

PROFESSIONAL SERVICES AGREEMENT

This Agreement dated as of _____, is made by and between Kittitas County (hereinafter "the County") and Utilities Plus, Inc. (hereinafter "Consultant"). The County and Consultant agree as follows:

General Conditions; Exhibit A (Scope of Services); Exhibit B (Insurance)

Copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

The term of this Agreement shall commence on the January 3, 2011, and continue until completion of the project. Any party may terminate this Agreement by giving thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph.

Consultant acknowledges and by signing this Agreement agrees that the Indemnification provisions set forth in Paragraphs 6 (Independent Contractor), 8 (Taxes), 14 (Defense and Indemnity Agreement), and 21 (Confidentiality), are totally and fully part of this Agreement and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of ____, 2011.

APPROVED:

Utilities Plus, LLC.

BOARD OF COUNTY
COMMISSIONERS
KITITAS COUNTY, WASHINGTON

Signature of Signatory
(Date _____)

Chairman

Print Name of Signatory

Vice-Chairman

Commissioner

Attest:

Clerk of the Board

Approved as to Form:

By: _____
Deputy Prosecuting Attorney

Consultant Address:

Utilities Plus, LLC.
1001 Madison Ave.
Yakima, WA 98902

County's Address:

Kittitas County
205 West 5th Avenue, Suite 108
Ellensburg, WA 98926

Project Contact:

GENERAL CONDITIONS

1. Scope of Consultant's Services:

Consultant agrees to provide to the County services and any materials set forth in the project narrative identified in Exhibit "A" during the Agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

2. Performance of Work:

Consultant shall perform work in accordance with, and shall comply with, all of the provisions of this Agreement. All work shall comply with applicable codes and ordinances.

3. Schedule of Performance:

Unless directed otherwise by the County, Consultant shall perform the work in accordance with any schedules made a part of this Agreement.

4. Definitions:

- 4.1 "Additional Insured's" means the County, its successors and assigns, and the respective directors, officers, employees, agents and representatives of the County and its successors and assigns.
- 4.2 "Support" means the following: Consultant's directors, officers, employees, agents and representatives; and sub-Consultants of any tier; the respective directors, officers, employees, agents and representatives of these sub-Consultants of any tier; and any other person or entity acting under the direction or control of, or on behalf of, Consultant or any Consultant's sub-Consultants of any tier in connection with or incident to the performance of the Work or this Agreement.
- 4.3 The "Work" means all of the duties listed in Exhibit A and the performance of all other obligations, under this Agreement by Consultant or its Support.

5. Accounting and Payment for Consultant Services:

Payment to the Consultant for services rendered under this Agreement shall be as set forth in Exhibit "A". Where Exhibit "A" requires payments by the County, payment shall be based upon billings, supported unless otherwise provided in Exhibit "A", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit "A" or approved in writing in advance by the Kittitas County Board of Commissioners, the County will not reimburse the Consultant for any costs or expenses incurred by the Consultant in performance of this Agreement.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Consultant, no more often than monthly, through the County voucher system, for the Consultant's service pursuant to the fee schedule set forth in Exhibit "A".

6. Independent Contractor:

The Consultant's services shall be furnished by the Consultant as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Consultant as an independent contractor.

The Consultant acknowledges that the entire compensation for this Agreement is specified in Exhibit "A" and the Consultant is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Kittitas County employees.

Consultant will defend, indemnify and hold harmless the County, its Additional Insured's, officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

7. No Guarantee of Employment:

The performance of all or part of this Agreement by the Consultant shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Consultant or any employee of the Consultant or any sub-Consultant or any employee of any sub-Consultant by the County at the present time or in the future.

8. Taxes:

The Consultant understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Consultant authorizes the County to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the Consultant will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Consultant to make the necessary estimated tax payments throughout the year, if any, and the Consultant is solely liable for any tax obligation arising from the Consultant's performance of this Agreement. The Consultant hereby agrees to indemnify the County against any demand to pay taxes arising from the Consultant's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Consultant must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Consultant's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

9. Regulations and Requirement:

This Agreement shall be subject to all laws, rules and regulations of the United States of America, and State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth herein or in the attached exhibits.

10. Right to Review:

This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. The Consultant shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 6 years after contract termination, and shall make them available for such review, within Kittitas County, State of Washington, upon request.

11. Modifications:

- 11.1 Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
- 11.2 The County may, at any time, by written notice thereof to Consultant ("Change Notice") makes changes in the Work within the general scope of this Agreement, including, but not limited to: (a) changes in, revisions to, substitutions for, additions to or deletions of any Work; (b) changes in schedule; and (c) acceleration, deceleration or suspension of performance of any Work not yet completed.
- 11.3 If any change in the Work causes an increase or decrease on Consultant's cost of, or the time required for, performance of the Work, an equitable adjustment in the compensation to Consultant and in the schedule for the performance of the Work shall be made to reflect such an increase or decrease.
- 11.4 Notwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment, Consultant shall proceed in accordance with all Change Notices. Consultant must, within thirty (30) days after receipt of any Change Notice that does not set forth any acceptable adjustment, submit to the County a written statement setting forth any adjustment claimed.
- 11.5 If any change results in a decrease in the Work performed, Consultant shall be entitled to compensation associated with changing the Work, such as revising design already completed, revising calculations already performed, and revising documents.

