



**Request for Proposals (RFP)
2021-121
Notice to Consultants for**

Kitsap County Land Use Hearing Examiner Services

RESPONSE DEADLINE: June 4, 2021 at 2:00PM

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION

GENERAL INFORMATION

Kitsap County's Request for Proposals (RFP) invites Statements of Qualifications (SOQ) from qualified individuals, firms and organizations who can provide the professional services for the role of a Chief and Deputy Hearing Examiner for Kitsap County. The successful candidate shall be appointed initially for a one-year term. Thereafter, upon reappointment and through contract amendment in mutual agreement with the County and Contractor, the term of office shall be four years.

BACKGROUND

With a population of close to 270,000 residents and founded in 1857, Kitsap County is located on the Kitsap Peninsula in Washington State across the Puget Sound from Seattle. It comprises a total land mass of 393 square miles. Kitsap County occupies a unique portion of the State of Washington, directly between the urban areas of Seattle and Tacoma and the Olympic Mountains. It is bounded by Hood Canal on the west, Puget Sound on the east, and Mason and Pierce Counties to the south. The county seat is in the City of Port Orchard. While Kitsap is ranked as the 36th largest county in Washington by land mass, it is the 3rd most densely populated county in the state. Kitsap is governed by a three-member Board of County Commissioners.

Chapter 2.10 Kitsap County Code (KCC) establishes Kitsap County’s Hearing Examiner System and provides the duties and role of the hearing examiner. As further detailed below in the scope of work, hearing examiner duties include, but are not limited to:

- Hearing cases as assigned and preparing clear, defensible written decisions
- Preparing an annual summary of decisions
- Updating Rules of Procedure that govern the conduct of proceedings
- Providing recommendations for improving the Hearing Examiner System; and
- Providing other observations and recommendations pertaining to land use policies or legislation.

The Department of Community Development (Department) is charged with the administration and enforcement of all land use, site development and environmental rules and regulations in Kitsap County Code, and relies on the Hearing Examiner to provide independent review and approval of certain permits. In this regard, the Department provides clerk assistance in preparation of case files and records, and staff support during hearings; sets agendas in consultation with the Examiner; prepares legal notices; provides reproduction, electronic mailing and distribution of notices and decisions; and provides a staff recommendation for each permit before the Examiner. Electronic copies of staff recommendations and records are provided for the Examiner’s use, via email in electronic format. Staff will also facilitate hearing audio/visual recordings.

SCOPE OF WORK

Kitsap County is seeking an independent contractor(s) to fill the role of a Chief and a Deputy Hearing Examiner. The role of the Deputy Hearing Examiner is to provide an additional examiner for review and issuance of decisions on an as-needed basis. For example, the Deputy Examiner may conduct hearings and issue decisions when:

- The volume of applications set for hearing exceeds what is reasonable for one hearing examiner to issue timely decisions, or
- The Chief Hearing Examiner has a conflict for a particular application or case; or
- The Chief Hearing Examiner is unavailable for a scheduled hearing date.

Applicants may propose a Pro-Tempore Hearing Examiner in lieu of a Deputy Hearing Examiner. Neither the Chief Hearing Examiner nor the Deputy/Pro Tempore Hearing Examiner will be employees of Kitsap County.

For permits within the jurisdiction of unincorporated Kitsap County, the Hearing Examiner shall conduct hearings on the following permit applications and permit appeals:

- Type III and certain Type II land use, subdivision and environmental applications outlined in KCC Titles 12, 16, 17, 19, 20 and 22
- Chapter 18.04, KCC State Environmental Policy Act (SEPA) Determination appeals; and
- Type I and II Administrative Decision appeals.

Regular public hearings will be scheduled on the second and fourth Thursday of each month, between the hours of 9 am and 5pm. Additional hearings may be scheduled by the Department, as necessary. Hearings must be conducted consistent with the requirements of due process and the appearance of fairness doctrine.

