyers normally cannot be forced to divulge information about communications with their clients because it is protected by the attorney-client privilege. However, because County would be a joint client in the same matter with other counties and municipalities, it is likely that were there to be a future legal dispute between County and other counties or municipalities that engage Counsel about this matter, the attorney-client privilege would not apply, and each would not be able to invoke the privilege against the claims of the other.

Further, while County's position is in harmony with other counties and municipalities presently, and the conflict discussed above is waivable, facts and circumstances may change. For example, County may change its mind and wish to pursue a course that is adverse to the interests of another county or municipality and the conflict may become unwaivable. In that case, depending upon the circumstances, Counsel may have to withdraw from representing either County or another county or municipality and County would have to bear the expense, if County chooses, of hiring new lawyers who would have to get up to speed on the matter.

County is not required to agree to waive this conflict, and County may, after considering the risks involved in joint representation, decline to sign this Engagement Letter. By signing this Engagement Letter, County is signifying its consent to waiving the conflict of interest discussed herein.

Other than the facts and circumstances related to the joint representation of numerous counties and municipalities, Counsel are unaware of any facts or circumstances that would prohibit Counsel from providing the services set forth in this Engagement Letter. However, it is important to note that the law firm of von Briesen & Roper, s.c., is a relatively large law firm based in Wisconsin and represents many companies and individuals. It is possible that some present and future clients of von Briesen & Roper, s.c., will have business relationships and potential or actual disputes with County. von Briesen & Roper, s.c., will not knowingly represent clients in matters that are actually adverse to the interests of County without County's permission and informed consent. von Briesen & Roper, s.c. respectfully requests that County consent, on a case by case basis, to von Briesen & Roper, s.c.'s representation of other clients whose interests are, or maybe adverse to, the interests of County in circumstances where County has selected other counsel and where von Briesen & Roper, s.c., has requested a written conflict waiver from County after being advised of the circumstances of the potential or actual conflict and County has provided informed consent.

## **FEES FOR LEGAL SERVICES AND RESPONSIBILITY FOR EXPENSES**

### **A. Calculation of Contingent Fee**

There is no fee for the services provided herein unless a monetary recovery acceptable to County is obtained by Counsel in favor of County, whether by suit, settlement, or otherwise ("Recovery"). County understands and agrees that a Recovery may occur in any number of different fashions such as final judgment in the Lawsuit, settlement of the Lawsuit, or appropriation to County following a nationwide settlement or extinguishing of claims in lawsuits and matters similar to the Lawsuit. Counsel agree to advance all costs and expenses of Counsel, and the Lawsuit associated with investigating and prosecuting the Lawsuit provided, however, that the costs and expenses associated with County cooperating with Counsel in conjunction with the Lawsuit and otherwise performing its responsibilities under this Engagement Letter are the responsibility of County. In consideration of the legal services to be rendered by Counsel, the contingent attorneys' fees for the services set forth in this



Engagement Letter shall be a gross fee of 25% of the Recovery, which sum shall be divided among Counsel as set forth in the above chart.

Upon the application of the applicable fee percentage to the gross Recovery, and that dollar amount set aside as attorneys' fees to Counsel, the amount remaining shall first be reduced by the costs and disbursements that have been advanced by Counsel, and that amount shall be remitted to Counsel. By way of example only, if the gross amount of the Recovery is \$1,000,000.00, and costs and disbursements are \$100,000.00, then the fee to Counsel shall be \$250,000, the costs amount of \$100,000 shall be deducted from the balance of \$750,000.00, and the net balance owed to County shall be \$650,000. The costs and disbursements which may be deducted from a Recovery include, but are not limited to, the following, without limitation: court fees, process server fees, transcript fees, expert witness fees and expenses, courier service fees, appellate printing fees, necessary travel expenses of attorneys to attend depositions, interview witnesses, attend meetings related to the scope of this Engagement Letter and the like, and other appropriate matter related out-of-pocket expenses. In the event that any Recovery results in a monetary payment to County that is less than the amount of the costs incurred and/or disbursements made by Counsel, County shall not be required to pay Counsel and any more than the sum of the full Recovery.

B. Nature of Contingent Fee

No monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel in the event no Recovery to County has been obtained. In the event of a loss at trial due to an adverse jury verdict or a dismissal of the Lawsuit by the court, no monies shall be paid to Counsel for any work performed, costs incurred or disbursements made by Counsel. In such an event, neither party shall have any further rights against the other.

C. Disbursement of Recovery Proceeds to County

The proceeds of any Recovery on County's behalf under the terms of this Engagement Letter shall be disbursed to County as soon as reasonably practicable after receipt by Counsel. At the time of disbursement of any proceeds from a Recovery, County will be provided with a detailed disbursement sheet reflecting the method by which attorney's fees have been calculated and the expenses of litigation that are due to Counsel from such proceeds. Counsel are authorized to retain out of any moneys that may come into their hands by reason of their representation of County the fees, costs, expenses and disbursements to which they are entitled as determined in this Engagement Letter.

## **TERMINATION OF REPRESENTATION**

This Engagement Letter shall cover the period from the date first indicated below until the termination of the legal services rendered hereunder, unless earlier terminated as provided herein. This Engagement Letter may be terminated by County at any time, and in the event of such termination, neither party shall have any further rights against the other, except that in the event of a Recovery by County against the Opioid Manufacturers subsequent to termination, Counsel shall have a statutory lien on any such recovery as provided by applicable law and further maintain rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination. Counsel may withdraw as County's attorneys at any time for the following reasons:

- A. If Counsel determine, in their sole discretion, that County's claim lacks merit or that it is not worthwhile to pursue the Lawsuit further; or

- B. For Good Cause. For purposes of this Paragraph, Good Cause may include County's failure to honor the terms of the Engagement Letter, County's failure to follow Counsel's advice on a material matter, or any fact or circumstance that would, in the view of Counsel, impair an effective attorney-client relationship or would render continuing representation unlawful or unethical. If terminated for Good Cause, County will take all steps necessary to free Counsel of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete withdrawal provided, however, that Counsel shall have a statutory lien on any Recovery as provided by applicable law and further maintain rights in the nature of *quantum meruit* to recover fees, costs and expenses reasonably allocable to their work prior to termination.

### **SETTLEMENT**

County has the authority to accept or reject any final settlement amount after receiving the advice of Counsel. County understands settlements are a "compromise" of its claim(s), and that Counsel's fee, as set forth above, applies to settlements also. For example, if a settlement is reached, and includes future or structured payments, Counsel's fee shall include its contingent portion of those future or structured payments.

### **NO GUARANTEE OF RECOVERY**

County understands and acknowledges that dispute resolution through litigation often takes years to achieve. County understands and acknowledges that there is no guarantee or assurances of any kind regarding the likelihood of success of the Lawsuit, but that Counsel will use their skill, diligence, and experience to diligently pursue the Lawsuit.

