



**KITSAP COUNTY  
DEPARTMENT OF PUBLIC WORKS**

**REQUEST FOR QUALIFICATIONS**

**2017-160  
Engineering Consultant  
Services for:**

**East Bremerton & East Port Orchard Stormwater Retrofit  
Plan Development**

**Submission Deadline:  
Wednesday, January 10, 2018 3:00 P.M.**

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

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# REQUEST FOR QUALIFICATIONS

## Support for East Bremerton & East Port Orchard Retrofit Plan Development

### 1.0 Objective

The Kitsap County Public Works (KCPW) Stormwater Division is seeking consulting services to develop a stormwater retrofit plan for the East Bremerton and East Port Orchard communities. This plan will identify and prioritize stormwater retrofit projects to address both water quality (WQ) and drainage problems. There will be an emphasis on the use of Green Stormwater Solutions (GSS) in developing retrofit projects, but conventional stormwater techniques will also be considered.

### 2.0 Background

The proposed Scope of Work (see section 3.0) outlines tasks to be performed by the selected consultant to assist KCPW in its efforts to address the impacts of polluted stormwater runoff on natural receiving waters, as well as the impacts of local flooding and drainage problems. The end result of this work will be a technical report similar to previous stormwater retrofit plans (see <https://spf.kitsapgov.com/pw/resources/publications>) that provides KCPW with a prioritized list of projects and conceptual designs to support our Capital Facility Plan (CFP) and could be used to obtain grant funding.

Therefore, Kitsap County Stormwater Division is soliciting Statements of Qualifications from consulting firms with experience in stormwater retrofit plan development. The consultant team must also have experience with low impact development (LID) or GSS design, as well as stormwater drainage and conveyance system design.

### 3.0 Scope of Work

The scope of work (SOW) includes tasks and activities KCPW staff have assumed necessary to meet the objectives outlined above. There may be additional tasks that will be identified during interviews and as part of scope/contract negotiations upon selection of a consultant team. For the purposes of this RFQ, the following tasks are assumed and included in this proposed SOW:

#### Task 1: Stormwater Retrofit Project Identification

In this task, the consultant will conduct computer (GIS-based) analysis and field work to identify potential retrofit projects. This task will also include public outreach with community groups and property owners to identify and characterize stormwater problem areas, as well as interviews with KCPW staff and analysis of KCPW records.

#### Assumptions:

- The county will delineate the study area and identify stormwater related problems.
- The consultant will identify potential projects within the study area.

**Deliverables:**

- Potential Project List
- Mapping of problems and projects, as well as associated data layers such as soil type, infiltration potential, and other geologic or hydrologic variables.
- Feasibility study of top 10 sites (evaluate infiltration, slope, critical areas, connectivity to storm conveyance system, and need for flow control in subbasin).

**Task 2: Stormwater Retrofit Prioritization**

The consultant team will utilize elements of the project prioritization scheme developed in previous KCPW retrofit planning projects to develop a project scoring system to rank projects based on a range of benefits, including stormwater management and community amenity attributes.

**Assumptions:**

- The consultant will prioritize all projects identified in Task 1.

**Deliverables**

- Project ranking scheme
- Prioritized list of retrofit projects

**Task 3: Project Conceptual Designs**

The consultant will produce conceptual designs for the top ranked projects. These designs will include enough detail for use in grant applications, as well as illustrations and graphics for use in public outreach efforts.

**Assumptions:**

- Retrofit project conceptual designs will include cost estimates

**Deliverables:**

- Conceptual designs for prioritized retrofit projects

**Task 4: Stormwater Retrofit Plan**

The consultant will produce a stormwater retrofit plan consisting of:

- Project background
- Identified areas of opportunity
- The evaluation of opportunities and constraints
- Identification
- Assessment and ranking of feasible retrofit projects
- Concept development and prioritization
- Conceptual designs and planning level costs
- Public education and outreach
- Implementation tools (recommendations and planning tools)

## Task 5: Project Management

The consultant project manager will manage technical staff, budget, and project schedule, and communicate weekly with the KCPW project manager regarding project status. The consultant project manager will also ensure quality control is performed throughout the project and will review and submit monthly invoices and project status reports.

### Assumptions:

- The project must be completed prior to the end of 2018

### Deliverables:

- Monthly Invoices and Status Reports

## 4.0 Estimate and Schedule

KCPW anticipates the costs of the design services for this project to be less than \$200,000, depending on the agreed upon scope of work. The services are expected to start as early as possible in 2018. The consultant selected will be subject to Federal EEO requirements. The project must be completed before the end of 2018.

