

	<p><b>EXHIBIT I</b></p> <p>KC- _____</p> <p><b>CORRECTIONAL COMMISSARY AND BANKING SERVICES CONTRACT</b></p>	<p><b>Purchasing Department</b> 619 Division St., MS-7 Port Orchard, WA 98366 Phone: (360) 337-4789 Purchasing@co.kitsap.wa.us</p>
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This Correctional Commissary and banking 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 \_\_\_\_\_ a \_\_\_\_\_ corporation.

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 \_\_\_\_\_ and terminate on \_\_\_\_\_ unless terminated or extended by the parties. The cutover date from the current vendor to the Contractor shall occur December 32, 2022, at midnight. The Contract may be extended for additional consecutive terms at the mutual agreement of the parties. 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 Definitions. The following definitions shall apply for all purposes, unless otherwise defined herein.

- A. “Contract” means all Solicitation documents, which include the request for proposal instructions, scope of work, all exhibits, specifications, Attachment A (Compensation), Attachment B (Scope of Work), Attachment C (Contractor’s Proposal), and Attachment D (Prevailing Wage), County clarifications and addenda, the Contractor’s proposal as accepted by County, the agreement signed by the parties, and all appendices, and amendments referenced herein and therein, all of which are incorporated in full by reference.
- B. “Data” means all data, information, content, and other materials stored or transmitted using the Software, excluding Contractor data.
- C. “Defect” means a failure of a Good or Service to strictly comply with the Contract.
- D. “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, advice, proposals, and records, including all things described as deliverables in the Scope of Work.

- E. “Goods” means all products, materials, and Deliverables described in the Contract.
- F. “Net Sales” means all gross sales income derived from the sale of commissary services and products to Jail inmates, less sales or use tax and authorized returns. This includes all Internet Sales, and all Advertising Revenues specific to the internet web page, and lobby kiosks. Not included: revenue from the sale of non-commissionable items such as U.S. postage Stamps, hygiene products, and OTC medications and sales tax.
- G. “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.
- H. “Solicitation” means Request for Proposal 2022-129
- I. “Services” means the work to be performed and deliverables to be provided to the Jail 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 the Contract in compliance with the Contract. Contractor shall cooperate with the County and County staff in the performance of this Contract.
- 3.2. Compensation. County will receive 20 percent of the Net Sales. Commissions shall be paid to the County monthly within 15 days after the close of the month and shall be accompanied by a detailed commission report and signed statement of accuracy by Bidder’s authorized representative. A late charge of five percent (5%) per month shall be assessed on all commission payments not made within a 30-day period.
- 3.3. Invoice. If applicable, the Contractor will submit one invoice to the County per month for payment of Goods and Services, if applicable, 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. Should the County dispute 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.
- 3.4. Payment. If applicable, 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.

- 3.5. 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, unless otherwise provided herein.
- 3.6. 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 for convenience, in whole or in part, without penalty, by giving 120-days prior notice to the Contractor.
- 4.2. Termination for Default. In the event of a Default (due to the Contractor's failure to comply with any Contract term or condition, or to make satisfactory progress in performing the Contract), the County may terminate the Contract, in whole or part, if Contractor fails to cure the Default within a reasonable time ("Cure Period") following notice of the Default. Absent an agreement to the contrary, a reasonable Cure Period shall be 21 calendar days.
- 4.3. Procedures on Termination
  - A. Upon receipt of notice of termination, Contractor shall continue to perform, in accordance with the requirements of the Contract up to the date of termination as directed in the termination notice, notify Staff of the termination date, and minimize further costs.
  - B. The County shall pay Contractor its reasonable and allowable costs for work in progress, work completed, and materials accept by the County before the effective date of termination, subject to offset as provided herein. No costs incurred by Contractor in respect of Services performed by Contractor after the effective date of the termination will be paid.
  - C. Prior to or at the termination of the Contract, the Contractor shall make available all such information as reasonably requested by the County, including in a readable electronic format specified by the County.
- 4.4. Transition Services – Contract Termination
  - A. In the event of termination or expiration of the Contract, the following shall apply. The Contractor shall work cooperatively with the County to accomplish a complete, timely, and seamless transition of any terminated services from Contractor and the subcontractors to the County, or to any replacement provider designated by the County, without any interruption of or adverse impact on the terminated services or any other