### **LIMITED LIABILITY**

von Briesen & Roper, s.c., and Crueger Dickinson LLC are limited liability entities under Wisconsin law. This means that if Counsel fails to perform duties in the representation of County and that failure causes County damages, the firms comprising Counsel and the shareholder(s) or principals directly involved in the representation may be responsible to County for those damages, but the firm's other shareholders or principals will not be personally responsible. Counsel's professional liability insurance exceeds the minimum amounts required by the Wisconsin Supreme Court for limited liability entities of similar size.

### **COMMUNICATION BY E-MAIL**

Counsel primarily communicates with its clients via unencrypted internet e-mail, and this will be the way in which communications occur with County. While unencrypted e-mail is convenient and fast, there is risk of interception, not only within internal networks and the systems used by internet service providers, but elsewhere on the internet and in the systems of our clients and their internet service providers.

### **FILE RETENTION AND DESTRUCTION**

In accordance with Counsel's records retention policy, most paper and electronic records maintained are subject to a 10-year retention period from the last matter activity date or whatever date deemed appropriate. Extended retention periods may apply to certain types of matters or pursuant to County's specific directives.

After the expiration of the applicable retention period, Counsel will destroy records without further notice to County, unless County otherwise notifies in writing.

### **MISCELLANEOUS**

This Engagement Letter shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to conflicts of law rules. In the event of any dispute arising out of the terms of this Engagement Letter, venue for any such dispute shall be exclusively designated in the State of Wisconsin Circuit Court for Milwaukee County, Wisconsin, or in the United States District Court for the Eastern District of Wisconsin.

It is expressly agreed that this Engagement Letter represents the entire agreement of the parties, that all previous understandings are merged in this Engagement Letter, and that no modification of this Engagement Letter shall be valid unless written and executed by all parties.

It is expressly agreed that if any term or provision of this Engagement Letter, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of this Engagement Letter, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Engagement Letter shall be valid and shall be enforced to the fullest extent permitted by law.

The parties acknowledge that they have carefully read and fully understand all of the provisions of this Engagement Letter, and that they have the capacity to enter into this Engagement Letter. Each party and the person signing on behalf of each party, represents that the person signing this Engagement Letter has the authority to execute this document and thereby bind the party hereto on whose behalf the person is signing. Specifically, County acknowledges that it is bound by this Engagement Letter, has satisfied all conditions precedent to execution of this Engagement Letter and will execute all the necessary documents that may be required by its governing statutes and/or code.

### **CONCLUSION**

Counsel are pleased to have this opportunity to be of service to County. If at any time during the course of representation you have any questions or comments about our services or any aspect of how we provide services, please don't hesitate to call one or all of the individuals listed below.

Very truly yours,

**CRUEGER DICKINSON LLC**

**SIMONS HANLY CONROY LLC**

Erin K. Dickinson

Paul J. Hanly

**von BRIESEN & ROPER, s.c.**

Andrew T. Phillips

[NAME OF COUNTY] agrees to retain the services of Counsel all upon the terms and conditions specified above.

By:

Title:

Date:

DRAFT

RESOLUTION NO. \_\_\_\_\_

TO THE HONORABLE BOARD OF SUPERVISORS OF \_\_\_\_\_ COUNTY, IOWA

MEMBERS,

**WHEREAS,** \_\_\_\_\_ County (“County”) is concerned with the recent rapid rise in troubles among County citizens, residents, and visitors in relation to problems arising out of the use, abuse and overuse of opioid medications, which according to certain studies, impacts millions of people across the country; and

**WHEREAS,** issues and concerns surrounding opioid use, abuse and overuse by citizens, residents and visitors are not unique to County and are, in fact, issues and concerns shared by all other counties in Iowa and, for that matter, states and counties across the country, as has been well documented through various reports and publications, and is commonly referred to as the Opioid Epidemic (“Opioid Epidemic”); and

**WHEREAS,** the societal costs associated with the Opioid Epidemic are staggering and, according to the Centers for Disease Control and Prevention, amount to over \$75 billion annually; and

**WHEREAS,** the National Institute for Health has identified the manufacturers of certain of the opioid medications as being directly responsible for the rapid rise of the Opioid Epidemic by virtue of their aggressive and, according to some, unlawful and unethical marketing practices; and

**WHEREAS,** certain of the opioid manufacturers have faced civil and criminal liability for their actions that relate directly to the rise of the Opioid Epidemic; and

**WHEREAS,** County has spent millions in unexpected and unbudgeted time and resources in its programs and services related to the Opioid Epidemic; and

**WHEREAS,** County is responsible for a multitude of programs and services, all of which require County to expend resources generated through state and federal aid, property tax levy, fees and other permissible revenue sources; and

**WHEREAS,** County’s provision of programs and services becomes more and more difficult every year because the costs associated with providing the Opioid Epidemic programs and services continue to rise, yet County’s ability to generate revenue is limited by strict levy limit caps and stagnant or declining state and federal aid to County; and

**WHEREAS,** all sums that County expends in addressing, combatting and otherwise dealing with the Opioid Epidemic are sums that cannot be used for other critical programs and services that County provides to County citizens, residents and visitors; and

**WHEREAS,** County has been informed that numerous counties and states across the country have filed or intend to file lawsuits against certain of the opioid manufacturers in an effort to force the persons and entities responsible for the Opioid Epidemic to assume financial responsibility for the costs associated with addressing, combatting and otherwise dealing with the Opioid Epidemic; and

**WHEREAS**, County has engaged in discussions with representatives of the law firms of Crueger Dickinson LLC, Simmons Hanly Conroy LLC, and von Briesen & Roper, s.c., (the “Law Firms”) related to the potential for County to pursue certain legal claims against certain opioid manufacturers; and

**WHEREAS**, County has been informed that the Law Firms have the requisite skill, experience and wherewithal to prosecute legal claims against certain of the opioid manufacturers on behalf of public entities seeking to hold them responsible for the Opioid Epidemic; and

**WHEREAS**, the Law Firms have proposed that County engage the Law Firms to prosecute the aforementioned claims on a contingent fee basis whereby the Law Firms would not be compensated unless County receives a financial benefit as a result of the proposed claims and the Law Firms would advance all claim-related costs and expenses associated with the claims; and

**WHEREAS**, all of the costs and expenses associated with the claims against certain of the opioid manufacturers would be borne by the Law Firms; and

**WHEREAS**, the Law Firms have prepared an engagement letter, which is submitted as part of this Resolution (“Engagement Letter”) specifying the terms and conditions under which the Law Firms would provide legal services to County and otherwise consistent with the terms of this Resolution; and

**WHEREAS**, County is informed that the Iowa Counties Association has engaged in extensive discussions with the Law Firms and has expressed a desire to assist the Law Firms, County and other counties in the prosecution of claims against certain of the opioid manufacturers; and

**WHEREAS**, County would participate in the prosecution of the claim(s) contemplated in this Resolution and the Engagement Letter by providing information and materials to the Law Firms and, as appropriate, the Iowa State Association of Counties as needed; and

**WHEREAS**, County believes it to be in the best interest of County, its citizens, residents, visitors and taxpayers to join with other counties in and outside Iowa in pursuit of claims against certain of the opioid manufacturers, all upon the terms and conditions set forth in the Engagement Letter; and

**WHEREAS**, by pursuing the claims against certain of the opioid manufacturers, County is attempting to hold those persons and entities that had a significant role in the creation of the Opioid Epidemic responsible for the financial costs assumed by County and other public agencies across the country in dealing with the Opioid Epidemic.

