



**KITSAP COUNTY
DEPARTMENT OF PUBLIC WORKS**

**REQUEST FOR QUALIFICATIONS
2010-139**

**Engineering Consultant
Services for:**

**Stormwater Pond
Water-Quality Retrofit
Technical Support**

June 2010

**Kitsap County Department of Public Works
614 Division Street, MS-26A
Port Orchard, WA 98366-4699
360.337.5777**

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REQUEST FOR QUALIFICATIONS

Technical Support for Stormwater Pond Water-Quality Retrofit

1.0 Objective

The Kitsap County Department of Public Works Surface and Stormwater Management (SSWM) division is seeking consulting services to develop a set of guidelines for retrofit of stormwater treatment facilities (ponds) to enhance water-quality (WQ) treatment effectiveness. This project would select several "pilot" stormwater treatment facilities, evaluate their WQ-treatment effectiveness, and make recommendations for retrofit. The project would also develop a set of WQ-retrofit guidelines for use in retrofitting additional ponds under Kitsap County SSWM jurisdiction as part of the long-term retrofit stormwater infrastructure program. In addition, this project will develop conceptual-level designs for application to be used for private facility owner/operator education. This work product will serve as a guideline for implementing future retrofit projects, seeking project funding, and communicating potential project opportunities with the public and private commercial property owners. Expected outcomes of this program are enhanced water quality and ecological function in receiving waters and reduced pollution loading to Puget Sound.

Kitsap County SSWM is soliciting Statements of Qualifications from consulting firms with experience in Stormwater BMP Design, Landscape Design and Plant Selection, Wetland Mitigation and Creation, Environmental Engineering, Civil Engineering, Low Impact Development (LID) Design, Environmental Mitigation, Stormwater Management, Drainage Analysis, and Public Outreach.

2.0 Background

Kitsap County, like many jurisdictions in the Puget Sound region has a wide variety of structural stormwater management facilities. Most of these can be broadly classified as stormwater ponds. Many of these stormwater ponds were constructed utilizing older design standards and a large majority of these facilities are detention ponds, which were designed mainly for flood control, with little or no water-quality treatment capability. In addition, most of these older ponds were constructed without consideration for landscape aesthetics, habitat, or with any multifunctional assets. Finally, low-impact development or "green" stormwater treatment principles were also not incorporated into these engineered stormwater facilities.

Kitsap County has undertaken a major SSWM program effort to upgrade our older stormwater facilities to incorporate design features recommended under current design standards. This would include the following:

- Water-Quality Treatment
- Infiltration & Groundwater Recharge
- Landscaping for Aesthetics and Wildlife Habitat
- Community Recreational Functions
- LID Features

3.0 Scope of Work

The scope of work (SOW) includes tasks and activities SSWM has assumed necessary to complete an LID and Stormwater Retrofit Plan for Kingston. The following tasks are included in this SOW:

- Task 1 – Inventory Kitsap SSWM Stormwater Ponds in Need of WQ Retrofit
- Task 2 – Prioritize Selected Ponds for WQ Retrofit
- Task 3 – Complete Retrofit Designs for at least 10 “pilot” WQ Retrofit Projects
- Task 4 – Develop a WQ Retrofit Guidance Manual for Kitsap SSWM
- Task 5 – Assist Kitsap SSWM Staff with Retrofit Plan Rollout and Community Outreach

Assumptions for Conducting Tasks:

- Task 1** Inventory Kitsap SSWM Stormwater Ponds in Need of WQ Retrofit
 - Work with KC-SSWM staff to identify, inspect, and evaluate stormwater facilities with respect to WQ-treatment performance.
 - KC-SSWM will provide drainage system and pond location GIS mapping.

- Task 2** Prioritize Selected Ponds for WQ Retrofit
 - Work with Kitsap SSWM staff to prioritize stormwater ponds for WQ retrofit.
 - Create a map of prioritized projects and create an implementation matrix showing project costs and other data.

- Task 3** Complete Retrofit Designs for at least 10 “pilot” WQ Retrofit Projects
 - Work with Kitsap SSWM staff to select the initial group of “pilot” stormwater ponds for WQ retrofit.
 - Assist in development of engineering designs, planting plans, and cost estimates for the “pilot” retrofit projects.

