

KITSAP COUNTY
INVITATION TO BID

2009-117

FOR

MANUFACTURING OF MINERAL AGGREGATES

BIDS MUST BE SUBMITTED TO:
KITSAP COUNTY PURCHASING OFFICE
614 DIVISION STREET MS 20
PORT ORCHARD, WASHINGTON 98366

AND

WILL BE RECEIVED UNTIL 3:00 P.M., APRIL 24, 2009

AT WHICH TIME THEY WILL BE PUBLICLY OPENED
AND READ ALOUD

DEPARTMENT OF ADMINISTRATIVE SERVICES,
PURCHASING DIVISION
614 DIVISION STREET MS 20
PORT ORCHARD WASHINGTON 98366-4674

ACTING FOR:

PUBLIC WORKS DEPARTMENT
ROAD DIVISION

INVITATION TO BID

KITSAP COUNTY DEPARTMENT OF PUBLIC WORKS

Manufacturing of Mineral Aggregates

BID OPENING: FRIDAY, APRIL 24, 2009 @ 3:00 P.M.

NOTICE IS HEREBY GIVEN: The Kitsap County Department of Administrative Services, Purchasing Office will receive sealed bids for the Public Works Department for the manufacturing and stockpiling of mineral aggregates (Range \$100,000 - \$150,000). Bids will be received up to **2:30 PM** on Friday, 24, 2009 in the Kitsap County Purchasing Office, 619 Division Street MS-20, Port Orchard, Washington 98366. ***Bids will be publicly opened and read aloud in the Kitsap County Port Madison Conference Room at 3:00 PM the same day.*** After the review process has been completed, a bid tabulation will be available for public inspection.

Prospective Bidders are hereby notified that they are solely responsible for ensuring timely delivery of their bid to the Kitsap County Purchasing Office on or before the bid **submission** date and time indicated above. Additional information maybe found on the Kitsap County Web site www.kitsapgov.com.

TECHNICAL PROVISIONS**1.1 Description of Work**

This contract provides for the manufacturing of 50,000 cubic yards of crushed and screened pit run aggregate from the County's Holly Gravel Pit and stockpiling it on site. Manufactured material will be substantially free from wood, roots, bark and other extraneous material.

1.2 Preparation of Site

The portion of the gravel pit site to be used for this contract will be clearly identified at the site with survey lath for inspection during bid time.

1.3 Production Requirements

All oversize stones, rock fragments, or boulders occurring in the source, up to and including those measuring 18-inches in the greatest dimension, shall be utilized in the manufacture of the material.

If the grading or quality of raw materials in the source used for the manufacture of the product is such that the fracture, grading, or quality of the product specified cannot be obtained by utilizing the natural material, fine portions of the raw material shall be rejected to the extent necessary to produce the product meeting section 1.5 of these provisions.

1.4 Stockpiling of Manufactured Material

Kitsap County will prepare a suitable stockpile site adjacent to the manufacturing area. Manufactured material meeting the gradation requirements of section 1.5 shall be neatly placed in piles not to exceed 4-feet in height. Stockpiles in excess of 200-cubic yards shall be built up in layers not more than 4-feet in depth. Stockpile layers shall be constructed by trucks, clamshells, or other methods approved by the County. Pushing aggregates into piles with a bulldozer will not be permitted. Each layer shall be completed over the entire area of the pile before depositing aggregates in the succeeding layer. The aggregate shall not be dumped so that any part of it runs down and over the lower layers in the stockpile. The method of dropping

from a bucket or spout in one location to form a cone shaped pile will not be permitted. Any method of placing aggregates in stockpiles, which in the opinion of the County, breaks, degrades, or otherwise damages the aggregate, will not be permitted. Plank runways will be required, when deemed necessary by the County, for operating trucks on stockpiles to avoid tracking dirt or other foreign matter onto the stockpiled materials. Stockpiles of less than 200-cubic yards shall be piled in a manner to prevent segregation of the various sizes of material. No equipment other than pneumatic tired equipment shall be used in constructing the stockpiles of processed or manufactured aggregates.