**NOW, THEREFORE, BE IT RESOLVED:**

County authorizes, and agrees to be bound by, the Engagement Letter and hereby directs the appropriate officer of the County to execute the Engagement Letter on behalf of the County; and

**BE IT FURTHER RESOLVED:**

County shall endeavor to faithfully perform all actions required of County in relation to the claims contemplated herein and in the Engagement Letter and hereby directs all County personnel to cooperate with and assist the Law Firms in relation thereto.

The County Auditor shall forward a copy of this Resolution, together with the signed Engagement Letter, to the Law Firms at Erin Dickinson, Crueger Dickinson LLC, 4532 N. Oakland Ave., Whitefish Bay, WI 53211.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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## LEASE - BUSINESS PROPERTY

THIS LEASE AGREEMENT, is entered into on \_\_\_\_\_, 2017 by VanDee, Inc. ("Landlord") whose address for the purpose of this lease is 303 1st Ave. W., Newton, IA 50208, and Jasper County Board of Supervisors ("Tenant") whose address for the purpose of this lease is 101 1<sup>st</sup> St N, Room 203, Newton, IA 50208,

**1. PREMISES AND TERM.** The Landlord, in consideration of the rents, agreements and conditions herein contained, leases to the Tenant and Tenant leases from Landlord, according to the terms of this lease, the following described "premises", situated in Jasper County, Iowa:

The North 2400 square feet of Lot 5 in Block 18 of the Original plat of Newton, Jasper County, Iowa.

Locally known as: 114 W. 4th St. S., Newton, IA 50208

with the improvements thereon, and all rights, easements and appurtenances, which, more particularly, includes the space and premises as may be shown on "Exhibit A," if attached, for a term of 1 year, commencing at midnight of the day previous to the first day of the lease term, which shall be on December 1, 2017 and ending at midnight on the last day of the lease term, which shall be on November 30, 2018, upon the condition that the Tenant pays rent therefor, and otherwise performs as in this lease provided.

**2. RENTAL.** Tenant agrees to pay to Landlord as rental for said term, as follows: \$1,200.00 per month, in advance, the first rent payment becoming due upon December 1, 2017 and the same amount, per month, in advance, on or about the 1st day of each month thereafter, during the term of this lease.

All sums shall be paid at the address of Landlord, as above designated, or at such other place in Iowa, or elsewhere, as the Landlord may, from time to time, designate in writing. Delinquent payments shall draw interest at 10 % per annum from the due date, until paid.

**3. POSSESSION.** Tenant shall be entitled to possession on the first day of the term of this lease, and shall yield possession to the Landlord at the end of the lease term, except as herein otherwise expressly provided. Should Landlord be unable to give possession on said date, Tenant's only damages shall be a rebating of the pro rata rental.

**4. USE OF PREMISES.** Tenant covenants and agrees during the term of this lease to use and to occupy the leased premises only for professional offices. For restrictions on such use, see paragraphs 6 (c), 6 (d) and 11 (b) below.

**5. QUIET ENJOYMENT.** Landlord covenants that its estate in said premises is in fee simple and that the Tenant, if not in default, shall peaceably have, hold and enjoy the premises for the term of this lease. Landlord shall have the right to mortgage all of its right, title, interest in said premises at any time without notice, subject to this lease.



6. EQUIPMENT, DECORATING, REPLACEMENT, REPAIR AND MAINTENANCE.

DEFINITIONS

"Maintain" means to clean and keep in good condition.

"Repair" means to fix and restore to good condition after damage, deterioration or partial destruction.

CONDITIONS OF PREMISES

A. Tenant takes the premises in its present condition, except for such repairs and alterations as may be expressly otherwise provided in this lease.

REPAIRS AND MAINTENANCE

B. Landlord shall replace and repair the structural parts of the building. For purposes of this lease, the structural parts of the building shall mean the foundation, exterior walls, load bearing components of interior floors and walls, the roof and all sewers, pipes, wiring and electrical fixtures outside of the structure.

C. Repair shall be performed and paid for by the parties as follows:

|   | <u>PERFORMANCE</u>         | <u>PAYMENT</u> |          |
|---|----------------------------|----------------|----------|
|   | L = LANDLORD<br>T = TENANT | % Landlord     | % Tenant |
| Interior walls, floors and ceilings   | T                          | 0              | 100      |
| Sewer, plumbing fixtures, pipes, wiring<br>electrical fixtures within the structure | T                          | 0              | 100      |
| Heating equipment   | L                          | 100            | 0        |
| Air conditioning  | L                          | 100            | 0        |
| Plate glass (replacement)   | L                          | 100            | 0        |
| Sidewalks   | L                          | 100            | 0        |
| Parking areas   | L                          | 100            | 0        |

Tenant shall be responsible for all other maintenance.

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E. Any repair or maintenance not specifically provided for above shall be performed and paid for by Tenant.

F. Each party shall perform their responsibilities of repair and maintenance to the end that the premises will be kept in a safe and serviceable condition. Neither party will permit nor allow the premises to be damaged or depreciated in value by any act, omission to act, or negligence of itself, its agents or employees.

EQUIPMENT, DECORATING AND ALTERATIONS

G. The following items of equipment, furnishings and fixtures shall be supplied and replaced by the parties as follows:

|                            | <u>SUPPLIED</u>        | <u>REPLACED</u>        |
|----------------------------|------------------------|------------------------|
|                            | L=Landlord<br>T=Tenant | L=Landlord<br>T=Tenant |
| Heating equipment          | L                      | L                      |
| Air conditioning equipment | L                      | L                      |
| Carpeting/floor covering   | T                      | T                      |
| Drapes, shades, blinds     | T                      | T                      |

Any similar equipment, furnishings, and fixtures not specifically provided for above shall be provided and paid for by Landlord.

Any equipment, furnishings or fixtures to be supplied by Tenant shall be subject to the Landlord's prior written approval as to quality and method of installation. Tenant shall provide all trade equipment, furnishings and fixtures used in connection with the operation of its business, such as telephones, computers, desks, chairs, shelving and similar items.

H. Tenant shall be responsible for all interior decorating. Tenant shall make no structural alterations or improvements without the prior written consent of the Landlord.

