

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

IN RE:

PROFESSIONAL SERVICES)

AGREEMENT BETWEEN LEWIS COUNTY)

Douglas Edison)

RESOLUTION NO. 05 - 036

WHEREAS, the Board of County Commissioners has reviewed a proposed professional services agreement between Lewis County and Douglas Edison, for providing professional services assisting the County and South Lewis County Airport Board members in preparation of an Airport Comprehensive Plan for the South Lewis County Airport; and

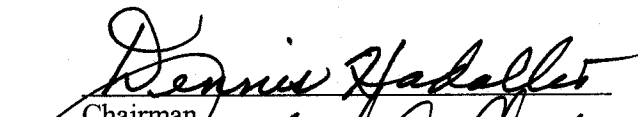
WHEREAS, a scope of work was included in the agreement as Appendix "A" and compensation for said services is included in said scope of work, and compensation shall not exceed \$14,500; and

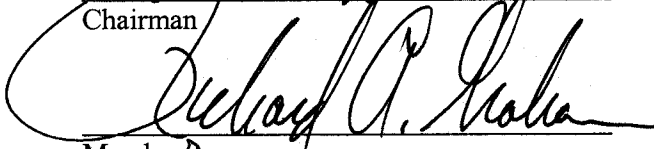
WHEREAS, it appears to be in the best public interest to authorize execution of said Agreement for Lewis County; NOW THEREFORE,

BE IT RESOLVED that the Board of County Commissioners hereby approves the Agreement contained herein and authorizes the Chief of Staff to sign the same.

DONE IN OPEN SESSION this 7 day of Feb., 2005.

**BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON**

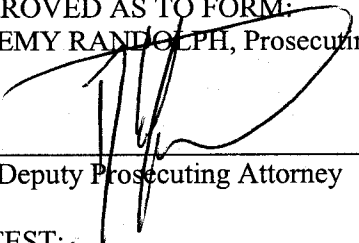

Chairman


Member

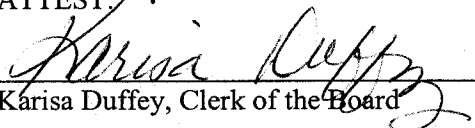

Member

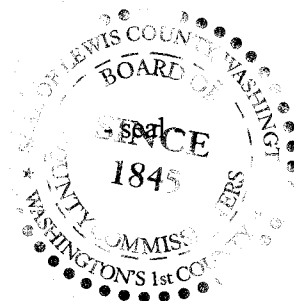
APPROVED AS TO FORM:

JEREMY RANDOLPH, Prosecuting Attorney


By: Deputy Prosecuting Attorney

ATTEST:


Karisa Duffey, Clerk of the Board



RESOLUTION NO. 05- 036

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Appendix A

ATTACHMENT TO RESOLUTION 05- 036 PROFESSIONAL SERVICES AGREEMENT BETWEEN LEWIS COUNTY AND DOUGLAS EDISON.

SCOPE OF WORK: To assist the County and South Lewis County Airport Board in preparation of a South Lewis County Airport Comprehensive Plan.

PRIMARY TASKS: To coordinate and facilitate the work of the Airport Board and County staff, working with federal agencies, the State, and others in drafting an airport comprehensive plan, consistent with the needs of the South Lewis County Airport and Lewis County prior to action before the Board of County Commissioners.

Tasks will include attending meetings in conjunction with the drafting a comprehensive plan, providing advice to the Airport Board and County with regards to the airport plan, and preparation of draft material for discussion and consideration of the Airport Board and Board of County Commissioners, including a final draft for public review and final consideration.

PERIOD OF WORK: Work shall begin February 7, 2005 and end December 31, 2005 or whenever the airport comprehensive plan proposal goes to the Board for final action, whichever is the earlier. This period may be extended by mutual agreement.

COMPENSATION: All work, materials and other expenses related to preparation of the draft comprehensive plan shall be billed, the total not to exceed \$14,500.

PROFESSIONAL SERVICES AGREEMENT

Between

LEWIS COUNTY

and

DOUGLAS EDISON

THIS AGREEMENT is made and entered into by and between LEWIS COUNTY and DOUGLAS EDISON.

IT IS THE PURPOSE OF THIS AGREEMENT to provide Consulting Services to assist the County and South Lewis County Airport Board of Directors in preparation of an Airport Comprehensive Plan.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Statement of Work

Douglas Edison shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for, or incidental to, the performance of the work set forth in Appendix "A" attached herein.

