A. 2015-4

AGREEMENT FOR BUILDING PLAN REVIEW SERVICES

THIS AGREEMENT FOR BUILDING PLAN REVIEW SERVICES ("Agreement") is made and entered into by and between the County of Pend Oreille, a County in Washington State (hereinafter the "County"), and Postlewait Code LLC, a Washington limited liability company (hereinafter "Postlewait"). The County and Postlewait are sometimes individually referred herein as a "Party" or collectively referred to herein as the "Parties".

WHEREAS, the County of Pend Oreille has adopted and enforces the Washington State Building code pursuant to RCW 19.27 & 19.27A within its jurisdictional boundaries; and

WHEREAS, the County is desirous of employing the services of Postlewait from time to time to perform the County's plan review and related work required under the State Building Code;

NOW, THEREFORE, and in consideration of the foregoing Recitals and the terms, conditions, covenants, and agreements hereinafter set forth, the County and Postlewait agree as follows:

1. DESCRIPTION OF SERVICES. Postlewait, under the terms of this Agreement, shall perform plan review on a given project assigned by the County in conformance with the State Building Code as adopted by the County. It is understood by both Parties that the services may be requested on an occasional basis at such times as may be agreed to by the Parties. It is further understood that this Agreement does not create an exclusive right of Postlewait to perform all building plan review services for the County.

1.1 The County has relied upon the qualifications of Postlewait in entering into this agreement. By execution of this agreement, Postlewait represents that it possesses the ability, skill, and resources necessary to perform the Services and is familiar with all current laws, rules, and regulations which reasonably relate to the Services.

1.2 The County, prior to Postlewait carrying out any of the terms of this Agreement for any year, agrees that the services will be performed under that edition of the adopted codes in effect in the County at the time the services are requested; however, in no case shall editions of codes other than those minimum codes required by RCW 19.27 and 19.27A be utilized with all amendments and deletions of each code that the County Commissioners for the County of Pend Oreille ("Commissioners") may respectively adopt, unless an agreement to the contrary is otherwise reached in writing between the Parties. The County agrees to take the necessary steps to see that the minimum codes required by RCW 19.27 and 19.27A as well as the other codes for which the County is desirous of engaging the services of Postlewait for plan review, are legally in effect in the County for the purposes of this Agreement.

1.3 Postlewait shall be responsible for the technical accuracy of services and prepared documents. The County shall not be responsible for discovering deficiencies therein.

Postlewait shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in County furnished information.

1.4 Postlewait shall perform the Services under this Agreement in accordance with generally accepted professional practices in effect at the time those services are performed.

1.5 The County shall be responsible for contacting Postlewait and coordinating the procedure to be used in requesting Postlewait to perform the services as set forth above. Such procedure shall be reduced to writing and mutually agreed to by the Parties.

2. COMPENSATION.

2.1 The County agrees that, for the purposes of this Agreement, the County shall compensate Postlewait in an amount equal to fifty percent (50%) of the total plan review fees collected by the County on a given project upon which Postlewait performs services, with the County retaining the remaining plan review fees for its own use.

2.2 Mileage shall be reimbursed for travel at the current IRS standard business mileage rate. Postlewait shall submit to the County on a monthly basis an accounting of the mileage expended by Postlewait.

2.3 The County, on a project-by-project basis, shall submit to Postlewait an accounting of fees collected and compensation due Postlewait for providing services under this agreement.

3. TERM AND TERMINATION.

3.1 The term of this Agreement shall commence on the date it is executed by the Parties and subsequent approval of the Agreement by the County Commissioners, and shall, remain in full force and effect until terminated by the mutual agreement of the Parties or by termination with or without cause by either Party, providing the other Party sixty (60) days prior written notice.

3.2 Upon termination of this Agreement, the County may take possession of all records and data within Postlewait's possession pertaining to the project(s), which may be used by the County without restriction. If the County's use of Postlewait's records or data is not related to the project(s), it shall be without liability or legal exposure to Postlewait.

4. INDEPENDENT CONTRACTOR. The Parties intend that an independent contractor-client relationship will be created by this Agreement. No employee, agent, representative or subcontractor of Postelwait shall be or shall be deemed to be the employee, agent representative or subcontractor of the County. None of the benefits provided by the County to its employees, including, but not limited to, compensation, insurance and unemployment insurance, vacation and sick leave, medical or retirement benefits are available from the County

to the employees, agents, representatives or subcontractors of Postelwait. On or before the effective date of this Agreement, Postlewait shall file, maintain and/or open all necessary records with the Internal Revenue Service and the State of Washington, as the same are required by RCW 51.08.195 in order to establish Consultant's status as an independent contractor.