Material not meeting the requirements of section 1.5 shall be stockpiled separately as directed by the County

1.5 Gradation Requirements

The manufactured aggregate shall be uniform in quality and substantially free from wood, roots, bark, and other extraneous material and shall meet the following gradation requirements:

Sieve Size	Percent Passing
5/8" square	100
1/2" square	90-100
U.S. No. 4	45-66
U.S. No. 40	10-25
U.S. No. 200.	7 max

All percentages are by weight.

Fracture Requirements shall be at least one fractured face for a minimum 75-percent of the combined aggregate retained on the U.S. No. 4 sieve in accordance with FOP for AASHTO TP61.

1.6 Measurement

Aggregates produced under this proposal shall be measured by the cubic yard. The cubic yard volume for pay quantity will be determined by cross sectioning the completed stockpile(s), meeting the requirements of Section 1.5, or by computation of the volume between the original ground surface and the stockpile surface using digital terrain modeling survey techniques. Survey measurements will be provided by Kitsap County.

In the event that the successful bidder possesses certified scales, the County, after contract execution, may consider a proposal from the successful bidder to measure the quantity of produced material by the ton.

1.7 Payment

All costs associated with the manufacturing of materials meeting these technical provisions shall be included in the unit contract price per cubic yard.

1.8 Contract Time

Work on this project is intended to start no later than June 15, 2009 and be completed within 90 calendar days.

1.9 Site Visit:

Prospective bidders are encouraged to contact the County Road Superintendent, Don Schultz, at 360.337.5777 to arrange for a site visit.

NOTICE

All work shall be in accordance with the specifications, and other contract documents as administered by the Kitsap County Purchasing Office. Contractors for this must comply with all

applicable government and local agency requirements, including the Washington State Prevailing Wage Rate Law.

The Kitsap County Purchasing Office reserves the right to reject any or all responses for good cause, to waive any informality in any response and to delete certain items listed in the Bid Proposal as set forth herein.

BID BOND

All bid proposals shall be accompanied by a bid deposit of 5% of the total bid to be received in the form of a surety bond, certified check, or cashiers check. Should the successful bidder fail to enter into such contract and furnish a "performance bond" meeting necessary requirements within the time of contract signing the bid proposal deposit shall be forfeited.

Prospective bidders are hereby notified that they are solely responsible for ensuring timely delivery of their bid to the Kitsap County Purchasing Office on or before the bid opening date and time.

Included in submittal:

- County Bid Proposal – as published in Invitation to Bid
- Signed acknowledgment of receipt of all bid documents and addenda
- Bid Bond in an amount equal to five percent (5%) of submitted bid or:
 - Cash
 - Certified check
 - Cashiers check

Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond at contract signing the bid proposal deposit shall be forfeited to Kitsap County.

Each bid proposal shall be completely sealed in a separate envelope, properly addressed as stated above, with the name and address of the bidder and the name of the project plainly written on the outside of the envelope.

If you have questions regarding the bid process please contact R'Lene J. Orr, 360-337-4410, or at rorr@co.kitsap.wa.us. Questions regarding the project please contact County Road Superintendent, Don Schultz at 360-337-5777 or dschultz@co.kitsap.wa.us, Monday-Friday 8:00 AM to 4:30 PM excluding holidays.

Bids received after 3:00p.m. , on Friday, April 24, 2009 will not be considered.

MAIL: **R'Lene J. Orr, Manager**
Kitsap County Purchasing
614 Division Street MS 20
Port Orchard, WA 98366

Or, hand-deliver Monday-Friday (excluding holidays) 8:00 a.m. to 4:30p.m. To the Purchasing Office, Kitsap County Administration Building, Fourth Floor, Room 413, 619 Division Street, Port Orchard, Washington.