## 5.0 Request for Qualification (RFQ) Process

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

### 5.01 SOQ SUBMITTAL AND GENERAL GUIDELINES

**SOQ packages shall be submitted NO LATER THAN 3:00 PM Wednesday, January 10, 2018**

**Please submit by mail to:**

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

OR

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

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

Proposals received after the response deadline will not be considered.

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

## **6.1 Consultant Selection Process**

### **6.1 PRE-PROPOSAL QUESTIONS**

A representative of the Stormwater Division will be available by phone answer questions from potential Proposers. No formal pre-proposal meeting will be held unless requested by a Proposer. A pre-proposal meeting is not required, nor is it tied to the evaluation process.

### **6.2 COUNTY PROJECT MANAGER**

Work performed under the resulting agreement shall be under the direction of the Kitsap County Project Manager (PM). Please direct questions and inquiries regarding the request for qualifications to the KC-PM:

Angela Gallardo  
Kitsap County Public Works Stormwater Division  
614 Division Street MS-26A  
Port Orchard WA 98366  
(360) 337-7296  
[agallard@co.kitsap.wa.us](mailto:agallard@co.kitsap.wa.us)

### **6.3 ANTICIPATED RFQ SCHEDULE**

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

- SOQ due: January 10, 2018
- Short list for interviews by: January 17, 2018
- Interviews: January 24-26, 2018
- Announce final selection by: February 2018
- Contract negotiation complete by: April 2018
- Board of County Commissioner approval: April 2018
- "Notice to Proceed": May 2018

### **6.4 ACCEPTANCE/REJECTION OF RESPONSES**

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

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

### **6.5 PROFESSIONAL SERVICES AGREEMENT**

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

## **7.0 SOQ Submittal Content**

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

Submit one (1) original (containing original signatures) and three (3), individually bound copies of the SOQ. Provide clear distinction between the original SOQ and the copies. Proposers are strongly encouraged to use recycled/recyclable products and both sides of the paper whenever appropriate. No more than ten (10) sheets (double sided or not, including resumes of team members), plus a cover and a one page cover letter. All pages must be standard size.

### **7.1 SOQ COVER AND COVER LETTER**

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

### **7.2 CONSULTANT TEAM STRUCTURE**

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

### **7.3 TEAM QUALIFICATIONS AND EXPERIENCE**

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

### **7.4 PERSONNEL QUALIFICATIONS AND EXPERIENCE**

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

## **7.5 PAST PERFORMANCES/REFERENCES**

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

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

## **7.6 QUALITY CONTROL, PROJECT MANAGEMENT, AND PRODUCT DELIVERY**

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

## **8.0 Consultant Evaluation Process**

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

### Part 1

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

### Part 2

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

### Part 3

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

## **8.1 EVALUATION CRITERIA**

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

- Experience and background of the project manager on similar projects and with proposed team members.
- Experience and background of key personnel on similar projects.
- Teams previous working relationships and/or relevance to teaming on this project



- Knowledge of NPDES Phase II Permit Requirements.
- Experience with stormwater code development and/or update.
- Experience with stormwater technical guidance manual development and/or update.
- Experience with LID technical guidance manual development and/or update.
- Ability to provide dedicated staff.
- Approach to the project.
- Proposer's quality assurance/quality control program.
- Proposer's approach to project management and project delivery.
- Experience with facilitation of stakeholder group meetings.
- Familiarity Kitsap County Code.
- Past performances/references.

## **8.2 INTERVIEWS**

Following evaluation of the SOQ's, phone interviews will be conducted. The intent of the interviews is to help clarify and verify information provided in the SOQ and to give the County's evaluation team an opportunity to ask questions of the project manager and key personnel that shall have direct involvement with the project and to learn more about their relevant experience and expertise.

## **9.0 Contract Negotiation Process**

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

## **10.0 County Contact Information**

Questions regarding technical aspects of this project should be directed to Angela Gallardo, the Project Manager, at (360) 337-7296.

Questions regarding the RFQ process or contracting should be directed to Colby Wattling Manager Kitsap County Purchasing Office at (360) 337-7036.

