

CONTRACT REVIEW

**THE WONDERFUL WORLD OF
CONTRACTS OR HOW TO SURVIVE
LEGAL REVIEW**


TWO ASPECTS OF PRESENTATION

- ▶ ESSENTIAL CONTRACT TERMS
 - ▶ DEALING WITH VENDORS
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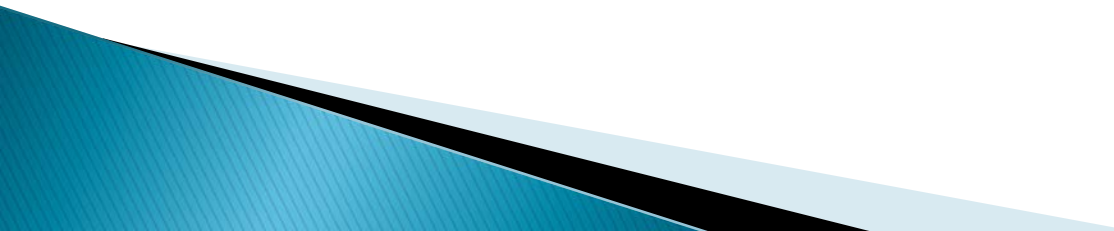
REQUIRED TERMS OF A CONTRACT



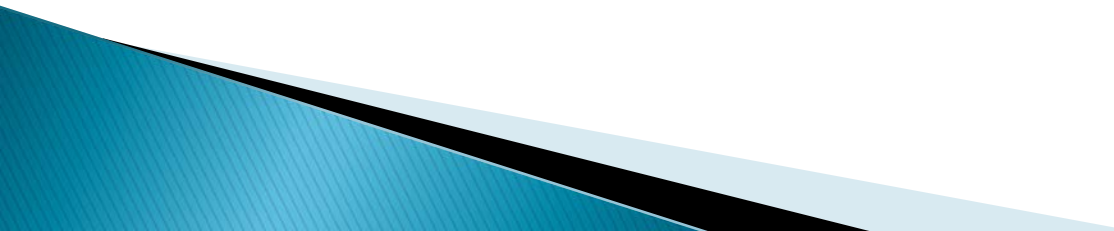
**LEGAL, WORKING WITH
PURCHASING, HAVE
DEVELOPED CERTAIN MINIMUM
REQUIREMENTS FOR ANY
CONTRACT ENTERED INTO ON
BEHALF OF THE COUNTY**



PARTIES

- ▶ CONTRACTS ARE NOT WITH DEPARTMENTS
 - ▶ CONTRACT ARE REQUIRED TO BE WITH EITHER
 - ❖ OKALOOSA COUNTY, OR
 - ❖ THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY
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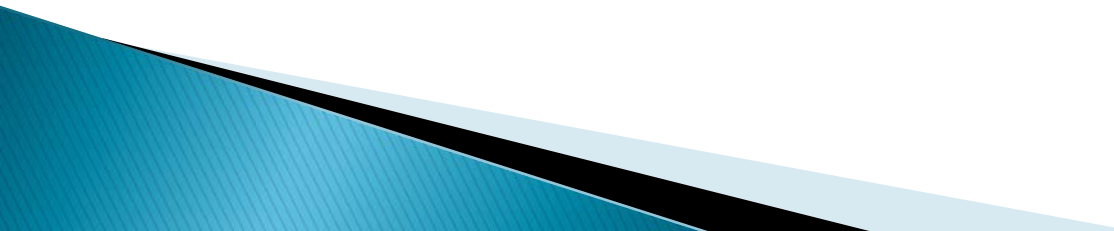
TERM OF THE AGREEMENT

- ▶ ALL CONTRACTS NEED A TERMINATION DATE
 - ▶ IN PAST CONTRACTS, THERE WERE AUTOMATIC RENEWALS THAT COULD GO FOREVER
 - ▶ MAXIMUM OF 5 YEARS WITH NO MORE THAN 2 RENEWAL OF 1 YEAR EACH (THIS IS THE MAXIMUM)
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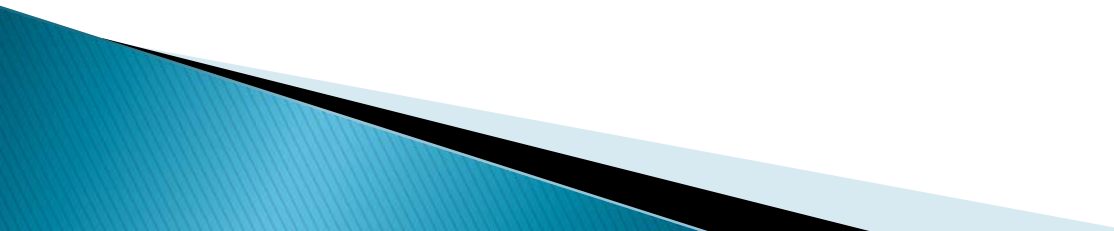
ABILITY TO TERMINATE