AMERICANS WITH DISABILITIES ACT

I. Tenant will make no unlawful use of said premises and agrees to comply with all valid regulations of the Board of Health, City Ordinances or applicable municipality, the laws of the State of Iowa and the Federal government, but this provision shall not be construed as creating any duty by Tenant to members of the general public, provided, however,

responsibility for compliance with the Americans with Disabilities Act shall be performed and paid for by the parties as follows:

|                              | % Landlord | % Tenant |
|------------------------------|------------|----------|
| Common areas                 | N/A        | N/A      |
| Tenants area:                |            |          |
| Initial compliance (specify) | 100        | 0        |
| Future compliance            | 100        | 0        |

**7. UTILITIES AND SERVICES.** Utilities and services shall be furnished and paid for by the parties as follows:

|                     | <u>PERFORMANCE</u>         | <u>PAYMENT</u> |          |
|---------------------|----------------------------|----------------|----------|
|                     | L = LANDLORD<br>T = TENANT | % Landlord     | % Tenant |
| Electricity         | L                          | 0              | 100      |
| Gas                 | L                          | 0              | 100      |
| Water and Sewer     | L                          | 0              | 100      |
| Garbage/Trash       | T                          | 0              | 100      |
| Janitor/Cleaning    | T                          | 0              | 100      |
| Common areas        | T                          | 0              | 100      |
| Other: Snow removal | T                          | 0              | 100      |

**8. TERMINATION, SURRENDER OF PREMISES AT END OF TERM -- REMOVAL OF FIXTURES.**

(a) **TERMINATION.** This lease shall terminate upon expiration of the original term; or if this lease expressly provides for any option to renew, and if any such option is exercised by the Tenant, then this lease will terminate at the expiration of the option term or terms.

(b) **INTENTIONALLY DELETED.**

(c) **SURRENDER.** Tenant agrees that upon termination of this lease it will surrender and deliver the premises in good and clean condition, except the effects of ordinary wear and tear and depreciation arising from lapse of time, or damage without fault or liability of Tenant.

(d) **HOLDING OVER.** Continued possession by Tenant, beyond the expiration of its tenancy, coupled with the receipt of the specified rental by the Landlord (and absent a written

agreement by both parties for an extension of this lease, or for a new lease) shall constitute a month to month extension of the lease.

(e) **REMOVAL OF FIXTURES.** Tenant may, at the expiration of its tenancy, if Tenant is not in default, remove any fixtures or equipment which Tenant has installed in the premises, providing Tenant repairs any and all damages caused by removal.

**9. ASSIGNMENT AND SUBLETTING.** Any assignment of this lease or subletting of the premises or any part thereof, without the Landlord's written permission shall, at the option of the Landlord, make the rental for the balance of the lease term due and payable at once. Such written permission shall not be unreasonably withheld.

**10. REAL ESTATE TAXES.**

A. All installments of real estate taxes would become delinquent if not paid during the term of this lease, shall be paid by the parties in the following proportions:

Landlord 100 %                      Tenant 0 %

B. Any increase in such installments that exceeds the amount of the installment that would be delinquent if not paid by October 1, 2018 shall be paid as follows:

Landlord 100 %                      Tenant 0 %

C. **PERSONAL PROPERTY TAXES.** Tenant agrees to timely pay all taxes, assessments or other public charges levied or assessed by lawful authority against its personal property on the premises during the term of this lease.

D. **SPECIAL ASSESSMENTS.** Special assessments that would be delinquent if not paid during the term of this lease shall be timely paid by the parties in the following proportions:

Landlord 100 %                      Tenant 0 %

E. Each party reserves its right of protest of any assessment of taxes.

**11. INSURANCE.**

A. **PROPERTY INSURANCE.** Landlord and Tenant agree to insure their respective real and personal property for the full insurable value. Such insurance shall cover losses included in the special form causes of loss (formerly all risks coverage). To the extent permitted by their policies the Landlord and Tenant waive all rights of recovery against each other.

B. **LIABILITY INSURANCE.** Tenant shall obtain commercial general liability insurance in the amounts of \$1,000,000.00 each occurrence and \$2,000,000.00 annual aggregate per location. Such policy shall include liability arising from premises operations, independent contractors, personal injury, products and completed operations and liability assumed under an insured contract. This policy shall be endorsed to include the Landlord as an additional insured.

C. **CERTIFICATES OF INSURANCE.** Prior to the time the lease takes effect the Tenant will provide the Landlord with a certificate of insurance with these property and liability insurance requirements, such certificate shall include 30 days advance notice of cancellation to the Landlord. A renewal certificate shall be provided prior to expiration of the current policies.

D. **ACTS BY TENANT.** Tenant will not do or omit doing of any act which would invalidate any insurance, or increase the insurance rates in force on the premises.

E. **INCREASED RISKS OR HAZARDS.** Tenant further agrees to be liable for and to promptly pay, as if current rental, any increase in insurance rates on said premises and on the building of which said premises are a part, due to increased risks or hazards resulting from Tenant's use of the premises otherwise than as herein contemplated and agreed.

F. Landlord and Tenant shall each provide a copy of this lease to their respective insurers.

12. **LIABILITY FOR DAMAGE.** Each party shall be liable to the other for all damage to the property of the other negligently, recklessly or intentionally caused by that party (or their agents, employees or invitees), except to the extent the loss is insured and subrogation is waived under the owner's policy.

13. **INDEMNITY.** Except as provided in paragraph 21 (A) (5) and except for the negligence of Landlord, Tenant will protect, defend and indemnify Landlord from and against all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence, causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by Tenant or any person claiming through or under Tenant.

14. **FIRE AND CASUALTY.** (a) **PARTIAL DESTRUCTION OF PREMISES.** In the event of a partial destruction or damage of the premises, which is a business interference which prevents the conducting of a normal business operation and which damage is repairable within 60 days after its occurrences, this lease shall not terminate but the rent for the premises shall abate during the time of such business interference. In the event of a partial destruction, Landlord shall repair such damages within 60 days of its occurrence unless prevented from doing so by acts of God, government regulations, or other causes beyond Landlord's reasonable control.

(b) **ZONING.** Should the zoning ordinance of the municipality in which this property is located make it impossible for Landlord to repair or rebuild so that Tenant is not able to conduct its business on these premises, then such partial destruction shall be treated as a total destruction as provided in the next paragraph.

(c) **TOTAL DESTRUCTION OF BUSINESS USE.** In the event of a destruction or damage of the leased premises including the parking area (if parking area is a part of this lease) so that Tenant is not able to conduct its business on the premises or the then current legal use for which the premises are being used and which damages cannot be repaired within 60 days this lease may be terminated at the option of either the Landlord or Tenant. Such termination in such event shall be effected by written notice of one party to the other, within 20 days after such destruction. Tenant shall surrender possession within 10 days after such notice issues and each party shall be released from all future obligations, and Tenant shall pay rent pro rata only to the date of such destruction. In the event of such termination of this lease, Landlord at its option, may rebuild or not, at its discretion.

#### **15. CONDEMNATION.**

(a) **DISPOSITION OF AWARDS.** Should the whole or any part of the premises be condemned or taken for any public or quasi-public purpose, each party shall be entitled to retain, as its own property, any award payable to it. Or in the event that a single entire award is made on account of the condemnation, each party will then be entitled to take such proportion of said award as may be fair and reasonable.

(b) **DATE OF LEASE TERMINATION.** If the whole of the demised premises shall be condemned or taken, the Landlord shall not be liable to the Tenant except and as its rights are preserved in paragraph 15 (a) above.