ADDENDA

Where appropriate, responses to questions, inquiries or requests for additional information or for substitution of proposed material will be issued in the form of Addenda, and copies of each addendum will be issued to all prospective bidders of record. Additionally, addenda are on file at the Kitsap County Purchasing Office. During the bidding period, prospective bidders will be advised by

Addendum of additions to, deletions from or changes in the requirements of the contract documents. Kitsap County will not be responsible for the authenticity or correctness of oral interpretations of contract documents or for information obtained in any other manner **than** through the media of Addenda. Bidders shall acknowledge receipt of Addendum in their bid proposals and each Addendum shall be considered a part of the Contract Documents.

Failure to acknowledge receipt of any Addenda issued will invalidate a proposal as incomplete.

COOPERATIVE PURCHASING

Washington State Inter-local Cooperative Purchasing Act RCW 39.34 provides that other governmental agencies may purchase goods and services on this solicitation or contract in accordance with terms and prices indicated therein, if all parties are willing.

Bidder has received the following addenda, receipt of which is hereby acknowledged:

DATE	NUMBER	INITIALS
_____	_____	_____
_____	_____	_____
_____	_____	_____

BASIC BID:

Pursuant to and in compliance with the advertisement for bids and instructions to bidders the undersigned hereby certifies having carefully examined contract documents entitled:

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and conditions affecting the work, and are familiar with the site; and having made the necessary examinations, here proposes to furnish all labor, materials, equipment, and services necessary to complete the work in strict accordance with the above named documents for the stipulated lump sum of:

_____ Dollars (\$_____).

The above sum is hereby designated as the basic bid. The basic bid does not include Washington State and/or local sales taxes on the contract value.

CONTRACT AND BOND:

If notified of the acceptance of this bid within sixty (60) days of the time set for opening of bids, the undersigned agrees to execute a contract for the above work, for a compensation computed from the above-stated sums, on the Contract Form bound with the specifications and to furnish a bond as required by the specifications on the form bound therein.

BID GUARANTEE:

It is agreed that if the undersigned fails to execute said Contract and furnish said Bond within seven (7) days after written notice of award of Contract, then the Bid Guarantee shall be retained by the County as liquidated damages. If this bid is not accepted within sixty (60) days after the time set for the opening of bids, or if the undersigned delivers said Contract and Bond in a timely manner, then the check or cash shall be returned, or the Bid Bond shall become void.

SIGNATURE

Signed By: _____ Date _____

Please Print Name: _____

Title: _____

Name of Firm: _____

Address: _____

Telephone: (_____) _____

CAPITAL PROJECTS CONTRACT

KC-____-09

THIS CONTRACT is entered into in duplicate originals between the COUNTY OF KITSAP, a municipal corporation, with its principal offices at 614 Division Street, Port Orchard, Washington 98366, hereinafter called the OWNER, and _____ located at _____, hereinafter the CONTRACTOR.

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

SECTION 1. DURATION OF CONTRACT

- a. The term of this Contract shall commence upon the effective date set forth below. The CONTRACTOR shall substantially complete all Work required under this Contract within a period of _____ days from the Start Date stated in the written Notice to Proceed referenced in Section 5. Final completion and closeout of this Contract shall occur _____ working days after timely substantial completion, except as provided in Section 10 below. Time is of the essence in the performance of this Contract.
- b. The term "Substantial Completion" as used in this Contract means that stage in the progress of the Work where the OWNER has full and unrestricted use and benefit of the facilities for the purposes intended and only minor incidental work, replacement of temporary substitute facilities or minor correction or repair remains to physically complete the total contract. The term "Notice to Proceed" means a written notice from the OWNER to the CONTRACTOR that defines the date on which the Work under the Contract is to start.