Period of Performance

Subject to its other provisions, the period of performance of this Agreement shall commence on February 7, 2005 and be completed on December 31, 2005 or whenever the South Lewis County Airport Comprehensive Plan proposal goes to the Board for final action, whichever is the earlier, but may be extended by mutual agreement.

Payment

Compensation for the work provided in accordance with this agreement shall be as set forth in Appendix "A".

Future Non-Allocation of Funds:

If sufficient funds are not appropriated or allocated for payment under this contract 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 calendar year. No penalty or expense shall accrue to the County in the event this provision applies.

GENERAL CONDITIONS

1. **Scope of Contractor's Services:** The Contractor agrees to provide to the County the services as described in Appendix "A" solely on behalf of Lewis County as directed by the Lewis County Chief of Staff.
2. **Accounting and Payment for Contractor Services:** The County Contractor shall be paid for performance under this contract, in accordance with a detailed Schedule of Compensation attached thereto (Appendix "A").
3. **Assignment and Subcontracting:** No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Contracting Officer.
4. **Labor Standards and Contract Assistance:** The Contractor shall comply with the provisions of the Lewis County Contract and Procurement Assistance Program, attached hereto as Special Conditions.
5. **Independent Contractor:** The Contractor's services shall be furnished by the Contractor as an independent contractor and nothing contained herein or in this contract shall be construed to create a relationship of employer-employee or master-servant, but all payments made there under and all services performed shall be made and performed, pursuant to this Memorandum or any contract, by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for any work request or order shall be specified within said work request or order, and the Contractor, its agents, officers, employees or subcontractors, 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 Lewis County employees.

Contractor 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.

6. **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 subcontractor or any employee of any subcontractor in the present or in the future.
7. **Taxes:** The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County 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 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 contract. The Contractor hereby agrees to

indemnify the County against any demand to pay taxes on compensation earned pursuant to this contract.

The County 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 the County does not hold title. The County is exempt from Federal Excise Tax.

8. **Regulations and Requirement:** This contract shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington.
9. **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 any contract and its performance, and any and all communications with or evaluations by service recipients under such contract(s). When necessary, Contractor shall have an affirmative duty of notify such service recipients of this right to review. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under any contract for 3 years after contract termination, and shall make them available for such review, within Lewis County, State of Washington, upon request.
10. **Modifications:** Either party may request changes in this contract. Any and all agreed modifications shall be in writing, signed by each of the parties, and effective on the latter date of execution by the respective parties.
11. **Termination for Default:** If the Contractor defaults by failing to perform any of the obligations of this contract or becomes insolvent or is declared bankrupt or commits an act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, be depositing written notice to the Contractor in the U. S. mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract 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 Contractor. The Contractor shall bear any reasonable extra expenses incurred by the County in completing the work, including all increased costs for 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 Contractor 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.
12. **Termination or Suspension for Public Convenience:** The County may terminate this contract in whole or in part whenever the County determines, in its sole discretion, that such termination or suspension is in the interests of the County. Whenever the contract is terminated or suspended in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. 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 or suspension of such contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County. Lewis County may reactivate the contract in whole or in part following suspension upon depositing written notice of reactivation to Contractor in the U.S. mail, said reactivation becoming effective ten (10) days following mailing.

13. **Defense & Indemnity Agreement:** The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers 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 or employees for damages because of personal or bodily injury, including death at any time resulting there from, sustained by any person or persons and on account of damage to property including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the Contractor, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees. It is further provided that no liability shall attach to the County by reason of entering into any contract, except as expressly provided herein or as otherwise required by operation of law upon political subdivisions of the State of Washington.
14. **Industrial Insurance Waiver:** With respect to the performance of this contract and as to claims against the County, its officer, agents and employees, the Contractor 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 contract extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Memorandum as part of the valuable consideration of present and future contracts.
15. **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 Memorandum or this contract, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Lewis. This Memorandum and any contract shall be governed by the law of the State of Washington. Except as otherwise stated herein, each party shall be responsible for its own attorneys fees.
16. **Withholding Payment:** In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Memorandum or this contract, and said failure has not been cured within the times set forth in any contract, then the County may, upon written notice, withhold all moneys due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.
17. **Future Non-Allocation of Funds:** If sufficient funds are not appropriated or allocated for payment under this contract 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.
18. **Contractor Commitments, Warranties and Representations:** Any written Commitment received from the Contractor concerning this Memorandum or this contract shall binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment in accordance with industry standards shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this contract, whether or not incorporated elsewhere therein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