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

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

**-SAMPLE CONTRACT DRAFT-  
CONTRACT FOR PROFESSIONAL SERVICES**

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

**SECTION 1. EFFECTIVE DATE OF CONTRACT**

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

**SECTION 2. SERVICES TO BE PROVIDED**

- 2.1 A description of the services to be performed by the Contractor is set forth in Exhibit A: Description of Services, which is attached to the Contract and incorporated by this reference.
- 2.2 The Contractor agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor or facilities will be furnished by the County.
- 2.3 The Contractor will perform the work specified in the Contract according to standard industry practice.
- 2.4 The Contractor will complete its work in a timely manner and in accordance with the schedule agreed to by the parties.
- 2.5 The Contractor will confer with the County from time to time during the progress of the work. The Contractor will prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the County.

**SECTION 3. CONTRACT REPRESENTATIVES**

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

**County's Contract Representative**

**Contractor's Contract Representative**

**SECTION 4. COMPENSATION**

- 4.1 A description of the compensation to be paid to the Contractor is set forth in Exhibit B: Compensation, which is attached to the Contract and incorporated by this reference.
- 4.2 The total amount payable under the Contract by the County to the Contractor in no event will exceed \$.
- 4.3 Unless otherwise provided in the Contract, the Contractor may submit an invoice to the County once a month for payment of work actually completed to date. Subject to the other provisions of the Contract, the County generally will pay such an invoice within 30 days of receiving it.
- 4.4 The Contractor will be paid only for work expressly authorized in the Contract.
- 4.5 The Contractor will not be entitled to payment for any services that were performed prior to the effective date of the Contract or after its termination, unless a provision of the Contract expressly provides otherwise.
- 4.6 If the Contractor fails to perform any substantial obligation and the failure has not been cured within 10 days following notice from the County, the County may, in its sole discretion

and upon written notice to the Contractor, withhold all monies due the Contractor, without penalty, until such failure to perform is cured.

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

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

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

- 6.1 The Contractor will hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of the Contract. Provided, however, that the Contractor's obligation under this provision will not extend to injury, sickness, disability, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.
- 6.2 With regard to any claim against the County, its officers, officials, employees and agents by any employee of the Contractor, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. It is clearly agreed and understood by the parties to the Contract that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing the Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section will be incorporated, as relevant, into any contract the Contractor makes with any subcontractor or agent performing work under the Contract.
- 6.3 The Contractor's obligations under these provisions include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the Contractor, the Contractor's employees, agents or subcontractors.

## **SECTION 7. INSURANCE**

- 7.1 **Professional Legal Liability.** The Contractor, if it is a licensed professional, will maintain professional legal liability or professional errors and omissions coverage appropriate to the Contractor's profession. The coverage will have a limit of not less than \$1 million per occurrence. The coverage will apply to liability for a professional error, act or omission arising out of the Contractor's services under the Contract. The coverage will not exclude bodily injury or property damage. The coverage will not exclude hazards related to the work rendered as part of the Contract or within the scope of the Contractor's services under the Contract, including testing, monitoring, measuring operations or laboratory analysis where such services are rendered under the Contract.
- 7.2 **Workers' Compensation and Employer Liability.** The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Kitsap County Risk Management Division. If the

Contract is for over \$50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than \$1 million.

7.3 **Commercial General Liability.** The Contractor will maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to a limit of not less than \$1 million per occurrence. The general aggregate limit will apply separately to the Contract and be no less than \$2 million. The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of the Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard commercial general liability policy, including contractual liability coverage.

7.4 **Automobile Liability.** The Contractor will maintain automobile liability insurance as follows (check ONE of the following options):

**Not Applicable.**

The Contractor will maintain commercial automobile liability insurance with a limit of not less than \$1 million each accident combined bodily injury and property damage. The aggregate limit will be at least \$2 million. Coverage will include owned, hired and non-owned automobiles.

The Contractor will maintain automobile liability insurance or equivalent form with a limit of not less than \$100,000 each accident combined bodily injury and property damage. The aggregate limit will be at least \$300,000. If a personal lines automobile liability policy is used to meet this requirement, it must include a business rider and must cover each vehicle to be used in the performance of the Contract and the certificates of insurance must evidence that these conditions have been met. If the Contractor will use non-owned vehicles in performance of the Contract, the coverage will include owned, hired and non-owned automobiles.

