



**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners
Philip Morley, County Administrator

FROM: Carl Smith, Department of Community Development (DCD) Director 
Stacie Hoskins, DCD Planning Manager 
David Wayne Johnson, Associate Planner

DATE: August 13, 2012

SUBJECT: Consultant Contract for Revision of JCC 18.30.150 "Sign Code"

STATEMENT OF ISSUE:

On May 21, 2012, the Board of County Commissioners (BoCC) approved a request to place revision of JCC 18.30.150 Signs on the DCD work plan for 2012. In particular, this work will address a Clallam County Superior Court injunction prohibiting enforcement of section 18.30.150(2)(f) of the JCC, which reads, "Personal signs on private property displaying personal messages such as "yard sale" or "no trespassing" or political signs not to exceed eight square feet." DCD has selected a consultant to draft the required revisions and presents the reviewed and approved contract to the BoCC for signing.

ATTACHMENTS: Contract Review Form
Supplemental Professional Services Agreement between Jefferson County and Aaland Planning Services

ANALYSIS/STRATEGIC GOALS/PROS and CONS:

It is important that the UDC be reviewed and updated periodically to ensure consistency with applicable court cases, Federal and State law as well as to implement the purpose of the UDC under JCC 18.05.020(2). DCD has secured the services of a competent, independent land use consultant to review and make recommended changes to JCC 18.30.150 under the Vendor list bidding procedures, JCC 3.55.050 as allowed under JCC 3.55.090(3) Services. A schedule of deliverables shall be completed once the contract is finalized.

FISCAL IMPACT/COST-BENEFIT ANALYSIS:

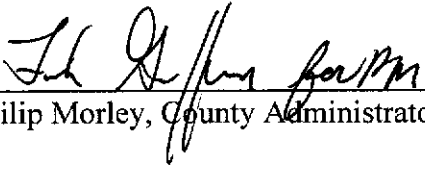
DCD Staff time and Consultant services not to exceed \$10,000.00 will be paid from the General Fund Non-Departmental Professional Services.


RECOMMENDATION:

DCD recommends the Board of County Commissioners:

1. Sign the Supplemental Professional Services Agreement between Jefferson County and Aaland Planning Services.

REVIEWED BY:


Philip Morley, County Administrator


Date

**SUPPLEMENTAL PROFESSIONAL SERVICES AGREEMENT
BETWEEN JEFFERSON COUNTY, A MUNICIPAL CORPORATION, BY AND
THROUGH ITS DEPARTMENT OF COMMUNITY DEVELOPMENT,
AND AALAND PLANNING SERVICES, CONSULTANT,
FOR THE COMPLETION OF REVISION TO THE UNIFIED DEVELOPMENT
CODE 18.30.150 SIGNS**

THIS SUPPLEMENTAL AGREEMENT is made and entered into by and between **Jefferson County**, a Washington municipal corporation, hereinafter referred to as the "County," and **Aaland Planning Services**, hereinafter referred to as the "Consultant." In consideration of the mutual promises, covenants, terms and conditions contained herein and attached and made a part of this agreement, the parties hereto agree as follows:

1. Services to be Provided by the Parties:

1.1 The Consultant for purposes of this Agreement is one distinct firm, person or business entity retained by the County to perform planning services described in more detail below.

1.2 The Consultant shall undertake planning services in connection with the review, analysis and revision of Jefferson County Code (JCC) 18.30.150 Signs, described in Exhibit A.

1.3 The Consultant shall complete in a satisfactory and proper manner as determined by the County, the technical and professional services by outlined in **Exhibit A**, herein referred to as the "Proposal," including the provision of all labor, materials, equipment and supplies.

1.4 The consultant shall provide to the County a revised UDC 18.30.150, herein referred to as the "Sign Code" and in developing same, shall: 1) Research legal background and produce a briefing memo with options; 2) Review, analyze and recommend text with respect to amendments to the Unified Development Code (UDC). All documents shall be delivered to the County in Word format accompanied by two (2) "hard" copies of each document.

1.5 The County will be responsible for expense of copying and distribution of the additional documents. In addition, the County will provide legal review of proposed amendments, and such assistance and guidance as may be required to support the objectives set forth in the Proposal and will provide compensation for services as forth in Section 3 below.