SECTION 2. DESCRIPTION OF THE WORK

- a. The CONTRACTOR shall do all Work necessary to complete _____. The Work shall consist of _____.
- b. The CONTRACTOR shall do all Work and furnish and pay for all materials, equipment, and labor in accordance with the attached Project Documents, including, but not limited to, any drawings, specifications, addenda thereto, and all terms and conditions contained in the Call for Bids, Instructions to Bidders and Bid documents. Specific items considered to be Project Documents are _____ and project drawings listed herein, which Project Documents are incorporated herein by reference. Further, the CONTRACTOR shall perform any alterations in or additions to the Work covered by this Contract and any extra work which may be ordered as provided for in this Contract if requested to do so by the OWNER pursuant to Section 16.
- c. The CONTRACTOR shall perform according to standard industry practice for the requested Work specified in this Contract.
- d. The CONTRACTOR shall complete its Work in a timely manner and in accordance with the agreed schedule submitted by the CONTRACTOR and approved by the OWNER.
- e. The CONTRACTOR shall, from time to time, during the progress of the Work, confer with the OWNER. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be

requested by the OWNER.

SECTION 3. CONTRACT REPRESENTATIVES

- a. Each party to this Contract shall have a representative. Each party may change its representative upon providing written notice to the other party.

The parties representatives are as follows:

- i. For CONTRACTOR:
 - Title:
 - Mailing Address:
 - City, State and Zip Code:
 - Telephone Number:
 - Fax Number:
 - E-mail Address:

- ii. For OWNER: Kitsap County Public Works – Road Division
 - Name of Representative: Don Schultz
 - Title: Road Superintendent
 - Mailing Address: 614 Division Street (MS-26)
 - City, State and Zip Code: Port Orchard, WA 98366-4699
 - Telephone Number: 360-337-5777
 - Fax Number: 360-337-4867
 - E-mail Address dschultz@co.kitsap.wa.us

- b. All instructions, modifications, and changes to the Contract shall be conveyed to the CONTRACTOR through the OWNER'S REPRESENTATIVE. Any work executed upon the direction of any person or entity other than the OWNER'S REPRESENTATIVE may be considered defective and will be performed without reimbursement for said work to the CONTRACTOR. The OWNER'S REPRESENTATIVE shall have the authority to reject any and all nonconforming or defective work under the Project Documents.

SECTION 4. CONTRACT AMOUNT

The OWNER hereby agrees to pay the CONTRACTOR according to the Contractor's Bid in the amount of \$ _____ (including accepted alternates and excluding Washington State Sales Tax (WSST)), at the time and manner and upon the conditions provided for in this Contract.

SECTION 5. NOTICE TO PROCEED

The COUNTY shall issue a Notice to Proceed after the execution of the Contract and receipt of all necessary required documents, including, where applicable, Performance and Payment Bond, a copy of insurance policies and/or any and all Certificates of Insurance and Additional Insured Endorsements. The Notice to Proceed shall provide the Start Date.

SECTION 6. PREVAILING WAGES

Pursuant to RCW Chapter 39.12 and WAC 296-127, the CONTRACTOR shall pay not less than the prevailing rate of per diem wages to its employees and provide documentation to the OWNER of its compliance with prevailing wage laws and regulations. A copy of such prevailing rates of per diem wages shall be posted by the CONTRACTOR at the Work site. The CONTRACTOR must submit a Statement of Intent to Pay Prevailing Wages to the State Department of Labor and

Industries for approval. Copies of an approved "Statement of Intent" shall be provided to the OWNER prior to any payment being made to the CONTRACTOR. An "Affidavit of Wages Paid" must be submitted to and approved by the State Department of Labor and Industries by the CONTRACTOR prior to release of the retained percentage. Copies of these documents shall be sent to the OWNER. The fee for each of these documents shall be paid by the CONTRACTOR.