#### **16. DEFAULT, NOTICE OF DEFAULT AND REMEDIES.**

##### EVENTS OF DEFAULT

A. Each of the following shall constitute an event of default by Tenant:

1. Failure to pay rent when due.
  2. Failure to observe or perform any duties, obligations, agreements or conditions imposed on Tenant pursuant to terms of the lease.
  3. Abandonment of the premises, "Abandonment" means the Tenant has failed to engage in its usual and customary business activities on the premises for more than fifteen (15) consecutive business days.
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4. Institution of voluntary bankruptcy proceedings in which the Court orders relief against the Tenant as a debtor; assignment for the benefit of creditors of the interest of Tenant under this lease agreement; appointment of a receiver for the property or affairs of Tenant, where the receivership is not vacated within ten (10) days after the appointment of the receiver.

#### NOTICE OF DEFAULT

B. Landlord shall give Tenant a written notice specifying the default and giving the Tenant ten (10) days in which to correct the default. If there is a default (other than for nonpayment of a monetary obligation of Tenant, including rent) that cannot be remedied in ten (10) days by diligent efforts of the Tenant, Tenant shall propose an additional period of time in which to remedy the default. consent to additional time shall not be unreasonably withheld by the Landlord. Landlord shall not be required to give Tenant any more than three notices for the same default within any 365 day period.

#### REMEDIES

C. In the event Tenant has not remedied a default in a timely manner following a Notice of Default, Landlord may proceed with all available remedies at law or in equity, including but not limited to the following:

1. Termination. Landlord may declare this lease to be terminated and shall give Tenant a written notice of such termination. In the event of termination of this lease, Landlord shall be entitled to prove claim for and obtain judgment against Tenant for the balance of the rent agreed to be paid for the term herein provided, plus all expenses of Landlord in regaining possession of the premises and the reletting thereof, including attorney's fees and court costs, crediting against such claim, however, any amount obtained by reason of such reletting.

2. Forfeiture. If a default is not remedied in a timely manner, Landlord may then declare this lease to be forfeited and shall give the Tenant a written notice of such forfeiture, and may, at the time, give Tenant the notice to quit provided for in Chapter 648 of the Code of Iowa.

**17. RIGHT OF EITHER PARTY TO MAKE GOOD ANY DEFAULT OF THE OTHER.** If default shall be made by either party in the performance of, or compliance with, any of the terms or conditions of this lease, and such default shall have continued for thirty (30) days after written notice thereof from one party to the other, the person aggrieved, in addition to all other remedies now or hereafter provided by law, may, but need not, perform such term or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the rate of 10.00 % per annum, from date of advance.

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18. **SIGNS.** (a) Tenant shall have the right and privilege of attaching, painting or exhibiting signs on the leased premises, provided only (1) that any sign shall comply with the ordinances of municipality in which the property is located and the laws of the State of Iowa; (2) such sign shall not change the structure of the building; (3) such sign, if and when removed, shall not damage the building; and (4) such sign shall be subject to the written approval of the Landlord, which approval shall not be unreasonably withheld.

(b) Landlord during the last ninety (90) days of this lease, or extension, shall have the right to maintain in the windows or on the building or on the premises either or both a "For Rent" or "For Sale" sign and Tenant will permit, at such time, prospective tenants or buyers to enter and examine the premises.

19. **MECHANIC'S LIENS.** Neither the Tenant nor anyone claiming by, through, or under the Tenant, shall have the right to file or place any mechanic's liens or other lien of any kind or character whatsoever, upon said premises or upon any building or improvement thereon, or upon the leasehold interest of the Tenant, and notice is hereby given that no contractor, sub-contractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien on the premises, and for the further security of the Landlord, the Tenant covenants and agrees to give actual notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.

20. **LANDLORD'S LIEN AND SECURITY INTEREST.** (a) Said Landlord shall have, in addition to any lien given by law, a security interest as provided by the Uniform Commercial Code of Iowa, upon all personal property and all substitutions thereof, kept and used on said premises by Tenant. Landlord may proceed at law or in equity with any remedy provided by law or by this lease for the recovery of rent, or for termination of this lease because of Tenant's default in its performance.

(b) **SPOUSE.** If Tenant's spouse is not a Tenant, then the execution of this instrument by Tenant's spouse shall be for the sole purpose of creating a security interest on personal property and waiving rights of homestead, rights of distributive share, and exemptions.

## 21. ENVIRONMENTAL.

A. Landlord. To the best of Landlord's knowledge to date:

1. Neither Landlord nor Landlord's former or present tenants are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state, or local codes, rules and regulations pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of toxic or hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.

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2. Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state and local codes, rules and regulations.

3. No leak, spill release, discharge, emission or disposal of toxic or hazardous substances has occurred on the premises.

4. The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances.

5. Landlord shall assume liability and shall indemnify and hold Tenant harmless against all liability or expense arising from any condition which existed, whether known or unknown, at the time of execution of the lease which condition is not a result of actions of the Tenant or which condition arises after date of execution but which is not a result of actions of the Tenant.

B. Tenant. Tenant expressly represents and agrees:

1. During the lease term, Tenant's use of the property will not include the use of any hazardous substance without Tenant first obtaining the written consent of Landlord. Tenant understands and agrees that Landlord's consent is at Landlord's sole option and complete discretion and that such consent may be withheld or may be granted with any conditions or requirements that Landlord deems appropriate.

2. During the lease term, Tenant shall be fully liable for all costs and expenses related to the use, storage, removal and disposal of hazardous substances used or kept on the property by Tenant, and Tenant shall give immediate notice to Landlord of any violation or any potential violation of any environmental regulation, rule, statute or ordinance relating to the use, storage or disposal of any hazardous substance.

3. Tenant, at its sole cost and expense, agrees to remediate, correct or remove from the premises any contamination of the property caused by any hazardous substances which have been used or permitted by Tenant on the premises during any term of this lease. Remediation, correction or removal shall be in a safe and reasonable manner, and in conformance with all applicable laws, rules and regulations. Tenant reserves all rights allowed by law to seek indemnity or contribution from any person, other than Landlord, who is or may be liable for any such cost and expense.

4. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, causes of action, damages, loss, costs, expense, penalties, fines, lawsuits, liabilities, attorney fees, engineering and consulting fees, arising out of or in any manner connected with hazardous substances, which are caused or created by

Tenant on or after the date of this lease and during any term of this lease, including, but not limited to, injury or death to persons or damage to property, and including any diminution of the value of any leased premises which may result from the foregoing. This indemnity shall survive the cessation, termination, abandonment or expiration of this lease.

**22. SUBSTITUTION OF EQUIPMENT, MERCHANDISE. ETC.** (a) During its tenancy, the Tenant shall have the right to sell or otherwise dispose of any personal property of the Tenant situated on the premises, when in the judgment of the Tenant it shall have become obsolete, outworn or unnecessary in connection with the operation of the business on the premises; provided, however, that the Tenant shall, in such instance (unless no substituted article or item is necessary) at its own expense, substitute for such items a new or other item in substitution thereof, in like or greater value.

(b) Nothing herein contained shall be construed as denying to Tenant the right to dispose of inventoried merchandise in the ordinary course of the Tenant's trade or business.

**23. RIGHTS CUMULATIVE.** The various rights, powers, options, elections and remedies of either party, provided in this lease, shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

**24. NOTICES AND DEMANDS.** Notices as provided for in this lease shall be given to the respective parties hereto at the respective addresses designated on page one of this lease unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such message shall be considered given under the terms of this lease when sent, addressed as above designated, postage prepaid, by certified mail deposited in a United States mail box.

