



**REQUEST FOR PROPOSAL (RFP)  
2018-108  
KITSAP COUNTY DEPARTMENT OF PUBLIC WORKS  
CONSULTANTS FOR PAVEMENT CONDITION SURVEY**

**RESPONSE DEADLINE: THURSDAY, MARCH 22, 2018 @ 3:00 p.m.**

The Kitsap County Department of Public Works is soliciting proposals from qualified firms to perform a pavement condition survey utilizing the A2 Method { The County will accept and review proposals from vendors that utilize visual methods, or a combination of visual and automated/semi-automated technology to rate roadways} on 308 Center lane-miles of County arterial and collector roadways.

After selection, a detailed project scope and budget will be negotiated with the chosen firm or individual to be followed by completion of a Professional Services Agreement. It is expected that this agreement will be a “Unit Cost” contract based on the actual lane-miles surveyed.

**PROJECT DESCRIPTION**

Kitsap County is requesting proposals for pavement condition ratings for approximately 308 Center lane miles of Arterial and Collector roadways, in 0.10-mile segments. The survey shall be driven in one direction and the contractor will be required to survey 100% of one lane employing the A2 Method for each road / road segment. See Exhibit “A” for project roadway information.

**SCOPE OF WORK**

The pavement condition shall be evaluated according to the classification, severity and extent criteria defined in the current edition of “Pavement Surface Condition Field Rating Manual for Asphalt Pavement”, published by the Northwest Pavement Management Association (NWPMA).

The following distresses are listed by the NWPMA as Core Program Defects and shall be evaluated and included in the survey:

Flexible Pavement (308 Center lane-miles)

- a) Rutting and Wear
- b) Alligator Cracking
- c) Longitudinal Cracking
- d) Transverse Cracking
- e) Raveling and Aging
- f) Flushing/Bleeding

- g) Patching (maintenance and utility)
- h) Corrugation and Waves
- i) Sags and Humps
- j) Pavement Edge Condition

Kitsap County will provide the contractor with a list of roads and associated road log numbers to be surveyed, along with a shape file of the County road system. Discrepancies in reference point locations that are greater than a total of 53 lineal feet shall be reported to the County in EXCEL spreadsheet format. Contractor's data collection mileposts must be accurately associated with the County's linear referencing system to within +/- 0.5% (0.005 mile).

The Contractor shall provide a detailed, written Quality Management Plan (QMP) that addresses both quality control and quality assurance for each phase of the project, and that will verify that the Contractor is able to meet reasonable and industry-accepted measures of accuracy and repeatability. The County has intentionally left the design and implementation of the QMP report elements up to the Contractor in order to accommodate the Contractor's procedures. The QMP must be reviewed and approved by the County before production survey work begins. The Plan should (at a minimum) address the following phases and activities:

**Before Data Collection:**

Project schedule, project team, training requirements, equipment calibration and acceptance procedures, control sites and ground truth determination plan, pilot project data collection reporting plan, production survey control data collection plan, data processing, accuracy and precision evaluation, corrective action procedures, and reporting to agency.

**During Production Survey:**

Processing and agency report, production data collection and processing, control site (known and/or blind) testing plan, ongoing accuracy and precision verification plan, corrective action plan, routine equipment inspection and calibration procedures, real-time data checks, periodic reports to agency documenting control site and routine accuracy / precision check data, and periodic reports of production survey processed data

**After Completion of Production Survey:**

Final data review, validation, and feedback, review for missing segments, final report of data accuracy and precision over entire project area, data delivery / final report plan.

The Contractor shall submit a work schedule before the start of work under the contract that reflects continuous rating activity until all field data has been collected and reported in a manner that complies with the field data collection requirements and the approved QMP. Periodic schedule updates may be requested by the contracting agency.

Prior to conducting the survey, the Contractor shall survey and analyze a five (5) lane-mile test section. The results of the survey will be discussed with Kitsap County the next day to determine level of acceptance and fine tune any items identified before the Contractor proceeds with the remainder of the survey.

