

KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

AGENDA STAFF REPORT

AGENDA DATE:	March 15, 2010
ACTION REQUESTED:	Requesting the Board of County Commissioners to approve the Professional Services Agreement for the coordination of the activities of the 2011 Kittitas County Flood Control District Task Force, and authorize the Director of Public Works to sign the agreement.
BACKGROUND:	The Board of County Commissioners directed the staff to move forward with a professional services agreement with the Cascade Land Conservancy for the coordination of the activities of the Kittitas County Flood Task Force. A primary role of this activity is the coordination of the Citizens' Advisory Committee to explore the feasibility of a Flood Control Zone District.
INTERACTION:	Public Works
RECOMMENDATION:	Approve the professional services agreement and authorize the Director of Public Works to sign the agreement.
HANDLING:	Public Works to return one original signed agreement to BOCC office.
ATTACHMENTS:	Professional Services Agreement with the Cascade Land Conservancy.
LEAD STAFF:	Kirk Holmes Public Works Director

PROFESSIONAL SERVICES AGREEMENT

This Agreement, dated as of _____, is made by and between Kittitas County, Washington, (hereinafter the "County") and Cascade Land Conservancy, whose address is 409 North Pine, Ellensburg, WA 98926 (hereinafter the "Consultant"). Both entities may be referred to in this Agreement collectively as "Parties" or individually as "Party" and agree and contract as follows:

I. SERVICES BY CONSULTANT

- A. The Consultant agrees to perform the services described in Attachment A to this Agreement, which attachment is incorporated herein by reference (hereafter, the "Project").
- B. All services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and in accordance with professional standards of conduct and performance.

II. COMPENSATION

- A. The County will pay Consultant at the rate of \$125 per hour for time spent by Consultant working on the Project, provided, however, that total compensation to be paid to Consultant under this Agreement shall not exceed \$20,000.00 (twenty thousand dollars and no cents). If the Project cannot be completed within the term of or budget established by this Agreement, then the parties may extend the Agreement or renegotiate the budget, provided that any amendment to this Agreement must be in writing executed by both the County and the Consultant.
- B. Payment to Consultant by the County in accordance with the payment ceiling specified above shall be the total compensation for all work performed under this Agreement and supporting documents hereto, as well as all subcontractors' fees and expenses, supervision, labor, supplies, materials, equipment or the use thereof, reimbursable expenses, and other necessary incidentals.
- C. The Consultant shall be paid quarterly on the basis of invoices submitted. Invoicing will be on the basis of time tracked via project code.
- D. The County shall have the right to withhold payment to Consultant for any work not completed in a satisfactory manner until such time as Consultant modifies such work to the satisfaction of the County, provided, however, that the County's determination of satisfaction may not be unreasonably withheld.
- E. Unless otherwise specified in this Agreement, any payment shall be considered timely if a warrant is mailed or is available within 45 days of the date of actual receipt by the County of an invoice conforming in all respects to the terms of this Agreement.

III. TERMINATION OF AGREEMENT

The County reserves the right to terminate or suspend this Agreement at any time, with or without cause, by giving ten (10) days notice to Consultant in writing. In the event of

termination, all finished or unfinished reports, or other material prepared by the Consultant pursuant to this Agreement, shall be provided to the County. In the event the County terminates without cause, and prior to completion of the work as described in this Agreement, the County may allow the Consultant to complete such analyses and records as may be necessary to place its files in order. Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on the project prior to the date of suspension or termination, not to exceed the payment ceiling set forth above. Just and equitable compensation 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.

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 first paragraph of Section III.

IV. OWNERSHIP OF WORK PRODUCT

Ownership of the originals of any reports, data, studies, surveys, charts, maps, drawings, specifications, figures, photographs, memoranda, and any other documents which are developed, compiled or produced as a result of this Agreement, whether or not completed, shall be vested in the County.

V. GENERAL ADMINISTRATION AND MANAGEMENT

The Director for Public Works, Kirk Holmes, for Kittitas County shall review and approve the Consultant's invoices to the County under this Agreement, shall have primary responsibility for overseeing and approving services to be performed by the Consultant, and shall coordinate all communications with the Consultant from the County.

VI. CONTRACT TERM

The term of this Agreement shall be from its execution to December 31, 2011, which is the estimated completion date for the Consultant's performance of the services specified in Section I.

Consultant will diligently proceed with the work contracted for, but Consultant shall not be held responsible for delays occasioned by factors beyond its control or which could not reasonably have been foreseen at the time of the execution of this Agreement. If such a delay arises, Consultant shall forthwith notify the County.

VII. SUCCESSORS AND ASSIGNS

The Consultant shall not assign, transfer, convey, pledge, or otherwise dispose of this Agreement or any part of this Agreement without prior written consent of the County.

VIII. NONDISCRIMINATION

Consultant shall, in employment made possible or resulting from this Agreement, ensure that there shall be no unlawful discrimination against any employee or applicant for employment in violation of RCW 49.60.180, as currently written or hereafter amended, or other applicable law prohibiting discrimination, unless based upon a bona fide occupational qualification as provided in RCW 49.60.180 or as otherwise permitted by other applicable law. Further, no person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement in violation of RCW 49.60.215 or other applicable law prohibiting discrimination.

IX. HOLD HARMLESS/INDEMNIFICATION

The Consultant agrees to indemnify, defend, and save harmless the County and its officers, agents, and employees, from any claim, filed against the County or its officers, agents, or employees, alleging damage, injury, or death arising out of the subject matter of this Agreement. This duty to indemnify shall not apply to liability from damages arising out of bodily injury to persons or damages to the property caused by, or resulting from, the sole negligence of the County or its respective officers, agents and employees.