SECTION 7. PAYMENT

- a. At least ten (10) calendar days before the first Application for Payment, the CONTRACTOR shall submit to the OWNER'S REPRESENTATIVE a Schedule of Values which allocates the total cost of the project to various categories. This schedule, unless returned for revision by the OWNER'S REPRESENTATIVE, shall be used as the OWNER'S REPRESENTATIVE'S basis for reviewing the CONTRACTOR'S Applications for Payment. For contracts using unit pricing, the unit pricing schedule provided in the CONTRACTOR'S bid shall be used by the OWNER'S REPRESENTATIVE as the basis for reviewing the CONTRACTOR'S Applications for Payment.
- b. At monthly intervals, unless determined otherwise by the OWNER, the CONTRACTOR shall submit to the OWNER an Application for Payment. An Application for Payment is a written request submitted by the CONTRACTOR to the OWNER for payment of Work. The Application shall be submitted on a form reviewed and approved by the OWNER'S REPRESENTATIVE. Within thirty (30) calendar days of receiving an Application for Payment, the OWNER shall pay ninety-five (95) percent of the Application for Payment if such Application is acceptable to the OWNER. Five (5) percent of the Application for Payment amount shall be retained in accordance with RCW Chapter 60.28. No Application for Payment will be considered until all schedules have been met and other documentation required by the Project Documents have been submitted.
- c. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment may be similarly made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored off site shall be conditioned upon compliance by the CONTRACTOR with procedures satisfactory to the OWNER to establish the Owners' title to such material and equipment or otherwise protect the Owner's interest.
- d. No certificate given or payment made shall be evidence of the performance of the Contract, either wholly or in part, against the claim of the OWNER to the contrary, and no payment will be construed to be an acceptance of any defective Work which may before or afterward appear.
- e. Neither OWNER nor OWNER'S REPRESENTATIVE shall have an obligation to pay or to see the payment of money to a subcontractor except as may otherwise be required by law.

SECTION 8. PERFORMANCE AND PAYMENT BOND

Pursuant to RCW Chapter 39.08, the CONTRACTOR shall make, execute, and deliver to the OWNER a performance and payment bond for the contract amount of \$_____ (including WSST). This bond shall also cover all approved change

orders. The bond must be submitted within ten (10) days after notice of the award, exclusive of the day of notice. If the bidder to whom the contract is awarded fails to enter into the contract and provide the performance bond as required the amount of the bid deposit will be forfeited to the county and the contract awarded to the next lowest and best bidder.

SECTION 9. FINAL COMPLETION AND FINAL PAYMENT

- a. Upon receipt of a final Application for Payment, the OWNER'S REPRESENTATIVE will promptly make a final inspection and, when the OWNER'S REPRESENTATIVE finds the Work acceptable under the Project Documents and the Contract fully performed, the OWNER will promptly issue final payment pursuant to Paragraph 7.
- b. Before final payment, the CONTRACTOR shall furnish to OWNER or the OWNER'S REPRESENTATIVE, in addition to the other documents required by the Contract, record drawings or changes from the construction drawings showing deviations in a manner requested by the OWNER or the OWNER'S REPRESENTATIVE, and originals of all warranties for such equipment and materials where warranties are specified in the Contract.

SECTION 10. RETAINED PERCENTAGE

- a. In accordance with RCW Chapter 60.28, the OWNER shall release any retained percentage withheld in the manner set forth in Section 7.b., if after sixty (60) calendar days of final completion and acceptance of all contract Work, no liens or claims are filed against the project, and after receipt of the Department of Revenue's Certificate designating taxes due or to become due are discharged and receipt of by the OWNER of an Affidavit of Wages Paid from L&I. The provisions of this paragraph shall supersede any other conflicting provisions.

SECTION 11. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONTRACTOR shall hold harmless, indemnify and defend the OWNER, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including, but not limited to, reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the performance of the services rendered under this contract by the CONTRACTOR, its employees, agents, or subcontractors or anyone for whose acts any of them may be liable. PROVIDED HOWEVER, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the OWNER, its officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the CONTRACTOR'S obligations hereunder shall apply only to the percentage of fault attributable to the CONTRACTOR, its employees, agents, or subcontractors.
- b. In any and all claims against the OWNER, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or

benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws. By executing the Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing Work hereunder.