12. Termination for Default:

If the Consultant defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Consultant in the U.S. mail, postage prepaid, terminate the Agreement, and at the County's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the County in completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

13. Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the best interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Consultant shall be entitled to payment for actual work performed at unit contract prices for completed items of work. In the event of such termination, an equitable adjustment shall be made in the compensation payable to Consultant.

An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

14. Defense & Indemnity Agreement:

The Consultant agrees to and shall defend, indemnify and hold harmless the County, its Additional Insured's, its appointed and elective officers, agents and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its Additional Insured's, its elected or appointed officials, agents, or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons, and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Consultant, its sub-contractors, its elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole

negligence of the County, its Additional Insured's, its appointed or elected officials, agents, or employees. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

15. Industrial Insurance Waiver:

With respect to the performance of this Agreement and as to claims against the County, its Additional Insured's, officers, agents and employees, the Consultant expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Consultant. **This waiver is mutually negotiated by the parties to this Agreement.**

16. Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas. This Agreement shall be governed by the law of the State of Washington.

17. Withholding Payment:

In the event the Consultant has failed to perform any obligation to be performed by the Consultant under this Agreement within the time set forth in this Agreement, then the County may, upon written notice, withhold all monies due and payable to Consultant, without penalty, until such failure to perform is cured or otherwise adjudicated.

18. Consultant Commitments, Warranties and Representations:

The Consultant represents and warrants to the County as follows:

- 18.1 The Consultant is duly incorporated, validly existing and in good standing under the laws of the State of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement.
- 18.2 The Consultant has the authority to execute this Agreement, to make the representations and warranties set forth in it and to perform the obligations of the Consultant under this Agreement in accordance with its terms.
- 18.3 This Agreement has been validly executed by an authorized representative of the Consultant and constitutes a valid and legally binding and enforceable obligation of Consultant.
- 18.4 The Consultant has or will obtain prior to the commencement date such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Agreement.
- 18.5 The Consultant is not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect Consultant's ability to perform its obligations under this Agreement. The Consultant is not subject to any order or judgment of any court, tribunal or

governmental agency which materially and adversely affects its operations or assets in the State of Washington, or its ability to perform its obligations under this Agreement.

- 18.6 None of the representations or warranties in this Agreement, and none of the documents, statements, certificates or schedules furnished or to be furnished by Consultant pursuant hereto or in connection with the performance of the obligations contemplated under this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

19. Disputes:

19.1 General

Differences between the Consultant and the County, arising under and by virtue of the Agreement Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, instructions, and decisions of the Kittitas County Commissioners shall be final and conclusive.

19.2 Notice of Potential Claims

The Consultant shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the County, or (2) the happening of any event or occurrence, unless the Consultant has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Consultant believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Consultant shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

19.3. Detailed Claim

The Consultant shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the completion of the portion of the work from which the claim arose, and before final payment by the County, the Consultant has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or extension of time claimed to be due.

20. Ownership of Items Produced:

Final deliverables outline in the scope of services shall be the sole and absolute property of the County. All field data and supporting documentation shall be the sole and absolute property of the consultant.

21. Confidentiality:

The Consultant, its employees, sub-contractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Consultant in performance of this Agreement, except upon the prior written consent of the Kittitas County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Consultant shall immediately give to the County notice of any judicial proceedings seeking disclosure of such information. Consultant shall indemnify and hold harmless the County, its Additional Insured's, officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Consultant's breach of this provision.

22. Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Consultant to the department head of the department for whom services are rendered, and to the Kittitas County Commissioners, 205 W 5th Ave, Suite 108, Ellensburg, WA 98926. Notice to the Consultant for all purposes under this Agreement shall be given to the address reflected on the signature page. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

23. Severability:

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

24. Miscellaneous:

- 24.1 The County's failure or delay to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions, rights or remedies in that or any other instance; rather the same shall be and remain in full force and effect.
- 24.2 This Agreement embodies the entire Agreement between the County and Consultant, and supersedes any and all prior agreements, regarding the Work. No change, amendment or modification of any provisions of this Agreement shall be valid unless set forth in a written instrument signed by the party to be bound thereby.
- 24.3 The rights and remedies of the County set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights of

remedies afforded to the County by any other provisions of this Agreement, by any of Consultant's Support or by law.

- 24.4 The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

25. Waiver:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

26. Survival:

The provisions of paragraphs 6, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, 27, and 28 shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

27. Nondiscrimination:

- 27.1 The County is an equal opportunity employer.