7.5 **Miscellaneous Insurance Provisions.**

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

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

- A. The Contractor will place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-VII, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- B. The Contractor will furnish the County with properly executed certificates of insurance or a signed policy endorsement which will clearly evidence all insurance required in this Section within 10 days after the effective date of the Contract. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract may not be canceled, or allowed to expire, except on 30-days' prior written notice to the County. Any certificate or endorsement limiting or negating the insurer's obligation to notify the County of cancellation or changes must be amended so as not to negate the intent of this provision.
- C. The Contractor will furnish the County with evidence that the additional-insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the County as an additional insured.
- D. Certificates of insurance will show the certificate holder as Kitsap County and indicate "care of" the appropriate County office or department. The address of the certificate holder will be shown as the current address of the appropriate County office or department.
- E. The Contractor will request that the Washington State Department of Labor and Industries, Workers Compensation Representative, send written verification to Kitsap County that the Contractor is currently paying workers' compensation.
- F. Written notice of cancellation or change will be mailed to the County at the following address:
  - Risk Management Division
  - Kitsap County Department of Administrative Services
  - 614 Division Street, MS-7
  - Port Orchard, WA 98366
- G. The Contractor or its broker will provide a copy of all insurance policies specified in the Contract upon request of the Kitsap County Risk Manager.

## **SECTION 8. TERMINATION**

8.1 The County may terminate the Contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the best interests of the County. The County may terminate the Contract upon giving the Contractor 10-days' written notice. In that event, the County will pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice, subject to the other provisions of the Contract.

8.2 If funding for the underlying project or matter is withdrawn, reduced or limited in any way after the Contract is signed or becomes effective, the County may summarily terminate the Contract notwithstanding any other termination provision in the Contract. Termination under this provision will be effective upon the date specified in the written notice of termination sent by County to the Contractor. No costs incurred after the effective date of the termination will be paid.

8.3 If the Contractor breaches any of its obligations under the Contract, and fails to cure the breach within 10 days of written notice to do so by the County, the County may terminate the Contract. In that event, the County will pay the Contractor only for the costs of services accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor will bear all costs and expenses incurred by the County in completing the work and all damages sustained by the County by reason of the Contractor's breach.

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

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

## **SECTION 10. INDEPENDENT CONTRACTOR**

- 10.1 The Contractor's services will be furnished by the Contractor as an independent contractor and not as an agent, an employee or a servant of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in the Contract.
- 10.2 The Contractor acknowledges that the entire compensation for the Contract is set forth in the compensation provisions of the Contract and the Contractor is not entitled to any County benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental or other insurance benefits; fringe benefits; or any other rights or privileges afforded to Kitsap County employees.
- 10.3 The Contractor will have and maintain complete responsibility and control over all of its subcontractors, employees, agents and representatives. No subcontractor, employee, agent or representative of the Contractor will be or be deemed to be, or act or purport to act, as an employee, agent or representative of the County.

## **SECTION 11. NONDISCRIMINATION**

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

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

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

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

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

## **SECTION 14. DISPUTES**

Differences, disputes and disagreements between the Contractor and the County arising under or out of the Contract will be brought to the attention of the County at the earliest possible time so that

the matter may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's contract representative or designee. All rulings, orders, instructions and decisions of the County's contract representative will be final and conclusive.

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

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

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

16.1 The Contract will be construed as having been made and delivered within the State of Washington, and it is agreed by each party that the Contract will be governed by the laws of the State of Washington, both as to its interpretation and performance.

16.2 Any action at law, suit in equity or other judicial proceeding arising under or out of the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington.

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

17.1 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the Contract, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the Contract at a later time.

17.2 **Tax Payments.** The Contractor will pay all applicable federal, state and local taxes, fees (including licensing fees) and other amounts.

17.3 **Personnel Removal.** The Contractor agrees to remove immediately any of its subcontractors, employees, agents or representatives from assignment to perform services under the Contract upon receipt of a written request to do so from the County's contract representative or designee.

17.4 **Legal Compliance.** The Contractor and its subcontractors, employees, agents and representatives will comply with all applicable federal, state and local laws, rules and regulations in their performance under the Contract.

17.5 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of the Contract. The Contractor will retain for audit purposes all Contract-related records for at least six years after termination of the Contract.

17.6 **Successors and Assigns.** The County, to the extent permitted by law, and the Contractor each bind themselves, their partners, successors, executors, administrators and assigns to the other party to the Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Contract.

17.7 **Severability.** If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.

17.8 **Entire Agreement.** The parties acknowledge that the Contract is the complete expression of their agreement regarding the subject matter of the contract. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.

17.9 **Notices.** Any notices will be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the contract representatives provision of the Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day.

DATED this \_\_\_\_ day \_\_\_\_\_, 20\_\_\_. DATED this \_\_\_\_ day \_\_, 20\_\_