- c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

SECTION 12. INSURANCE

- a. **Workers' Compensation and Employer's Liability:** The CONTRACTOR shall maintain workers' compensation insurance as required by Title 51, RCW, and shall provide evidence of coverage to the OWNER. If this contract is over \$50,000, then the CONTRACTOR shall also maintain Employees Liability Coverage with a limit of not less than \$1 million.
- b. **Commercial General Liability:** The CONTRACTOR shall maintain Commercial General Liability coverage for bodily injury, personal injury, and property damage, subject to limits of not less than Two Million Dollars (\$2,000,000.00) per loss. The general aggregate limit shall apply separately to this Contract and be no less than Five Million Dollars (\$5,000,000.00).

The CONTRACTOR will provide Commercial General Liability coverage which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard Commercial General Liability policy, including contractual liability coverage. Coverage shall include liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; or premises owned, leased, or used by the CONTRACTOR.

- c. **Automobile Liability:** The CONTRACTOR shall maintain Business Automobile Liability insurance or equivalent form with a limit of not less than \$1,000,000.00 each accident combined Bodily Injury and Property Damages and an aggregate limit of at least \$2,000,000.00. Coverage shall include owned, hired and non-owned automobiles.
- d. **Builders Risk:**
 - A. Contractor shall purchase and maintain, until final acceptance by the Owner, property insurance in the amount of the Contract Sum including all Change Orders for the Work on a replacement cost basis. The insurance shall cover the interest of Owner, Contractor, and any Subcontractors, as their interests may appear.
 - B. Contractor property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss

or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for A/E's services and expenses required as a result of an insured loss.

- C. Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E's sub consultants, separate contractors described in Section 5.20, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

e. **Other Insurance Provisions**

- i. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the OWNER, its elected and appointed officers, officials, employees and agents.
- ii. The CONTRACTOR'S Commercial General Liability insurance shall include the OWNER, its officers, officials, employees and agents with respect to performance of services.
- iii. The CONTRACTOR'S Commercial General Liability insurance shall contain no special limitations on the scope of protection afforded to the OWNER as additional insured.
- iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the OWNER, its officers, officials, employees, or agents.
- v. The CONTRACTOR'S insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- vi. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- vii. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
- viii. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates,

policies, and endorsements expiring before completion of services shall be promptly replaced as well as the verification sent to the OWNER.

- f. **Verification of Coverage and Acceptability of Insurers:** The CONTRACTOR shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A:7 with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- i. The CONTRACTOR shall furnish the OWNER with properly executed certificates of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this Section within ten (10) calendar days after the effective date of the contract. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be canceled, allowed to expire, or be materially reduced in coverage except on thirty (30) calendar days prior written notice to the OWNER. Any certificate or endorsement limiting or negating the insurer's obligation to notify the OWNER of cancellation or changes shall be altered so as not to negate the intent of this provision.
 - ii. The CONTRACTOR shall furnish the OWNER with evidence that the additional insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the OWNER as an additional insured or an Additional Insured Endorsement page.
 - iii. Certificates of Insurance shall show the Certificate Holder as Kitsap County and include c/o of the Office or Department issuing the Contract. The address of the Certificate Holder shall be shown as the current address of the Office or Department.
 - iv. The CONTRACTOR shall request that their Washington State Department of Labor and Industries, Workers Compensation Representative send written verification to Kitsap County that CONTRACTOR is currently paying Workers Compensation within ten (10) calendar days after the effective date of the Contract.
 - v. Written notice of cancellation or change shall be mailed to the OWNER at the following address:

Attn: Risk Manager
Department of Administrative Services
614 Division Street Port Orchard, Washington 98366
 - vi. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Kitsap County Risk Manager.

SECTION 13. CONTRACTOR RESPONSIBILITY FOR WORK

- a. The CONTRACTOR shall supervise and direct all Work herein using the CONTRACTOR's best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work herein.
- b. The CONTRACTOR shall be responsible to the OWNER for the acts and omissions of the CONTRACTOR'S employees, agents, subcontractors and their agents and employees, and any other person performing Work under a contract with the CONTRACTOR.