27.2 Nondiscrimination in Employment

In the performance of this Agreement, the Consultant will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Consultant shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Consultant shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

27.3 Nondiscrimination in Services

The Consultant will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race,

creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

- 27.4 If any assignment and/or subcontracting has been authorized by the County, said assignment or subcontract shall include appropriate safeguards against discrimination. The Consultant shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

28. Prevailing Wage:

Consultant shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wages rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Consultant's responsibility to verify the applicable prevailing wage rate. It is understood that the Consultant is responsible for obtaining and completing all required government forms and submitting same to the proper authorities.

Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

29. Assignment and Subcontracting:

No portion of this Agreement may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

EXHIBIT "A"

SCOPE OF SERVICES

As requested by the project architect and Kittitas County, Utilities Plus LLC. is coordinating the activities outlined in this Scope of Services. Due to the uncertain nature of underground utility locations, the site conditions, and the conflicting information of existing records, Utilities Plus, LLC. shall exercise due diligence in accord with current industry standards and guarantees and warrants against its own negligence and that of its subcontractors as to the completeness or accuracy of the extent of utilities within the courtyard.

1. The County contacted the firm of Utilities Plus, LLC, who did the initial limited utility locations for the geotechnical engineer in September of 2010. Utilities Plus, LLC, proposes to use ground penetrating radar and other methods to locate underground utilities in the future construction area. We understand that these methods will indicate the presence of subsurface anomalies such as pipelines, conduits, boulders, and foundations. It will not determine the size or types of pipes. Utilities Plus, LLC, will survey the courtyard area and the east and west grass areas between the courthouse building and the sidewalks for use as a possible storm water disposal area and backup generator placement.
2. The City of Ellensburg may provide on-site video inspection of the sanitary sewer line that is accessible via existing clean outs. HLA will pursue this option with the City.
3. HLA will have a survey crew on site to provide field topographic surveying of the locating work by Utilities Plus, LLC, and MRM Construction.

Cost

The cost for this work will not exceed \$ 1,800.00. This is not meant to be the maximum amount of this agreement. If the fees exceed this amount the consultant will notify the County in accordance with the terms and conditions of this agreement.

EXHIBIT "B"

INSURANCE

The Consultant shall secure and maintain in effect at all times during performance of the Work such insurance as will protect Consultant, its Support and the Additional Insured's from all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the work or this Agreement, whether such performance is by Consultant or any of its Support.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports unless otherwise approved by the County. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The Consultant shall provide proof of insurance for:

- 1) Commercial General Liability Insurance.
 - Coverage limits not less than:
 - \$1,000,000 per occurrence per project
 - \$2,000,000 general aggregate
 - \$1,000,000 products & completed operations aggregate
 - \$1,000,000 personal and advertising injury, each offense
 - Certificate Holder – Kittitas County
 - The Certificate must name the County as additional insured as defined in the Agreement
 - Thirty (30) days written notice to the County of cancellation of the insurance policy.
- 2) Stop Gap/Employers Liability.
 - Coverage limits not less than:
 - \$1,000,000 each accident
 - \$1,000,000 disease – policy limit
 - \$1,000,000 disease – each employee
 - Thirty (30) days written notice to the County of cancellation of the insurance policy.
- 3) Commercial Automobile Liability Insurance.
 - Automobile Liability for owned, non-owned, hired, and leased vehicles, with an MCS 90 endorsement and a CA 9946 endorsement attached if 'pollutants' are to be transported.
 - Coverage limits not less than:
 - \$1,000,000 combined single limit

- Thirty (30) days written notice to the County of cancellation of the insurance policy.
- 4) Excess or Umbrella Liability.
- The Consultant shall provide Excess or Umbrella Liability coverage at limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. This Excess or Umbrella Liability coverage shall apply, at a minimum, to both the Commercial General and Auto Insurance policy coverage.
 - This requirement may be satisfied instead through the Consultant's primary Commercial General and Automobile Liability coverage, or any combination thereof.
- 5) Workers' Compensation.
- Workers' Compensation in amounts required by law.
- 6) Professional Liability.
- The Consultant and/or its Subcontractor and/or its design consultant providing construction management, value engineering, or any other design-related non-construction professional services shall provide evidence of Professional Liability Insurance covering professional errors and omissions. Such policy must provide the following minimum limits:
 - \$1,000,000 per Claim
 - \$2,000,000 annual aggregate
 - If the scope of such design-related professional services includes work related to pollution conditions, the Professional Liability insurance shall include Pollution Liability coverage
 - If insurance is on a claims-made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Agreement.

Consultant shall furnish the County a certificate of insurance with Endorsement as evidence that policies providing insurance required by this Agreement are in full force and effect. Consultant hereby waives all rights of recourse, including any right to which another may be subrogated, against Kittitas County for personal injury, including death, and property damage. Consultant's insurance policies required above shall be primary insurance and shall be non-contributing with any other insurance maintained by Kittitas County.

The Consultant shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Consultant's employee-owned tools, machinery, equipment, or

motor vehicles owned or rented by the Consultant, or the Consultant's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

The Consultant shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

NOTE: No contract shall form until and unless a copy of the Certificate of Insurance with Endorsement, properly completed and in the amount required, is attached hereto.