



## **REQUEST FOR PROPOSALS 2019-115**

**Kitsap County Public Works Department,  
Solid Waste Division  
for  
Consultant Services for Procurement of  
Solid Waste Transfer Station Operations and  
Waste Transportation and Disposal Services**

**Mandatory Site Visit: Friday, March 8, 2019 @ 10:00 a.m.**

**Response Deadline: Thursday, March 28, 2019 @ 3:00 p.m.**

### **PROJECT DESCRIPTION**

Kitsap County Public Works Solid Waste Division (the County) is soliciting proposals from qualified vendors to provide consulting services to assist the County in developing a Request for Proposals (RFP) to solicit for vendors to provide Solid Waste Transfer Station Operations and Waste Transportation and Disposal Services. The selected Consultant will also advise and assist the County in evaluating the proposals received from the drafted RFP and in negotiating the contract with the selected vendor, per the requirements of Revised Code of Washington (RCW) 36.58.090.

The County intends to issue the RFP for transfer station operations and waste transport and disposal services in late 2019, with the awarded contract commencing upon the expiration of the current contract in 2022. The contract for transfer station operations and waste transportation and disposal services will be a public-private partnership between the County and the selected vendor.

Proposers must have experience in solid waste industry standards, including regional and local areas and best practices of solid waste operations and disposal.

### **BACKGROUND**

Kitsap County owns the Olympic View Transfer Station (OVTS) facility for the processing and transportation of solid waste materials for final disposal. OVTS is located at 9380 SW Barney White Road, Bremerton, Washington 98312. OVTS manages municipal solid waste (MSW), as well as specified recyclable materials, designated special waste materials, and limited household hazardous waste (HHW) for proper disposal.

Most solid waste generated in Kitsap County is processed at OVTS, including the unincorporated areas of the county, the Cities of Bainbridge Island, Bremerton, Port Orchard, and Poulsbo, and the U.S. Navy, as well as solid waste generated from portions of neighboring Mason County. Waste is received at OVTS from five (5) commercial garbage haulers, as well as residential and business self-haul customers. OVTS also serves as the temporary consolidation point for MSW from the three (3) County owned and operated Recycling and Garbage Facilities. Special waste generated within Kitsap County and from other jurisdictions is also accepted.

In 2018, OVTS processed approximately 220,000 tons of MSW. All MSW collected at OVTS is currently exported by rail to the Columbia Ridge Recycling and Landfill in Arlington, Oregon. The County's current contract for OVTS operations and waste transport and disposal with Waste Management of Washington, Inc. expires in July 2022.

The County is currently working on a Facility Master Plan for expansion and/or improvements to OVTS to improve traffic flow, increase customer service, and meet future solid waste disposal and diversion needs.

## **SCOPE OF WORK**

- 1) With the current infrastructure in place, the County anticipates that rail transport of waste will likely continue upon execution of a new contract. The County is willing to consider alternative proposals, however, and requests that the selected Consultant provide guidance concerning other reasonable alternatives, considering such factors as cost to the County, cost to the ratepayer, sustainability (including carbon footprint and greenhouse gas emission analysis), and durability with respect to emergencies that could affect disposal.
- 2) The selected Consultant will work with the County (including the Solid Waste Division, Purchasing Division, Risk Management Division, and Prosecuting Attorney's Office) to develop a Request for Proposals (RFP) for operations of OVTS and the transportation and disposal of waste received and processed there. The RFP will include a scope of work and RFP evaluation criteria, as well as the recommended terms and conditions for a proposed contract.

The RFP and contract should include, at a minimum, the following elements:

### **OPERATIONS:**

- Transfer Station operations overview
- Special waste handling
- Equipment purchase, maintenance and repair
- Potential waste diversion options
- Contingency plan for transfer station operations
- Routine building maintenance and repair schedules and responsibilities
- Facility management, oversight and responsiveness, including inspections and surveys

### **WASTE TRANSPORT AND DISPOSAL:**

- Rail line coordination
- Contingency backup services
- Preferred waste disposal method
- Final disposal location, including estimated capacity
- Transport and disposal fee calculations
- Greenhouse gas impact

## GENERAL CONSIDERATIONS:

- Experience of proposer
  - Operational and financial resources
  - Term of contract
  - Contract re-openers
  - System redundancy
  - Organized labor relations
  - Environmental compliance and notice of any non-compliance
  - Other regulatory compliance history (including Safety Regulations, Risk Management, Labor Law, including prevailing wage/Davis-Bacon, etc.)
  - Prior contract service compliance, noting any terminations of contract prior to expiration
  - Emergency situations, including disaster debris readiness and contingency backup services
- 3) Assist the County in evaluation of proposals, including verification and/or validation of calculations by proposers and independent calculations such as costs, carbon footprint and greenhouse gas emissions, forecasted rates, and costs to the County and to the ratepayers.
  - 4) Assist the County in negotiating, drafting, and finalizing a contract for consideration by the Board of Commissioners for approval.
  - 5) Assist County staff in the development of briefing and presentations to the Solid Waste Advisory Committee and Board of Commissioners and other County staff, including attending meetings and responding to questions.
  - 6) Proposers are invited to offer applicable additional services in addition to those identified above.

## MANDATORY SITE VISIT

A mandatory site visit will be held on **Friday, March 8, 2019**. The site visit will begin at 10:00 a.m. at the Randy W. Casteel Public Works Annex and will then proceed as a group to OVTS after a brief introduction and overview. Directions to the Randy W. Casteel Public Works Annex are provided in Attachment A: Mandatory Site Visit Information.