SECTION 14. WARRANTY

In addition to any special warranties provided elsewhere in the Project Documents, the CONTRACTOR warrants to the OWNER and OWNER'S REPRESENTATIVE that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Project Documents, and that the Work will conform with the requirements of the Project Documents as described herein. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and may be rejected. The CONTRACTOR'S warranty excludes remedy for damage caused by abuse, improper or insufficient maintenance, or improper operation. If required by the OWNER'S REPRESENTATIVE or OWNER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided.

SECTION 15. SALES TAX AND OTHER FEES

The OWNER shall pay Washington State sales tax and any other tax, and shall secure and pay for permits as indicated in the general conditions.

SECTION 16. CHANGES

- a. The OWNER may, at any time, without notice to the CONTRACTOR'S surety, order additions, deletions, revisions, or other changes in the work. The CONTRACTOR agrees to fully perform any such changes in the work. The CONTRACTOR shall proceed with the work upon receiving a written change order approved by the OWNER, or an oral order from the OWNER before actually receiving the written change order. All such changes in the work shall be incorporated into the Contract documents through the execution of change orders. If any change hereunder causes an increase or decrease in the CONTRACTOR's cost of, or time required for, the performance or any part of the work under this Contract, an equitable adjustment will be made and the Contract modified in writing accordingly. Change Orders shall not be used to materially alter the Scope of Work.
- b. If the CONTRACTOR intends to assert a claim for an equitable adjustment hereunder, it shall within ten (10) calendar days after receipt of a written change order from the OWNER, submit to the OWNER a written statement setting forth the general nature and monetary extent of such claim. The CONTRACTOR shall supply such supporting documents and analysis for the claims as the OWNER may require to determine if the claims and costs have merit. No claim by the CONTRACTOR for an equitable adjustment hereunder will be allowed if asserted after final payment under this CONTRACT.
- c. If the OWNER and the CONTRACTOR are unable to reach agreement on the terms of any change to the Work, the CONTRACTOR shall pursue resolution of

the disagreement pursuant to Section 23.

SECTION 17. CHANGE ORDER PRICING

- a. The value of any Work covered by Change Order, or of any request for an equitable adjustment in the Contract Amount, shall be determined by one or more of the following methods:
 1. Lump sum;
 2. Unit price; or
 3. Fixed or percentage fee.
- b. Charges for the Work covered by an approved change shall be submitted by the CONTRACTOR to the OWNER on breakdown sheets for change proposal submittal and the proposals shall be prepared in a manner consistent with the Project Documents.

SECTION 18. TERMINATION

The OWNER may terminate this Contract in whole or in part whenever the

- a. OWNER determines, in its sole discretion, that such termination is in
- b. the best interests of the OWNER. The OWNER may terminate this Contract upon giving ten (10) calendar days written notice by Certified Mail to the CONTRACTOR. In that event, the OWNER shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 7 of this Contract.
- b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the OWNER may summarily terminate this Contract notwithstanding any other termination provision of this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by the OWNER to the CONTRACTOR. After the effective date, no charges incurred under this Contract are allowable.
- c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) calendar days of written notice to do so by the OWNER, the OWNER may terminate this Contract, in which case the OWNER shall pay the CONTRACTOR only for the costs of services accepted by the OWNER, in accordance with Section 7 of this Contract. Upon such termination, the OWNER, at its discretion, may obtain performance of the Work elsewhere or seek recourse against the performance and payment bond. The CONTRACTOR shall bear all costs and expenses incurred by the OWNER in completing the Work and all damage sustained by the OWNER by reason of the CONTRACTOR'S breach.

SECTION 19. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of this Contract does not constitute a waiver of such provisions for future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

- a. The CONTRACTOR shall perform this Contract as an Independent Contractor and not as an agent, employee or servant of the OWNER. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.
- b. The CONTRACTOR acknowledges that the Work performed under this Contract does not include any OWNER benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Kitsap County employees.
- c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent, or representative of the OWNER, unless otherwise directed by the terms of this Contract.
- d. The CONTRACTOR agrees to immediately remove any of its employees or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the OWNER'S REPRESENTATIVE or designee.

