

Personal Services Agreement Specific Terms and Conditions

THIS AGREEMENT is made and entered by and between **FLT Consulting, Inc.**, (hereinafter the "CONTRACTOR"), and **Kittitas County**, with an address of 205 West 5th Ave. Suite 108, Ellensburg, WA 98926, (hereinafter the "CLIENT"), for the express purposes set forth in the following provisions of this contract;

WHEREAS, the purpose of this contract is for the CONTRACTOR to provide service to the CLIENT for the Actuarial Determination of Per-Day Costs in Housing Inmates project;

WHEREAS, the CONTRACTOR has the time and expertise to perform the services required by this contract; and

NOW THEREFORE, in consideration of the terms and conditions contained herein, the CLIENT and the CONTRACTOR mutually agree as follows:

1. **Scope of Work**

CONTRACTOR will perform the services as described in Exhibit "A", copies of which are attached hereto and incorporated herein by this reference as if set forth herein.

2. **Period of Performance**

Subject to other contract provisions or amendments, the period of performance under this contract will be from the date of execution of this Agreement through November 15, 2012. The period of performance may be extended upon written mutual agreement of the parties.

3. **Independent Contractor**

The CONTRACTOR'S services shall be furnished by the CONTRACTOR 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 CONTRACTOR as an independent Contractor.

The CONTRACTOR acknowledges that the entire compensation for this Agreement is specified in Exhibit "A" and the CONTRACTOR is not entitled to any Kittitas 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.

CONTRACTOR will defend, indemnify and hold harmless CLIENT, its Additional Insured's, (hereinafter defined as "Kittitas County, its successors and assigns, the respective directors, officers, employees, agents and representatives of Kittitas County and its successors and assigns), and officers, agents or employees of Kittitas County 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.

4. **No Guarantee of Employment**

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

5. **Assignment and Subcontractors**

The CONTRACTOR may not assign or subcontract portions of the work unless expressly approved in writing by the CLIENT. Robert C. Thomas and Associates is approved by CLIENT as a subcontractor for CONTRACTOR for this project.

6. **Compensation and Payment**

A. **Amount of Compensation**

Total compensation payable to the CONTRACTOR upon satisfactory performance of the work shall not exceed the total project costs as stated in Exhibit "A". Additional services above the maximum amount must have prior written approval of the CLIENT.

B. **Expenses**

Direct and indirect expenses shall be accounted for in the agreed upon contract amount. Any additional payment for expenses above and beyond contract amount must be approved by the CLIENT.

C. **Taxes**

The CONTRACTOR understands and acknowledges that the CLIENT will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the CLIENT to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the CONTRACTOR 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 CONTRACTOR to make the necessary estimated tax payments throughout the year, if any, and the CONTRACTOR is solely liable for any tax obligation arising from the CONTRACTOR'S performance of this Agreement. The CONTRACTOR hereby agrees to indemnify the County against any demand to pay taxes arising from the CONTRACTOR'S failure to pay taxes on compensation earned pursuant to this Agreement.

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

D. **Time and Method of Payment**

Compensation for services rendered shall be payable on a percent of deliverable complete basis. CONTRACTOR shall submit a monthly invoice for payment approval for billings and expenses submitted by CONTRACTOR, and progress reports, via email to Judy Pless of the Kittitas County Auditor's Office at judy.pless@co.kittitas.wa.us.

Payment shall be sent to CONTRACTOR within 30 days of receipt of invoice to the address designated by the CONTRACTOR.

The CLIENT may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

The CONTRACTOR shall submit a final request for compensation within thirty (30) days after contract termination.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the CLIENT 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 CLIENT in the event this provision applies.

7. **Contract Representatives**

- A. The CLIENT'S authorized representative on this contract shall be **Commander Paula Hactor** of Kittitas County Sheriff's Office, with a telephone number of (509) 962-7527. The authorized representative shall be responsible for monitoring the performance of the CONTRACTOR, the approval of actions by the CONTRACTOR, and the acceptance of any reports by the CONTRACTOR.
- B. The CONTRACTOR'S representative on this contract shall be **Liz DuBois**, with a telephone number of (425-681-7635, who will be the contact person for all communications regarding the conduct of work under this contract.

8. **Record Retention**

CONTRACTOR agrees to retain intact and to provide any data, documents, reports, records, contracts and supporting materials relating to the project for a period of three years.

9. **Administrative Remedies and Termination**

This agreement may be terminated for cause by either party by delivery of a ten days written notice. The notice shall include the specific causes for the termination. Cause for termination may include, but not be limited to, falsification of financial information; refusal to perform duties as agreed upon; or negligence of duty.

