

**Schroader, Kathy**

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**From:** Wiser, Sonja  
**Sent:** Wednesday, June 15, 2016 3 57 PM  
**To:** Lisa Grueter, Schroader, Kathy  
**Cc:** Euler, Gordon  
**Subject:** Emailing Berk Contract - Addendum dated 2016-06-13 pdf  
**Attachments:** Berk Contract - Addendum dated 2016-06-13 pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Lisa, a hard (original) copy is being mailed to you today Kathy, you can put this in the record thanks

**PROFESSIONAL SERVICES CONTRACT AMENDMENT**  
Contract Purchase No 674

THIS CONTRACT entered this 13<sup>m</sup> day of June 2016, by and between CLARK COUNTY, after this called "County," a political subdivision of the State of Washington and *BERK Consulting*, after this called "Contractor "

WITNESSETH

WHEREAS, the contractor has been chosen through a competitive bid process by the County (RFP # 674) and has the expertise to provide professional services for Clark County and to perform those services more particularly set out in the proposal attached hereto and incorporated herein by this reference as Exhibit A

WHEREAS, Clark County does not have available staff to provide such services for the benefit of the services of Clark County NOW THEREFORE,

THE COUNTY AND THE CONTRACTOR MUTUALLY AGREE AS FOLLOWS

- 1 Services The Contractor shall perform services as set forth in Exhibit A, in addition to the original agreement RFP #674 dated July 30, 2014
- 2 Time The contract shall be effective beginning June 10, 2016 and ending December 31, 2016
- 3 Compensation County shall pay the Contractor for performing said services upon receipt of a written invoice according to the schedule set forth in Exhibit B, which is attached hereto and incorporated herein by this reference and is in addition to the original agreement RFP #674 dated July 30, 2014 The parties mutually agree that in no event shall the amount billing exceed the dollar amount of \$106,243 without prior approval of the

County

4 Termination The County may terminate this contract immediately upon any breach by Contractor in the duties of Contractor as set forth in Contract. The waiver by the County of one or more breaches shall not be construed as a waiver of any subsequent breach or breaches. Further, County may terminate this Contract upon immediate notice to Contractor in the event that the funding for the project ceases or is reduced in amount. The Contractor will be reimbursed for services expended up to the date of termination.

5 Independent Contractor The Contractor shall always be an independent Contractor and not an employee of the County, and shall not be entitled to compensation or benefits of any kind except as specifically provided herein.

6 Indemnification / Hold Harmless The Consultant shall defend, indemnify and hold the County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the County. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4 24 115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the County, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This

waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

7 Wage and hour compliance Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and any other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall always save County free, clear and harmless from all actions, claims, demands and expenses arising out of said act and the rules and regulations that are or may be promulgated in connection therewith.

8 Social Security and Other Taxes The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, federal or state legislation that is now or may during the term of this agreement be enacted as to all persons employed by the Contractor in performance of the work pursuant to this Contract and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules and regulations that are now and may be promulgated in connection therewith.

9 Contract Documents Contract documents consist of this Agreement, Exhibit A, a scope of work which consists of a proposal based on RFP #674, and Exhibit B a budget document.

10 Equal Employment Opportunity The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, age, disability, marital status or national origin.

11 Changes County may, from time to time, require changes in the scope of the services to be performed hereunder. Such changes, including any increase or decrease

in the amount of the Contractor's compensation, which are mutually agreed upon by and between County and the Contractor shall be in writing, signed by both parties and incorporated in the written amendments to the Contract

12 Public records act Notwithstanding the provisions of this Contract to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, RCW Chapter 42 56, as may hereafter be amended, Contractor agrees to maintain all records constituting public records and to produce or assist Clark County in producing such records, within the time frames and parameters set forth in state law Contractor further agrees that upon receipt of any written public record request, Contractor shall, within two business days, notify Clark County by providing a copy of the request to the Clark County Public Records Officer/Department of Community Planning

13 Governing Law This agreement shall be governed by the laws of the State of Washington Venue for any litigation shall be in Superior Court for the State of Washington in Clark County, Washington

14 Confidentiality With respect to all information relating to County that is confidential and clearly so designated, the Contractor agrees to keep such information confidential