- Task 4** Develop a WQ Retrofit Guidance Manual for Kitsap SSWM
 - Work with Kitsap SSWM staff to produce a guidance manual for future stormwater pond WQ retrofit, including conceptual drawings, design standards, and cost estimates for retrofit features.
 - Work with Kitsap SSWM staff ensure all stormwater pond retrofit guidance meets Department of Ecology requirements.

- Task 5** Perform Cost Evaluation of Retrofit Projects
 - Work with Kitsap SSWM staff to determine communications and potentially needs for community outreach for the “pilot” retrofit projects.
 - Develop materials for use in future community outreach efforts.

4.0 Estimate and Schedule

Kitsap County anticipates the costs of the design services for this project to be approximately \$60,000. The services are expected to start in October 2010. The consultant selected will be subject to Federal EEO requirements. The project should be completed by May 2011.

5.0 Request for Qualification (RFQ) Process

It is the intent of KC-SSWM to select a consultant based on the qualifications and abilities of the firm/team and key project individuals. Proposers may be individual firms or teams as appropriate to meet the specific needs of the project. Proposers are solely responsible for all costs incurred in the development and submission of the response statement to this RFQ or any other presentations whether in response to this RFQ or to any subsequent requirements of the consultant selection and contract negotiation process. All materials submitted in the response to this RFQ become the property of Kitsap County.

5.01 SOQ SUBMITTAL AND GENERAL GUIDELINES

SOQ packages shall be submitted no later than **4:30 P.M. on Monday August 2, 2010** to:

R'Lene J. Orr, Manager
Kitsap County Purchasing Office
614 Division Street, MS-21
Port Orchard, WA 98366
(360) 337-4410
Rorr@co.kitsap.wa.us

Proposals received after the response deadline will not be considered.

Notices related to revisions or updates to this RFQ will be provided via e-mail, unless the Proposer requests to receive it by regular mail. Regular mail will be post marked the same date any e-mails are sent.

6.0 Consultant Selection Process

6.01 PRE-PROPOSAL MEETING

The County's project manager will be available by phone the week of July 26 to provide an overview of the project and answer questions from potential Proposers. No formal pre-proposal meeting will be held unless requested by a Proposer, although the project manager will be available to meet in person the week of 26 July. A pre-proposal meeting is not required, nor is it tied to the evaluation process, but it is your opportunity to meet the project manager and have questions answered. The County will not meet with or talk to potential Proposers at any other time prior to the week of July 26, 2010.

6.02 COUNTY PROJECT MANAGER

Work performed under the resulting agreement shall be under the direction of the County's project manager. Please direct questions and inquiries regarding the request for qualifications to the project manager:

Christopher May
Program Director
Kitsap County Public Works Surface and Stormwater Management
614 Division Street, MS-26A
Port Orchard, WA 98366
(360) 337-7295
cmay@co.kitsap.wa.us

6.03 ANTICIPATED RFQ SCHEDULE

The following schedule has been established for the submission and evaluation of the SOQs and selection of the Consultant. These are tentative dates only and the County reserves the right to adjust these dates at its sole discretion:

- SOQ due: August 2, 2010
- Short list for interviews by: August 6, 2010
- Interviews: August 16-20, 2010
- Announce final selection by: August 27, 2010
- Contract negotiation complete by: September, 2010
- Board of County Commissioner approval: October, 2010
- "Notice to Proceed": October, 2010

6.04 ACCEPTANCE/REJECTION OF RESPONSES

The County reserves the right and holds at its discretion the following rights and options:

- to waive any or all informalities in any SOQ.
- to reject any or all responses.
- to issue subsequent requests.

6.05 PROFESSIONAL SERVICES AGREEMENT

A standard Kitsap County agreement will be utilized for this project. It is expected that this will be a "Fixed Fee" Contract.

7.0 SOQ Submittal Content

To be considered responsive to this RFQ, the Proposers SOQ must follow the directions presented and include the information required below.

Submit one (1) original (containing original signatures) and five (5), individually bound copies of the SOQ. Provide clear distinction between the original SOQ and the copies. Proposers are strongly encouraged to use recycled/recyclable products and both sides of the paper whenever appropriate. No more than ten (10) sheets (double sided or not, including resumes of team members), plus a cover and a one page cover letter. All pages must be standard size (8.5X11).