### **FINAL DELIVERABLE**

Upon completion of the services and tasks noted above, the Contractor will submit final deliverables for review and approval by the County. The final deliverables, unless otherwise requested, shall consist of:

The Contractor shall supply Kitsap County with the results of the pavement condition survey on compact disks (or other mutually acceptable media) in a format compatible with electronic downloading of the data directly into Mobility ([www.crab.wa.gov](http://www.crab.wa.gov)), the County's pavement management system.

An excel spreadsheet (Microsoft EXCEL 2010) reporting distress conditions by type, severity, and extent (per this document) or each 0.100 mile segment of every road log surveyed.

An excel spreadsheet (Microsoft EXCEL 2010) listing every road log / road log segment not rated with a comment describing reason for lack of survey (i.e., construction, inaccessible due to road obstruction, etc.).

An excel spreadsheet listing every road log / road log segment that, per vendor, appears to have invalid or incorrect data associated with it (i.e. incorrect milepost, reference point > 53 feet, etc.).

An electronic (Microsoft Office 2010) and hard copy report summarizing the project's quality control / quality assurance acceptance criteria and achievements (i.e. What % of the data routinely collected for repeatability checks met established acceptance criteria? What % of control / blind site data met established acceptance criteria, linear referencing data quality statistics, etc.?)

### **Contract Term**

The field survey shall be completed prior to September 30, 2018 and the final pavement condition ratings, and other contract deliverables, provided by October 31, 2018. Adverse weather conditions could revise these dates, and will be reviewed as necessary.

### **Proposal (Submittal) Requirements**

Three hard copies and one electronic copy (CD or thumb drive) of each proposal is requested.

The Proposal should not exceed ten (10) single sided pages, not including a one page cover letter.

Proposals (submittals) shall include, at a minimum, the following:

- A.** Firm Information: Firm name, phone and email address. Name of Principal-in-Charge and Project Manager who would assume responsibility for this project.
- B.** Team Structure: Identify the team structure and the general project responsibilities of each member. Also provide the name and role of all sub-consultants. Discuss the team's ability to proactively perform the proposed work.
- C.** References: Submit two to five client references for similar projects in size and scope that were successfully completed by the proposing firm or individual within the last three years. Briefly describe each project and for each reference provide up-to-date individual contact name with e-mail address and phone number.
- D.** Qualifications: Submit statements pertaining to qualifications and experience of key personnel assigned to this project. Identify each by their proposed role and include for each their name and up-to-date, pertinent resume.
- E.** Proposed Approach: Submit a descriptive narrative of your proposed approach and timeline to successfully perform the work required. Include number of working days necessary to complete all work and submit final product.
- F.** Quality Management Plan: Submit a draft of the Quality Management Plan you propose to use for this project. Please include a statement reflecting your firm's policies, attitude, and commitment to QA/QC as well as a statement reflecting proposer's ability to provide agency with meaningful periodic quality reports during production data collection phase of project.
- G.** Experience with Washington State and NWPMA rating guidelines: Submit a description of the proposer's familiarity with relevant Washington State regulations and guidelines, and field experience with data collection using NWPMA rating guidelines.
- H.** Cost: Submit **total** cost to complete all project requirements and deliverables requested by the County. Proposal shall include the unit costs or itemized task costs which were used to determine the total cost for the project.

**Proposal Evaluation:**

The following criteria will form the basis of the selection process of the successful proposer:

- The proposed methodology for accomplishing the work.
- The qualifications of the proposed staff and consultants.

- Meeting and/or exceeding the requirements of the above Scope of Work.
- The proposer's prior experience with pavement surveys of this type.
- Evaluation of prior customer's satisfaction with the work of the proposer.
- Proposer's availability and timeline to perform the project.
- Cost of the service.