5. NON-DISCRIMINATION. The Contractor shall not discriminate against any employee or applicant for contracted employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory or mental disability. The Contractor shall make decisions with regard to selection and retention of sub-Contractors, procurement of materials and equipment and similar actions related to the Contract without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability. Compliance with Title VI of the Civil Rights Act of 1964, and RCW 49.60, Law against Discrimination, and other related laws and statutes is required.

6 INDEMNIFICATION.

6.1 Postlewait shall defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with Postlewait's performance of this Agreement, except for that portion of the injuries and damages caused by the County's negligence.

6.2 The County's inspection or acceptance of any of Postlewait's work when completed shall not be grounds to avoid any of these covenants of indemnification.

6.3 Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Postlewait and the County, its officers, officials, employees, agents and volunteers, Postlewait's liability hereunder shall be only to the extent of Postlewait's negligence.

6.4 IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES POSTLEWAIT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, RCW TITLE 51, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTALLY NEGOTIATED THIS WAIVER.

6.5 The provisions of this section shall survive the termination of this Agreement.

7. INSURANCE. Postlewait shall, during the term of this Agreement and for a period of one year after termination of this Agreement, maintain in full force and effect at its own cost and

expense the following insurance coverage which shall be placed with an insurance carrier authorized to do business in the State of Washington and rated A-VII or better by Best's Guide.

7.1 Professional Liability insurance coverage with limits of not less than $1,000,000 per claim and $2,000,000 aggregate.

7.2 Commercial General Liability insurance coverage with limits not less than $1,000,000 per Occurrence and $2,000,000 aggregate for Bodily Injury and Property Damage.

7.3 Automobile Liability Insurance coverage on all vehicles in the amount of $100,000 per person and $300,000 per occurrence for personal injury or property damages.

Postlewait insurance coverage shall be primary as to insurance or self-insurance programs afforded to or maintained by the County. Postlewait shall provide proof of insurance required in certificates of insurance. Except for Professional Liability Insurance, the County, its officials, officers, employees, and agents shall be designated as additional insured and shall be given 30 days prior written notice of cancellation, non-renewal or material change in insurance coverage. Insuring companies or entities are subject to County acceptance.

8. EXCHANGE OF INFORMATION. The County will provide its best efforts to provide reasonable accuracy of any information supplied by it to Postlewait for the purpose of completion of the work under this Agreement.

9. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the County. All records submitted by the County to Postlewait shall be safeguarded by Postlewait. Postlewait shall make such data, documents, and files available to the County upon the County's request. The County's use or reuse of any of the documents, data and files created by Postlewait for this project by anyone other than Postlewait on any other project shall be without liability or legal exposure to Postlewait.

10. COUNTY'S RIGHT OF INSPECTION. Even though Postlewait is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the County and shall be subject to the County's general right of inspection and supervision to secure satisfactory completion.

11. WORK PERFORMED AT CONSULTANT'S RISK. Postlewait shall take all necessary precautions and shall be responsible for the safety of its employees, agents and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Postlewait's own risk, and Postelwait shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

12. MISCELLANEOUS PROVISIONS.

12.1 Non-Waiver of Breach. The failure of the County to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

12.2 Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Spokane County Superior Court, Spokane County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the County's right to indemnification under Section 6 of this Agreement.

12.3 Written Notice. All communications regarding this Agreement shall be sent to the Parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

If to the County:

County of Pend Oreille
Mike Lithgow, Community Development Director
P.O. Box 5066
Newport, WA 99156

If to Postlewait:

Postlewait Code, LLC.
Thomas Postlewait
PO Box 9084
Spokane, WA 99209-9084

12.4 Assignment. Any assignment of this Agreement by either Party without the written consent of the non-assigning Party shall be void. If the non-assigning Party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

12.5 Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the County and Postlewait.

12.6 Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or

other representative of the County, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of the Agreement shall prevail.

12.7 Construction of Agreement. In the event of a dispute between Parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any Party nor in favor of any Party.

12.8 Compliance with Laws. Postlewait agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Postlewait's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

12.9 Establishment of Fees and Valuations. The County, in its discretion, shall have the authority to establish building permit fees, plan review fees and building valuations which may include the acceptance of reasonable bids as a basis for value. Such fees may be reviewed by Postlewait, upon request.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement each by its proper officers to be effective the date it is executed by both Parties.

COUNTY OF PENDOREILLE

Steve Kiss, County Commissioner
Chair

Dated: 1-6-2015

POSTLEWAIT CODE, LLC

Thomas Postlewait, Managing Member

Dated: 1/5/15

ATTEST:

Liz Braun, Clerk of the Board

APPROVED AS TO FORM:

33613

Dolly Hunt, Prosecuting Attorney