**25. PROVISIONS TO BIND AND BENEFIT SUCCESSORS, ASSIGNS, ETC.** Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties; except that if any part of this lease is held in joint tenancy, the successor in interest shall be the surviving joint tenant.

**26. CHANGES TO BE IN WRITING.** None of the covenants, provisions, terms or conditions of this lease shall be modified, waived or abandoned, except by a written instrument duly signed by the parties. This lease contains the whole agreement of the parties.

**27. RELEASE OF DOWER.** Spouse of Landlord appears as a signatory to this lease solely for the purpose of releasing dower, or distributive share, unless said spouse is also a co-owner of an interest in the leased premises.

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28. **CONSTRUCTION.** Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

29. **CERTIFICATION.** Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant hereby agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

30. **ADDITIONAL PROVISIONS.**

A. **EXISTING SIGNAGE.** Signage on the building at lease inception is the property of Landlord.

B. **CONFERENCE TABLE AND PHONE SYSTEM.** The conference table and phone system are the property of Landlord and may be used by Tenant during the term of the lease.

VANDEE, INC.

JASPER COUNTY BOARD OF SUPERVISORS

\_\_\_\_\_, LANDLORD

\_\_\_\_\_, TENANT

Attest:

\_\_\_\_\_  
Dennis Parrott, Jasper County Auditor

## **PROFESSIONAL SERVICES AGREEMENT**

**ATTN:** Joe Brock, Chairman  
**CLIENT:** Jasper County Board of Supervisors  
Jasper County Courthouse, Room 203  
Newton, IA 50208

**PROJECT:** Jasper Co. - Annex Building Investigation

**PROJECT LOCATION:** Newton, IA

**DATE OF AGREEMENT:** December 8, 2017

### **PROJECT DESCRIPTION**

Provide Professional Engineering and Architecture Consultation Services on an as requested hourly basis to develop conceptual options for improvements and repairs to the Jasper County Annex Building.

### **SCOPE OF SERVICES**

We can provide the following services for the project:

Civil Engineering, Architecture, Structural Engineering, Mechanical Engineering, Electrical Engineering, and Land Surveying

These services can consist of the following tasks:

1. Professional Consultation Services
  - A. Investigate and develop alternative conceptual options of repairs and modifications to the existing County Annex Building with associated engineering cost opinions.
  - B. Attendance at Board of Supervisors meetings, as requested, to review building investigation observations and discuss repair alternatives with the Board.

### **CLIENT RESPONSIBILITIES**

It will be your responsibility to provide the following:

1. Identify a Project Representative with full authority to act on behalf of the Client with respect to this project. The Client Project Representative shall render decisions in a timely manner in order to avoid delays of Shive-Hattery's services.
2. Legal, accounting, and insurance counseling services or other consultants, including geotechnical, or vendors that may be necessary. The Client shall coordinate these services with those services provided by Shive-Hattery.
3. Provide to Shive-Hattery any available drawings, survey plats, testing data and reports related to the project, either hard copy or electronic media. Electronic media is preferred.
4. Unless specifically included in the Scope of Services to be provided by Shive-Hattery, the Client shall furnish tests, inspections, permits and reports required by law, regulation or code including but not limited to hazardous materials, structural, mechanical, building egress, and water pollution tests.



**SCHEDULE**

We will begin our services upon receipt of this Agreement executed by you which will serve as a notice to proceed.

- We will meet with you to develop a mutually agreed-upon schedule for the Scope of Services.

**COMPENSATION**

| Description                        | Fee Type     | Fee     | Estimated Expenses | Total   |
|------------------------------------|--------------|---------|--------------------|---------|
| Professional Consultation Services | Hourly w/Max | \$6,000 | Included           | \$6,000 |
| <b>TOTAL</b>                       |              | \$6,000 | Included           | \$6,000 |

**Fee Types:**

- Hourly w/Max - We will provide the Scope of Services on an hourly rate basis at our Standard Hourly Fee Schedule in effect at the time that the services are performed. We will not exceed the estimated amounts above without your prior authorization.

**Expenses:**

- Included – Expenses have been included in the Fee amount.

The terms of this proposal are valid for 30 days from the date of this proposal.

**ADDITIONAL SERVICES**

The following are additional services you may require for your project. We can provide these services but they are not part of this proposal at this time.

1. Full building assessment including mechanical, electrical, structural, roofing, and architectural.
2. Design and Construction Documents for any improvements or repairs.
3. Topographic Survey and public and private utility location services.
4. Storm sewer camera scoping to determine location and condition of existing pipes.
5. Attendance at additional Board of Supervisor meetings.
6. Hazardous material investigations including asbestos surveys and abatement plans.
7. Consultation and testing on indoor air quality.

**OTHER TERMS****STANDARD TERMS AND CONDITIONS**

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**PARTIES**

"S-H" shall mean Shive-Hattery, Inc., Shive-Hattery A/E Services, P.C., or Design Organization, a Division of Shive-Hattery, Inc.  
"CLIENT" shall mean the person or entity executing this Agreement with "S-H."

#### **LIMITATION OF LIABILITY AND WAIVER OF CERTAIN DAMAGES**

The CLIENT agrees, to the fullest extent of the law, to limit the liability of S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, to the CLIENT and any person or entity claiming by or through the CLIENT, for any and all claims, damages, liabilities, losses, costs, and expenses including reasonable attorneys' fees, experts' fees, or any other legal costs, in any way related to the Project or Agreement from any cause(s) to an amount that shall not exceed the compensation received by S-H under the agreement or fifty thousand dollars (\$50,000), whichever is greater. The parties intend that this limitation of liability apply to any and all liability or cause of action, claim, theory of recovery, or remedy however alleged or arising, including but not limited to negligence, errors or omissions, strict liability, breach of contract or warranty, express, implied or equitable indemnity and all other claims, which except for the limitation of liability above, the CLIENT waives.

CLIENT hereby releases S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, and none shall be liable to the CLIENT for consequential, special, exemplary, punitive, indirect or incidental losses or damages, including but not limited to loss of use, loss of product, cost of capital, loss of goodwill, lost revenues or loss of profit, interruption of business, down time costs, loss of data, cost of cover, or governmental penalties or fines.

#### **INDEMNIFICATION**

Subject to the limitation of liability in this Agreement, S-H agrees to the fullest extent permitted by law, to indemnify and hold harmless the CLIENT, its officers, directors, shareholders, employees, contractors, subcontractors and consultants against all claims, damages, liabilities, losses or costs, including reasonable attorneys' fees, experts' fees, or other legal costs to the extent caused by S-H's negligent performance of service under this Agreement and that of its officers, directors, shareholders, and employees.

The CLIENT agrees to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants, and affiliated companies against all damages, liabilities, losses, costs, and expenses including, reasonable attorneys' fees, expert's fees, and any other legal costs to the extent caused by the acts or omissions of the CLIENT, its employees, agents, contractors, subcontractors, consultants or anyone for whom the CLIENT is legally liable.

