



## ADDENDUM NO. 1 REQUEST FOR PROPOSALS 2023-014

### KITSAP COUNTY DEPARTMENT OF ADMINISTRATIVE SERVICES

**TO:** All Respondents

**FROM:** Glen McNeill Purchasing Program Supervisor

**CLOSING DATE:** March 30, 2023, at 2:00pm **[CHANGED]**

**REF NO.:** 2023-014 Legislative Management System

**DATE:**

---

In response to questions received, the following information is provided to assist in responding to the above referenced Request for Proposals (RFP):

This addendum further adds Federal Language to this Request for Proposal and an updated sample contract.

#### QUESTIONS AND RESPONSES

1. Whether companies from Outside USA can apply for this? **Please see paragraph 30, page 8 Licenses and Certifications.**
2. Whether we need to come over there for meetings? **Please see paragraph 36, page 9 Interviews.**
3. Can we perform the tasks (related to RFP) outside USA? **Please see Appendix A Acknowledgement form**
4. Can we submit the proposals via email? **Please see paragraph 6, page 5.**
5. The Additional features on page 14 notes the "Ability to generate notification letters identifying the Commissioners action." What is the nature of the notification letters and who would be the recipients? Would the letters be sent via email or by physical mail? **This was just part of a wish list. If possible, messages would a sent via email from the system.**
6. Would the County be willing to accept e-signatures in lieu of original signed documents in the Response? **YES**
7. How is the Cost Reasonableness evaluation calculated? **It will be calculated using the following formula.**

<p>Example: A total point for cost section equals 1</p> <p>Lowest bid = \$20,000</p> <p>Bidder's bid = \$25,000</p> <p>\$20,000 divided by \$25,000 = 0.80 (80%)</p> <p>0.80 times 10 points possible = 8 points for the cost proposal</p>
--

8. Regarding the County's Data Migration:

- How much data needs to be migrated and what file types will be included?

**At the most maybe 10 years, we wanted to know the cost from 3-10 yrs. back. They would be word and .pdf files.**

- Will metadata also need to be migrated? **YES**

9. Our proposed solution does not currently include a document management system, but it includes out-of-the-box integrations with 3<sup>rd</sup> party systems such as Laserfiche. Would the County consider using a 3<sup>rd</sup> party document management system in conjunction with a comprehensive legislative solution? **Any solutions would have to be approved through the Kitsap County IT Solutions Team.**

**The Following Term shall be added as section 11 to the Instructions to Offerors in RFP 2023-014.**

Compliance with Law and Federal Contract. The County is using federal funding to procure the goods and services provided for under this Contract. Contractor agrees to comply with and make all necessary certification as required by the American Rescue Plan Act of 2021 (ARPA), Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) federal grant program, which is incorporated herein by reference and Appendix D, Federal Contract Terms.

The Following with will be added to RFP 2023-014 as Appendix D and returned with the offeror's response:

**FEDERAL CONTRACT TERMS**

**2023-2014**

**APPENDIX D**

To the extent applicable, the following shall apply.

1. CONFLICT. In the event of conflict between these Federal Contract Terms and the Contract, the Federal Contract Terms shall take priority.
2. COMPLIANCE. Contractor understands and agrees that funds provided under the Contractor Agreement come from a federal source and agrees to comply with all additional applicable terms.
  - A. Technical Assistance. If, at any time, Contractor believes its capacity is compromised or Contractor otherwise needs any sort of assistance, it shall immediately notify the County. County will make best efforts to provide timely technical assistance to Contractor to bring Contractor into compliance.
  - B. Compliance with Act. Contractor understands and agrees that ARPA Funds provided under the Contract may only be used in compliance with section 603(c) of the Social Security Act ("Act"), as added by section 9901 of the American Rescue Plan Act ("ARPA"), the U.S. Department of Treasury's ("Treasury's") regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
3. SCOPE OF ELIGIBLE EXPENDITURES. ARPA funds may only for reimbursable eligible expenditures as described in the Contract, these Federal Contract Terms and Scope of Work. No ARPA Funds may be used to pay or reimburse costs for expenditures for which Contractor has received any other funding, whether state, federal or private in nature, for that same expense.
4. REPORTS. Contractor shall provide the County with additional information and documentation upon request, including completing any reports deemed necessary for the County to comply with documentation, reporting, or audit requirements
5. REMEDIES. All administrative, contractual, or other legal remedies available by law, including sanctions and penalties, are available to the parties in the event of a breach of contract.
6. UNIFORM GUIDANCE COMPLIANCE
  - A. Remedial Actions. In the event of Contractor's noncompliance with section 603(c) of the Act, Treasury's regulations implementing that section, guidance issued by Treasury regarding the foregoing, or any other applicable federal laws or regulations, Treasury may take available remedial actions as set forth in 2 C.F.R. 200.339.
  - B. Recoupment
    1. Contractor agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to Contractor's failure, for any reason, to comply with the

terms of the Contract. This duty to repay the County shall not be diminished or extinguished by the termination of the Contract.