A maximum of three (3) representatives from each potential respondent team are authorized to attend the site visit. A visitor's log will be provided to the Facility Operator in advance of the site visit. In order to plan accordingly, the County requests prospective bidders send notification of their intent to attend the site visit *in writing via email* by **3:00 p.m. on Thursday, March 7, 2019**. Notifications should be sent to:

Patricia Campbell, Senior Program Manager  
Kitsap County Public Works Solid Waste Division  
[PCampbell@co.kitsap.wa.us](mailto:PCampbell@co.kitsap.wa.us)

Photographs are allowed during the site visit. The site visit will involve walking around the facility grounds and is expected to take approximately one (1) hour. Personal protective equipment (PPE) including hard hat, safety vest, and closed-toe shoes are required and must be worn while onsite at OVTS. Those attending should provide their own PPE for the site visit.

## RFP/SOW QUESTIONS

Site operations prevent County staff from answering ANY questions while at OVTS. It is expected that ALL attendees will proceed back to the Randy W. Casteel Public Works Annex for a Question and Answer (Q&A) session after leaving OVTS. Questions must be written down and each question will be addressed during this Q&A session.

All questions and answers will be transcribed by a County representative and included in an Addendum to be published as described below. If information pertaining to the question(s) is readily available during the Q&A session, answer(s) will be provided to all attendees and transcribed as stated above. If information is not available during the Q&A session, the question will be transcribed as stated above and the answer will be included in the Addendum to be published as described below.

Site visit attendees may submit additional questions regarding this solicitation and/or the scope of work in writing via e-mail no later than **3:00 p.m. on Wednesday, March 13, 2019**, and should be directed to:

Patricia Campbell, Senior Program Manager  
Kitsap County Public Works Solid Waste Division  
PCampbell@co.kitsap.wa.us

Responses to all questions received at site visit and via email will be published as an Addendum to this Request for Proposals no later than **Tuesday, March 19, 2019** and posted on the County's website (<https://spf.kitsapgov.com/das/Pages/Online-Bids.aspx>). Failure to request clarification of any inadequacy, omission, or conflict will not relieve the vendor of any responsibilities under this solicitation or any subsequent contract. It is the responsibility of the interested vendor to assure that they receive responses to questions if any are issued.

## PROPOSAL REQUIREMENTS

Submitted proposals must include, at a minimum, the following information:

- Letter of Interest
- Coversheet containing pertinent contact information
- Detailed description of your firm's approach to developing the operations, transportation and disposal RFP and assisting in evaluating submitted proposals. Include a tentative timeline for project completion. Particular attention should be paid to the economics and sustainability of solid waste disposal. Description should not exceed twenty (20) pages.
- Detailed Statement of Qualifications showing your firm's experience in preparing RFPs and contracts for similar projects involving solid waste transfer station operations, waste export, railroad transshipment of solid waste, and selection and negotiations with solid waste disposal vendors within the last ten (10) years. Describe each project in detail and for each project provide up-to-date contact information for the project client, including, but not limited to, name, e-mail and phone number.

- Identification of all key personnel to be assigned to this project, including each staff member’s qualifications and experience, including any subcontracted work. Identify their experience on prior projects including, but not limited to, performing the leadership, management, or creative functions (identify each by their proposed role and include for each their name and up-to-date, pertinent resume). Total personnel information should not exceed ten (10) pages.
- If sub-consultants will be used, identification of the proposed firm(s) and information on their experience, qualification, responsible personnel, and anticipated responsibilities
- An itemized Project Budget:
  - Include the hourly costs associated for staff assigned to this project including, but not limited to, the project manager, financial or operational analysts, and clerical staff. Identify any indirect or overhead cost/charges and out of pocket expenses.
  - Provide your firm's overhead charge for any sub-consultant work and express this as a percentage of the sub-consultant rate.
  - Provide the pricing for each of the major tasks of the Scope of Work separately and, for each, separately identify direct and indirect costs and expenses.
  - Identify if the pricing of any task is dependent on other task(s) and explain this in detail.
  - If additional services are proposed, a detailed description and cost of each such proposed service should be included.
- References and current contact information for at least three (3) current or former customers with service needs and/or programs similar in size and scope to Kitsap County
- Copy of the Proposer’s current Certificate of Liability Insurance showing evidence of proper insurance, including the required levels shown in Attachment B: Sample Contract
- A specific description or list of the exceptional, value-added features or capabilities beneficial to the County that your firm proposes to bring to your performance of the project.
- Any additional information the Proposer feels addresses the selection criteria

## **CONTRACT TERM**

The contract term will be effective upon the date of this contract execution and will terminate when the contract is executed for transfer station operations and the disposal of the County's solid waste.

The selected Consultant shall be expected to adhere to the Goods & Services Contract format and must be able to meet the minimum insurance requirements as shown in Attachment B: Sample Contract.

## SELECTION CRITERIA

Selection shall be based on the following:

1. Proposed approach of RFP development, proposal criteria and evaluation, contract development and negotiations. (30 points)
2. Experience, including quality/relevance of the Proposer's project list for similar projects within the past ten years. (25 points)
3. Qualifications and experience of key personnel to be assigned to perform the project. (20 points)
4. Pricing Proposal. (20 points)
5. Exceptional value, added features, or capabilities the Proposer brings to the project. (5 points)

Should the County determine that interviews are desirable, up to 25 additional points may be granted based on those interviews. Ranking will be made on a total point basis of the proposal and the interview, if conducted.