19. **Patent/Copyright Infringement:** Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:
- a. That Contractor shall be notified promptly in writing by County of any notice of such claim.
 - b. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.
20. **Disputes:**
- a. **General**
Differences between the Contractor and the County, arising under and by virtue of this Memorandum or any contract 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, ruling, instructions, and decisions of the County, shall be final and conclusive.
 - b. **Notice of Potential Claims**
The Contractor 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 Contractor has given the County a written Notice of Potential Claim within 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 Contractor 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. Contractor shall keep full and completed daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
 - c. **Detailed Claim**
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor 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 the extension of time claimed to be due.
21. **Ownership of Items Produce:** All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of any contract shall be the sole and absolute property of the County.
22. **Confidentiality:** The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the

Contractor in performance of any contract, except upon the prior written consent of the Lewis County Administration Office or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including but not limited to settlements, judgments, setoff's, attorney's fees and costs resulting from contractor's breach of this provision.

23. **Notice:** Except as set forth elsewhere in this Memorandum or this contract, for all purposes under said Memorandum or contract(s), except service of process, notice shall be given by the Contractor to the County's designated representative. Notice to the Contractor for all purposes under any contract shall be given to the address of record supplied by the contractor. Notice may be given by delivery or by depositing in the U.S. mail, first class, postage prepaid.
24. **Severability:** If any term or condition of this Memorandum or any contract 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 said Memorandum or contract(s) are declared severable.
25. **Waiver:** Waiver of any breach or condition of this Memorandum or any contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of thereof 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, 22, and 26 of this Memorandum, shall survive, notwithstanding the termination of invalidity of this Memorandum or any contract for any reason.
27. **Entire Agreement and Interpretation:** This written Memorandum represents the entire general terms of contracting for professional services as between the parties, and supersedes any prior oral statements, discussions or understanding between the parties.
28. **Contract Management**
The program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

SPECIAL CONDITIONS

A. Definitions

The COUNTY is the recipient of CONTRACTOR's services, and at all times acts through its Board of County Commissioners. The Contact Officer of the COUNTY will be Larry Keeton, Chief of Staff, or his designee.

B. Non-Discrimination (Lewis County Funds)

The CONTRACTOR should be aware that public funds are being used to assist in projects associated with any contract between the parties. During the performance of any contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 or Executive Order No. 11246 of September, 1965, and shall post copies of the notice in a conspicuous place available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books and records for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, any contract may be canceled, terminated or suspended in whole or in part and the contract(s) may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the provisions of Paragraphs (1) through (7) in every sub-contract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contract or vendor. The CONTRACTOR will take such action with respect to any sub-contract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

C. Original Specifications

It is hereby expressly agreed by and between the parties involved that in any matter, dispute, suit, or proceedings arising or in any way growing out of any contract in which it may be necessary to introduce into evidence the original of such specifications, that a printed copy thereof may be used in lieu thereof with like force and effect as though the original was produced.

The CONTRACTOR, shall further verify that:

1. He had not employed or retained any company or person (other than a full-time bona fide employee working solely for the offerer) to solicit or receive said contract(s); and
2. He has not paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offerer) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of said contract(s); and
3. He has not been asked or otherwise coerced, whether expressed or implied, into contributing funds, for any purpose as a condition to doing business with the COUNTY.

IN WITNESS WHEREOF, the parties have executed this Agreement

This Agreement represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings.

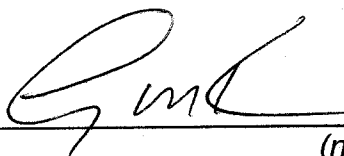
Lewis County Contract Manager

Larry Keeton, COS
360 NW North Street
Chehalis, Washington 98532
(360) 740-1419

Contractor Program Manager

Douglas Edison
1050 Cardigan Loop NW
Olympia, Washington 98502
(360) 753-0292

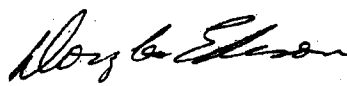
LEWIS COUNTY

By: 
(name)

Title: Chief of Staff

Date: 2-8-05

DOUGLAS EDISON

By: 

Title: Principal, RHO International

Date: January 31, 2005