- ▶ ALL CONTRACTS MUST HAVE THE ABILITY FOR THE COUNTY TO GET OUT FROM THEM WITHOUT CAUSE
- ▶ USUALLY THESE SHOULD REQUIRE NO MORE THAN 60 DAYS NOTICE OF BY COUNTY TO TERMINATE CONTRACT

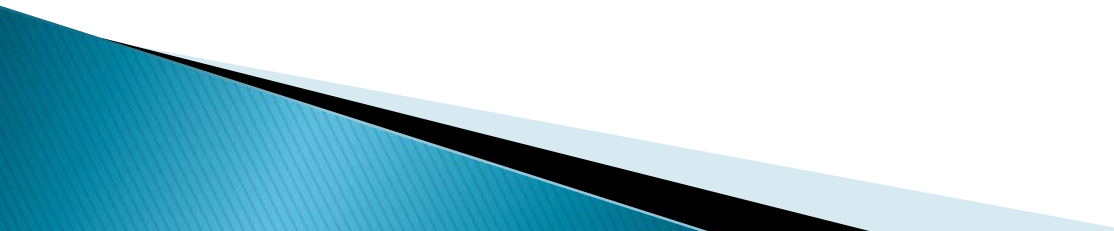
PUBLIC RECORDS

- ▶ GENERALLY WE PREFER TO HAVE A STATEMENT THAT THE CONTRACTOR IS TO COMPLY WITH THE PUBLIC RECORDS LAW
 - ▶ IF THE CONTRACTOR IS PERFORMING FUNCTIONS OF THE COUNTY THEN UNDER THE LAW, THEY MUST COMPLY WITH THE PUBLIC RECORDS LAW
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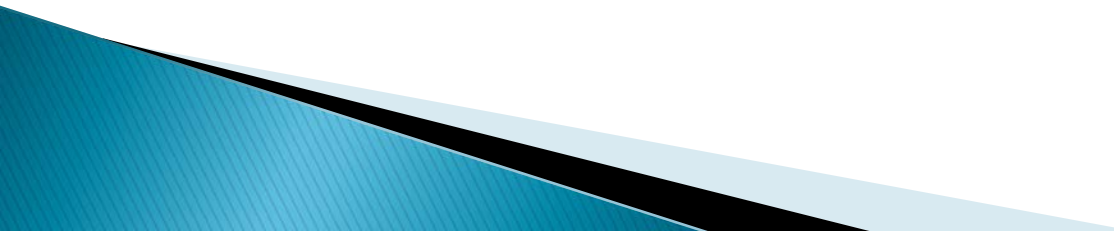
AUDIT ABILITY

- ▶ ALL CONTRACTS SHOULD AUTHORIZE THE COUNTY TO REVIEW AND AUDIT ANY BILLING OR EXPENDITURE OF PUBLIC FUNDS
 - ▶ WE HAVE STANDARD LANGUAGE THAT WE NORMALLY REQUIRE BE INCLUDED
 - ▶ MAY NEVER AUDIT BUT IT PROTECTS THE COUNTY
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INSURANCE

- ▶ REQUIRED FOR ANY CONTRACT THAT REQUIRES THE PRESENCE OF THE VENDOR ON SITE OR COUNTY PROPERTY ARE REQUIRED TO HAVE INSURANCE
 - ▶ AMOUNTS DETERMINED BY RISK MANAGEMENT
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INDEMNIFICATION

- ▶ INDEMNIFICATION IS THE AGREEMENT TO PROTECT AND PAY ANY LOSS OR DAMAGE OF ANOTHER PARTY
 - ▶ MAJOR PROBLEM AREA WITH CONTRACTS
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EXAMPLE OF “BAD” INDEMNIFICATION

“THE COUNTY AGREES TO INDEMNIFY AND HOLD THE CONTRACTOR HARMLESS FROM ANY LOSS, DAMAGE, CLAIM OR INJURY THAT IT MIGHT INCUR DURING THE TERM OF THIS CONTRACT”

EXAMPLE OF “GOOD” INDEMNIFICATION

“THE COUNTY AGREES TO INDEMNIFY AND HOLD THE CONTRACTOR HARMLESS FROM ANY LOSS, DAMAGE, CLAIM OR INJURY RESULTING FROM THE NEGLIGENCE OF ITS EMPLOYEES DURING THE PERFORMANCE OF THIS CONTRACT”

ADDITIONAL INDEMNIFICATION LANGUAGE

“THE PARTIES FURTHER AGREE THAT NOTHING CONTAINED HEREIN IS INTENDED TO, NOR SHALL THE BE CONSTRUED AS, A WAIVER OF THE COUNTY’ RIGHTS AND IMMUNITIES UNDER SECTION 768.28, FLORIDA STATUTES, AS AMENDED FROM TIME TO TIME.”