## PROPOSAL SUBMITTAL

Four (4) copies of the proposal must be submitted with the Request for Proposal (RFP) Number, the date and time of the response deadline and the name and address of the respondent clearly stated on the outside of the envelope.

Proposals for additional Kitsap County open bid opportunities must be submitted separately. Proposals received after the specified date and time will automatically be rejected and will not receive any further consideration. Postmarked, faxed or e-mailed proposals will not be accepted.

Please submit by mail to:  
Colby Wattling, Buyer  
Kitsap County Purchasing Office  
614 Division Street, MS-7  
Port Orchard, WA 98366

**OR**

For hand deliver, express or courier:  
Colby Wattling, Buyer  
Kitsap County Administration Building  
Purchasing Office – Fourth Floor  
619 Division Street  
Port Orchard, WA 98366

**Proposals must be received by 3:00 pm on Thursday, March 28, 2019.**

All costs for proposal preparation and negotiation incurred by the proposer, whether or not they lead to execution of a contract and agreement with Kitsap County, must be borne entirely and exclusively by the proposer.

Kitsap County reserves the following rights for acceptance, modification, and/or rejection of submitted proposals such as:

1. Rejection of any or all proposals.
2. Rejection of any proposal not in compliance with proposal requirements.
3. Providing of addenda, amendments, supplementary material or other modifications to the proposal specifications.
4. Cancellation of this Request for Proposals without issuance of another Request for Proposals.
5. Issuance of subsequent requests for new proposals.
6. Request for submission of further information by the proposer in order to complete evaluation by Kitsap County.
7. Determination to select one or more proposers for attempted negotiation of a final contract(s). Decisions made by Kitsap County will be final.

## ATTACHMENT A

### MANDATORY SITE VISIT INFORMATION

#### DIRECTIONS TO RANDY W. CASTEEL PUBLIC WORKS ANNEX FOR THE MANDATORY SITE VISIT

The mandatory site visit will be held on **Friday, March 8, 2019**. The site visit will begin at 10:00 a.m. at the Randy W. Casteel Public Works Annex, located at 8600 SW Imperial Way, Bremerton, Washington 98312, in the Olympic View Industrial Park, and will then proceed as a group to OVTS after a brief introduction and overview. Directions are provided below.

***Personal protective equipment (PPE) including hard hat, safety vest, and closed-toe shoes are required and must be worn while onsite at OVTS. Those attending should provide their own PPE for the site visit.***

##### Directions from the North (Silverdale/Bremerton):

Take Highway 3 South into Gorst. Exit right onto Highway 3 South towards Belfair/Shelton. As you approach the Bremerton National Airport, take Exit 28 at SW Barney White Road and enter the Olympic View Industrial Park. At the four-way stop, continue straight through the intersection and follow SW Barney White Road to the next intersection with SW Imperial Way. The Randy W. Casteel Public Works Annex is located on the southwest corner of the intersection.

##### Directions from the South (Tacoma/Gig Harbor):

Take Highway 16 West towards Bremerton/Port Orchard. As you enter Gorst, exit left onto Highway 3 South towards Belfair/Shelton. Follow the exit towards the stop light and turn left onto Highway 3 South. Continue on Highway 3 South towards Belfair. As you approach the Bremerton National Airport, take Exit 28 at SW Barney White Road and enter the Olympic View Industrial Park. At the four-way stop, continue straight through the intersection and follow SW Barney White Road to the next intersection with SW Imperial Way. The Randy W. Casteel Public Works Annex is located on the southwest corner of the intersection.

##### Directions from the East (Shelton/Belfair):

Take Highway 3 North towards Bremerton/Port Orchard. As you approach the Bremerton National Airport, make a left at the light for SW Imperial Way and enter the Olympic View Industrial Park. At the four-way stop, go left onto SW Barney White Road and follow SW Barney White Road to the next intersection with SW Imperial Way. The Randy W. Casteel Public Works Annex is located on the southwest corner of the intersection.

##### Directions from the Seattle/Bremerton Ferry Terminal:

Follow the ferry traffic south onto Burwell Street (State Route 304 N). As you emerge from the tunnel, continue on South 304 for approximately 1.5 miles through several traffic lights. Turn left onto N Callow Ave (State Route 304 S) and continue to Highway 3 South toward Belfair/Shelton. As you enter Gorst, exit RIGHT onto Highway 3 South toward Belfair/Shelton. As you approach the Bremerton National Airport, take Exit 28 at SW Barney White Road and enter the Olympic View Industrial Park. At the four-way stop, continue straight through the intersection and follow SW Barney White Road to the next intersection with SW Imperial Way. The Randy W. Casteel Public Works Annex is located on the southwest corner of the intersection.

**ATTACHMENT B**  
**SAMPLE CONTRACT**

**CONTRACT NO. [Contract Number]**  
**Contract for Goods and Services**

This Goods and Services Contract ("Contract") is between Kitsap County, a Washington state political subdivision, having its principal offices at 614 Division Street, Port Orchard, Washington 98366 ("County") and [Contractor Name], a [Contractor Type] having its principal offices at [Contractor Addr] ("Contractor").