This duty to indemnify for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the County's and the Consultant's agents or employees shall apply only to the extent of negligence of the County's and the Consultant's agents, employees, subcontractors and suppliers.

The Consultant specifically and expressly waives any immunity that may be granted under the Washington State Industrial Act, Title 51 RCW. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, benefits payable to or by any third party under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.

This duty to defend, indemnify, and hold harmless shall include all related costs, reasonable attorney fees, court costs and related expenses asserted against or incurred by the County or its respective officers, agents and employees.

The Parties hereby certify that these indemnification provisions were mutually negotiated and agreed to by the Parties.

X. LIABILITY INSURANCE COVERAGE

Consultant will, at Consultant's sole expense, obtain and maintain during the life of this contract, policies of comprehensive general liability insurance and professional liability insurance, each with the combined single limits of not less than \$1,000,000 per occurrence,

\$2,000,000 general aggregate, and placed with an insurer having no less than a Best's rating of A VII and authorized to do business in the State of Washington. The certificate(s) must include an endorsement naming the County as an additional insured. Certificate(s) issued by the insurance carriers for said policies showing such insurance to be in force shall be filed with the County prior to the execution of this Agreement and the commencement of work. 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. The Consultant shall have sole responsibility for ensuring the insurance coverage and limits required are obtained by subcontractors. Any policy of required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under the contract and filed within three (3) years following completion of the services so to be performed. A failure to obtain and maintain such insurance coverage or to file said certificates shall be a material breach of this Agreement.

XI. COMPLIANCE WITH LAWS/BUSINESS LICENSE

The Consultant shall comply with all applicable State, Federal, and County laws, ordinances, regulations, and codes.

XII. FUTURE SUPPORT

The County makes no commitment and assumes no obligations for the support of Consultant activities except as set forth in this Agreement.

XIII. INDEPENDENT CONTRACTOR

Consultant is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the County. Consultant agrees that he is solely responsible for the payment of taxes applicable to the services performed under this Agreement and agrees to comply with all federal, state, and local laws regarding the reporting of taxes, maintenance of insurance and records, and all other requirements and obligations imposed on him as a result of his status as an independent contractor. The Consultant is responsible for providing the office space and clerical support necessary for the performance of services under this Agreement. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance of unemployment compensation programs or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of Consultant.

XIV. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with all attachments and addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto.

XV. ADDITIONAL WORK

The County may desire to have the Consultant perform work or render services in connection with the project other than provided for by the express intent of this contract. Any such work or services shall be considered as additional work, supplemental to this contract. Additional work shall not proceed unless so authorized in writing by the County.

Authorized additional work will be compensated for in accordance with a written supplemental contract between the Consultant and the County.

XVI. 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.

XVII. Future Non-Allocation of Funds

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

XVIII. Contractor Commitments, Warranties and Representations

The Consultant represents and warrants to the County as follows:

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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.

XIX. 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.

XX. 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.

XXI. 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.

XXII. 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 409 N. Pine, Ellensburg, WA 98926. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

XXIII. Miscellaneous

- A. 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.
- B. 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 or remedies afforded to the County by any other provisions of this Agreement or by law.
- C. 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.
- D. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be curtailed and limited only the extent necessary to bring it within legal requirements.
- E. This Agreement has been submitted to the scrutiny of all Parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any Party or its counsel. No stricter construction or interpretation of the terms hereof shall be applied against any Party as the drafter hereof. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter gender.
- F. The provisions of Sections III, IV, IX, X, XII, XVI, XVII, XVIII, XX, XXI shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.
- G. 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-Contractor or any employee of any sub-Contractor by the County at the present time or in the future.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Dated this day of , 2011 .

Kirk Holmes
Kittitas County Public Works Director
Interim Director Community Development Services

Casey O'Connor
Chief Operating Officer
Cascade Land Conservancy

ATTACHMENT A
SCOPE OF WORK

During the term of this Agreement, CLC will assist Kittitas County to coordinate the activities of the 2011 Kittitas County Flood Control District Task Force according to the following scope of work:

Establishment of a Flood Control Zone District (FCD) in Kittitas County must meet the needs of the county government as well as the citizens of Kittitas County. To this end, the Consultant will assist the County to create a Task Force to explore the feasibility of an FCZD per the direction of the Board of County Commissioners at the Regular Study Session of February 28, 2011.

Under this Agreement, the Consultant will assist the County to complete, or make significant progress toward completion of, the following tasks:

Cascade Land Conservancy Kittitas County Contract 2011 Scope of Work
1. Coordinate all aspects of Kittitas County Flood Task Force (FTF) and Technical Advisory Group (TAG) as established in 2010 2. Run monthly TAG meetings 3. Run semi-annual FTF meetings 4. Set agendas and take minutes 5. Maintain communication and share resources with TAG and FTF members 6. Communicate progress with press 7. Coordinate TAG and FTF recommendations to Kittitas County Commissioners for Flood Control District establishment and ballot 8. Assist with education and outreach for Flood Control District establishment 9. Represent TAG/FTF on: a. Critical Areas Ordinance update process b. Shoreline Management Planning update process c. Kittitas County All-Hazard Mitigation Planning process 10. Coordinate completion of update to Comprehensive Flood Hazard Management Plan for Kittitas County