2. Time of Performance. The effective date of this Agreement shall be the date the parties sign and complete execution of the Agreement. The termination date of the Agreement shall be upon completion of the Sign Code review as described in the Proposal identified under **Exhibit A**. The document shall be completed no later than

December 31, 2012, unless an extension of time beyond the deadline listed herein is granted in writing by the County.

3. Payment.

3.1 The County shall reimburse the Consultant for all allowable expenses agreed upon by the parties to complete the Proposal.

3.2 Reimbursement under this Agreement shall be based on billings, supported by appropriate documentation of costs actually incurred. It is expressly understood that claims for reimbursement shall not be substituted in excess of actual, immediate cash requirements necessary to carry out the purposes of the Agreement.

3.3 The Consultant may submit vouchers to the County once per month during the progress of the work for partial payment for project completed to date, up to eighty percent (80%) of total project costs. The County will review and check such vouchers, and upon approval thereof, payment will be made to the Consultant in the amount approved. In no event shall the total amount to be reimbursed by the County exceed the sum of **NINE THOUSAND EIGHT HUNDRED NINETY ONE DOLLARS EVEN (\$9,891.00)** without express written modification of the Agreement.

3.4 Final payment of any balance due to the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the County after the completion of the work under this agreement and its acceptance by the County.

4. Consultant's Accounting Books and Records; Audit. The Consultant shall keep and maintain, accurate books and records of account in accordance with sound accounting principles, of all expenditures made and all costs, liabilities and obligations incurred under this Agreement in relation to the services performed for which compensation is paid. These accounts, books and records shall be available, upon reasonable request, to the County or its representatives for examination and audit. The County shall have the right to review and monitor the financial and other compensation of services and work under this Agreement. The Consultant shall keep and maintain any such books and records for a period of no less than three (3) years from the date of termination of this Agreement.

5. Ownership and Use of Documents. All work products, papers, notes, memoranda, correspondence, drawings, specifications, reports, and other documents and records produced, received, held or maintained in conjunction with the performance of this Agreement by the Consultant shall be and are the exclusive property of the County, except that the Consultant may use such materials to assist other public agencies. Upon request of the County, or upon completion of any services provided for in this Agreement, or upon termination of this Agreement for any reason, the Consultant shall deliver to the County any and all materials.

6. Independent Consultant; No Partnership. The relationship of the Consultant to the County shall be that of an independent Consultant rendering professional services. The Consultant shall have no authority to execute agreements or to make commitments on behalf of the County and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the Consultant. It is further understood and agreed that nothing within this Agreement shall be construed as creating or constituting a partnership between the parties.

7. Duties of the County. All information, data and reports which the County has readily available and which the Consultant deems reasonably necessary for the performance of the services it is required to provide under this Agreement, shall be furnished to the Consultant without charge by the County. The County shall also cooperate with the Consultant as requested by the Consultant to aid it in the performance of the services to be rendered.

8. Suspension, Termination, and Close Out. If the Consultant fails to comply with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including, but not limited to, the suspension or termination of this Agreement in the manner specified as follows:

8.1 Suspension – If the Consultant fails to comply with the terms and conditions of this Agreement, or whenever the Consultant is unable to substantiate full compliance with the provisions of this Agreement, the County may suspend the Agreement pending corrective actions or investigation, effective not less than seven (7) calendar days following written notification to the Consultant or its authorized representative. The suspension will remain in full force and effect until the Consultant has taken corrective action to the satisfaction of the County and is able to substantiate its full compliance with the terms and conditions of this Agreement. No obligations incurred by the Consultant or its authorized representative during the period of suspension will be allowable under the Agreement except:

8.1.1 Reasonable, proper, and otherwise allowable costs which the Consultant could not avoid during the period of suspension;

8.1.2 If upon investigation, the Consultant is able to substantiate complete compliance with the terms and conditions of this Agreement, otherwise allowable costs incurred during the period of suspension will be allowed; and

8.1.3 In the event all or any portion of the work prepared or partially prepared by the Consultant is suspended, abandoned, or otherwise terminated, the County shall pay the Consultant for work performed to the satisfaction of the County, in accordance with the percentage of the work completed.