10. **Confidentiality**

The CONTRACTOR, its employees, sub-Contractors, and their employees shall maintain the confidentiality of all information provided by the CLIENT or acquired by the CONTRACTOR 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 CLIENT. CONTRACTOR shall immediately give to the County notice of any judicial proceedings seeking disclosure of such information. CONTRACTOR shall indemnify and hold harmless the CLIENT, its Additional Insured's, its successors and assigns, the respective directors, officers, employees, agents and representatives of Kittitas County and its successors and assigns, and officers, agents or employees of Kittitas County 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.

11. Equal Employment Opportunity

CONTRACTOR shall not discriminate on the basis of race, creed, color, religion, national origin, sex, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in the performance of the Agreement.

12. Insurance

The CONTRACTOR shall secure and maintain in effect at all times during performance of the Work such insurance as will protect CONTRACTOR, its Support (hereinafter defined as "Contractor's directors, officers, employees, agents and representatives; and sub-Contractors of any tier; the respective directors, officers, employees, agents and representatives of these sub-Contractors of any tier; and any other person or entity acting under the direction or control of, or on behalf of, Contractor or any Contractor's sub-Contractors of any tier in connection with or incident to the performance of the Work or this Agreement") 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 CONTRACTOR 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 Kittitas 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 CONTRACTOR 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 Kittitas County as additional insured as defined in the Agreement
 - Thirty (30) days written notice to Kittitas 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 Kittitas 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) Workers’ Compensation.
- Workers’ Compensation in amounts required by law.

CONTRACTOR shall furnish Kittitas County a certificate of insurance with Endorsement as evidence that policies providing insurance required by this Agreement are in full force and effect. CONTRACTOR’S insurance policies required above shall be primary insurance and shall be non-contributing with any other insurance maintained by Kittitas County.

The CONTRACTOR shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, CONTRACTOR’S employee-owned tools, machinery, equipment, or motor vehicles owned or rented by the CONTRACTOR, or the CONTRACTOR’S agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

The CONTRACTOR shall have sole responsibility for ensuring the insurance coverage and limits required are obtained by subcontractors.

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.

13. Jurisdiction and Venue

This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance.

Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Kittitas County, Washington.

14. Defense and Indemnity Agreement

CONTRACTOR agrees to and shall defend, indemnify and hold harmless the CLIENT, its Additional Insured's, 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 CLIENT, 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 CONTRACTOR, 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 CLIENT, its Additional Insured's, appointed or elected officials, agents, or employees. It is further provided that no liability shall attach to the CLIENT by reason of entering into this contract, except as expressly provided herein.

15. Interpretation of Contract

- A. **Entire Agreement.** This contract represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.
- B. **Conformance.** If any provision of this contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.
- C. **Approval.** This contract shall be subject to the written approval of the CONTRACTOR'S and CLIENT'S authorized representatives and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 7th day of AUG., 2012.

APPROVED:

FLT CONSULTING, INC

BOARD OF COUNTY COMMISSIONERS
KITITITAS COUNTY, WASHINGTON



Signature of Signatory

(Date 8/17/12)



Alan Crankovich, Chairman

Faith Trimble

Print Name of Signatory



Obie O'Brien, Vice-Chairman



Paul Jewell, Commissioner

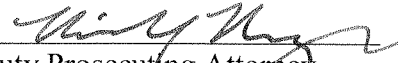


Attest:



Clerk of the Board

Approved as to Form:

By: 
Deputy Prosecuting Attorney

Contractor Address:

FLT Consulting, Inc.
1441 West Bay Drive, Suite 301
Olympia, WA 98502

County's Address:

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

Project Contact:

Liz DuBois

FLT Consulting, Inc.

~~President/CEO~~ *HT*

Principal

Project Contact:

Commander Paula Hocter

Kittitas County Sheriff's Office

EXHIBIT A:

Project Deliverables and Costs

The table below provides a quotation for the agreed upon scope of work, specifies the associated project deliverables, and provides a project timeline. We have adjusted the project costs slightly to reflect the elimination of the original proposed Task 4 and the addition of a mid-course project update to the County Commissioners. The costs include all of the research and analysis to complete the tasks, technical review of our analysis and conclusions with the Kittitas County Sheriff and other staff, two presentations to the County Commissioners (a mid-course progress update and final presentation), and a concise final report document. Please note that the proposed timeline assumes that information on costs, staffing and facility design will be readily available.