The Examiner shall render decisions on such matters or provide recommendations to the Kitsap County Board of Commissioners consistent with Title 21 and Title 2, Kitsap County Code. Such decisions shall be clear, defensible written decisions that set forth the applicable law with cogent analysis and citations to the record.

In the future, the Examiner may also hear and render decisions or provide recommendations on public nuisances pursuant to chapter 9.56 Kitsap County Code at the request of the Department.

To obtain copies of applicable ordinances and existing rules of procedure, or for questions, please contact the Department of Community Development at 360-337-5777 or visit the County website at http://www.kitsapgov.com/dcd/lu_env/he/

In addition to the review and issuance of decisions, Chief Hearing Examiner duties include:

- Administrative responsibility over Deputy Hearing Examiner and any Pro Tempore Hearing Examiner.
- Production of a written annual report, which shall contain a summary of decisions rendered and recommendations for improving the Hearing Examiner System.
- Pursuant to KCC Title 2 and the Kitsap County Hearing Examiner Rules of Procedure (Resolution 116-2009), the Examiner is required to render decisions or recommendations within 10 business days of the close of the record on each matter. A copy of the decision must be sent to the Department shall be in an electronic format and transmitted via email.
- It may be necessary for the examiner to visit proposed development sites prior to rendering a decision or recommendation. Mileage is paid on a reimbursement basis at the normal County rate.
- Initiate, recommend, and assist with revisions to the Kitsap County Hearing Examiner Rules of Procedure (Resolution 116-2009) and related KCC Chapter 2.10 related to duties of the Hearing Examiner.

Deputy Hearing Examiner (or Pro-Tempore Hearing Examiner) duties include:

- Review and issuance of decisions when the Chief Hearing Examiner is unavailable.
- In such situations, the Deputy or Pro Tempore Hearing Examiner has all the duties and powers of the Chief Hearing Examiner to conduct public hearings and exercise authority to interpret, review and implement land use regulations, hear appeals, and issue decisions or determinations as set forth in this scope of work.

Deputy hearing examiner or pro-tempore services shall be free of improper influences and conflict of interest. Deputy hearing examiner or pro-tempore services will be held to the same standards as a chief hearing examiner and will be expected to issue timely, well-written, and fair decisions.

Other Requirements:

- The Department utilizes a paperless, online permitting process.
- All permit files, documents, and hearing records are processed and transmitted electronically, including electronic document transfers to the Hearing Examiner.
- The Hearing Examiner must have adequate technology and equipment to receive large volumes of records in electronic form. No paper copies of permit files, hearing records, or submitted exhibits will be provided to the Hearing Examiner from the department.
- Hearings may be held in-person, virtually, or remotely. Hearing Examiner must have adequate technology and equipment required for successful audio and video connection capabilities.

Prior to beginning work, the Chief and Deputy Hearing Examiner will be required to procure and maintain at the Hearing Examiners' expense, for the duration of the contract, comprehensive automobile liability insurance at statutorily required limits and workers' compensation coverage as required by the State of Washington. The insurance must be placed with insurers with a minimum Best's rating of A-. Evidence of insurance must be presented to the County's Risk Management Office prior to execution of the contract.

The contract will contain a conflict-of-interest statement, and the applicant (including any Deputy or Pro Tempore Hearing Examiner) shall be prepared to recuse him or herself from any case where a potential conflict of interest exists.