Proposals (submittals) will be scored by a County evaluation committee using the criteria set forth above. If deemed necessary, written and/or oral discussions, site visits or any other type of clarification of proposal information may be conducted with the Proposers whose submittals are found to be potentially acceptable.

The County may request oral presentations/interviews with all proposing firms, with a "short list" of proposing firms, or enter into negotiations with the highest scoring firm only.

The County may enter into negotiation discussions with one or more Proposers. The objective of the negotiations shall be to reach agreement on all provisions, including contract terms and conditions of the proposed contract. In the event negotiations are not successful, the next highest ranked firm will be contacted for negotiations. This process may be continued until a contract is successfully negotiated or the County rejects all proposals.

This is not a low bid contract. Proposer's will be evaluated on the totality of their submittal, including proposed costs.

**Method of Payment:**

The Contracting Agency intends to issue this contract on a unit cost per lane-mile basis. Kitsap County and the Proposer will negotiate the final Scope of Work and Budget after the selection process is complete. Failure to reach a satisfactory project cost will result in Kitsap County negotiating with the next most qualified proposer. Progress payments may be made at agreed to intervals upon completion of Scope of Work items.

**Deadline for Submittal of Proposals:**

Three hard copies and one electronic copy (CD or thumb drive) of each proposal is requested.

**Please submit by mail to:**

Colby Wattling, Buyer  
Kitsap County Purchasing Office  
614 Division Street, MS-7  
Port Orchard, WA 98366

OR

**For hand delivery, express, or courier:**

Colby Wattling, Buyer  
Kitsap County Administration Building  
Purchasing Office – Fourth Floor  
619 Division Street  
Port Orchard, WA 98366

Sealed proposals will be accepted **no later than 3:00 pm on THURSDAY MARCH 22, 2018** at which time they will be recorded and forwarded to the County’s Road Superintendent. Any questions regarding this project should be directed to Jacques Dean, Road Superintendent, at 360-337-4671 or [jdean@co.kitsap.wa.us](mailto:jdean@co.kitsap.wa.us)

**PROPOSED SCHEDULE:**

Proposals Due..... MARCH 22, 2018  
Proposal Review..... MARCH 26 – MARCH 30, 2018  
Proposers Interviews (if needed) ..... APRIL 9 – APRIL 13, 2018  
Contract Negotiation..... APRIL 16 – APRIL 27, 2018  
Contract Executed by Board of Commissioners..... JUNE 5, 2018  
Notice to Proceed..... JUNE 6, 2018

KITSAP COUNTY encourages disadvantaged, minority and women owned consultant firms to respond.

An information packet for this project may be obtained at <https://spf.kitsapgov.com/das/Pages/Online-Bids.aspx>

Persons with disabilities may request that this information be prepared and supplied in alternate forms by calling collect 360-337-5777 or TTY 360-337-5455.

The recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 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 consultants 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 qualifications 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

**-SAMPLE CONTRACT DRAFT-**

**CONTRACT FOR PROFESSIONAL SERVICES**

This Contract for Professional Services (the Contract) is entered into by Kitsap County, a municipal corporation, having its principal offices at 614 Division Street, Port Orchard, Washington, 98366 (the County) and \_\_\_\_\_, having its principal offices at \_\_\_\_\_ (the Contractor).

**SECTION 1. EFFECTIVE DATE OF CONTRACT**

The Contract will become effective on \_\_\_\_\_ and terminate on \_\_\_\_\_. In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.

**SECTION 2. SERVICES TO BE PROVIDED**

- 2.1 A description of the services to be performed by the Contractor is set forth in Exhibit A: Description of Services, which is attached to the Contract and incorporated by this reference.
- 2.2 The Contractor 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.
- 2.3 The Contractor will perform the work specified in the Contract according to standard industry practice.
- 2.4 The Contractor will complete its work in a timely manner and in accordance with the schedule agreed to by the parties.
- 2.5 The Contractor will confer with the County from time to time during the progress of the work. The Contractor will prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the County.

