

**KITSAP COUNTY  
DEPARTMENT OF PUBLIC WORKS  
ROADS DIVISION  
RE-ROOFING ROAD SHOPS**



**FORMAL BID 2010-110**



Vendor must be a licensed contractor and must submit a photocopy of their valid Washington State Contractor's Registration, and a copy of their Certificate of Liability Insurance.

The following documents are required for a complete bid package:

- Bid Sheet
- Addendum Receipt, if any
- Certificate of Liability Insurance (Requirements Attached)
- Certificate of Contractor's Registration
- Bid Bond

The Kitsap County Purchasing Office reserves the right to reject any or all bid responses for good cause,

**EACH BID RESPONSE MUST BE SUBMITTED** in a separate envelope and sealed when mailed. The bid number and title of the project (as indicated above), the date & time of the response deadline, and the name & address of the bidder shall be clearly shown on the outside of the envelope.

Bids received after 3:00p.m. March 23, 2010, will not be considered.

Or hand-deliver Monday-Thursday (excluding holidays) 8:00 a.m. To 5:00 p.m. To the Department of Administrative Services, Purchasing Office, 4<sup>th</sup> floor, 619 Division Street, Port Orchard, Washington, 98366

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.

Current solicitations and any addendum may be viewed by accessing the County's Procurement web site at [www.kitsapgov.com](http://www.kitsapgov.com)

## SPECIFICATIONS

## ROOF REPLACEMENT/REPAIR BID

### **Steve Cates**

#### **North Road Shop**

Office/Mechanics Shop Building  
Hwy 305 & bond Road  
Poulsbo, WA. 98370  
360-337-4961

The existing roof is an exposed fastener metal roof system: Replace the chimney over the mechanics shop. Repair the various minor penetrations as needed.

### **Bob Wilson**

#### **Central Road Shop**

1971 Seabeck Hwy  
Bremerton, WA. 98312  
360-337-4582

Office/Mechanics Shop Building, Welding Shop Building/Remote Storage Building:

Office & Mechanics Shop; the existing roofs are a 3-ply built up roof with a mineral surfaced cap sheet. Install a PVC membrane roof system with plumbing and perimeter flashings.

Welding Shop: This roof is similar to the Office and Mechanics shop. Install a PVC membrane roof system along with a new roof, plumbing and perimeter flashings.

Remote Storage Building: The existing roof is an exposed fastener metal roof system. Coat the entire roof with GAF TOPCOAT or approved equal.

### **Paul Woods**

#### **South Road Shop**

2339 Cedar Rd  
Port Orchard, WA. 98366  
Mechanics Shops Buildings  
360-337-7198

The existing roofs are an exposed fastener metal roof system. Apply GAP TOPCOAT or approved equal.. For bidding purposes, consider the two abutting mechanic shops as one building.

## **WARRANTY**

1. Manufacturer's Product Warranty; 20 year Manufacturer's warranty shall apply. Installation of the product shall be in conformance with the manufacturer's requirements to obtain the stated warranty.
2. Contractor's Warranty; on 24 gauge clip rib panels, flashings, sealants, fasteners and accessories against defective materials and/or workmanship, to remain watertight and weather proof for two (2) years following Project Substantial Completion date.

## **EXAMINATION EXISTING CONDITION:**

1. Verify that members and/or substrate to receive panels are complete, accurately sized and located, in true plane, secure and otherwise properly prepared.
2. Before starting work, notify Owner about defects requiring correction.
3. Do not start work until conditions are satisfactory.

## **PREPARATION FIELD MEASUREMENTS**

1. Verify before fabrication.
2. Contractor is expected to take field measurements and order roofing Material and accessories from their measurements.

All work should be backed by material and water tightness warranties and are to include new plumbing, and/or perimeter flashings, or chimneys and vents as needed.

**FB 2010-110**  
**Re-Roofing County Road Shops**

**BID SHEET**

The undersigned Vendor proposes to complete the as described in the scope for County Road Shops Kitsap County Department of Public Works Roads Division.

NORTH ROAD SHOP PROJECT COST \$ \_\_\_\_\_

CENTRAL ROAD SHOP PROJECT COST \$ \_\_\_\_\_

SOUTH ROAD SHOP PROJECT COST \$ \_\_\_\_\_

WASHINGTON STATE SALE TAX \$ \_\_\_\_\_

TOTAL COSTS W/TAX \$ \_\_\_\_\_

This Informal Bid is made in accordance with the published requirements and warrants, receipt of which is hereby acknowledged, and is offered in accordance with the authority of the Kitsap County Purchasing Office.

BIDDER: \_\_\_\_\_  
Name of Company Type or Print

NAME: \_\_\_\_\_  
Type or Print

SIGNATURE: \_\_\_\_\_ Date \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

- Attachments:  
Bid Sheet  
Addendum Receipt, if any  
Certificate of Liability Insurance  
Certificate of Contractor's Registration

**ADDENDUM RECEIPT**

Receipt of the following addendum to this solicitation is hereby acknowledged:

<u>Amendment number</u>	<u>Date of Receipt <i>Addendum</i></u>	<u>Signed Acknowledgement</u>
1	_____	_____
2	_____	_____
3	_____	_____

**NOTE: Failure to acknowledge receipt of any amendment may be considered an irregularity in the bid.**

**CAPITAL PROJECTS CONTRACT**

**KC-\_\_10**

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:  
Name of Representative:  
Title:  
Mailing Address:  
City, State and Zip Code:  
Telephone Number:  
Fax Number:  
E-mail Address:

- 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 (or 50% letter if contract amount, including WSST, is \$25,000 or less), 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 OWNER's 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 Worker's 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 subconsultants, 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.

#### SECTION 20. INDEPENDENT CONTRACTOR

- 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 \_\_\_\_\_, 200\_\_.

CONTRACTOR:

BOARD OF COUNTY COMMISSIONERS  
Kitsap County, Washington

Firm: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
JOSH BROWN, Chair

Signature: \_\_\_\_\_

(Authorized Representative)

\_\_\_\_\_  
STEVE BAUER, Commissioner

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
CHARLOTTE GARRRIDO, Commissioner

Attest:

Contractor Registration No. \_\_\_\_\_

\_\_\_\_\_  
Opal Robertson Clerk of the Board

Federal Tax ID. No. \_\_\_\_\_

**Approved as to form by the Prosecuting Attorneys Office.**