ESTIMATED CONTRACT PERIOD: SEPTEMBER 1, 2021 – AUGUST 31, 2022

SUBMITTAL REQUIREMENTS

1. Proposal

- Proposal should include the applicant's relevant experience as a hearing examiner, including proposed deputy or pro-tempore, or other type of administrative judge, substantial experience with land use and zoning law, environmental law, shoreline law and building code and related hearing processes.
 - For judicial or quasi-judicial experience, please list jurisdictions, types of cases, number of cases and approximate dates such work was performed.
 - Applicant must have a Juris Doctor degree and be licensed to practice law in the State of Washington.
- Proposal should demonstrate the extent of the applicant's familiarity with Kitsap County's land use regulations and processes and geographic knowledge of the area.
- Proposal should provide examples of hearing format for appeals and both contested and uncontested permit decisions and recommendations.
- Proposals should provide a summary or examples of how the applicant plans to address contested exhibits and testimony for both parties represented by attorneys and pro-se parties.
- Proposal should indicate the applicant's support staff and ability to meet deadlines required by Kitsap County Code.
- Applicants shall disclose if they have ever been the subject of a complaint to a professional organization or regulatory body and describe the nature of the complaint and the outcome.
- Applicant shall disclose if he or she has ever been the subject of a legal claim for liability arising out of professional services provided, or the applicant's role as an employer or employee.
- Proposal should indicate the proposed fees based on the below outline of tasks. The County requires two pricing structures in the proposal, an hourly rate, and a fixed hearing rate, per day basis. An itemized list of services shall include:
 - Regular Scheduled Hearings (second and fourth Hearings/month)
 - Continued Hearings (if hearings are continued and fall outside the two standard monthly hearing dates)

- Supplemental Hearings (dependent on application volumes, additional monthly hearings may be needed)
 - Hearing Examiner’s Decision
 - Prehearing Conferences
 - Pre/Post Hearing Orders (including but not limited to orders on requests for clarification, requests for reconsideration, requests for additional exhibits to be added to the record)
 - Administrative Appeals
 - SEPA Appeals
- Proposal should indicate the applicant’s ability to comply with the Americans with Disabilities Act, EEO, and any other applicable County, State or Federal laws.
 - The proposal shall be accompanied by:
 - A list of professional references who can attest to the applicant’s abilities; and
 - Three writing samples, consisting of administrative decisions written by the applicant.
 - If the applicant has no experience as a hearing examiner or administrative law judge, concise opinion memos or staff reports may be substituted for the administrative decisions.
 - The applicant shall sign and date the proposal.

2. Statement of Qualifications (SOQ)

The nature and form of response are at the discretion of the applicant, but at a minimum, must include the following required and desired experiences.

A. Applicant Background

1. General information about the applicant, including a description of the applicant’s history, the names and number of years the applicant has been in business, and current or previous names, or additional assumed business names, and any other pertinent applicant information.
2. Proof that the applicant and the proposed deputy or pro-tempore are licensed to do business and practice law in Washington state.

B. Organization and Staffing

1. Provide an organization chart showing all proposed team members and describing their responsibilities for this work. Include professional qualifications/resumes of each member of the team responsible for performing work and issuing decisions.
2. Describe the portion of work that will be performed by any sub-contractors or ‘pro-tempore’ and information about the professional qualifications of proposed sub-applicants.

C. Description of Related Experience

1. Describe the applicant's experience with the following:

- The Growth Management Act
- State Environmental Policy Act
- The Subdivision Act
- The Shoreline Management Act
- Forest Practices Act
- Appeals of decisions or orders of administrative officials
- Kitsap County land use and development codes, regulations, and policies
- Kitsap Countywide Planning Policies; and
- Kitsap County Comprehensive Plan.

2. Describe the applicant's familiarity with Kitsap County, Growth Management Hearings Board decisions and local stakeholders.

3. Describe the applicant's ability to complete work on schedule as prescribed by code.

4. List any litigation in which the applicant is or was involved as a named defendant.

5. Identify any other relevant information pertinent to this RFP section.

D. Hearing Process Approach and Budget

1. Describe the applicant's approach to the hearing process and budget or fee for services as outlined in the scope of work.

The applicant's SOQ should include, at a minimum, a coversheet that contains pertinent contact information (i.e. applicant name, address, phone and fax numbers, and name of project manager), as well as identification of all key personnel and associated capacities to be assigned to the project.

SUBMITTAL FORMAT

The Proposal and SOQ should be organized in a manner that allows the reviewer to evaluate the applicant's qualifications quickly and easily. Concise text is preferred.