8.2 Termination for Cause – If the Consultant fails to comply with the terms and conditions of this Agreement and any of the following conditions exist:

8.2.1 The actions or omissions of the Contractor that reflect a lack of compliance with the provisions of this Agreement were of such scope and nature that the County deems continuation of the Agreement to be substantially detrimental to the interests of the County; or

8.2.2 The Consultant has failed to take satisfactory action as directed by the County or its authorized representative within the time period specified by the County; or

8.2.3 The Consultant has failed within the time specified by the County or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Agreement; then,

Then the County may terminate this Agreement in whole or in part, and thereupon shall notify the Consultant of termination, the reasons for, and the effective date of the termination, provided that such effective date shall not be prior to notification of the Consultant. After this effective date, no charges incurred under any terminated portions of the Scope of Work are allowable.

8.3 Termination for Other Grounds – This Agreement may also be terminated in whole or in part:

8.3.1 By the County, with the consent of the Consultant, or by the Consultant with the consent of the County, in which case the two parties shall devise by mutual agreement, the conditions of termination, including effective date and in case of termination in part, that portion to be terminated;

8.3.2 If the funds allocated by the County via this Agreement are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services;

8.3.3 In the event the County fails to pay the Consultant promptly or within thirty (30) days after invoices are rendered, the County agrees that the Consultant shall have the right to consider said default a breach of this Agreement and the duties of the Consultant under this Agreement terminated. In such event, the County shall then promptly pay the Consultant for all services performed and all allowable expenses incurred; and

8.3.4 The County may terminate this Agreement at any time giving at least ten (10) days notice in writing to the Consultant. If the Agreement is terminated for convenience of the County as provided herein, the Consultant will be paid for time provided and expenses incurred up to the termination date.

9. Changes, Amendments, Modification. The County may, from time to time, require changes or modifications in the Proposal. Such changes, including any decrease or increase in the amount of compensation, which are mutually agreed upon by the

County and the Consultant shall be incorporated in written amendments to this Agreement.

10. Personnel.

10.1 The Consultant represents that it has, or will secure at its own expense, all personnel required in order to perform under this Agreement. Such personnel shall not be employees of the County. Such personnel may have additional contractual relationships with the County that, in the County's opinion, are not detrimental to implementing the professional services under this Agreement.

10.2 All services required under this Agreement will be performed by the Consultant or under Consultant's supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

10.3 None of the work or services covered by this Agreement shall be subcontracted without prior written approval of the County, which shall not be unreasonably withheld. Any work or services subcontracted shall be specified in the written contract or agreement and shall be subject to each provision of this Agreement.

11. Assignability. The Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (with or by assignment or novation), without prior written consent of the County, which consent shall not be unreasonably withheld.

12. Reports and Information. The Consultant, at such times and in such forms as the County may require, shall furnish the County such periodic reports as the County may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

13. Nondiscrimination; Equal Employment Opportunity. The Consultant, and its employees, agents and sub Consultants, shall at all times comply with any and all federal, state or local laws, ordinances, rules or regulations with respect to nondiscrimination and equal employment opportunity, which may at any time be applicable to the County by law, contract or otherwise.

Without limiting the generality of the foregoing, Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, handicap or marital status, and as required by law Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, national origin, handicap or marital status.

Further, Consultant, its employees, agents and sub Consultants, shall not at any time discriminate against any other person or entity because of race, color, religion, age, sex, national origin, handicap or marital status.

Consultant shall keep and maintain any and all records that may be required by law in connection with compliance with this section.

14. Wage and Hour Laws. Consultant shall at all times comply with all applicable provisions of the Fair Labor Standards Act (FLSA) and any other federal or state legislation affecting its employees, and the rules and regulations issued thereunder, insofar as applicable to its employees, and shall at all times save and hold harmless the County, its officers, agents and employees free, clear and harmless from any and all actions, claims, demands and expenses arising out of the FLSA or other legislation and any rules and regulations that are or may be promulgated in connection with the FLSA.

15. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

16. Approval Not Deemed Release. Approval or acceptance by the County of any of the work of the Consultant shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, or of its employees, officers or sub Consultants, for the accuracy and competency of the work, nor shall such approval or acceptance be deemed to be an assumption of responsibility by the County for any defect in the work. After acceptance of the work by the County, Consultant agrees to perform any additional services for no additional compensation as may be required by the County to correct the Consultant's errors or omissions in the work by Consultant.