services provided by Third-Parties or Services that Contractor shall continue to provide (each transition, a "Transition Services"). Contractor shall cooperate with the County and any new service provider and otherwise promptly take all steps required or reasonably requested, to assist the County in effecting Transition Services of any terminated services. Contractor shall provide all information available as of the effective date of termination regarding the terminated services or as otherwise needed for Transition Services, including data conversion, interface specifications, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all terminated services, as the County may direct, including completion or partial completion of projects, documentation of work in process, and other reasonably necessary measures to assure an orderly transition to the County or the County's designee. Contractor's obligation to provide Services shall not cease until Transition Services satisfactory to the County, acting reasonably, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Section, has been completed.

- B. Contractor will provide currently published (as of the effective date of termination) entity relationship diagrams, data dictionaries, and complete data documentation which comprises the design specifications, file types and formats, and all other material necessary to allow a reasonably skilled programmer or analyst to maintain and reuse the Data extracted from Contractor.
- C. Transition Services as outlined within this section will be assessed a reasonable fee based on the then going rate for time and materials. In the event any undisputed amounts have not been paid as required in this Contract, Contractor may decline to provide the transition support outlined in this section until such amounts are paid in full.
- D. Upon County's request, Contractor shall continue to provide the Support Services to Customer (except where Contractor is enjoined) pursuant to the terms of this Contract for a transitional period of up to twelve (12) months (" Transition Period") subject to the payment to Contractor of applicable annual support fees as calculated for the County for the designated term pro-rated on a monthly basis.

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

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

- A. The Contractor has free and unencumbered title and the right to sell the Goods to the County.
- B. 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) conform to all requirements of the Contract and all representations of the Contractor and shall be fit for all purposes and used required by the Contract.

- C. 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 to provide all Services promptly, efficiently, and satisfactorily.
  - D. 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.
  - E. 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 all security, occupational health, and safety and other policies and procedures specified by the County from time to time.
  - F. 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. If applicable, 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 (subject to the notice and Cure Period provisions described above). 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 Contractor's obligation under the warranty. All warranties shall survive inspection, testing, acceptance, and use.

- 5.3. Title and Risk of Loss. To the extent County purchases Goods from Contractor, title to all Goods will vest in the County upon delivery to the County unless expressly agreed otherwise. Risk of loss for Goods will pass to the County at final acceptance. 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 which includes without limitation transit, installation, and setup. 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. To the extent County purchases Goods from Contractor, all Goods 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.

- 5.7. Intellectual Property Warranty. Contractor warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware (“Contractor Products”) to be provided by Contractor in the performance of this Contract, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. Contractor hereby grants to County, or represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display, prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize Contractor Products to the extent reasonably necessary to use the Contractor Products in the manner contemplated by this Contract. Further, Contractor warrants and represents that it knows of no allegations, claims, or threatened claims that the Contractor’s Products provided to County under this Contract infringe any patent, copyright, trademark or other proprietary right. Should any third party assert a claim of infringement against the County relating to a Contractor Product, Contractor shall indemnify and defend the County pursuant to section 6 of this Contract.

In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.

## **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 Contractor’s 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 related to Contractor’s performance of the Contract.

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.

- 6.2. 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.

- 6.3. 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, but to the extent it elects to participate in the defense it shall do so at its own expense. 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 that becomes 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. 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. 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.
- 7.5. Umbrella or Excess Liability. The Contactor 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 required insurance as required herein for the Contract duration.
- 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 will be deemed to be given three (3) days following the date of mailing, or immediately if personally served. 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: Penelope Sapp  
Title: Chief of Corrections

614 Division Street MS-33  
Address: Port Orchard,  
Phone: (360) 337-4514  
Email: PSapp@co.kitsap.wa.us

Contractor's Contract Representative

Name:  
Title:  
Address:  
Phone:  
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, CONFIDENTIALITY, DATA BREACH**

- 10.1. Ownership. The software and related materials are and shall remain the sole and exclusive property of contractor, its licensors and/or its affiliates and shall remain with Contractor, its affiliates and/or its licensors. Any rights not expressly granted herein are reserved by contractor. County may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the software, the documentation, and related material supplied by contractor. County shall report to Contractor any actual and verified infringement or misappropriation of Contractor's intellectual property rights or other rights in the or the documentation of which county becomes aware.