The Proposal and SOQ responsive to this RFP must be on 8-1/2 inches by 11-inch paper, with one-inch margins. No laminated or cardstock paper. Please staple or paper clip each packet together in the top left corner. Do not wire or comb bind.

The response must be received at the address noted below no later than **2:00PM (PST) Friday, June 4, 2021**. Responders are solely responsible for ensuring that summary of qualifications is delivered on time. **Postmarked, telegraphic (facsimile) or emailed offers will not be considered.**

Responders shall submit three (3) signed hard copies and one (1) electronic copy (on CD or USB drive PDF format) of their proposal.

Qualifications shall be submitted to the Buyer at the location specified below in a sealed envelope or package provided by the offeror and shall include the offeror's name and address, the Request for Proposal (RFP) name and number, and the submittal due date clearly identified on the outside of the envelope or package. The offeror is responsible for the timely delivery of submitted offers, regardless of the delivery method. Offerors should allow sufficient time to ensure timely receipt by the County. Offers received after the submittal due date and time will not be opened or considered. The timeliness of offer submissions is determined by the County.

By mail to:

OR

For hand delivery, express, or courier:

by Appointment call 306.337.4788

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

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

CRITERIA FOR SELECTION

The County will use the following criteria when scoring submitted SOQs:

- Responsiveness and completeness of proposal (Maximum 10 points)
- Proven experience with similar work and the ability to meet deadlines required by code (Maximum 20 points)
- Price and fee structure (Maximum 20 points)
- Legally defensible decisions (Maximum 20 points)
- Knowledge of Kitsap County Code (Maximum 10 points)
- Organizational capacity/quality of associates (Maximum 20 points)

Upon review of the SOQs, a two-step selection may be used to award this contract for services. First, the SOQs will be rated based upon the criteria noted in this RFP. Following scoring of SOQs, Kitsap County retains the right to make selections based on the SOQs and/or request follow-up interviews conducted by an interview panel of the top scoring applicants before awarding the contract.

Procurement Schedule

Item	Action	Date
1.	Kitsap County Issues Letter to Request Proposals	May 12, 2021
2.	Questions will be accepted via email by Vicki Martin at vmartin@co.kitsap.wa.us until 3 p.m. Pacific Time	May 28, 2021
3.	Kitsap County will Issue responses via email.	On or about June 2, 2021 (if questions are received)
4.	Applicant must submit Proposal by 2:00 p.m. Pacific Time	June 4, 2021
5.	Kitsap County evaluation of Proposals Includes interviews	June 21, 2021
6.	Announce successful Proposal	June 25, 2021
7.	Contract Execution	Anticipated September 1, 2021

TERMS AND CONDITIONS

A copy of the Professional Services Contract is attached to this RFP as Attachment B. Respondents to this RFP will need to affirm that the terms and conditions of Attachment B are acceptable or describe reasons for any exceptions and propose alternative language.

OTHER INFORMATION

All responses to this RFP will be held unopened until the proposal deadline. The proposals will then be forwarded to the Department for review, SOQ scoring and possible selection of consultants for interview. Consultants not responding to items requested in the RFP or indicating exceptions to such items may have their submittals rejected. All proposals, plans, and other documents submitted shall become the property of Kitsap County, are considered public records and may be subject to public release. Respondents to this RFP are responsible for their own expense in preparing, delivering or presenting the proposal, and for subsequent negotiations, if any, with Kitsap County or its agents. Kitsap County reserves the right (i) to reject any and all proposals or any part of any proposal, (ii) to waive minor defects or

technicalities, or (iii) to solicit new proposals on the same project or on a modified project that may include portions of the originally proposed project as deemed necessary.