In consideration of the terms and conditions of this Contract, the parties agree as follows:

**SECTION 1. TERM AND EFFECTIVE DATE**

- 1.1. The Contract will become effective on [Contract Effective Date] and terminate on [Contract End Date], unless terminated or extended. The Contract may be extended for additional consecutive terms at the mutual agreement of the parties, not to exceed a total of [Contract Length]. 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. DEFINITIONS**

- 2.1. Contract means this Contract and any exhibits, amendments, specifications, schedule, and solicitation documents accepted by the County, and Attachments A (Scope of Work), B (Compensation)[List Additional Attachments, if any]. All such documents are incorporated herein in full by this reference.
- 2.2. Defect means a failure of a Good or Service to strictly comply with the Contract.
- 2.3. Goods means all products, materials, and Deliverables described in the Contract.
- 2.4. Deliverables means all things, materials, documents, information, and items developed by or on behalf of the Contractor or its Personnel in the course of or in connection with the supply of the Goods and Services in any form whatsoever (including electronic form) and includes all inventions, models, drawings, plans, artwork, designs, logos, reports, advices, proposals, and records, including all things described as deliverables in the Scope of Work.
- 2.5. Personnel means the Contractor and its employees, subcontractors, volunteers, interns, agents, and any other person utilized by the Contractor directly or indirectly or through third parties to provide goods and/or perform any services under the Contract. The Contractor shall have and maintain complete responsibility for its Personnel. The Contractor remains liable for all acts, errors, and omissions of its Personnel as if they were the acts or omissions of the Contractor. The Contractor will remove any Personnel performing services upon a request from the County.
- 2.6. Services means the work to be performed and deliverables as described in the Contract.

**SECTION 3. SCOPE OF WORK, COMPENSATION, AND PAYMENT**

- 3.1. Scope of Work. The Contractor shall provide all Goods and Services as identified in Attachment A, Scope of Work, in compliance with the Contract.

- 3.2. Compensation. The maximum amount of compensation paid under the Contract by the County shall not exceed \$[Contract Amount]. A description of the compensation is provided in Attachment B: Compensation.
- 3.3. Price. The price payable for the Goods and Services shall be as provided in the Contract and unless otherwise stated shall include all charges for packing, shipping, insurance, and delivery of the Goods to the location identified by the County, and any taxes, levies, duties and applicable tax. No increase in the price may be made (whether on account of increased costs of material, labor, transport or fluctuation in rates of exchange or otherwise) without the prior written consent of the County.
- 3.4. Invoice. The Contractor will submit one (1) invoice to the County per month for payment of Goods and Services completed to date, unless otherwise agreed. Each invoice shall identify the Goods and Services provided, dates the services were provided, and any other information requested by the County. In the event the County disputes any aspect of an invoice, the County may upon providing written notice to the Contractor, withhold or suspend payment of the disputed part of the invoice until the dispute is resolved. The Contractor shall continue to perform its obligations under this Contract in the event of such a dispute.
- 3.5. Payment. The County will make reasonable efforts to pay the Contractor within thirty (30) days from the date the County receives a complete and correct invoice, subject to Section 4. All funds disbursed to the Contractor by Direct Deposit via Automated Clearing House (ACH), unless agreed otherwise.
- 3.6. Insurance/W-9 Compliance. All payments are expressly conditioned upon the Contractor's compliance with all insurance requirements and submission of a current IRS W-9 form to the County. Payments may be suspended in full in the event of noncompliance. Payments will be released upon compliance, subject to Section 4.
- 3.7. Restrictions. The Contractor will only be entitled to receive payment for Goods and Services expressly authorized in the Contract, which are received during the Contract term, and accepted by the County. The Contractor acknowledges oral requests and approvals of additional services or additional compensation are prohibited and unenforceable. Advance payments are not authorized.

#### **SECTION 4. TERMINATION**

- 4.1. For Convenience. The County may terminate the Contract, in whole or in part, without penalty, by giving ten (10) days prior notice to the Contractor.
- 4.2. For Funding issues. If any funding for Goods or Services is not available, withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on the funding after the Contract becomes effective, the County may in its discretion: (1) accept a decreased price offered by the Contractor; (2) terminate the Contract; or (3) terminate the Contract and re-solicit the requirements.
- 4.3. Termination for Default. The County may immediately terminate the Contract, in whole or part, due to the Contractor's failure to comply with any Contract term or condition, or to make satisfactory progress in performing the Contract.

- 4.4. Procedures. Upon receipt of notice of termination, the Contractor shall stop all Goods and Services as directed in the notice and minimize further costs. All goods, materials, documents, data, and reports prepared by the Contractor under the Contract shall become the property of, and delivered to, the County on demand. A final payment will be made to the Contractor only for Goods and Services provided and accepted by the County up to the effective date of termination. No costs incurred after the effective date of termination will be paid.

## **SECTION 5. STANDARDS, ACCEPTANCE, RISK OF LOSS, WARRANTY**

- 5.1. Warranties. The Contractor warrants and represents to the County as follows:

- 5.1.1. The Contractor has free and encumbered title and the right to sell the Goods to the County.
- 5.1.2. All Goods will: i) be free from defects, and errors or omissions in design, materials, and workmanship; ii) comply in every respect with any relevant specification, industry standards, samples, drawings, and the Contract; iii) be newly manufactured, of first quality and not end of life; iv) adequately marked, labeled, contained, and packaged to prevent damage or deterioration during transport; v) be able to be used, assembled, handled, stored, dismantled, decommissioned, and disposed of without risk to the health or safety of any person; vi) be of good and merchantable quality; and vii) of satisfactory quality and fit for the purpose for which the County has made known to the Contractor, or, where the County does not make any purpose known to the Contractor, for the purpose for which the Goods are normally used.
- 5.1.3. All Services will: i) be performed with due care, diligence, and skill, in a professional, efficient and safe manner, and to best industry standards; ii) be performed by appropriately qualified and experienced Personnel; iii) be fit for the ordinary purpose for which they are intended; and iv) comply with every relevant specification, industry standards, and the Contract. The Contractor shall devote such time, energy, attention, and efforts to the Services provided under this Contract in order to promptly, efficiently, and satisfactorily provide all Services.
- 5.1.4. The Contractor will do all acts, matters, and things that may be necessary for and incidental to the proper and efficient supply of the Goods and Services. The Contractor and its Personnel will comply with all laws and standards relating to the supply of the Goods and Services, including the County's standards, policies, procedures, and directions, and obtain all necessary licenses, consents, permits, and approvals to supply the Goods and Services. The Contractor shall keep the County informed of the progress of the Goods and Services in the manner, method, and intervals requested by the County.
- 5.1.5. The Contractor and its Personnel: i) are competent and have all necessary and appropriate skills, training, background, and valid qualifications to carry out the duties and responsibilities of their positions and the tasks allocated to them; ii) will behave in a professional and responsible manner at all times and perform the Services with due care and skill and in accordance with best industry practice; iii) understand and agree to the requirements of this Contract which are relevant to them; and iv) when accessing the County locations, will comply with any security, occupational health, and safety and other policies and procedures specified by the County from time to time.

- 5.1.6. The Contractor will ensure that the County will obtain the benefit of all warranties given by all manufacturers, subcontractors, suppliers, and other relevant third parties in relation to the Goods and Services; and that the supply, and use, of any Goods and Services does not and will not contravene any laws or infringe the rights of a third party (including any Intellectual Property Rights). During any applicable Warranty Period, the Contractor shall, at no additional charge to the County and without prejudice to any other rights or remedies of the County, repair or replace any Goods or Services that do not comply with any of the applicable warranties.
- 5.2. Inspection, Testing and Acceptance. Prior to delivery of any Goods, the Contractor must conduct pre-installation testing to confirm that all Goods have no apparent defects. All Goods and Services are subject to final inspection and acceptance by the County. In the event of nonconforming Goods and/or Services, the County may elect to do any or all of the following: a) waive the non-conformance; b) stop the work immediately; c) require the Contractor to bring Goods and Services into compliance; and/or d) terminate the Contract and seek all remedies available in law and in equity. The Contractor agrees to diligently correct any work and replace any Goods and Services or make alternations necessary to meet specification requirements free of cost to the County. Inspection, testing, acceptance, or use of the Goods and Services will not affect the Contractors obligation under the warranty. All warranties shall survive inspection, testing, acceptance, and use.
- 5.3. Title and Risk of Loss. Title to all Goods and Services will vest in the County upon delivery to the County unless expressly agreed otherwise. Risk of loss for Goods will pass to the County when the County actually receives and accepts the Goods at the point of delivery. All work shall be performed at the Contractor's own risk, and the Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work. All Goods failing to conform to the Contract shall be held at the Contractor's risk and may be returned to the Contractor.
- 5.4. Damage to County Property. The Contractor shall perform all work so that no damage to any County buildings or property results. The Contractor shall at its sole expense repair any damage caused to the satisfaction of the County. The Contractor shall take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, the Contractor shall at its sole expense, repair and finish in a manner which matches existing material as approved by the County.
- 5.5. Product Discontinuance. Should a product or model identified in the Contract be subsequently discontinued by the manufacturer, the County at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request prior permission from the County to substitute a new product or model and shall provide the County with documentation from the manufacturer confirming that the product or model has been discontinued and identifying the names of the replacement product or model. All replacements shall meet or exceed all Contract specifications, be compatible with all the functions or uses of the discontinued product or model, and be at a price equal to or less than the discontinued product or model.
- 5.6. Guarantee. All Goods and Services shall be guaranteed for a minimum period of one (1) year from the date of acceptance by the County against defects in material and workmanship. The Contractor at its sole expense shall be responsible for the repair or replacement of any defects identified during that period, unless the defect was caused solely by misuse of the County.

## SECTION 6. INDEMNIFICATION

- 6.1. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all Claims resulting from or arising out of the performance of the Contract, whether such Claims arise from the acts, errors, or omissions of the Contractor, its Personnel, third parties, or anyone directly or indirectly employed by any of them, or anyone for whose acts, errors, or omissions for which any of them may be liable. It is the specific intent of the parties that the Indemnitees shall, in all instances except Claims arising from the sole negligence or willful misconduct of the Indemnitees, be indemnified by the Contractor from and against any and all Claims.
- 6.2. With regard to any Claim against any Indemnitee by any of the Contractor's Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification obligation shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or the Contractor's Personnel under workers compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, the Contractor expressly waives its immunity under Title 51 RCW (Industrial Insurance) and acknowledges this waiver was mutually negotiated by the parties.
- 6.3. Claim. "Claim" means all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, or other liabilities of any kind or nature whatsoever, including without limitation, all costs including costs of Claim processing, investigation, reasonable attorneys' fees, consequential damages, and punitive damages, for any personal or bodily injury, sickness, disease, disability, or death, or loss or damage to tangible or intangible business or property, including the loss of use. Claim includes any infringement, violation, or misappropriation of copyright, patent, trademark, or other proprietary rights of any third parties.
- 6.4. Obligations/Notice of Claim. The County will provide the Contractor notice of the assertion of liability by a third party that may give rise to a Claim by the County against the Contractor based on the indemnity contained herein. The Contractor shall respond to the County's tender of defense of a claim in writing within fourteen (14) calendar days from the notice date and will advise the County if the Contractor accepts or denies tender of the claim. The County may in its discretion withhold all or part of any payment due the Contractor under the Contract until the Contractor responds to such notice. The Contractor shall keep the County timely and fully informed through all stages of the defense and promptly respond to and comply with the County's requests for information. The County at all times reserves the right but has no obligation to participate in the defense and settlement of any Claim. Such participation shall not constitute a waiver of the Contractor's indemnity and defense obligations under the Contract. The Contractor shall not settle or compromise any Claim in any manner that imposes any obligations upon the County without the prior written consent of the County. The Contractor shall promptly advise the County of any occurrence or information known to the Contractor that could reasonably result in a Claim against the County. The violation of any provisions of Section 6, including improper refusal to accept tender, is a material breach.