2. In the event of a violation of section 603(c) of the Act, ARPA Funds shall be subject to recoupment by the County.
3. Any funds paid to Contractor (a) more than the amount to which Contractor is authorized to retain under the terms of the Contract; (b) that are determined by the Treasury Office of Inspector General to have been misused; (c) are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act; or (d) are otherwise subject to recoupment by the County shall constitute a debt to the County.
4. Any Contractor debts determined to be owed the County must be paid promptly by Contractor. A debt is delinquent if it has not been paid by the date specified in the County's initial written demand for payment, unless other satisfactory arrangements have been made or if the County knowingly or improperly retains funds that are a debt. The County will take any actions available to it to collect such a debt.

C. Return of Unused ARPA Funds. If Contractor has any unspent ARPA Funds on hand as of the earlier of December 31, 2024, or the termination of the Contract, Contractor shall return all unspent ARPA Funds to the County within ten (10) calendar days.

7. **DISCLAIMER**

- A. The United States expressly disclaims all responsibility or liability to Contractor or third persons for the actions of Contractor or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this grant or any contract, or subcontract under this grant.
- B. The acceptance of this grant by Contractor does not in any way establish an agency relationship between the United States and Contractor.

8. **CONFLICT OF INTEREST**. Contractor understands and agrees it must maintain and comply with a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c) and such policy is applicable to each activity funded under this award. Contractor and Contractors must disclose in writing any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. **PROTECTION FOR WHISTLEBLOWERS**

- A. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of

law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

- B. The list of persons and entities referenced in the paragraph above includes the following: (1) a member of Congress or a representative of a committee of Congress; (2) an Inspector General; (3) the Government Accountability Office; (4) a Treasury employee responsible for contract or grant oversight or management; (5) an authorized official of the Department of Justice or other law enforcement agency; (6) a court or grand jury; and (7) a management official or other employee of Contractor, Contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- C. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

10. INCREASING SEAT BELT USE IN THE UNITED STATES. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for its their employees when operating company-owned, rented or personally owned vehicles.

11. REDUCING TEXT MESSAGING WHILE DRIVING. Pursuant to Executive Order 13513, 74 FR 51225 (October 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and to establish workplace safety policies to decrease accidents caused by distracted drivers.

12. FALSE STATEMENTS. Contractor understands that making false statements or claims in connection with this Contract may be a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal or county awards or contracts, and/or any other remedy available by law.

13. APPLICABLE LAWS

The Contract shall be governed by and construed in accordance with the laws of the State of Washington. Contractor agrees to comply with the requirements of section 603 of the Act, the Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. Contractor also agrees to comply with all other applicable federal laws, regulations, and executive orders, and Contractor shall provide for such compliance by other parties in any agreements it enters with other parties relating to this Contract. Federal regulations applicable to this grant may include, without limitation, the following:

- A. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, including the following: Subpart A, Acronyms and Definitions; Subpart B, General Provisions; Subpart C, Pre-Federal Award Requirements and Contents of

Federal Awards; Subpart D, Post-Federal Award Requirements; Subpart E, Cost Principles; and Subpart F, Audit Requirements.

- B. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
  - C. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
  - D. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non- procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
  - E. Contractor Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - F. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - G. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601- 4655) and implementing regulations.
  - H. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
    - 1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's Implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination based on race, color, or national origin under programs or activities receiving federal financial assistance;
    - 2. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing based on race, color, religion, national origin, sex, familial status, or disability;
    - 3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination based on disability under any program or activity receiving federal financial assistance;
    - 4. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination based on age in programs or activities receiving federal financial assistance; and
    - 5. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination based on disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
14. HATCH ACT. Contractor agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits certain political activities of federal employees, as well as certain other employees who work in connection with federally funded programs. Contractor agrees to comply with the Prohibition on Providing Funds to the Enemy (2 C.F.R. 183).

15. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Contract, Contractor agrees as follows:

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- A. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by

Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
1. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor due to direction by the administering agency, the Contractor may request the United States to enter such litigation to protect the interests of the United States.
  2. County further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the County so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
  3. County agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency



and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

4. County further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the County agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the County under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such County; and refer the case to the Department of Justice for appropriate legal proceedings.
  
16. DAVIS-BACON ACT. All transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, Contractors are required to pay wages not less than once a week.
  
17. COPELAND ANTI-KICKBACK ACT
  - A. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
  - B. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all contract clauses.
  - C. Breach. A breach of the Contractor Agreement clauses above may be grounds for termination of the Contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

18. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- A. Overtime Requirements. As required by 29 C.F.R. § 5.5(b), no Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  
- B. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work more than the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
  
- C. Withholding for Unpaid Wages and Liquidated Damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided by federal law.
  
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

19. RIGHTS TO INVENTIONS. All materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the County.

20. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.** Contractor will comply with all applicable federal environmental laws and regulations, including without limitation.
- A. Clean Air Act. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.
- B. Federal Water Pollution Control Act. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.
21. **DEBARMENT AND SUSPENSION.** If this Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further

agrees to include a provision requiring such compliance in its lower tier covered transactions.

22. **PROCUREMENT OF RECOVERED MATERIALS.** In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired i) competitively within a timeframe providing for compliance with the contract performance schedule; ii) meeting contract performance requirements; or iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/ismm/comprehensive-procurement-guideline-cpg-program>. Contractor agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
23. **ACCESS TO RECORDS.** Contractor agrees to provide the County, the Treasury Office of Inspector General, the Government Accountability Office, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions, to the extent allowed by law. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
24. **AMENDMENTS.** This Contract may only be amended upon the mutual written agreement of the parties.
25. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.** Contractor will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.
26. **NO OBLIGATION BY FEDERAL GOVERNMENT.** The federal government is not a party to this Contract and is not subject to any obligations or liabilities to the non-federal entity, Contractor, or any other party pertaining to any matter resulting from this Contract.
27. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

28. BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED). Contractors who request or receive an award for federal money shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded

Required Certification. If applicable, Contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 — CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, as attached.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By signing below, Contractor certifies that Contractor has read and understood, is and will remain in compliance with the above-described obligations. Contractor acknowledges any intentional or negligent misrepresentation or falsification of any information submitted in conjunction with this document may subject the Contractor to civil and/or criminal liability and penalties, including but not limited to fines and/or imprisonment under Title 18, United States Code, Sec. 1001, et seq. and other applicable law.

CONTRACTOR

---

Signature

---

Title

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

The Following shall replace the Sample Contract provided in Appendix C of RFP 2023-014

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

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

WHEREAS, the County is a recipient of certain Coronavirus Local Fiscal Recovery Funds (“ARPA Funds”) which are to be disseminated and used in compliance with section 603(c) of the Social Security Act (“Act”), as added by section 9901 of the American Rescue Plan Act (“ARPA”), the U.S. Department of Treasury regulations implementing that section and the guidance issued by the U.S. Department of Treasury published in the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule: Frequently Asked Questions issued January 2022, all collectively referred to herein as “ARPA Rules”.

WHEREAS, the County desires to use ARPA Funds to pay for the goods and services provided by the Contractor and the parties desire to execute this Contract to address the respective requirements of each for the receipt and use of the ARPA Funds.

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

## **SECTION 1. TERM AND EFFECTIVE DATE**

- 1.1. The Contract will become effective on [Contract Effective Date] and terminate on [Contract End Date], unless terminated or extended. The Contract may be extended for additional consecutive terms at the mutual agreement of the parties. In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.

## **SECTION 2. DEFINITIONS**

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

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

- 3.1. Scope of Work. The Contractor shall provide all Goods and Services as identified in Attachment A, Scope of Work, in compliance with the Contract.
- 3.2. Compensation. The maximum amount of compensation paid under the Contract by the County shall not exceed \$[Contract Amount]. A description of the compensation is provided in Attachment B: Compensation.