All materials submitted in response to this RFP shall become the property of Kitsap County and are subject to inspection and copying under the Public Records Act, chapter 42.56 RCW. If the Applicant considers any portion of the materials submitted to be proprietary or confidential under Washington law, the applicant shall specifically identify each page and item considered exempt and the rationale/citation to law therefor. The Applicant may not mark the entire submission proprietary. If Kitsap County receives a request to view or copy Applicant's materials, *the County's sole obligation will be to make a reasonable effort to notify the offeror of the request and date the exempt information will be released to the requestor unless the Applicant obtains a court order to enjoin disclosure pursuant to RCW 42.56.540.* The County will release the information unredacted on the date specified, absent receipt of a court order enjoining such disclosure. The County will not assert any exemption on behalf of the offer, nor will the County be liable to the offeror for releasing records that have been marked by the offeror as exempt.

SAMPLE CONTRACT - ONLY

**CONTRACT NO. [Contract Number]
Professional Services Contract**

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

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

SECTION 1. TERM AND EFFECTIVE DATE

1.1 The Contract will become effective [Contract Start Date] and terminate [Contract End Date], unless terminated or extended. The Contract may be extended for additional consecutive terms at the mutual agreement of the parties, not to exceed a total of [Contract Length]. In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.

SECTION 2. SERVICES

2.1. Scope of Work. The Contractor shall provide all “Services” identified in Attachment A: (Scope of Work), which is incorporated herein by reference. The Contractor shall provide its own equipment, labor, and materials.

2.2. Contract. “Contract” means this Contract and any exhibits, amendments, and solicitation documents accepted by the County, and Attachments A (Scope of Work), B (Compensation)[List Additional Attachments, if any]. All such documents are incorporated herein in full by this reference.

2.3. Personnel. The Contractor shall have and maintain complete responsibility for its Personnel. “Personnel” means Contractor and Contractor’s employees, subcontractors, volunteers, interns, agents, and any other person utilized by the Contractor directly or indirectly or through third parties to perform any Services under the Contract. The Contractor shall promptly remove any Personnel performing Services on request from the County Representative.

2.4. Standards. The Contractor warrants that i) Contractor has the qualifications, knowledge, experience, skills, and resources necessary to provide all Services; ii) all Services shall be provided by Personnel experienced in their respective fields and in a manner consistent with the standards of care, skill, diligence, and knowledge commonly possessed and exercised by experienced professionals in the same discipline in the same or similar circumstances; and iii) all Services shall be performed to the County’s reasonable satisfaction and according to the schedule agreed to by the parties.

2.5. Communication. The Contractor shall keep the County informed of the progress of the Services in the manner, method, and intervals requested by the County.

SECTION 3. COMPENSATION AND PAYMENT

3.1. Compensation. The maximum amount of compensation paid under the Contract by the County shall not exceed \$[Contract Amount]. A description of the compensation is provided in Attachment B: Compensation, which is incorporated herein by reference.

- 3.2. Invoice. The Contractor will submit one (1) invoice to the County per month for payment of Services completed to date, unless otherwise provided herein. Each invoice shall identify the Services performed, dates performed, and any other information requested by the County.
- 3.3. Payment. The County will make reasonable efforts to pay the Contractor within thirty (30) days from the date the County receives a complete and correct invoice, unless otherwise provided herein. All funds disbursed to the Contractor will be processed by Direct Deposit via Automated Clearing House (ACH), unless otherwise agreed to by the parties.
- 3.4. 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. Upon full compliance, payments will be released to the Contractor unless otherwise provided herein.
- 3.5. Restrictions. The Contractor will only be entitled to receive payment for Services expressly authorized in the Contract, and received during the Contract term and accepted by the County. The Contractor acknowledges oral requests and approvals of additional services or additional compensation are prohibited and unenforceable. Advance payments are not authorized.