Task	Cost	August	Sept	Oct	Nov
Project management and status reports	\$ 1,280				
Develop fully-burdened cost per inmate/bed	\$ 7,500				
Analyze Cost Drivers and Trends	\$ 7,180				
Analyze Impacts of Facility Design and Staffing	\$ 6,400				
Mid-course project presentation to Sheriff and County Commissioners	\$ 1,500		X		
Review draft conclusions with Sheriff and County staff	\$ 1,280				
Develop final cost models and report	\$ 1,180				
Present results to Sheriff and County Commissioners	\$ 1,600			X	X
Travel (4 trips)	\$ 879				
Total Project Costs	\$28,799.12				

Outline of Work

In fulfilling this scope of work we will be employing several analytical tools and models that we have developed in previous jail cost studies, and which we will make available for future use by Kittitas County. The scope of work we are proposing would be designed to answer the following questions, provided information is available to support the analysis.

1. What is the fully-burdened cost per inmate and cost per bed?

This is a multi-faceted question that can be broken down into the cost categories described below. We use two terms to discuss unit costs – cost per inmate and cost per bed – because both are useful units for comparison. With either measure the costs are variable, but the cost per inmate is more variable than the cost per bed for the obvious reason that the number of inmates can fluctuate over a short period of time. For making comparisons to the costs of contracting with other jurisdictions for beds, either unit of cost may be more appropriate given the situation and terms under which contracting is conducted. In the State of Washington, it is not uncommon for a jurisdiction to contract for the use of a certain number of jail beds whether or not those jail beds are actually utilized at all times.

The cost categories we will use include:

- **Staffing costs.** Using templates we have previously developed for similar analyses in King and Pierce County, we will collect information on staffing levels, wages, step increases, COLA, benefits, leave, backfill, overtime, any compensatory time, equipment costs and training.
- **Operations and Maintenance:** We will collect information on food services costs, medical, supplies, supervision, administrative overhead, maintenance, and major systems periodic repair and replacement costs.
 - ✓ Note: Major systems periodic repair and replacement cost can be a significant percentage of owning and operating costs over the long term. We can address this cost either from the standpoint of quantifying necessary reserve fund balances and contributions, or by using a tool we have developed that can estimate an annualized cost based on information about prices, inflation, asset age, condition and where the asset is in its repair-replacement cycle.
- **Capital costs.** Like major systems periodical repair and replacement, initial capital costs of facilities can be a significant part of overall owning and operation costs over the useful life of the facility, and must be taken into account in calculating and portraying cost per bed or cost per inmate. Our team has extensive experience in the field of capital planning and finance for corrections, and we will use our experience and tools to quantify the capital portion of the unit costs.
 - ✓ **Note:** The use of the term “actuarial determination” in the title of the RFQ for this study conveys the need for pricing (determining the unit costs) that adequately takes into account key variable and uses best practice techniques for annualizing the present value of capital

financing and other future costs. Our team members are experts in the use of these techniques.

- **Fixed and variable costs.** To fully understand the cost per inmate and cost per bed in proper context, the study must identify costs that are fixed, and those that will vary based on how many staff are utilized, and how many inmates are housed, at any given time. Fixed cost must further be broken down into those that are policy driven (such as any general government overhead charges) and those that are inherent in operating a jail (for example paying debt service on capital costs). Making these distinctions is crucial for making comparisons either to other jurisdictions.

2. What are the most significant drivers/components of the cost per inmate? Do any identifiable trends exist in recent years?

To address these questions we will conduct trend analyses and apply assumptions used in Kittitas County's budget preparation to understand how key cost drivers may change over time. Our analyses will include such drivers as:

- Staffing costs (salary, wages and benefits)
- Overtime and leave use
- Inmate health care costs
- Average Daily Population by gender, program and custody level

3. To what extent do facility design and the corrections officer staffing plan impact cost/inmate and cost/bed?

Just as it is crucial to distinguish between fixed and variable costs, it is also necessary to conduct threshold analyses that show how costs change as the inmate population changes. Although some variable costs may change proportionally with the number of inmates, our experience is that cost may also change disproportionately when certain thresholds are passed. Examples include major cost shifts when housing units are opened or closed, and when the number of inmates in a housing unit surpasses a set limit and thereby calls for enhanced security staffing. Often this is the case with double-bunking, where double-bunking results in more inmates in a housing unit than can safely be managed by a single correctional officer. Factors we will review, which influence security staffing, include:

- Facility design
- The security staffing plan (posts, shift schedule, and the rules by which staffing patterns may change based on housing operational capacity, and average daily population by gender and custody level).
- The design and staffing plans for the new pod scheduled to open in August, and how these will impact the cost per inmate.