#### **HAZARDOUS MATERIALS - INDEMNIFICATION**

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold S-H, its officers, directors, shareholders, employees, agents, consultants and affiliated companies, and any of them harmless from and against any and all claims, liabilities, losses, costs, or expenses including reasonable attorney's fees, experts' fees and any other legal costs (including without limitation damages to property, injuries or death to persons, fines, or penalties), arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, polychlorinated biphenyl, petroleum contaminants spores, biological toxins, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

#### **STANDARD OF CARE**

Services provided by S-H under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances on projects of similar size, complexity, and geographic location as that of the Project. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

#### **BETTERMENT**

The CLIENT recognizes and expects that certain change orders may be required to be issued as the result in whole or part of imprecision, incompleteness, omissions, ambiguities, or inconsistencies in S-H's drawings, specifications, and other design, bidding or construction documentation furnished by S-H or in other professional services performed or furnished by S-H under this Agreement (herein after in this Betterment section referred to as S-H Documentation). If a required item or component of the Project is omitted from S-H's Documentation, the CLIENT is responsible for paying all costs required to add such item or component to the extent that such item or component would have been required and included in the original S-H Documentation. In no event will S-H be responsible for costs or expense that provides betterment or upgrades or enhances the value of the Project.

#### **RIGHT OF ENTRY**

The CLIENT shall provide for entry for the employees, agents and subcontractors of S-H and for all necessary equipment. While S-H shall take reasonable precautions to minimize any damage to property, it is understood by the CLIENT that in the normal course of the project some damages may occur, the cost of correction of which is not a part of this Agreement.

## **PAYMENT**

Unless otherwise provided herein, invoices will be prepared in accordance with S-H's standard invoicing practices then in effect and will be submitted to CLIENT each month and at the completion of the work on the project. Invoices are due and payable upon receipt by the CLIENT. If the CLIENT does not make payment within thirty (30) days after the date the invoice was mailed to the CLIENT, then the amount(s) due S-H shall bear interest due from the date of mailing at the lesser interest rate of 1.5% per month compounded or the maximum interest rate allowed by law. In the event that S-H files or takes any action, or incurs any costs, for the collection of amounts due it from the client, S-H shall be entitled to recover its entire cost for attorney fees and other collection expenses related to the collection of amounts due it under this Agreement. Any failure to comply with this term shall be grounds for a default termination.

## **TERMINATION**

Either party may terminate this Agreement for convenience or for default by providing written notice to the other party. If the termination is for default, the non-terminating party may cure the default before the effective date of the termination and the termination for default will not be effective. The termination for convenience and for default, if the default is not cured, shall be effective seven (7) days after receipt of written notice by the non-terminating party. In the event that this Agreement is terminated for the convenience of either party or terminated by S-H for the default of the CLIENT, then S-H shall be paid for services performed to the termination effective date, including reimbursable expenses due, and termination expenses attributable to the termination. In the event the CLIENT terminates the Agreement for the default of S-H and S-H does not cure the default, then S-H shall be paid for services performed to the termination notice date, including reimbursable expenses due, but shall not be paid for services performed after the termination notice date and shall not be paid termination expenses. Termination expenses shall include expenses reasonably incurred by S-H in connection with the termination of the Agreement or services, including, but not limited to, closing out Project records, termination of subconsultants and other persons or entities whose services were retained for the Project, and all other expenses directly resulting from the termination.

## **INFORMATION PROVIDED BY OTHERS**

S-H shall indicate to the CLIENT the information needed for rendering of services hereunder. The CLIENT shall provide to S-H such information, including electronic media, as is available to the CLIENT and the CLIENT's consultants and contractors, and S-H shall be entitled to rely upon the accuracy and completeness thereof. The CLIENT recognizes that it is difficult for S-H to assure the accuracy, completeness and sufficiency of such client-furnished information, either because it is provided by others or because of errors or omissions which may have occurred in assembling the information the CLIENT is providing. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them, from and against any and all claims, liabilities, losses, costs, expenses (including reasonable attorneys' fees, experts' fees, and any other legal costs) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the CLIENT.

## **UNDERGROUND UTILITIES**

Information for location of underground utilities may come from the CLIENT, third parties, and/or research performed by S-H or its subcontractors. S-H will use the standard of care defined in this Agreement in providing this service. The information that S-H must rely on from various utilities and other records may be inaccurate or incomplete. Therefore, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees agents, subconsultants, affiliated companies, and any of them for all claims, losses, costs and damages arising out of the location of underground utilities provided or any information related to underground utilities by S-H under this Agreement.

## **CONTRACTOR MATTERS**

CLIENT agrees that S-H shall not be responsible for the acts or omissions of the CLIENT's contractor, or subcontractors, their employees, agents, consultants, suppliers or arising from contractor's or subcontractors' work, their employees, agents, consultants, suppliers or other entities that are responsible for performing work that is not in conformance with the construction Contract Documents, if any, prepared by S-H under this Agreement. S-H shall not have responsibility for means, methods, techniques, sequences, and progress of construction of the contractor, subcontractors, agents, employees, agents, consultants, or others entities. In addition, CLIENT agrees that S-H is not responsible for safety at the project site and that safety during construction is for the CLIENT to address in the contract between the CLIENT and contractor.

## **SHOP DRAWING REVIEW**

If, as part of this Agreement S-H reviews and approves Contractor submittals, such as shop drawings, product data, samples and other data, as required by S-H, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. S-H's review shall be conducted with reasonable promptness while allowing sufficient time in S-H's judgment to permit adequate review. Review of a specific item shall not indicate that S-H has reviewed the entire assembly of which the item is a component. S-H shall not be responsible for any deviations from the contract documents not brought to the attention of S-H in writing by the Contractor. S-H shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

### **OPINIONS OF PROBABLE COST**

If, as part of this Agreement S-H is providing opinions of probable construction cost, the CLIENT understands that S-H has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that S-H's opinions of probable construction costs are to be made on the basis of S-H's qualifications and experience. S-H makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

### **CONSTRUCTION OBSERVATION**

If, as part of this Agreement S-H is providing construction observation services, S-H shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. Unless otherwise specified in the Agreement, the CLIENT has not retained S-H to make detailed inspections or to provide exhaustive or continuous project review and observation services. S-H does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, its subcontractors, employees, agents, consultants, suppliers or any other entities furnishing materials or performing any work on the project.

S-H shall advise the CLIENT if S-H observes that the contractor is not performing in general conformance of Contract Documents. CLIENT shall determine if work of contractor should be stopped to resolve any problems.

### **OTHER SERVICES**

The CLIENT may direct S-H to provide other services including, but not limited to, any additional services identified in S-H's proposal. If S-H agrees to provide these services, then the schedule shall be reasonably adjusted to allow S-H to provide these services. Compensation for such services shall be at S-H's Standard Hourly Fee Schedule in effect at the time the work is performed unless there is a written Amendment to Agreement that contains an alternative compensation provision.