SECTION 4. TERMINATION

- 4.1. For Convenience. The County may terminate the Contract, in whole or in part, without penalty, for any reason or no reason, with ten days prior notice to the Contractor.
- 4.2. For Funding issues. If any funding for Services is not available, withdrawn, reduced, or limited in any way, or if additional or modified conditions are placed on the funding after the Contract becomes effective, the County may: (1) accept a decreased price offered by the Contractor; (2) terminate the Contract; or (3) terminate the Contract and re-solicit the requirements.
- 4.3. Termination for Default. The County may immediately terminate the Contract, in whole or part, due to the failure of the Contractor to comply with any Contract term or condition, or to make satisfactory progress in performing the Contract, subject to the provisions of 11.1, or if the County determines the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity. The Contractor shall immediately notify the County if the Contractor becomes suspended or debarred.
- 4.4. Procedures. Upon receipt of notice of termination, the Contractor shall stop all Services as directed in the notice, notify Personnel of the termination date, and minimize further costs. All goods, materials, documents, data, and reports prepared by the Contractor under the Contract shall become the property of, and delivered to, the County on demand. A final payment will be made to the Contractor only for Services performed and accepted by the County through the effective date of termination. No costs incurred after the effective date of the termination will be paid.

SECTION 5. INDEMNIFICATION

- 5.1. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all Claims resulting from or arising out of the performance of the Contract, whether such Claims arise from the acts, errors,

or omissions of the Contractor, its Personnel, third parties, or Kitsap County, or anyone directly or indirectly employed by any of them or anyone for whose acts, errors, or omissions 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.

- 5.2. With regard to any Claim against any Indemnitee by any of the Contractor's Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification obligation shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or 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.
- 5.3. Architectural, Landscape Architectural, Engineering, or Land Surveying Services. Should a court of competent jurisdiction determine the Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the County, its officers, officials, employees, and agents, the Contractor's liability hereunder, including the duty and cost to defend, will be only to the extent of the Contractor's negligence.
- 5.4. 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, and 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 of copyright, patent, trademark, or other proprietary rights of any third parties arising out of Contract performance or use by the County of materials furnished or work performed under the Contract.
- 5.5. 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 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 County's requests for information. The County at all times reserves the right, but has no obligation to participate in the defense and settlement of any Claim. Such participation shall not constitute a waiver of the Contractor's indemnity and defense obligations under the Contract. The Contractor shall not settle or compromise any Claim in any manner that imposes any obligations upon the County without the prior written consent of the County. The Contractor shall promptly advise the County of any occurrence or information known to the Contractor that could reasonably result in a Claim against the County. The violation of any provisions of this Section, including improper refusal to accept tender, is a material breach.

SECTION 6. INSURANCE

- 6.1. Minimum Insurance Required. The Contractor and its subcontractors, if any, shall procure and maintain, until all of the Contract obligations have been fully discharged, including any warranty period, all insurance required in this Section 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 this Section, or the limits available under the policies maintained by the Contractor without regard to the Contract, whichever is greater.
- 6.2. Professional Liability. Not less than \$1,000,000 per claim 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.
- 6.3. 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.
- 6.4. Automobile Liability.
- Contractor shall maintain personal automobile insurance on all vehicles used for Contract purposes as required by law.
 - Not less than \$100,000 per occurrence and \$300,000 annual aggregate. If a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If Contractor will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.
 - 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.
- 6.5. Umbrella or Excess Liability. The Contractor may satisfy the minimum liability limits required for the CGL and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the annual aggregate limit shall not be less than the highest "Each Occurrence" limit for either CGL or Automobile Liability. The Contractor agrees to an endorsement naming the County as an additional insured as provided in this Section, unless the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

- 6.6. 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.
- 6.7. 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.
- 6.8. Review of Policy Provisions. Upon request, the Contractor shall provide a full and complete copy of all requested insurance policies to the County. The County reserves the right without limitation, but has no obligation to revise any insurance requirement, or to reject any insurance policies that fail to meet the requirements of the Contract. The County also has the right, but no obligation to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington. The County has the right to request and review the self-insurance retention limits and deductibles, and the Contractor's most recent annual financial reports and audited financial statements, as conditions of approval. Failure to demand evidence of full compliance with the insurance requirements or failure to identify any insurance deficiency shall not relieve the Contractor from, nor be construed or deemed a waiver, of its obligation to maintain all the required insurance at all times as required herein.
- 6.9. 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.
- 6.10. 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 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, Washington 98366.