SECTION 21. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

SECTION 22. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates, or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status or the presence of any disability. Implementation of this provision shall be consistent with Initiative 200, Sec. 1 (Effective 12/3/98).

SECTION 23. DISPUTES

- a. Questions or claims regarding meaning and intent of this Contract or arising from this Contract, shall be referred by the CONTRACTOR in writing to the OWNER'S REPRESENTATIVE or designee within ten (10) calendar days of the date in which the CONTRACTOR knows or should know of the question or claim.
- b. In the event the CONTRACTOR disagrees with any determination or decision of the OWNER'S REPRESENTATIVE, the CONTRACTOR shall, within fifteen (15) calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Director of the department. Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The Director will review the appeal and transmit a decision in writing to the CONTRACTOR within thirty (30) calendar days from the date of receipt of the appeal. Failure of the CONTRACTOR to appeal the decision or determination of the OWNER'S REPRESENTATIVE within said fifteen (15) calendar day period will constitute a waiver of the CONTRACTOR'S right to thereafter assert any claim resulting from such determination or decision. Appeal to the Director shall be a condition precedent to litigation hereunder.

- c. Absent agreement to alternative dispute resolution, all claims, counterclaims, disputes and other matters in question between the OWNER and the CONTRACTOR that are not resolved between the OWNER'S REPRESENTATIVE and the CONTRACTOR will be decided in the Superior Court of Kitsap County, Washington.
- d. Pending final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the Contract and in accordance with the direction of the OWNER'S REPRESENTATIVE. Failure to comply with the time deadlines set out in this Section as to any claim shall operate as a release of that claim and a presumption of prejudice to the OWNER.

SECTION 24. CHOICE OF LAW, JURISDICTION AND VENUE

- a. This Contract 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 Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.
- b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Kitsap County, Washington.

SECTION 25. SUCCESSORS AND ASSIGNS

The OWNER, to the extent permitted by law, and the CONTRACTOR each bind themselves, their partners, successors, executors, administrators, and assigns to the other Party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants of this Contract.

SECTION 26. SEVERABILITY

- a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the United States or the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

SECTION 27. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

SECTION 28. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 3. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or

immediately if personally served. For service by facsimile, service shall be effective upon receipt during working hours. If a facsimile is sent after working hours, it shall be effective at the beginning of the next working day.

SECTION 29. INSPECTION

The OWNER or the OWNER'S REPRESENTATIVE shall have the right (a) to inspect and obtain copies of all written licenses, permits, or approvals issued by any governmental entity or agency to the CONTRACTOR, its delegates, or subcontractors, which are applicable to the performance of this Contract, and (b) to inspect all Work and Materials for conformity with the Contract terms. The CONTRACTOR shall be responsible for ensuring the Work and materials conform to the Contract terms even if the OWNER or the OWNER'S REPRESENTATIVE conducts any inspection of the same.

SECTION 30. MODIFICATION

Except as provided in Section 16, all amendments or modifications to the Contract shall be in writing, signed by both parties, and attached to this Contract.

SECTION 31. LIQUIDATED DAMAGES

Upon written notice by the OWNER, liquidated damages at a rate of One Thousand Five Hundred Dollars (\$1,500.00) per working day or any portion thereof will be assessed against the CONTRACTOR for late performance or delay in the substantial completion of the work to be performed under this Contract. This provision in no way limits the OWNER's right to seek damages for the CONTRACTOR's breach of any other of its obligations under this Contract pursuant to Section 18 of this Contract or to actual damages for the CONTRACTOR's failure to achieve final completion within the time set forth in Section 1.

SECTION 32. CONTRACTS PROVISION

In the event language in this Contract conflicts with the requirements in the Project Documents, the language in the Contract controls.

This Contract is executed by the persons signing below who certify that they have the authority to execute the Contract. The parties to this Contract have executed this Contract to take effect as of the date written below.

This Contract shall take effect this _____ day of _____, 2009.

CONTRACTOR: KITSAP COUNTY COMMISSIONERS

SIGNATURE BLOCK REQUIRED