7.01 SOQ COVER AND COVER LETTER

Clearly label the SOQ cover and the subject line in the cover letter with "**SOQ for Kingston Stormwater & LID Retrofit Plan**". The cover letter shall be limited to one page and shall; identify the consultant name and contact person with his/her title; include address, mailing address, e-mail address, and phone number, for the contact person; and include the name of the proposed project manager. A duly authorized officer, employee, or agent of the consulting firm must sign the cover letter.

7.02 CONSULTANT TEAM STRUCTURE

Please provide the team structure including names of lead persons with titles and general project responsibilities, and the physical location of each lead person. Provide the names for each sub-consultant. Discuss the team ability to actively perform the proposed work and provide a statement which clearly conveys the ability of all proposed project personnel to accept responsibility for completing the project in view of the firm's current and projected workload.

7.03 TEAM QUALIFICATIONS AND EXPERIENCE

The Proposer will be evaluated for the team qualifications, general background, and experience in relation to the stated Scope of Work. Please provide a summary of the background and experience of the team relative to the project and the Scope of Work under consideration. Include lists of specific projects on which the team has had a major role together with the location, cost, and basic description of the project, start and completion dates, the name of the client, a description of the team responsibility on the project, and the specific roles of the individuals proposed for this project. Describe experience working with municipal or other public agencies on relevant projects. Also, provide a description of those special projects, awards, or other items that make the team especially qualified for this project.

7.04 PERSONNEL QUALIFICATIONS AND EXPERIENCE

The proposed project personnel identified shall be evaluated for their areas of expertise and experience, which qualify them to perform the work for the project. Provide the qualifications of the team's project manager; focus on experience in managing projects with the Scope of Work provided, past working relationship(s) with other proposed team members, level of effort, and availability for this project. List the lead project personnel with titles who shall be primarily responsible for and involved with work activities. This includes any sub-consultant's project managers. Identify the responsibilities and activities of each lead person and include professional biographical data or resume outlining specific project capabilities, with emphasis on those team members that will be doing actual work on the project.

7.05 PAST PERFORMANCES/REFERENCES

References shall be used to verify the accuracy of information provided by the Proposer, which may affect the rating of the Proposer. Provide five recent references who may be contacted concerning your firm's/team's performance with regard to the Scope of Work. In listing the references, include the name of the client, mailing address, fax number, telephone number, e-mail address, contact person, and the specific work your firm did for the client.

Provide three recent references who may be contacted concerning the performance of your firm's/team's proposed project manager(s). The County reserves the right to contact references other than those submitted by the respondent.

7.06 QUALITY CONTROL, PROJECT MANAGEMENT, AND PRODUCT DELIVERY

Keeping a project on track and delivering a quality product are important elements to assure a successful outcome. Please describe measures that the firm/team will use to account for these elements when working with Kitsap County on this project. If applicable, describe how these elements may have been utilized on similar projects in the past.

8.0 Consultant Evaluation Process

A team of County staff will evaluate the SOQs, and conduct interviews according to the consultant evaluation criteria and the three-part process described below:

Part 1

Evaluation of the written Statement of Qualification (SOQ) package submitted by each Proposer, resulting in a short-listing of Proposers who will be invited to an interview. Proposers submitting SOQ's will be notified in writing if they have been selected for an interview or not.

Part 2

Interviews will be conducted and Proposers will be evaluated on the interview in addition to the SOQ for a combined final score.

Part 3

The County's evaluation team makes a recommendation to the Public Works Director to obtain approval to begin negotiations with the selected Proposer. Contract negotiations shall then commence with the selected Proposer. Proposers not selected will be notified in writing of the selection outcome. If the selected Proposer and the County are unable to agree on the final scope and fee for the design services for the contract, the County reserves the right to terminate the negotiations with the selected Proposer and initiate contract negotiations with the next highest rated Proposer.

8.01 EVALUATION CRITERIA

The SOQs will be evaluated and ranked based on the criteria listed below. The County reserves the right to give each criterion such weight as it deems appropriate.