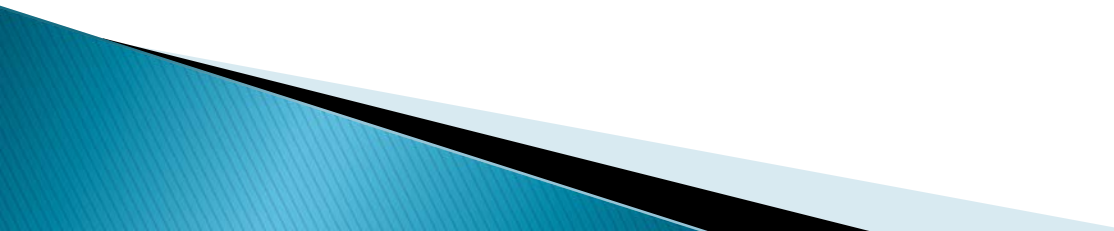
GOVERNING LAW AND VENUE

THIS DETERMINES WHAT LAW APPLIED AND WHERE ANY LAWSUIT OVER THE CONTRACT MUST BE BROUGHT

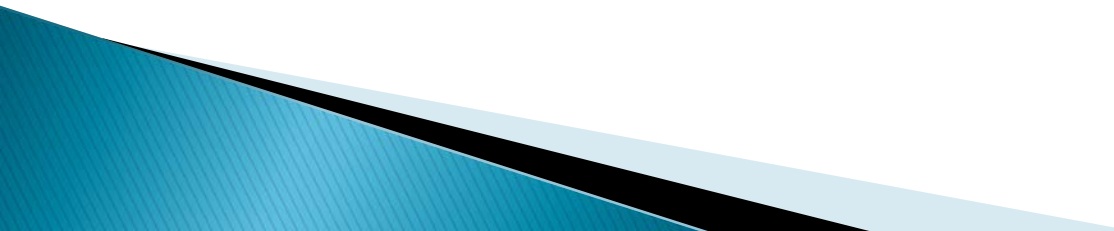
WE HAVE HAD CONTRACTS THAT REQUIRE ANY LAWSUIT TO BE BROUGHT IN NEBRASKA, COLORADO AND CALIFORNIA.

SIGNATORIES

- ▶ WHO CAN SIGN THE CONTRACT
 - ❖ DEPARTMENT HEAD
 - ❖ PURCHASING
 - ❖ BOARD CHAIRMAN

 - ▶ DEPENDS ON THE AMOUNT. NEED TO VERIFY THE TOTAL COST OF THE CONTRACT
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SPECIAL ISSUES

- ▶ FEDERAL FUNDING
 - ▶ SOFTWARE CONTRACTS
 - ▶ SOLE SOURCE
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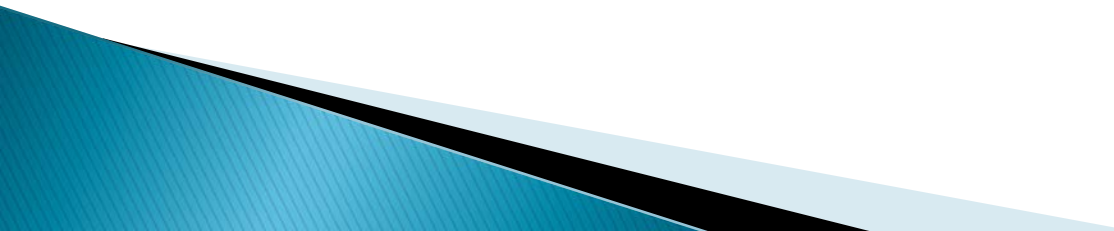
FEDERAL FUNDING