## SECTION 7. INSURANCE

- 7.1. Minimum Insurance Required. The Contractor and its subcontractors, if any, shall procure and maintain, until all of Contract obligations have been fully discharged, including any warranty period, all insurance required in Section 7 with an insurance company duly licensed in Washington State with an A.M. Best Company ratings of not less than A-VIII and a category rating of not less than "8", with policies and forms satisfactory to the County. Use of alternative insurers requires prior written approval from the County. Coverage limits shall be at minimum the limits identified in Section 7, or the limits available under the policies maintained by the Contractor without regard to the Contract, whichever is greater.
- 7.2. Professional Liability. *(Check one of the following options):*
- Not applicable.
  - Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage will apply to liability for professional error, act or omission arising out of or in connection with the Contractor's Services under the Contract. The coverage shall not exclude bodily injury, property damage, or 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.
- 7.3. Commercial General Liability ("CGL"). Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include personal injury, bodily injury, and property damage for premise-operations liability, products/completed operations, personal/advertising injury, contractual liability, independent contractor liability, and stop gap/employer's liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required herein, without the prior written approval of the County. The certificate of insurance for the CGL policy shall expressly cover the indemnification obligations required by the Contract.
- 7.4. Automobile Liability. *(Check one of the following options):*
- Contractor shall maintain personal automobile insurance on all vehicles used for Contract purposes as required by law.
  - Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include liability for any and all owned, hired, and non-owned vehicles. Coverage may be satisfied with an endorsement to the CGL policy.
  - Not less than \$100,000 per occurrence and \$300,000 annual aggregate. If a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If the Contractor will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.

- 7.5. Umbrella or Excess Liability. The Contractor may satisfy the minimum liability limits required for the CGL and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the annual aggregate limit shall not be less than the highest "Each Occurrence" limit for either CGL or Automobile Liability. The Contractor agrees to an endorsement naming the County as an additional insured as provided in Section 7, unless the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- 7.6. Workers' Compensation and Employer Liability. If applicable, the Contractor shall maintain workers' compensation insurance as required under the Title 51 RCW (Industrial Insurance), for all Contractor's Personnel eligible for such coverage. If the Contract is for over \$50,000, then the Contractor shall also maintain employer liability coverage with a limit of not less than \$1,000,000.
- 7.7. Primary, Non-Contributory Insurance/Subcontractors. The Contractor's and its subcontractors' insurance policies and additional named insured endorsements will provide primary insurance coverage and be non-contributory. Any insurance or self-insurance programs maintained or participated in by the County will be excess and not contributory to such insurance policies. All Contractor's and its subcontractors' liability insurance policies must be endorsed to show as primary coverage. The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All subcontractors shall comply with all insurance and indemnification requirements herein.
- 7.8. Review of Policy Provisions. Upon request, the Contractor shall provide a full and complete copy of all requested insurance policies to the County. The County reserves the right without limitation, but has no obligation to revise any insurance requirement, or to reject any insurance policies that fail to meet the requirements of the Contract. The County also has the right, but no obligation to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington. The County has the right to request and review the self-insurance retention limits and deductibles, and the Contractor's most recent annual financial reports and audited financial statements, as conditions of approval. Failure to demand evidence of full compliance with the insurance requirements or failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver, of its obligation to maintain all the required insurance at all times as required herein.
- 7.9. Waiver of Subrogation. In consideration of the Contract award, the Contractor agrees to waive all rights of subrogation against the County, its elected and appointed officials, officers, employees, and agents. This waiver does not apply to any policy that includes a condition that expressly prohibits waiver of subrogation by the insured or that voids coverage should the Contractor enter into a waiver of subrogation on a pre-loss basis.
- 7.10. Additional Insured, Endorsement, and Certificate of Insurance. All required insurance coverage, other than the workers' compensation and professional liability, shall name the County, its elected and appointed officials, officers, employees, and agents, as additional insureds and be properly endorsed for the full available limits of coverage maintained by the Contractor and its subcontractors. Endorsement is not required if the Contractor is a self-insured government entity, or insured through a government risk pool authorized by Washington State.

The Certificate of Insurance and endorsement shall identify the Contract number and shall require not less than thirty (30) days' prior notice of termination, cancellation, nonrenewal, or reduction in coverage. At the time of execution, the Contractor shall provide the Certificate of Insurance, endorsement, and all insurance notices to: Risk Management Division, Kitsap County Department of Administrative Services, 614 Division Street, MS-7, Port Orchard, WA 98366.

- 7.11. No Limitation on Liability. The coverage limits identified herein are minimum requirements only and will not in any manner limit or qualify the liabilities or obligations of the Contractor under the Contract. All insurance policy deductibles and self-insured retentions for policies maintained under the Contract shall be paid by the Contractor. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its elected and appointed officials, officers, employees, or agents. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, subject to the limits of the insurer's liability.
- 7.12. Claims-Made. If the Contractor's liability coverage is written as a claims-made policy, the Contractor shall purchase an extended-reporting period or "tail" coverage for a minimum of three (3) years following completion of the performance or attempted performance of the provisions of this Contract.