- 6.11. General. 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.
- 6.12. 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 7. NOTICE AND CONTRACT REPRESENTATIVES

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

County's Contract Representative

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

Contractor's Contract Representative

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

SECTION 8. AMENDMENTS, SUBCONTRACTS, INDEPENDENT CONTRACTOR

- 8.1. Amendment. No amendment or modification to the Contract will be effective without the prior written consent of the authorized representatives of the parties.
- 8.2. Successors and Assigns. To the extent permitted by law, the Contract is binding on the parties' respective partners, successors, assigns, executors, and legal representatives.

- 8.3. Assignments. Except with the prior written consent of the other party, each party shall not 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. Any purported assignment or transfer in violation of this section shall be void.
- 8.4. 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 material 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.
- 8.5. 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. The Contractor shall have complete responsibility and control over its Personnel. 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 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 9. OWNERSHIP, CONFIDENTIAL INFORMATION AND BREACH

- 9.1. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films, or any other materials created, prepared, produced, constructed, assembled, made performed, or otherwise produced by the Contractor or its Personnel for delivery to the County under this Contract shall be the sole and absolute property of the County. All such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material the Contractor uses to perform this Contract that is not created, prepared, constructed, assembled, made, performed, or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of the Contract.
- 9.2. Confidential Information/Breach. The Contractor shall ensure that all personal identifying information, financial information, and other information submitted or made available to the Contractor by, or on behalf of, the County, or acquired or developed by the Contractor in the performance of the Contract (unless publicly available) is kept confidential, secured, and protected to prevent unauthorized access. Such information will be utilized by the Contractor solely as necessary for the performance of Services under the Contract and not made available to any other person without the County's prior written consent. In the event of unauthorized access or other security breach, the Contractor shall immediately notify the Contract Representative and shall at its sole expense comply with all requirements of RCW 19.255.010, in effect at any given time. Upon expiration or termination of the Contract, all confidential information shall be returned to the County or destroyed at the County's discretion.

SECTION 10. REPRESENTATIONS AND RECORDS

- 10.1. 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.
- 10.2. 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.
- 10.3. Compliance. The Contractor and its Personnel, and the Services provided by the Contractor and its Personnel, shall comply with all applicable laws, codes, and standards in effect at any given time regardless as to whether such laws are referred to by the County. If required for the Services provided, the Contractor and its Personnel shall submit to a background check as directed by the County.
- 10.4. 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 Americans with Disabilities Act of 1990 in the performance of the Contract.
- 10.5. Public Records. The Contractor acknowledges the Contract and all public records associated with the Contract shall be available to the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW ("Act"). To the extent that public records in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor shall make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under the Contract, whether electronic or hard copy, to be protected from disclosure under the law, the Contractor shall clearly identify all specific information it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information that has been identified by the Contractor as protected from disclosure and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligation will be to make a reasonable effort to notify the Contractor of the request and the date that such protected information will be released to the requester unless the Contractor obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this Section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County will not be liable to the Contractor for releasing records in compliance with the Act, this Section or court order.
- 10.6. Advertising, Logo. The Contractor shall not use, advertise, or promote for commercial benefit information concerning the Contract or use any trade name, trademark, or logo of the County, without the County's prior written consent.

- 10.7. Audit and Record Retention. The Contractor and its Personnel shall retain all books, documents, and records relating to performance of the Contract and Services provided in connection with this Contract for six (6) years after completion of the Contract or longer if requested by the County. All records shall be subject to inspection and audit by the County. Upon request, the Contractor shall promptly make available to the County a legible copy of all books, documents, and records at no cost to the County.