**SECTION 3. CONTRACT REPRESENTATIVES**

The County and the Contractor will each have a contract representative. A party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

County's Contract Representative

Contractor's Contract Representative

**SECTION 4. COMPENSATION**

- 4.1 A description of the compensation to be paid to the Contractor is set forth in Exhibit B: Compensation, which is attached to the Contract and incorporated by this reference.

- 4.2 The total amount payable under the Contract by the County to the Contractor in no event will exceed \$\_\_\_\_\_.
- 4.3 Unless otherwise provided in the Contract, the Contractor may submit an invoice to the County once a month for payment of work actually completed to date. Subject to the other provisions of the Contract, the County generally will pay such an invoice within 30 days of receiving it.
- 4.4 The Contractor will be paid only for work expressly authorized in the Contract.
- 4.5 The Contractor will not be entitled to payment for any services that were performed prior to the effective date of the Contract or after its termination, unless a provision of the Contract expressly provides otherwise.
- 4.6 If the Contractor fails to perform any substantial obligation and the failure has not been cured within 10 days following notice from the County, the County may, in its sole discretion and upon written notice to the Contractor, withhold all monies due the Contractor, without penalty, until such failure to perform is cured.

#### **SECTION 5. AMENDMENTS AND CHANGES IN WORK**

- 5.1 In the event of any errors or omissions by the Contractor in the performance of any work required under the Contract, the Contractor will make all necessary corrections without additional compensation. All work submitted by the Contractor will be certified by the Contractor and checked by the Contractor for errors and omissions. The Contractor will continue to be responsible for the accuracy of work even after the work is accepted by the County.
- 5.2 In order to be effective, any Contract renewal, amendment or modification must be in writing, be signed by both parties and be attached to the Contract. Work under a renewal, an amendment or a modification may not commence until the renewal, amendment or modification has been approved by the County and has become effective.

#### **SECTION 6. HOLD HARMLESS AND INDEMNIFICATION**

- 6.1 The Contractor will 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 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 Contractor's acts, errors or omissions in the performance of the Contract. Provided, however, that the Contractor's obligation under this provision will not extend to injury, sickness, disability, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents. Further, if a court of competent jurisdiction determines that this Contract is subject to RCW 4.24.115, then in the event of liability for damages caused by or arising out of the concurrent negligence of the Contractor and the County, its officers, officials, employees or agents, the Contractor's liability shall be only to the extent of the Contractor's negligence.
- 6.2 With regard to any claim against the County, 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 will 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 is clearly agreed and understood by the parties to the Contract 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 will be incorporated, as relevant, into any contract the Contractor makes with any subcontractor or agent performing work under the Contract.

- 6.3 The Contractor's obligations under these provisions 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 7. INSURANCE**

- 7.1 **Professional Legal Liability.** The Contractor will maintain professional legal liability or professional errors and omissions coverage appropriate to the Contractor's profession. The coverage will have a limit of not less than \$1 million per occurrence. The coverage will apply to liability for a professional error, act or omission arising out of the Contractor's services under the Contract. The coverage will not exclude bodily injury or property damage. The coverage will not exclude hazards related to the work rendered as part of the Contract or within the scope of the Contractor's services under the Contract, including testing, monitoring, measuring operations or laboratory analysis where such services are rendered under the Contract.
- 7.2 **Workers' Compensation and Employer Liability.** The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Kitsap County Risk Management Division. If the Contract is for over \$50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than \$1 million.
- 7.3 **Commercial General Liability.** The Contractor will maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to a limit of not less than \$1 million per occurrence. The general aggregate limit will apply separately to the Contract and be no less than \$2 million. The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of the 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.
- 7.4 **Automobile Liability.** The Contractor will maintain automobile liability insurance as follows (check ONE of the following options):
- Not Applicable.
- The Contractor will maintain commercial automobile liability insurance with a limit of not less than \$1 million each accident combined bodily injury and property damage. The aggregate limit will be at least \$2 million. Coverage will include owned, hired and non-owned automobiles.
- The Contractor will maintain automobile liability insurance or equivalent form with a limit of not less than \$100,000 each accident combined bodily injury and property damage. The aggregate limit will be at least \$300,000. If a personal lines automobile 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 the Contract and the certificates of insurance must evidence that these conditions have been met. If the Contractor will use non-owned vehicles in performance of the Contract, the coverage will include owned, hired and non-owned automobiles.
- 7.5 **Miscellaneous Insurance Provisions.**