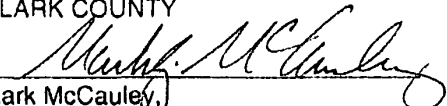
15 Conflict of Interest The Contractor covenants that it has had no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder The Contractor further covenants that no person having such interest shall be employed by it, or shall perform services as an independent contractor with it, in the performance of this Contract

16 Consent and Understanding This agreement contains a complete and integrated understanding of the contract between the parties and supersedes any understandings, agreement, or negotiations, whether oral or written, not set forth herein or in written amendments hereto duly executed by both parties

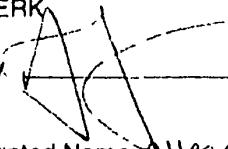
17 Severability If any provision of this agreement is held invalid, the remainder would then continue to conform to the terms and requirements of applicable law

IN WITNESS THEREOF, County and the Contractor have executed this contract on the date first above written

CLARK COUNTY

  
Mark McCauley,  
County Manager

BERK

By 

Printed Name Allegra Calder

Title Principal

APPROVED AS TO FORM ONLY  
ANTHONY F GOLIK

*Clark County Prosecuting Attorney*

*Lee Marchisio for T. Stephen Defalco,*  
*Special Deputy Prosecuting Attorney*  
Vendor/Contractor:

Have you or any of your employees who will be directly compensated retired from a Washington State Retirement System using the 2008 Early Retirement Factor?

Yes

No

If yes, please provide the name and social security number for each retiree to Clark County Purchasing

## EXHIBIT A

Clark County is updating its Comprehensive Plan consistent with the Growth Management Act periodic review requirements. Two proposed changes would alter the minimum lot sizes in resource zones, as follows:

- Change the minimum lot size for parcels zoned AG-20 from 20 acres to 10 acres (AG-10)
- Change the minimum lot size for parcels zoned FR-40 from 40 acres to 20 acres (FR-20)

County staff has developed development regulations authorizing land divisions in the two zones to be accomplished through use of clustering or the designation of building envelopes. The County Council may consider approval of the changes without the clustering-related regulations. In 2012, a Rural Lands Study was prepared by BERK Consulting and team members. It provided an assessment of agriculture and forestry activities in Clark County and a policy analysis of techniques to support agriculture and forestry producers.

The County requested BERK Consulting ("Consultant") to provide a scope of services and cost estimate to supplement and update the record, as follows:

- Update selected mapping and data analysis in the 2012 Rural Lands Study regarding the analysis of parcel sizes and agriculture/forestry activity
- Update the policy analysis of example County resource land parcel sizes (e.g., Pierce County and others) and regulations of land divisions in the 2012 Rural Lands Study. Conduct a brief review of literature and other county's regulations designed to support producers (e.g., family farms on small acreage and homesteading). Several counties have continued to refine their planning for agricultural land since 2012.

With this task, the Consultant will update and confirm the trends regarding farm size and location in Clark County in relation to Rural and Ag-20 zoning as well as forestry activities and the Forest-40 zone.

Since the 2012 Rural Lands Study was prepared, the 2012 Census of Agriculture was released, which offers newer information beyond the 2007 Census of Agriculture. Further, there is agricultural activity-specific GIS data from the Washington Department of Agriculture (WSDA) that was only available at the section level in 2012. The WSDA provides crop type and field limits of information. These field/crop polygons can be superimposed on parcels and analysis of parcels

with home sites and agriculture can be ascertained. The results may show, for example, agriculture types occurring on properties with existing homes in comparison to agriculture occurring on properties without homes.

The following Exhibits from the 2012 Rural Lands Study, Assessment of Agriculture and Forestry, will be updated to incorporate the latest Census of Agriculture, County Assessor, and WSDA data as appropriate:

- \*Exhibit 5: Farms by Type including number of farms. This sets a baseline of number of farms that can be compared to newer WSDA data for the year 2015 and to the results of the 2007 data included in the Rural Lands Study.
- Exhibit 7: Percentage of Farms by Commodity Total. This exhibit identifies the commodity total by farm size. 2012 Census of Agriculture data would be compared to the 2007 data in the Rural Lands Study.
- \*Exhibit 8: Percent of Farms by Acres. Indicates the numbers of farms by size. Illustrates the size ranges of farms in the County. 2012 Census of Agriculture data would be compared to the 2007 data in the Rural Lands Study.
- \*Exhibit 9: Crops by Farms and Commodity Totals. Illustrates the number of farms providing different commodities. 2012 Census of Agriculture data would be compared to the 2007 data in the Rural Lands Study.
- Section 6.0 and Exhibit 13: Update farm composition and tenure information. This may be helpful to consider when conducting Task 2, a literature review of how producers are supported by land use regulations.
- Exhibit 16: Crop Type by Current Use Agriculture Designation. This map will be updated based on area-specific and parcel-specific data now available from the Washington Department of Agriculture for 2015 as well as the latest Assessor Current Use Data.
- Exhibit 20: Location of Clark County Timberlands. Current Use and designated Forest-40 and other Resource designations. Data comparing forestry activity current use and parcel size to the zoning would be added based on Final EIS information or County Assessor data as appropriate.

**\*Note:** The Consultant collected 2012 Census of Agriculture information on these topics as part of the Rural Industrial Land Bank project, which can be synthesized for the Supplemental Record.

The following Exhibits in the Rural Lands Study Policy Review will be updated as appropriate:

- Table 1: Distribution of Parcel Sizes in Agriculture 20 Zone
- Table 2: Parcels Less than 20 Acres – Contiguous Ownership
- Table 2 (mis-numbered): Comparison of Rural and Resource Conservation Tools by Example Counties



- In 2016, Pierce County has been investigating its criteria for resource land mapping and has established more recent regulations and programs for producers
  - Whatcom County has been considering altering its approach to density and clustering in rural study areas where small lot agriculture is prevalent
  - Other Counties may also have newer standards
  - Counties that allow lot divisions with and without building siting criteria or clustering will be noted, given the County's draft policies and regulations on clustering and building envelopes
- Appendix B Agriculture-20 Properties Map and Current Uses Final EIS information or County Assessor data would be used as appropriate

The results of Task 1 will include a technical memo updating the data and maps originated in the 2012 Rural Lands Study. The relationship of the updated data and findings to the Clark County land use proposals will be described. One round of revisions will be made following County review.

The task will involve a brief review of existing reports or literature regarding the economic need to support agriculture with a resident population (residents on the agricultural land), and the relationship of smaller agricultural operations and proximity to urban markets (farm to market, etc.) For example, homesteading or other regulations and relationship to how banks finance the homes that producers desire to build for themselves and their heirs, balanced with the ability to continue long-term agriculture production may be relevant (this topic was studied by the Consultant with producers, bankers, and others in Whatcom County).

This task may draw on the definition of agricultural viability that has been underway through the Washington Department of Agriculture and the Voluntary Stewardship Program (VSP). While the VSP is not a program that Clark County is implementing some of the work towards the effort may address the viability of agriculture from a number of angles including how regulations support producers to be able to economically farm on the land.

The results of Task 2 will be a memo that highlights the key questions explored, literature reviewed, example counties, and findings applicable to the Clark County land use proposals. One round of revisions will be made following County review.

**EXHIBIT B**

	Manager	Associate	Project Support	Total Hours and Estimated Cost by Task
2016 Hourly Rate	\$175	\$125	\$90	
<b>Task 1: Update Selected Mapping and Data Analysis</b>				
Update Data and Maps	6	14	4	
Technical Memo & Revisions	6	2	2	
<b>Subtotal</b>	<b>12</b>	<b>16</b>	<b>6</b>	<b>11</b> <b>\$1,980</b>
<b>Task 2: Literature Review and Examine Counties Providing Regulatory Support for Producers</b>				
Review	3		2	
Technical Memo & Revisions	5			
<b>Subtotal</b>	<b>8</b>	<b>0</b>	<b>2</b>	<b>10</b> <b>\$1,580</b>
<b>Total Estimated Hours</b>	<b>20</b>	<b>16</b>	<b>8</b>	<b>11</b>
<b>Cost (Hours*Rate)</b>	<b>\$3,500</b>	<b>\$2,000</b>	<b>\$720</b>	<b>\$6,220</b>
<b>Subtotal Consultant Cost</b>				
	\$6,220			
<b>Project Expenses (Included in project budget)</b>				
	\$25			
<b>Estimated Project Total</b>				
	\$6,245			