- Experience and background of the project manager on similar projects and with proposed team members.
- Experience and background of key personnel on similar projects.
- Teams previous working relationships and/or relevance to teaming on this project.
- Experience with environmental planning and permitting processes.
- Experience with wetland mitigation and estuary enhancements.
- Experience with Low-Impact-Development Techniques.
- Ability to provide dedicated staff.
- Approach to the project.
- Proposer's quality assurance/quality control program.
- Proposer's approach to project management and project delivery.
- Experience with public outreach strategies and procedures.
- Familiarity with relevant codes, standards and requirements for projects with Federal Funding.
- Past performances/references.

8.02 INTERVIEWS

Following evaluation of the SOQ's, the highest-ranking firms will be invited to participate in the interview process. The County will notify Proposers as soon as possible for scheduling of interviews. The project manager will schedule interviews with the contact person provided in the SOQ. Additional interview information shall be provided at the time of the invitation. The intent of the interviews is to help clarify and verify information provided in the SOQ and to give the County's evaluation team an opportunity to meet the project manager and key personnel that shall have direct involvement with the project and to learn more about their relevant experience and expertise.

9.0 Contract Negotiation Process

Contract negotiations will begin immediately after the selection process is complete. A standard Kitsap County agreement will be utilized for this project. This will be a "Fixed Fee" Contract.

10.0 County Contact Information

Questions regarding technical aspects of this project should be directed to Chris May, SSWM Senior Program Manager, at (360) 337-7295. Alternate contacts for technical questions are Bob Southwick (360-337-7296) or Scott Murphy (360-337-3348).

Questions regarding the RFQ process or contracting should be directed to R'Lene J. Orr, Manager Kitsap County Purchasing Office at (360) 337-4410.

Persons with disabilities may request this information be prepared and supplied in alternate forms by calling (360) 337-5777.

Kitsap County, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

EXAMPLE OF A KITSAP COUNTY CONTRACT

Revision 2000-05-01

KC- CONTRACT FOR [ARCHITECTURAL/ENGINEER] SERVICES GENERAL TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between KITSAP COUNTY, a municipal corporation, with its principal offices at 614 Division Street, Port Orchard, Washington 98366, hereinafter "COUNTY", and , located at , hereinafter "CONSULTANT."

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

1. CONTRACT DOCUMENTS

This Contract consists of the following:

- a.
- b.
- c.

2. DURATION OF CONTRACT

Unless otherwise provided herein, the term of this Contract shall begin immediately upon execution by the parties on the effective date below, and shall, unless terminated or renewed as provided elsewhere herein, terminate on . The CONSULTANT shall complete all work required by this Contract no later than the termination date above. Time is of the essence in the performance of this Contract.

3. SERVICES PROVIDED BY THE CONSULTANT

The COUNTY retains the CONSULTANT to perform the following consulting services in connection with this Contract:

- a. A description of the services to be performed by the CONSULTANT is set forth in Exhibit "A", which is attached hereto and incorporated by reference.
- b. The CONSULTANT agrees to perform the services specified in this Contract according to standard industry practice.
- c. The CONSULTANT agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the COUNTY.
- d. The CONSULTANT shall complete its work in a timely manner and in accordance with the schedule agreed to by the parties.
- e. The CONSULTANT shall, from time to time, during the progress of the work, confer with the COUNTY. The CONSULTANT shall prepare and

present monthly status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

- a. For CONSULTANT:

- b. For COUNTY:

5. COMPENSATION

- a. Payment to the CONSULTANT for services rendered under this Contract shall be in accordance with the fee schedule set forth in Exhibit "B", which is attached hereto and incorporated by reference. These fees shall remain in effect for the term of the Contract.
- b. The maximum total amount payable by the COUNTY to the CONSULTANT shall not exceed \$ (), unless a Contract Amendment has been negotiated and executed prior to the COUNTY incurring any costs in excess of the maximum amount payable.
- c. The CONSULTANT may, in accordance with Exhibit B submit invoices to the COUNTY not more often than once per month during the progress of the work for partial payment of work completed to date. Invoices shall cover the time CONSULTANT performed work for the COUNTY during the billing period. The COUNTY shall pay the CONSULTANT for services rendered in the month following the actual delivery of the work and will remit payment within thirty (30) days from the date of receipt.
- d. The CONSULTANT shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.
- e. In the event the CONSULTANT has failed to perform any substantial obligation to be performed by the CONSULTANT under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, then the COUNTY may, in its sole discretion, upon written notice to the CONSULTANT, withhold any and all monies due and payable to the CONSULTANT, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for purposes of this contract means faithfully fulfilling the terms of this contract with variances only for technical or minor omissions or defects.
- f. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONSULTANT will not be paid for any billings or invoices presented for payment prior to the execution of this Contract or after its termination.
- g. No payment shall be made for any work performed by the CONSULTANT,