- A. The Contractor's liability insurance provisions will be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents.
- B. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will include the County, its officers, officials, employees and agents as an additional insured with respect to performance of services.
- C. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will contain no special limitations on the scope of protection afforded to the County as an additional insured.
- D. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees or agents.
- E. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, subject to the limits of the insurer's liability.
- F. The Contractor will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements stated in these provisions.
- G. The insurance limits mandated for any insurance coverage required by the Contract are not intended to be an indication of exposure, nor are they limitations on indemnification.
- H. The Contractor will maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements scheduled to expire before completion of services will be renewed before expiration. If the Contractor's liability coverage is written as a claims-made policy, then the Contractor must evidence the purchase of an extended-reporting period or "tail" coverage for a three-year period after completion of the services.

**7.6 Verification of Coverage and Acceptability of Insurers.**

- A. The Contractor will 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-VII, 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.
- B. The Contractor will furnish the County with properly executed certificates of insurance or a signed policy endorsement which will clearly evidence all insurance required in this Section within 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 may not be canceled, or allowed to expire, except on 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 must be amended so as not to negate the intent of this provision.
- C. The Contractor will 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.
- D. Certificates of insurance will show the certificate holder as Kitsap County and indicate "care of" the appropriate County office or department. The address of the certificate holder will be shown as the current address of the appropriate County office or department.

- E. The Contractor will request that the Washington State Department of Labor and Industries, Workers Compensation Representative, send written verification to Kitsap County that the Contractor is currently paying workers' compensation.
- F. Written notice of cancellation or change will 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
- G. The Contractor or its broker will provide a copy of all insurance policies specified in the Contract upon request of the Kitsap County Risk Manager.

#### **SECTION 8. TERMINATION**

- 8.1 The County may terminate the 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 the Contract upon giving the Contractor 10-days' written notice. In that event, the County will pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice, subject to the other provisions of the Contract.
- 8.2 If funding for the underlying project or matter is withdrawn, reduced or limited in any way after the Contract is signed or becomes effective, the County may summarily terminate the Contract notwithstanding any other termination provision in the Contract. Termination under this provision will be effective upon the date specified in the written notice of termination sent by County to the Contractor. No costs incurred after the effective date of the termination will be paid.
- 8.3 If the Contractor breaches any of its obligations under the Contract, and fails to cure the breach within 10 days of written notice to do so by the County, the County may terminate the Contract. In that event, the County will pay the Contractor only for the costs of services accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor will bear all costs and expenses incurred by the County in completing the work and all damages sustained by the County by reason of the Contractor's breach.

#### **SECTION 9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING**

- 9.1 The Contractor will perform under the Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under the Contract will not be assigned, delegated or subcontracted to any other person or firm without the prior express written consent of the County.
- 9.2 The Contractor 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 Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Contract.

#### **SECTION 10. INDEPENDENT CONTRACTOR**

- 10.1 The Contractor's services will be furnished by the Contractor as an independent contractor and not as an agent, an employee or a servant of the County. 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 the Contract.

- 10.2 The Contractor acknowledges that the entire compensation for the Contract is set forth in the compensation provisions of the Contract and the Contractor 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.
- 10.3 The Contractor will 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 will be or be deemed to be, or act or purport to act, as an employee, agent or representative of the County.