SECTION 11. RIGHTS AND REMEDIES

- 11.1. Failure to Perform. If County determines the Contractor has failed to perform any material obligation of the Contract, and such failure has not been cured within ten (10) days' following notice from the County, the County may without penalty, in its discretion, withhold all monies due the Contractor until such failure is cured to the reasonable satisfaction of the County.
- 11.2. Right of Assurance. If the County in good faith has reason to believe the Contractor does not intend, or is unable to perform, or continue performing under the Contract, the County may demand in writing that the Contractor give a written assurance of intent to perform. Should the Contractor fail to provide adequate assurance to the reasonable satisfaction of the County, by the date specified the demand, the County may terminate all or part of the Contract and pursue all other rights and remedies available at law and in equity.
- 11.3. Responsibility for Errors. All Services shall be completed to the reasonable satisfaction of the County and as required herein. Upon request, the Contractor shall provide any clarifications and/or explanations regarding any Services provided as required by the County, at no additional cost to the County. In the event of an error or omission under the Contract, the Contractor shall, at no cost to the County, provide all necessary design drawings, estimates, and all other professional 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 Services, even after the Work is accepted by the County and the termination or expiration of the Contract.
- 11.4. 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.
- 11.5. Right of Off-Set; Reimbursement. The County will be entitled to offset against any sums due the Contractor and to reimbursement from the Contractor for any damages, expenses, or costs incurred by the County due to the Contractor's nonconforming performance or failure to perform the Services under the Contract.
- 11.6. 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.
- 11.7. Breach. In the event of a material breach by the Contractor, the County may procure, on terms and in the manner that it deems appropriate, Services to replace those under the Contract. The Contractor shall be liable to the County for any and all costs, expenses, penalties, and fees incurred by the County in procuring such Services in substitution for those due from the Contractor under the Contract.

SECTION 12. GOVERNING LAW, DISPUTES

- 12.1. Governing Law; Venue. The Contract will be governed in all respects by the laws of the State of Washington, 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.
- 12.2. 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 13. PREVAILING WAGE

[Prevailing Wage]

SECTION 14. GENERAL PROVISIONS

- 14.1. 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.
- 14.2. Headings/Captions. Headings and captions used are for convenience only and are not a part of the Contract and do not in any way limit or amplify the terms and provisions hereof.
- 14.3. No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.
- 14.4. 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.
- 14.5. 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.
- 14.6. Counterparts. The Contract may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.
- 14.7. Non-Exclusive Contract. The County may at its discretion enter into multiple agreements to obtain the same or similar services that are the subject of this Contract or may have its own employees perform the same or similar services contemplated by the Contract.

- 14.8. 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 (Indemnification), 6 (Insurance), 8.5 (Independent Contractor), 9 (Ownership, Confidential Information and Breach), 11 (Rights and Remedies), 12 (Governing Law, Disputes), and 14 (General Provisions).
- 14.9. 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 and representations, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by the Contract.
- 14.10. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Contract on behalf of the party for whom they sign.

Dated this ____ day of _____, 20__

Dated this ____ day of _____, 20__

CONTRACTOR NAME

KITSAP COUNTY, WASHINGTON

Signature

SIGNATORY NAME
SIGNATORY TITLE

Print Name

Title

Dated this ____ day of _____, 20__

Dated this ____ day of _____, 20__

CONTRACTOR NAME

BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

Signature

ROBERT GELDER, CHAIR

Print Name

EDWARD E. WOLFE, COMMISSIONER

Title

CHARLOTTE GARRIDO, COMMISSIONER

ATTEST:

Dana Daniels, CLERK OF THE BOARD

ATTACHMENT A
SCOPE OF WORK

Purpose

Objective

Scope

Requirements

Technical Considerations

Schedule/Deliverables

Compliance/Acceptance

Warranties

Support/Maintenance

ATTACHMENT B
COMPENSATION

Payment amount and schedule is set forth below.

ATTACHMENT C
SPECIFIC TERMS AND CONDITIONS