KITTITAS COUNTY PROFESSIONAL SERVICES AGREEMENT WITH FRIENDS OF THE KITTITAS COUNTY FAIRGROUNDS FOUNDATION

This Agreement is made and entered into this 1st day of February 2011, by and between Kittitas County ("County") and the Friends of the Kittitas County Fairgrounds Foundation, a nonprofit organization ("Friends"), (sometimes collectively referred to as the "parties" or individually as a "party") as follows:

WHEREAS: The County sponsors the annual Kittitas County Fair ("Fair") during Labor Day weekend each year; and

WHEREAS: Friends is willing and able to assist the County in advertising and promotion of the Fair and in facilitating the provision of volunteer labor to support the efforts of the Fair; and

WHEREAS: The membership of Friends has demonstrated an ability to promote and assist in facilitating the Fair operations and functions.

NOW THEREFORE: the Parties agree to the following provisions:

I. SCOPE OF WORK

1. Friends shall:
    a. promote and advertise the Fair;
    b. assist in facilitating the solicitation and provision of volunteer labor to support the efforts of the Fair;
    c. assist in facilitating the volunteer staffing of the fair venues as requested;
    d. seek out and obtain sponsorships for the Fair, specific venues within the Fair, and/or specific activities held in conjunction with the Fair;
    e. raise funds to support the promotional efforts by Friends, consistent with the stated goals of the Friends' Articles of Incorporation and By-Laws. Such promotions and advertisement may include the distribution of tickets and passes.

In order to maximize the promotional benefits, promotional programs, including but not limited to, scholarships shall prominently mention the Fair as a supporter of the program. Any print or other advertisement shall be reviewed for approval of style and content by the County prior to distribution by Friends. Exception to this will be made for stand-alone fund-raising efforts that are not connected to the Fair, but are solely related to fund-raising to support the Friends organization.

Friends agree to furnish all personnel necessary for the expeditious

and satisfactory performance of this Agreement, each such person to be competent, experienced, and qualified to do the work to which he or she is assigned.

2. The County shall provide the following to Friends in consideration for the above-described duties:
    a. One (1) booth space near the rodeo grandstands during the Fair weekend;
    b. One (1) other area as deemed appropriate for use for activity engaged in to raise funds for the purposes of Friends; and
    c. Fees, deposit, and a percentage of gross receipts requirements for these are waived.

II. FUNDS

Money solicited and received for sponsorships of the Fair by Friends shall be remitted to the County by October 31st, 2011 or as they become available after the costs of such solicitation by Friends are recovered.

Friends shall be obligated to follow the County's usual and normal means for remitting funds.

III. 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.

IV. INDEPENDENT CONTRACTOR

Friend's services shall be furnished by Friends 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 Friends as an independent contractor.

Friends acknowledges that its volunteers, employees, officials, etc. are 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.

Friends will defend, indemnify and hold harmless the County, its 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.

V. NO GUARANTEE OF EMPLOYMENT

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

VI. 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.

VII. 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. Friends 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.

VIII. MODIFICATIONS

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

IX. TERM AND TERMINATION

This Agreement shall enter into full force and effect from Feb. 1, 2011, 2011 and end December 31, 2011, subject to earlier termination as provided below.

It is agreed that performance of the work under this Agreement may be terminated in whole or in part at any time by either party giving the other thirty (30) day written notice of such termination, specifying the extent and effective date thereof. After receipt of any such notice, Friends shall stop work hereunder to the extent and on the date specified in such notice, terminate any and all commitments to the extent they relate to the work terminated, and shall deliver to the County all material and information prepared and developed hereunder in connection with the work terminated.

X. INDEMNIFICATION

Friends agrees to and shall defend, indemnify and hold harmless the County, 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 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 Friends, its sub-contractors, its elected officers, employees, volunteers or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, 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.

The County agrees to and shall defend, indemnify and hold harmless Friends, 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 Friends, 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 County, its sub-contractors, its elected officers, employees, volunteers or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of Friends, its appointed or elected officials, agents, or employees. It is further provided that no liability shall attach to Friends by reason of entering into this contract, except as expressly provided herein.

XI. INDUSTRIAL INSURANCE WAIVER

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, Friends 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 or agent of Friends. **This waiver is mutually negotiated by the parties to this Agreement.**

XII. 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.

XIII. FRIENDS COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Friends represents and warrants to the County as follows:

1. Friends has the authority to execute this Agreement as a nonprofit organization, to make the representations and warranties set forth in it and to perform the obligations of Friends under this Agreement in accordance with its terms.
2. This Agreement has been validly executed by an authorized representative of Friends and constitutes a valid and legally binding and enforceable obligation of Friends.
3. Friends 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.
4. Friends is not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect Friends' ability to perform its obligations under this Agreement. Friends 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.

XIV. CONFIDENTIALITY

Friends and its agents shall maintain the confidentiality of all information provided by the County or acquired by Friends 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. Friends shall immediately give to the County notice of any judicial proceedings seeking disclosure of such information. Friends shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Friends' breach of this provision.

XV. INSURANCE

Friends shall, at all times during the term of the Agreement, at Friends own cost and expense, buy and maintain insurance sufficient enough to cover its employees, agents, volunteers and officials. Friends 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. Friend's insurance policies required above shall be primary insurance and shall be non-contributing with any other insurance maintained by Kittitas County.

XVI. NOTICE

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by Friends 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 Friends 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.

XVII. 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.

XVIII. WAIVER

Either party'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. 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.

XIX. PRIOR AGREEMENTS

This Agreement embodies the entire Agreement between the County and Friends, and supersedes any and all prior agreements, regarding the Scope of 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.

XX. HEADINGS

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.

XXI. REMEDIES

The rights and remedies of the parties 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 parties by any other provisions of this Agreement or by law.

XXII. NONDISCRIMINATION

1. The County is an equal opportunity employer.

2. Friends agrees to take all necessary and affirmative steps to ensure compliance with all federal, state and County laws and policies regarding nondiscrimination and equal employment opportunities. Friends shall not discriminate in any employment action because of race, creed, color, national origin, marital status, sex, sexual orientation, age, or the presence of any sensory, mental, or physical handicap.

3. Nondiscrimination in Services
   Friends 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.

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

XXIII. CONFLICT OF INTEREST

The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

IN WITNESS WHEREOF, the parties have executed this Agreement this 1st day of Feb., 2011.

FRIENDS OF THE KITTITAS COUNTY FAIRGROUNDS FOUNDATION	BOARD OF COUNTY COMMISSIONERS KITTITAS COUNTY, WASHINGTON
Signature of Signatory	Paul Jewell, Chair
(Date 1-6-11)	

Print Name of Signatory

Alan Crankovich, Vice-Chair

Obie O'Brien, Commissioner

COUNTY COMMISSIONERS SEAL KITTITAS COUNTY WASHINGTON

Attest:

Clerk of the Board

Approved as to Form:

By:_____

Deputy Prosecuting Attorney

Contractor Address: **County's Address:**

PO Box 1354	512 N. Poplar
Ellensburg, WA 98926	Ellensburg, WA 98926
Project Contact:	**Project Contact:**
Becky McDowell	Matthew Anderson