#### **SECTION 11. NONDISCRIMINATION**

The Contractor, its assignees, delegates or subcontractors will not discriminate against any person in performance of any of its obligations under the Contract on the basis of race, color, creed, religion, national origin, age, sex, marital status, veteran status or the presence of any disability.

#### **SECTION 12. OWNERSHIP OF MATERIALS/WORKS PRODUCED**

- 12.1 All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under the Contract will be "works for hire" as defined by the U.S. Copyright Act of 1976 and will be owned by the County. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights.
- 12.2 All design work done by the Contractor will be done on AutoCAD, release 12 or higher or other systems mutually agreed upon, an electronic copy of which will be submitted to the County upon request or at the end of the job. Should a construction project result from the work of the Contractor, the record drawings from the Contractor will be transposed onto the electronic design drawings and submitted to the County.
- 12.3 An electronic copy of all word processing documents will 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.

#### **SECTION 13. PATENT/COPYRIGHT INFRINGEMENT**

The Contractor will 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 Contractor or subcontractor infringes any patent or copyright. The Contractor will be notified promptly in writing by the County of any notice of such claim.

#### **SECTION 14. DISPUTES**

Differences, disputes and disagreements between the Contractor and the County arising under or out of the Contract will be brought to the attention of the County at the earliest possible time so that the matter may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's contract representative or designee. All rulings, orders, instructions and decisions of the County's contract representative will be final and conclusive.

#### **SECTION 15. CONFIDENTIALITY**

The Contractor, its employees, subcontractors and their employees will maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of the Contract, except upon the prior express written consent of the County or an order entered by a court of competent jurisdiction. The

Contractor will promptly give the County written notice of any judicial proceeding seeking disclosure of such information.

#### **SECTION 16. CHOICE OF LAW, JURISDICTION AND VENUE**

- 16.1 The Contract will be construed as having been made and delivered within the State of Washington, and it is agreed by each party that the Contract will be governed by the laws of the State of Washington, both as to its interpretation and performance.
- 16.2 Any action at law, suit in equity or other judicial proceeding arising under or out of the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington.

#### **SECTION 17. MISCELLANEOUS**

- 17.1 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the Contract, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the Contract at a later time.
- 17.2 **Tax Payments.** The Contractor will pay all applicable federal, state and local taxes, fees (including licensing fees) and other amounts.
- 17.3 **Personnel Removal.** The Contractor agrees to remove immediately any of its subcontractors, employees, agents or representatives from assignment to perform services under the Contract upon receipt of a written request to do so from the County's contract representative or designee.
- 17.4 **Legal Compliance.** The Contractor and its subcontractors, employees, agents and representatives will comply with all applicable federal, state and local laws, rules and regulations in their performance under the Contract.
- 17.5 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of the Contract. The Contractor will retain for audit purposes all Contract-related records for at least six years after termination of the Contract.
- 17.6 **Successors and Assigns.** The County, to the extent permitted by law, and the Contractor each bind themselves, their partners, successors, executors, administrators and assigns to the other party to the Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Contract.
- 17.7 **Severability.** If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 17.8 **Entire Agreement.** The parties acknowledge that the Contract is the complete expression of their agreement regarding the subject matter of the contract. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.
- 17.9 **Notices.** Any notices will 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 provision of the Contract. Notice may also be given by facsimile with the original to follow by regular mail.

Notice will be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day.

- 17.10 **Survival.** Those provisions of the Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, but are not necessarily limited to, the following: Sections 6.1-6.3 (Hold Harmless and Indemnification), 8.3 (Termination), 13 (Patent/Copyright Infringement), 14 (Disputes), 15 (Confidentiality), 16.1-16.2 (Choice of Law, Jurisdiction and Venue), 17.1 (Miscellaneous – No Waiver), 17.5 (Miscellaneous – Records Inspection and Retention) and Section 17.7 (Miscellaneous – Severability)