17. Compliance with Local Laws. The Consultant shall comply with all applicable laws, ordinances, and codes of the state and local government and the Consultant shall hold the County harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

18. Hold Harmless. The Consultant shall defend, indemnify and hold harmless the County, its appointed and elective officers, officials, employees, agents and volunteers from an against any and all losses, claims, injuries, liability, costs and expenses, including defense costs and legal fees, arising out of or in connection with the Consultant's negligent acts and the County shall defend, indemnify and hold harmless the Consultant from and against any and all losses, claims, injuries, liability, costs and expenses, including defense costs and legal fees, arising out of or in connection with the County's negligent acts.. This paragraph does not purport to indemnify the County against liability for damages caused by the sole negligence of the County, its officials, agents, or employees. In the event the Consultant and the County are both negligent, each party shall be responsible in proportion to its negligence.

19. Insurance. The Consultant shall obtain and keep in force during the terms of the Agreement, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.05:

19.1 General Commercial Liability Insurance in an amount not less than a single limit of five hundred thousand dollars (\$500,000.00) per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$1,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverages:

- 19.1.1 Broad form property damage, with no employee exclusion
- 19.1.2. Personal injury liability, including extended bodily injury
- 19.1.3 Broad form contractual/commercial liability – including completed operations
- 19.1.4 Premises - operations liability (m&c)
- 19.1.5 Independent Consultants and sub Consultants
- 19.1.6 Blanket contractual liability

19.2 Worker's compensation and employer's liability insurance as required by the State of Washington.

19.3 Automobile liability insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$250,000 each occurrence with the County named as an additional insured in connection with the Consultant's performance of the contract.

19.4 Said general liability policy shall name Jefferson County as an additional named insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to the County. Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this agreement.

20. Representatives; Notices. For purposes of administration of this Agreement, the representative of the County and the representative of the Consultant are set forth in this section below. All notices shall be delivered personally or may be mailed by certified mail, return receipt requested, to the other party. In the case of notice by mail, notice shall be deemed given in the date of postmark of the return receipt.

COUNTY:

Jefferson County Department of Community Development
Carl Smith, Director of Community Development
621 Sheridan St

Port Townsend WA 98368
Telephone: David Wayne Johnson: (360) 379-4465; Facsimile: (360) 379-4451
Email: dwjohnson@co.jefferson.wa.us

CONSULTANT:

Aaland Planning Services
Neil Aaland, Principal
5506 Cheri Estates Drive SE
Olympia, WA 98501
Telephone: (360) 791-8905
Email: naaland@comcast.com

21. Conflicts of Interest and Appearance of Fairness.

21.1 Conflicts of Interest - Consultant covenants that it has had no interest and shall not acquire any interest directly or indirectly that would conflict in any manner or degree with the performance of services hereunder. Consultant further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.

21.2 Appearance of Fairness – Consultant acknowledges that it is critically important that all dealings by the Consultant with the County be untainted by outside activities that would raise concerns of biased or unequal treatment among members of the public or persons or organizations, which do business with Jefferson County. To this end, the Consultant will not represent the interests of private clients before any County legislative or advisory body concerning issues subject to the scope of this Agreement.

22. Successors and Assigns. This Agreement shall be binding upon all the parties, their heirs, personal representatives, successors, and assigns.

23. Applicable Law; Venue. This Agreement shall be governed by the laws of Washington State. Venue for any action under this Agreement shall be in Jefferson County, Washington.

24. Disputes. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Washington and ordinances of Jefferson County, Washington. Parties agree that any dispute arising out of the conduct of this Agreement may, at the option of either party, be submitted to binding arbitration, but only if mediation between the parties by a person or entity mutually agreed upon has failed. Should arbitration be necessary to resolve a dispute between the parties, then each party shall select one arbitrator and those two arbitrators shall select a third arbitrator. The dispute shall be settled with a majority of arbitrators prevailing. The decision of the arbitration panel shall be binding on all parties, and shall be enforceable, if necessary, in the Superior Court for Jefferson County, State of Washington. Allocation between

parties of payment of costs of arbitration shall be determined by the panel of arbitrators, and their determination shall be final. In the event any action is brought by either party to enforce the decision of the arbitration panel, the parties agree that the party seeking enforcement shall pay to the other party the reasonable attorney fees and costs and disbursements incurred by such party.