BE AWARE OF YOUR FUNDING SOURCE

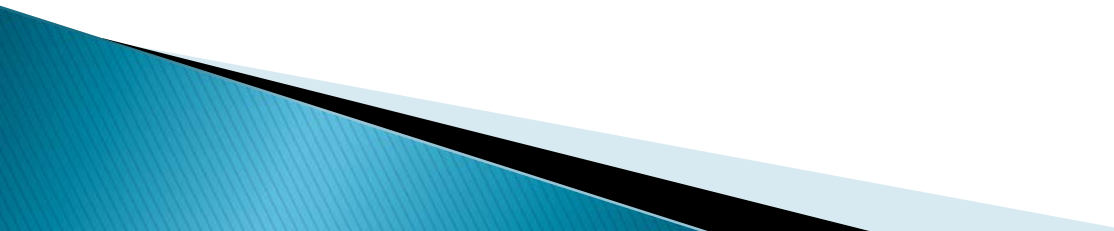
- ▶ RESTORE FUNDING
- ▶ FAA GRANTS
- ▶ FEMA REVENUES
- ▶ GRANTS

ANY PART OF FUNDING IS FROM THE FEDERAL GOVERNMENT, THEN MORE STRICT REQUIREMENTS APPLY

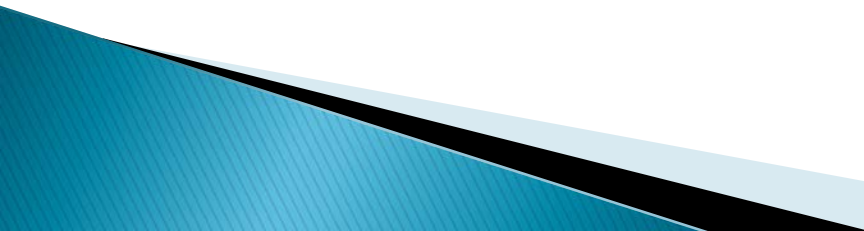
SPECIAL REQUIREMENTS OF FEDERAL FUNDING

- ▶ REQUIRES NUMEROUS FORMS TO BE COMPLETED TO INDICATE COMPLIANCE WITH CERTAIN FEDERAL REGULATIONS
 - ▶ MANDATORY COMPETITIVE PROCESS (SOLE SOURCE CREATES SPECIAL PROBLEMS)
 - ▶ STRICT AUDIT COMPLIANCE REQUIREMENTS
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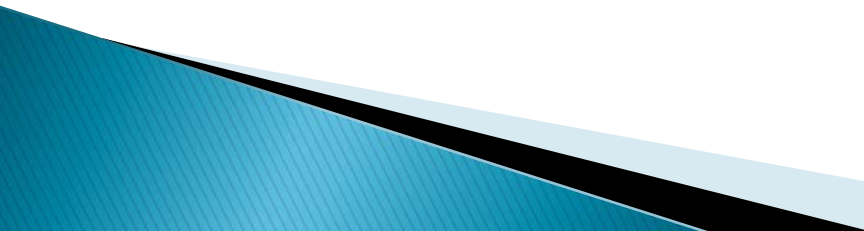
COMPUTER SOFTWARE

- ▶ FORM CONTRACTS WHICH COMPANY WILL NOT NEGOTIATE
 - ▶ STILL SUBJECT TO THE RULES—BUT SOMETIMES WE HAVE TO JUST ACCEPT THE CONTRACT TERMS
 - ▶ WILL NORMALLY GET A REQUEST FROM LEGAL TO VERIFY THE NEED FOR A PARTICULAR SOFTWARE
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SOLE SOURCE

- ▶ NEED TO JUSTIFY TO PURCHASING DIRECTOR THAT A COMPANY IS A SOLE SOURCE
 - ▶ LONG TIME SERVICE TO THE COUNTY DOES NOT MAKE THEM A SOLE SOURCE NOR DOES THE FACT THEY ARE REALLY GOOD GUYS
 - ▶ MUST BE PROVIDING A SERVICE OR PRODUCT THAT IS NEEDED AND THEY ARE THE ONLY SOURCE
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DEALING WITH VENDORS

- ▶ THE PROCESS IS ONLY AS GOOD AS THE SPECIFICATIONS THAT YOU PREPARE
 - ▶ HOWEVER, DO NOT CONTACT VENDORS AND HAVE THEM PREPARE SPECIFICATIONS FOR AN RFP OR BID.
 - ▶ MAKE SURE ALL VERBAL REPRESENTATIONS ARE IN THE WRITTEN DOCUMENT
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VENDOR ISSUES

- ▶ DO NOT PRESUME THAT ANY CONTRACT WILL BE APPROVED UNTIL IT IS SIGNED OFF BY LEGAL AND ACTUALLY SIGNED.
 - ❖ DO NOT HAVE THEM BEGIN WORK OR MOBILIZE PRIOR TO APPROVAL BY THE BOARD
 - ▶ KEEP TRACK OF YOUR EXPIRATION DATE – THEY MAY NOT GET PAID
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