### **OWNERSHIP & REUSE OF INSTRUMENTS OF SERVICE**

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by S-H as instruments of service shall remain the property of S-H. The CLIENT shall not reuse or make any modifications to the plans and specifications without the prior written authorization of S-H. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless S-H its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them from any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to any unauthorized reuse or modifications of the construction documents by the CLIENT or any person or entity that acquires or obtains the plans and specifications from or through the CLIENT without the written authorization of S-H.

### **DISPUTE RESOLUTION**

If a dispute arises between S-H and CLIENT, the executives of the parties having authority to resolve the dispute shall meet within thirty (30) days of the notification of the dispute to resolve the dispute. If the dispute is not resolved within such thirty (30) day time period, CLIENT and S-H agree to submit to non-binding mediation prior to commencement of any litigation and that non-binding mediation is a precondition to any litigation. Any costs incurred directly for a mediator, shall be shared equally between the parties involved in the mediation.

### **EXCUSABLE EVENTS**

S-H shall not be responsible for any event or circumstance that is beyond the reasonable control of S-H that has a demonstrable and adverse effect on S-H's ability to perform its obligations under this Agreement or S-H's cost and expense of performing its obligations under this Agreement (an "Excusable Event"), including without limitation, a change in law or applicable standards, actions or inactions by a governmental authority, the presence or encounter of hazardous or toxic materials on the Project, war (declared or undeclared) or other armed conflict, terrorism, sabotage, vandalism, riot or other civil disturbance, blockade or embargos, explosion, epidemic, quarantine, strike, lockout, work slowdown or stoppage, accident, act of God, failure of any governmental or other regulatory authority to act in a timely manner, unexcused act or omission by CLIENT or contractors of any level (including, without limitation, failure of the CLIENT to furnish timely information or approve or disapprove of S-H's services or work product promptly, delays in the work caused by CLIENT, CLIENT's suspension, breach or default of this Agreement, or delays caused by faulty performance by the CLIENT or by contractors of any level). When an Excusable Event occurs, the CLIENT agrees S-H is not responsible for damages, nor shall S-H be deemed to be in default of this Agreement, and S-H shall be entitled to a change order to equitably adjust for S-H's increased time and/or cost to perform its services due to the Excusable Event.

### **ASSIGNMENT**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

### **SEVERABILITY, SURVIVAL AND WAIVER**

Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the CLIENT and S-H shall survive the completion of the services hereunder and the termination of this Agreement. The failure of a party to insist upon strict compliance of any term hereof shall not constitute a waiver by that party of its rights to insist upon strict compliance at a subsequent date.



**GOVERNING LAW**

This Agreement shall be governed pursuant to the laws in the state of the locale of the S-H office address written in this Agreement.

**EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of S-H to provide equal employment opportunities for all. S-H enforces the following acts and amendments as presented by Federal government or State governments: Title VII of the Civil Rights Act of 1965, Age Discrimination in Employment ACT (ADEA), Americans With Disabilities Act (ADA), Iowa Civil Rights Act of 1965, and Illinois Human Rights Act [ 775ILCS 5]. S-H will not discriminate against any employee or applicant because of race, creed, color, religion, sex, national origin, gender identity, sexual orientation, marital status, ancestry, veteran status, or physical or mental handicap, unless related to performance of the job with or without accommodation.

**COMPLETE AGREEMENT**

This Agreement constitutes the entire and integrated agreement between the CLIENT and S-H and supersedes all prior negotiations, representations and agreements, whether oral or written. If the CLIENT issues a Purchase Order of which this Agreement becomes a part, the terms of this Agreement shall take precedence in the event of a conflict of terms.

**AGREEMENT**

This proposal shall become the Agreement for Services when accepted by both parties. Original, facsimile, electronic signatures or other electronic acceptance by the parties (and returned to Shive-Hattery) are deemed acceptable for binding the parties to the Agreement. The Client representative signing this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of the Client.

Thank you for considering this proposal. We look forward to working with you. If you have any questions concerning this proposal, please contact us.

Sincerely,

SHIVE-HATTERY, INC.



Chris Bauer, PE, PMP  
Civil Engineer-Project Manager  
cbauer@shive-hattery.com  
515-223-8104

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**AGREEMENT ACCEPTED AND SERVICES AUTHORIZED TO PROCEED**

**CLIENT:** Jasper County Board of Supervisors

**BY:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_  
(signature)

**PRINTED NAME:** \_\_\_\_\_ **DATE ACCEPTED:** \_\_\_\_\_

**Attest:** \_\_\_\_\_  
**Dennis Parrott, Auditor**

December 5, 2017

Tuesday, December 5, 2017 the Jasper County Board of Supervisors met in regular session at 9:30 a.m. with Supervisors Brock, Carpenter and Cupples present and accounted for; Chairman Brock presiding.

Buildings and Grounds Director Adam Sparks presented two quotes to the Board concerning louvers for the clock tower and they are as follows:

FormanFord \$4,587

Two Rivers Glass & Door Inc. \$6,200

Motion by Cupples and seconded by Carpenter to approve the purchase of 4 model 377 louvers for the Courthouse clock tower.

YEA: CARPENTER, CUPPLES, BROCK

Human Resources Director Dennis Simon asked the Board to approve the hiring of a floater for the Elderly Nutrition Department.

Motion by Carpenter and seconded by Cupples to adopt Resolution 17-88 a hiring resolution certifying the following to the Auditor for payroll implementation:

| <u>DEPARTMENT</u> | <u>POSITION</u>                   | <u>EMPLOYEE</u> | <u>PAY RATE</u> | <u>RANGE/STEP</u>                         | <u>EFFECTIVE DATE</u> |
|-------------------|-----------------------------------|-----------------|-----------------|---|-----------------------|
| Elderly Nutrition | Floater<br>(3 <sup>rd</sup> Cook) | Rhonda Milligan | \$10.26         | Hire-In<br>Non-Progressive<br>Union Scale | 12/06/2017            |

YEA: CUPPLES, CARPENTER, BROCK

A complete copy of the resolution is on file in the Office of the Jasper County Auditor.

Motion by Cupples and second by Carpenter to table agenda item 3(a): Lease Agreement for 114 W 4<sup>th</sup> St S, Newton, Iowa 50208.

YEA: CARPENTER, BROCK, CUPPLES

A brief discussion ensued concerning the construction of a new building to replace the County Annex Building. Supervisors Carpenter stated that the cost would be at least 4.5 million dollars to building a new building and he was opposed to that. Supervisor Brock said he would like to know the cost to build as opposed to fixing the Annex Building.

Motion by Cupples and seconded by Brock to hire Shive Hattery to design and place a cost on specific repairs for the County Annex Building.

YEA: CARPENTER, CUPPLES, BROCK

The Board directed Buildings and Grounds Director Sparks to look into buying air scrubbers for the County Annex Building.

Motion by Carpenter and seconded by Cupples to approve Board of Supervisors minutes for 11/28/2017.

YEA: CUPPLES, CARPENTER, BROCK

Motion by Carpenter and seconded by Cupples to adjourn the Tuesday, December 5, 2017 meeting of the Jasper County Board of Supervisors.

YEA: CUPPLES, BROCK, CARPENTER

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Dennis K. Parrott, Auditor

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Joe Brock, Chairman