except for work identified and set forth in this Contract or supporting exhibits or attachments.

6. AMENDMENTS AND CHANGES IN WORK

- a. In the event of any errors or omissions by the CONSULTANT in the performance of any of the services required herein, the CONSULTANT shall make any and all necessary corrections without additional compensation. All work submitted by the CONSULTANT shall be certified by the CONSULTANT and checked for errors and omissions. The CONSULTANT shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.
- b. No amendment, modification or renewal shall be made to this Contract unless set forth in a written Contract Amendment signed by each party's designated agent, and attached to this Contract. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

- a. The CONSULTANT shall hold harmless, indemnify and defend the COUNTY, 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, 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 Consultant, its employees, agents, or subcontractors or anyone for whose acts any of them may be liable. PROVIDED HOWEVER, that the CONSULTANT'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the CONSULTANT'S obligations hereunder shall apply only to the percentage of fault attributable to the CONSULTANT, its employees, agents, or subcontractors.
- b. In any and all claims against the County, its officers, officials, employees and agents by any employee of the Consultant, 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 Consultant 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 Consultant expressly waives any immunity the Consultant might have had under such laws. By executing the Contract, the Consultant 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 CONSULTANT makes with any subcontractor or agent performing work hereunder.

- c. The CONSULTANT'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 CONSULTANT, the CONSULTANT'S employees, agents or subcontractors.

8. INSURANCE

- a. **Professional Legal Liability:** The CONSULTANT shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONSULTANT'S profession. The policy shall be written subject to limits of not less than \$ per loss.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the CONSULTANT'S services defined in this Contract. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONSULTANT'S services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract.

- b. **Workers Compensation and Employer Liability:** The CONSULTANT shall maintain workers compensation insurance as required by Title 51 RCW, and shall provide evidence of coverage to the Kitsap County Risk Management Division. If this contract is over \$50,000, then the CONSULTANT shall also maintain Employer Liability Coverage with a limit of not less than \$1 million.

- c. **Commercial General Liability:** The CONSULTANT shall maintain Commercial General Liability coverage for bodily injury, personal injury, and property damage, subject to limits of not less than \$ per loss. The general aggregate limit shall apply separately to this Contract and be no less than \$.

The CONSULTANT 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 CONSULTANT 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.

- d. **Automobile Liability:** If applicable, the CONSULTANT shall maintain automobile liability insurance to be described as follows: (check the box that applies)

The CONSULTANT 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.

- OR -

_ The CONSULTANT shall maintain Automobile Liability insurance or equivalent form with a limit of not less than \$100,000.00 each accident combined Bodily Injury and Property Damage. The aggregate limit shall be at least \$300,000.00. If a personal lines Auto Liability policy is used to meet this requirement, it must include a business rider and must cover each vehicle to be used in the performance of this Contract and the certificates of insurance must evidence these conditions have been met. If the CONSULTANT will use non-owned vehicles in performance of this Contract, the coverage shall include owned hired and non-owned automobiles.

- OR -

_ Not Applicable.

e. **Other Insurance Provisions:**

- (1) The CONSULTANT'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees and agents.
- (2) If applicable, the CONSULTANT'S Commercial General Liability insurance and Automobile Liability insurance shall include the COUNTY, its officers, officials, employees and agents with respect to performance of services.
- (3) If applicable, the CONSULTANT'S Commercial General Liability insurance and Automobile Liability insurance shall contain no special limitations on the scope of protection afforded to the COUNTY as additional insured.
- (4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or agents.
- (5) The CONSULTANT'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.
- (6) The CONSULTANT shall include all subcontractors as insured 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.
- (7) 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.
- (8) The CONSULTANT 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. If CONSULTANT'S liability

coverage is written as a claims made policy, then the CONSULTANT must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after project completion.