#### **SECTION 8. NOTICE AND CONTRACT REPRESENTATIVES**

- 8.1. Any notices, demands, and other communications required by the Contract will be effective if personally served upon the other party or if mailed by registered or certified mail, postage prepaid, return receipt requested, to the other party's Contract Representative at the address below. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three (3) 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. Each party will designate a "Contract Representative", which may be changed by providing fifteen (15) days prior notice to the other party.

##### County's Contract Representative

Name: [County Rep Name]  
Title: [County Rep Title]  
Address: [County Rep Addr]  
Phone: [County Rep Phone]  
Email: [County Rep Email]

##### Contractor's Contract Representative

Name: [Contractor Rep Name]  
Title: [Contractor Rep Title]  
Address: [Contractor Rep Addr]  
Phone: [Contractor Rep Phone]  
Email: [Contractor Rep Email]

## **SECTION 9. AMENDMENT, SUBCONTRACT, INDEPENDENT CONTRACTOR**

- 9.1. Amendment. No amendment or modification to the Contract will be effective without the prior written consent of the authorized representatives of the parties.
- 9.2. Successors and Assigns. To the extent permitted by law, the Contract is binding on the parties' respective partners, successors, assigns, executors, and legal representatives.
- 9.3. Assignments. Neither party shall assign or transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law, any right, duty, obligation, or remedy under the Contract without the prior written consent of the other.
- 9.4. Subcontracts. The Contractor shall provide the County a list of all subcontractors and the subcontractors' proposed responsibilities. "Subcontract" means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any Good or Service for the performance of the Contract. All subcontracts shall incorporate by reference the terms and conditions of this Contract. The Contractor is solely responsible for the performance and payment of its subcontractors.
- 9.5. Independent Contractor. Each party under the Contract shall be for all purposes an independent contractor. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. Neither the Contractor nor its Personnel shall be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County. The Contractor shall have complete responsibility and control over its Personnel. The Contractor and its Personnel shall have no County employee-type benefits of any kind whatsoever, including without limitation, insurance, pension plan, vacation pay, or sick pay, or other right or privilege afforded to County employees. The Contractor and its Personnel shall be responsible for payment of all insurance, taxes, and benefits.

## **SECTION 10. OWNERSHIP, CONFIDENTIAL INFORMATION, AND BREACH**

- 10.1. Ownership. Any and all work product, deliverable, equipment, or any other materials created, prepared, constructed, assembled, made, performed, or otherwise produced by the Contractor or its Personnel for delivery to the County under this Contract are the sole property of the County, must be delivered to the County upon termination of the Contract, or final payment to the Contractor, and shall not be used or released by the Contractor without prior authorization from the County. The Contractor agrees all such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material the Contractor uses to perform this Contract that is not created, prepared, constructed, assembled, made, performed, or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of the Contract.

- 10.2. Personal Identifying Information/Breach. The Contractor shall ensure all personal identifying information, financial information, and other information made available to the Contractor by, or on behalf of, the County, or acquired or developed by the Contractor in the performance of the Contract (unless publicly available) is kept confidential, secured, and protected to prevent unauthorized access. In the event of unauthorized access or other security breach, the Contractor shall immediately notify the County and at its sole expense comply with all requirements of RCW 19.255.010. Upon Contract expiration or termination all confidential information shall be returned to the County or destroyed at the County's discretion.

#### **SECTION 11. REPRESENTATIONS AND RECORDS**

- 11.1. No Fee. The Contractor certifies it has not received, nor paid or agreed to pay another person or entity, other than a bona fide employee working exclusively for the Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract.
- 11.2. Licenses, Permits, and Taxes. The Contractor shall, at its own expense, have and maintain all licenses, registrations, permits, and approvals necessary for the performance of the Contract, including without limitation, registration with the Washington State Department of Revenue. The Contractor shall pay all fees (including licensing fees) and applicable federal, state, and local taxes.
- 11.3. Nondiscrimination. The Contractor and its Personnel shall not discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and the Americans with Disabilities Act, and as amended, in the performance of the Contract.
- 11.4. Public Records. The Contractor acknowledges the Contract and all records associated with the Contract shall be available to the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW ("Act"). To the extent that records in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor shall make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record, whether electronic or hard copy, to be protected from disclosure under the law, the Contractor shall clearly identify all specific information it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information that has been identified by the Contractor as protected from disclosure and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligation will be to make a reasonable effort to notify the Contractor of the request and the date that such protected information will be released to the requester unless the Contractor obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County will not be liable to the Contractor for releasing records in compliance with the Act, this subsection or court order.
- 11.5. Advertising. The Contractor shall not advertise or use the name, trademark, or logo of the County, without the County's prior written consent.

- 11.6. Audit and Record Retention. The Contractor and its Personnel shall retain all records relating to performance of the Contract for six (6) years after completion of the Contract or longer if requested by the County. All records shall be subject to inspection and audit by the County. Upon request, the Contractor shall promptly make all records available to the County at no cost to the County.