County shall retain sole and complete ownership of all Data, regardless of the location of the Data, and Contractor may not make any use any of the County's Data other than for testing purposes or as necessary to perform its obligations under this Contract (such as Services and Support Services), without the prior consent of the County.

- 14.2 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls, that are acceptable to the County to assuring that no information contained in its records or obtained from the County or from others in carrying out its functions under the Contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the County. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor and permitted subcontractors as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the County.

14.3 Data Breach

- A. The Contractor shall notify the County within a reasonable period of time, not to exceed the timeframe required by law, when any Contractor and/or subcontractor reasonably believe Software that stores Data is subject to a Data breach or any incident relating to the integrity of such Software such as a virus. Notice shall be provided via electronic correspondence to the person identified in the notice provisions herein. The parties acknowledge that Contractor, as County's agent, may have access to PII when providing services under this Contract. County will indemnify the Contractor in the event that a third party makes a claim against Contractor that the Contractor did not have the proper consent to access, use, or store the PII under applicable Law. Notwithstanding the foregoing, the County will not be responsible nor indemnify the Contractor for any subsequent improper use or dissemination of the PII by the Contractor.
- B. The Contractor shall provide reasonable notice, not to exceed the timeframes required by Law, to the County upon knowledge of a breach to the Contractor and/or subcontractor's systems that results in the unauthorized use, or disclosure of County Sensitive Data. If an unauthorized use or disclosure of any County Sensitive Data occurs, the Contractor must provide electronic notification to the County within a reasonable time, not to exceed the timeframes required by Law, after the Contractor's discovery of such use or disclosure and, thereafter, all information the County requests concerning such unauthorized use or disclosure. The Contractor, upon discovery, shall

report to the County within a reasonable time, not to exceed the timeframes required by Law, any improper or non- authorized use or disclosure of County Sensitive Data. The Contractor's report shall identify: i) the nature of the unauthorized use or disclosure; ii) the County Sensitive Data used or disclosed; iii) who made the unauthorized use or received the unauthorized disclosure; iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure; and vi) shall provide such other information, including a written report, as reasonably requested by the County.

- C. Contractor shall maintain reasonable safeguards to ensure that all personal identifying information, financial information, and other information submitted or made available to Contractor by, or on behalf of, the County, or acquired or developed by Contractor in the performance of the Contract (unless publicly available) is kept confidential, secured, and protected to prevent unauthorized access. Such information will be utilized by Contractor and permitted subcontractors solely as necessary for the performance of the Contract and not made available to any other person without the County's prior written consent. Upon expiration or termination of the Contract, all confidential information shall be returned to the County or destroyed at the County's discretion.
- D. The Contractor shall, at its sole expense, comply with all applicable laws that requires the notification of the County of any breach of the security of personal information owned or licensed by the County that Contractor maintains or possesses if Contractor discovers that such personal information was acquired by an unauthorized person, including without limitation RCW 19.255.010, as in effect during the term of this Contract.

14.4 Loss of Data. In the event of loss of any Data or records where such loss is due to the intentional act or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the County. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use reasonable efforts to assure that at no time shall any actions undertaken by the Contractor under the Contract damage or create any industry known vulnerabilities in the Software.