- f. **Verification of Coverage and Acceptability of Insurers:** The CONSULTANT 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.
- (1) The CONSULTANT shall furnish the COUNTY with properly executed certificates of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section within ten (10) 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, or allowed to expire, except on thirty (30) days prior written notice to the COUNTY. Any certificate or endorsement limiting or negating the insurer's obligation to notify the COUNTY of cancellation or changes shall be altered so as not to negate the intent of this provision.
 - (2) The CONSULTANT shall furnish the COUNTY 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 COUNTY as an additional insured.
 - (3) 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.
 - (4) The CONSULTANT shall request the Washington State Department of Labor and Industries, Workers Compensation Representative, to send written verification to Kitsap County that CONSULTANT is currently paying Workers Compensation.
 - (5) Written notice of cancellation or change shall be mailed to the COUNTY at the following address:
Risk Management Division
Kitsap County Department of Administrative Services
614 Division Street, MS-7
Port Orchard, WA 98366
 - (6) The CONSULTANT 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.

9. **TERMINATION**

- a. The COUNTY may terminate this Contract in whole or in part whenever

the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by Certified Mail to the CONSULTANT. In that event, the COUNTY shall pay the CONSULTANT for all cost incurred by the CONSULTANT in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section 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 COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONSULTANT. After the effective date, no charges incurred under this Contract shall be allowed.
- c. If the CONSULTANT breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the COUNTY shall pay the CONSULTANT only for the costs of services accepted by the COUNTY, in accordance with Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONSULTANT shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONSULTANT'S breach.

10. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- a. The CONSULTANT shall perform the terms of the contract using only its bona fide employees or agents, and the obligations and duties of the CONSULTANT under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.
- b. The CONSULTANT warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

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

12. INDEPENDENT CONTRACTOR

- a. The CONSULTANTS services shall be furnished by the CONSULTANT as an Independent Contractor and not as an agent, employee or servant of the COUNTY. The CONSULTANT specifically has the right to direct and control CONSULTANT'S own activities in providing the agreed

services in accordance with the specifications set out in this Contract.

- b. The CONSULTANT acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract and the CONSULTANT is not entitled to any County 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 CONSULTANT 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 CONSULTANT shall be or deem to be or act or purport to act as an employee, agent, or representative of the COUNTY.
- d. CONSULTANT shall pay for all taxes, fees, licenses, or payments required by Federal, State or local law which are now or may be enacted during the term of this Contract.
- e. The CONSULTANT 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 COUNTY'S contract representative or designee.

13. COMPLIANCE WITH LAWS

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

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONSULTANT relating to the performance of this Contract. The CONSULTANT shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

15. NONDISCRIMINATION

The CONSULTANT, 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.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

- a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONSULTANT for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONSULTANT harmless therefore to the extent such use is agreed to in writing by the

CONSULTANT.

- b. All design work done by the CONSULTANT shall be done on AutoCAD, release 12 or higher or other systems mutually agreed upon, an electronic copy of which shall be submitted to the COUNTY upon request and/or at the end of the job. Should a construction project result from the work of the CONSULTANT, the record drawings from the CONSULTANT shall be transposed onto the electronic design drawings and submitted to the COUNTY.
- c. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONSULTANT shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONSULTANT or subcontractor infringes any patent or copyright. The CONSULTANT shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Differences between the CONSULTANT and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONSULTANT shall be decided by the COUNTY'S Contract representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Contract representative shall be final and conclusive, subject to CONSULTANT'S right to seek judicial relief as provided elsewhere in this Contract.

19. CONFIDENTIALITY

The CONSULTANT, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONSULTANT shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. 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, 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.

21. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONSULTANT 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 to this Contract.

22. 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 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.

23. 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.

24. 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 the Contract Representatives Section of this Contract. 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 at the beginning of the next working day.

The parties to this Contract have executed this Contract to take effect as of the date written below.

DATED this ___ day _____, 200__.

DATED this ___ day _____, 200__.