## **SECTION 12. RIGHTS AND REMEDIES**

- 12.1. Responsibility for Correction. Any defects of design, workmanship, or materials that would result in non-compliance with the Contract specification or law shall be fully corrected by the Contractor (including parts, labor, shipping or freight) without cost to the County. This includes any necessary labor to remove, repair, install, or to ship or transport any item to a point of repair and return.
- 12.2. Default in One Installment. The Contractor shall deliver conforming goods in each installment or lot of this Contract and may not substitute nonconforming goods. Delivery of nonconforming goods or a default of any nature, at the option of the County, shall constitute a breach of the Contract as a whole.
- 12.3. Failure to Perform. If the County determines the Contractor has failed to perform any material obligation of the Contract, and such failure has not been cured within ten (10) days, following notice from the County, the County may without penalty, in its discretion, withhold all monies due the Contractor until such failure is cured to the satisfaction of the County.
- 12.4. Right of Assurance. If the County in good faith has reason to believe the Contractor does not intend or is unable to perform, or continue performing under the Contract, the County may demand in writing that the Contractor give a written assurance of intent to perform. Should the Contractor fail to provide adequate assurance to the reasonable satisfaction of the County, by the date specified the demand, the County may terminate all or part of the Contract and pursue all other rights and remedies available at law and in equity.
- 12.5. Responsibility for Errors. All Goods and Services shall be provided to the satisfaction of the County and as required herein. Upon request, the Contractor shall provide any clarifications and/or explanations regarding any Goods and Services provided as required by the County, at no cost to the County. In the event of noncompliance, error or omission under the Contract, the Contractor shall, at no cost to the County, provide all necessary design drawings, estimates, and all other services the County deems necessary to rectify and correct the matter to the satisfaction of the County. The Contractor shall continue to be responsible for the accuracy of Goods and Services, even after accepted by the County and the termination or expiration of the Contract.
- 12.6. Remedies. All County rights and remedies under the Contract are in addition to, and shall in no way limit, any other rights and remedies that may be available to the County at law and in equity.
- 12.7. Right of Off-Set; Reimbursement. The County shall be entitled to offset against any sums due the Contractor and reimbursement from the Contractor for any defects, damages, expenses, and any costs whatsoever incurred by the County due to the Contractor's nonconforming performance or failure to perform under the Contract.

- 12.8. Waiver. Either party's failure to insist upon the strict performance of any provision of the Contract, or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach, will not constitute a waiver of any right or remedy under the Contract unless expressly so agreed in writing by an authorized representative.
- 12.9. The County may, upon termination of the Contract, procure on terms and in the manner that it deems appropriate, Goods and Services to replace those under the Contract. The Contractor shall be liable to the County for any and all costs, expenses, penalties, and fees incurred by the County in procuring Goods and Services in substitution for those due from the Contractor.

### **SECTION 13. GOVERNING LAW, DISPUTES**

- 13.1. Governing Law; Venue. The Contract will be governed in all respects by the laws of the Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington or as provided by RCW 36.01.050.
- 13.2. Disputes. Conflicts and disagreements between the parties related to the Contract will be promptly brought to the attention of the County. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's Contract Representative. All decisions of the County's Contract Representative are considered final; however, nothing herein prohibits either party from seeking judicial relief.

### **SECTION 14. PREVAILING WAGE**

Does Not Apply

### **SECTION 15. GENERAL PROVISIONS**

- 15.1. Force Majeure. Neither party shall be liable to the other or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform any of their respective obligations in relation to the Contract, if the delay or failure was due to any cause beyond said party's reasonable control including, but not limited to, any act of God, government or state action, war, fire, civil commotion, insurrection, or industrial action of third parties out of the Contractor's control.
- 15.2. Time of the Essence. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 15.3. Implied Contract Terms. Each provision of law and any terms required by law to be in the Contract are made a part of the Contract as if fully stated in it.
- 15.4. Headings/Captions. Headings and captions are for convenience only and are not a part of the Contract and do not limit or amplify the terms and provisions hereof.
- 15.5. No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.
- 15.6. No Third-Party Beneficiary. No provision of the Contract is intended to, nor will it be construed to, create any third-party beneficiary or provide any rights or benefits to any person or entity other than the County and the Contractor.

- 15.7. 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.
- 15.8. Counterparts. The Contract may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
- 15.9. Non-Exclusive Contract. The County may obtain the same or similar goods or services that are the subject of this Contract from another source or have its own employees perform the same or similar services contemplated by the Contract.
- 15.10. Survival. Those provisions of this Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, without limitation: Sections 5 (Standards, Acceptance, Risk of Loss, Warranty), 6 (Indemnification), 7 (Insurance), 9 (Amendment, Subcontract, and Independent Contractor), 10 (Ownership, Confidential Information and Breach), 12 (Rights and Remedies), 13 (Governing Law, Disputes), and 15 (General Provisions).
- 15.11. Entire Agreement. The parties acknowledge the Contract is the product of negotiation between the parties and represents the entire agreement of the parties with respect to its subject matter. All previous agreements, oral or written, are hereby revoked and superseded by the Contract.
- 15.12. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Contract on behalf of the party for whom they sign.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

CONTRACTOR NAME

KITSAP COUNTY, WASHINGTON

\_\_\_\_\_  
Signature

\_\_\_\_\_  
SIGNATORY NAME  
SIGNATORY TITLE

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

CONTRACTOR NAME

BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON

\_\_\_\_\_  
Signature

\_\_\_\_\_  
ROBERT GELDER, CHAIR

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
**EDWARD E. WOLFE, COMMISSIONER**

\_\_\_\_\_  
Title

\_\_\_\_\_  
**CHARLOTTE GARRIDO, COMMISSIONER**

**ATTEST:**

\_\_\_\_\_  
**DANA DANIELS, CLERK OF THE BOARD**