25. Costs and Attorneys Fees. In the event any action is brought by either party to enforce the terms of this Agreement, or for breach of this Agreement by the other party, the parties agree that each party shall pay the attorneys fees and costs disbursements incurred by such party.

26. Severability. If any term of provision of this Agreement is held invalid, the remainder of such terms of provision of this Agreement shall not be affected, if such remainder would then continue to conform to the terms and requirements of applicable law.

27. Individual Liability. The Consultant described in this Agreement shall be individually responsible for performing all of the obligations, services and duties described and listed in the Proposal and/or this Agreement. The cessation of business as a result of, for example, bankruptcy, by the business entity that constitutes this Consultant shall not relieve the other business entity that is part of the Consultant from its contractual obligations under this Agreement or the scope of work.

28. Entire Agreement; Amendments. This Agreement, together with the **Exhibits**, represents the entire and integrated agreement between the County and the Consultant and supersedes all prior negotiations, representations, or agreements. This Agreement may be amended only by a written instrument signed by both the County and the Consultant. The attachments to this Agreement are identified as follows:

Exhibit A: Proposal

IN WITNESS WHEREOF the County and the Consultant have executed this Agreement as of the date and year last written below.

JEFFERSON COUNTY, a Washington Municipal Corporation

By:

John Austin, BoCC Chairperson

Philip Morley, County Administrator

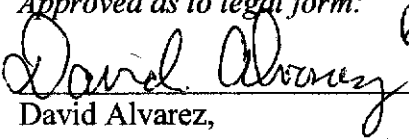
Date: _____

Attest/Authenticated:



Carl Smith, DCD Director


Approved as to legal form:

 6/25/2012

David Alvarez,
Chief Civil Deputy Prosecuting Attorney
Jefferson County

CONSULTANT:

By:



Neil Aaland, Principal
Aaland Community Planning Services

Date: 6/13/2012

Proposal

Description of Project

Jefferson County has asked for bids to revise its existing sign code. In 2006, in response to legal action filed by Mr. Mike Belenski, the Clallam County Superior Court issued a permanent injunction against the enforcement of section 18.130.150 (2)(f) of that code, as well as against regulating personal signs larger than eight square feet. In addition, Mr. Belenski filed another challenge in November, 2011 outlining additional issues of concern. The task is to revise JCC 18.30.150 to be constitutionally sound and defensible under Federal and State statutes, clearly define and describe when a permit is required, and reference and incorporate building code as necessary while addressing concerns regarding both code and policy.

Assumptions:

1. This proposal was developed using the process outlined in the e-mail titled "eight steps of UDC text amendment."
2. I have assumed that the first two steps have already been completed (amendment initiated, and BOCC has directed it to be placed on DCD work plan).
3. I am assuming one work session with the Planning Commission, one public hearing with the Planning Commission, and one open public meeting with the Board of County Commissioners. I did NOT assume the BOCC would hold its own public hearing.
4. These tasks and estimates are general assumptions, and can be modified as agreed by the contractor and the county.

General Approach

I propose the following approach to conducting this project and cost/time estimate:

Task	Time Estimate
Conduct detailed review of sign code and related materials	4 hours
Research legal background	16 hours
Prepare briefing memo with options	4 hours
Present to Planning Commission and obtain feedback	5 hours (includes travel time)
Prepare ordinance text and second briefing memo	12 hours
Present to Planning Commission; hearing by PC	5 hours (includes travel time)
Refine per PC direction and prepare memo/draft ordinance for presentation to Board of County Commissioners	12 hours
Present to BOCC at a regularly scheduled open public meeting	5 hours (includes travel time)
Finalize	8 hours
TOTAL HOURS	71 hours

Cost:

1. My hourly rate is \$135/hour; total staff costs based on time estimate is \$9,585.00
2. Mileage will be charged using standard IRS rate of 0.51/mile, travel between Olympia and Port Townsend of approximately 100 miles each way. For three trips, roundtrip costs estimated at \$306.00
3. **Total project cost estimate: \$9,891.00**