## **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 agrees that the Contract and all records associated with the Contract shall be available to the County for inspection and subject to the Public Records Act, Chapter 42.56 RCW (“Act”), including any applicable exemptions for material that is confidential, trade secret, or otherwise protected. If the County determines that records in the custody of the Contractor are needed to respond to a request under the Act, the County shall notify Contractor and Contractor shall make all such records promptly available to the County at no cost to the County. With the exception of the Contract, if the Contractor considers any portion of any record, electronic or hard copy, to be protected from disclosure under the Act, 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 proprietary 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 notify the Contractor of the request with reasonable advance notice from the date that such protected information is anticipated to be released 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 public inspection and copying under the Act. The County will not be liable to the Contractor for releasing records pursuant to the Act following the provision of reasonable notice to Contractor that it intends to do so.
- 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. Contractor and its Staff shall maintain and retain all books, documents, and records relating to performance of the Contract and services provided in connection with the Contract for six 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, no more than once in a twelve-month period, upon reasonable advance notice, and at all reasonable times during regular business hours. In the event of any audit or records request, the Contractor shall provide assistance to the County, without additional compensation, and provide all books, documents and records reasonably requested, and identify, investigate, and reconcile any audit discrepancies and/or variances. Contractor and its Staff shall fully cooperate with the County when the County is evaluating Contract compliance and conducting performance audits and financial audits, which shall include making all records requested by the County promptly available to the County for review, 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. If applicable, 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 the Cure Period, 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 in accordance with the termination provisions set forth herein 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 for default of the Contract, procure on terms and in the manner that it deems appropriate, Goods and Services to replace those under the Contract. If applicable, 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**

- 14.1 Contractor shall comply with the prevailing wage requirements identified in Attachment D, which is incorporated in full by this reference, as required by law.

### **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/Electronic Signature. 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. A facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures and deemed to constitute duplicate originals.
- 15.9. Non-Exclusive Contract. The Kitsap County Juvenile and Family Court Services 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), 9 (Amendment, Subcontract, Independent Contractor), 10 (Ownership, Confidential Information, Data 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 \_\_\_\_\_, 2022      DATED this \_\_\_\_ day of \_\_\_\_\_, 2022

**CONTRACTOR**

**KITSAP COUNTY, WASHINGTON**

\_\_\_\_\_  
Name

\_\_\_\_\_  
JOHN GESE, Sheriff

Print Name

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Title

**DATED** this \_\_\_ day of \_\_\_\_\_, 2022.

**BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON**

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**EDWARD E. WOLFE**, Chair

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**CHARLOTTE GARRIDO**, Commissioner

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**ROBERT GELDER**, Commissioner

ATTEST:

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Dana Daniels, Clerk of the Board

**ATTACHMENT A  
COMPENSATION**

All compensation, commissions, and fees are identified below:

**ATTACHMENT B  
SCOPE OF WORK**

**ATTACHMENT C  
CONTRACTOR'S PROPOSAL**

**ATTACHMENT D  
PREVAILING WAGE**

<b>Prevailing Wage</b>		
<input checked="" type="checkbox"/>	General	Contractor shall comply with the prevailing wage requirements of chapter 39.12 RCW and WAC 296-127, specifically including RCW 39.12.020 and WAC 296-127-023 (Building Service Maintenance), if applicable. Contractor shall pay not less than the prevailing rate of per diem wages to its employees and shall provide documentation to the County of its compliance with prevailing wage laws and regulations. A copy of such prevailing rates of wage statement shall be posted by the Contractor in a location readily visible to workers at the job site or as provided in RCW 39.12.020
	Over \$2,500	For contracts greater than \$2,500, a “Statement of Intent to Pay Prevailing Wages: (hereinafter “Statement of Intent”) must be submitted to and approved by the State Department of Labor and Industries prior to beginning work by the Contractor. If the Contract is more than \$10,000, the Statement of Intent shall include the Contractor’s registration number, the prevailing wage for each classification of workers, and an estimate of the number of workers in each classification. An “Affidavit of Wages Paid” must be submitted to and approved by the State Department of Labor and Industries by the Contractor prior to release of the retained percentage. Copies of these documents shall be provided to the County prior to any payment being made to the Contractor. The fee for each of these documents shall be paid by the Contractor.
	\$2,500 or Less	For contracts \$2,500 or less, the Contractor may submit the Statement of Intent to the County directly without the approval by the Washington State Department of Labor & Industries. Upon final acceptance of the work, the Contractor will submit an “Affidavit of Wages Paid” to the County.
	Statement of Intent	The Statement of Intent and Affidavit of Wages Paid must be submitted on forms approved by the Department of Labor and Industries.

Effective January 1, 2020, contractors must file weekly certified payroll reports for all prevailing wage jobs (regardless of project amount) and submit them directly to L&I.