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

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

- 4.1. For Convenience. The County may terminate the Contract, in whole or in part, without penalty, by giving ten (10) days prior notice to the Contractor.
- 4.2. For Funding issues. It is expressly understood by the parties that this Contract has been negotiated and executed in anticipation of receipt of ARPA Funds by the County from the federal government, and that the terms, conditions, and sums payable under this Contract are subject to any changes or limitations which may be required by the terms of the County's agreement with the federal government and all applicable federal law, rules, and regulations. 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 Contractor's failure to comply with any Contract term or condition, or to make satisfactory progress in performing the Contract.
- 4.4. Procedures. Upon receipt of notice of termination, the Contractor shall stop all Goods and Services as directed in the notice and minimize further costs. All goods, materials, documents, data, and reports prepared by the Contractor under the Contract shall become the property of, and delivered to, the County on demand. A final payment will be made to the Contractor only for Goods and Services provided and accepted by the County up to the effective date of termination. No costs incurred after the effective date of termination will be paid.

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

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

duties and responsibilities of their positions and the tasks allocated to them; ii) will behave in a professional and responsible manner at all times and perform the Services with due care and skill and in accordance with best industry practice; iii) understand and agree to the requirements of this Contract which are relevant to them; and iv) when accessing the County locations, will comply with any security, occupational health, and safety and other policies and procedures specified by the County from time to time.

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

with all the functions or uses of the discontinued product or model, and be at a price equal to or less than the discontinued product or model.

- 5.6. Guarantee. All Goods and Services shall be guaranteed for a minimum period of one (1) year from the date of acceptance by the County against defects in material and workmanship. The Contractor at its sole expense shall be responsible for the repair or replacement of any defects identified during that period, unless the defect was caused solely by misuse of the County.

## **SECTION 6. INDEMNIFICATION**

- 6.1. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all Claims resulting from or arising out of the performance of the Contract, whether such Claims arise from the acts, errors, or omissions of the Contractor, its Personnel, third parties, or anyone directly or indirectly employed by any of them, or anyone for whose acts, errors, or omissions for which any of them may be liable. It is the specific intent of the parties that the Indemnitees shall, in all instances except Claims arising from the sole negligence or willful misconduct of the Indemnitees, be indemnified by the Contractor from and against any and all Claims.
- 6.2. With regard to any Claim against any Indemnitee by any of the Contractor's Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification obligation shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or the Contractor's Personnel under workers compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, the Contractor expressly waives its immunity under Title 51 RCW (Industrial Insurance) and acknowledges this waiver was mutually negotiated by the parties.
- 6.3. Claim. "Claim" means all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, or other liabilities of any kind or nature whatsoever, including without limitation, all costs including costs of Claim processing, investigation, reasonable attorneys' fees, consequential damages, and punitive damages, for any personal or bodily injury, sickness, disease, disability, or death, or loss or damage to tangible or intangible business or property, including the loss of use. Claim includes any infringement, violation, or misappropriation of copyright, patent, trademark, or other proprietary rights of any third parties.

- 6.4. Obligations/Notice of Claim. The County will provide the Contractor notice of the assertion of liability by a third party that may give rise to a Claim by the County against the Contractor based on the indemnity contained herein. The Contractor shall respond to the County's tender of defense of a claim in writing within fourteen (14) calendar days from the notice date and will advise the County if the Contractor accepts or denies tender of the claim. The County may in its discretion withhold all or part of any payment due the Contractor under the Contract until the Contractor responds to such notice. The Contractor shall keep the County timely and fully informed through all stages of the defense and promptly respond to and comply with the County's requests for information. The County at all times reserves the right but has no obligation to participate in the defense and settlement of any Claim. Such participation shall not constitute a waiver of the Contractor's indemnity and defense obligations under the Contract. The Contractor shall not settle or compromise any Claim in any manner that imposes any obligations upon the County without the prior written consent of the County. The Contractor shall promptly advise the County of any occurrence or information known to the Contractor that could reasonably result in a Claim against the County. The violation of any provisions of Section 6, including improper refusal to accept tender, is a material breach.

## **SECTION 7. INSURANCE**

- 7.1. Minimum Insurance Required. The Contractor and its subcontractors, if any, shall procure and maintain, until all of Contract obligations have been fully discharged, including any warranty period, all insurance required in Section 7 with an insurance company duly licensed in Washington State with an A.M. Best Company ratings of not less than A-VIII and a category rating of not less than "8", with policies and forms satisfactory to the County. Use of alternative insurers requires prior written approval from the County. Coverage limits shall be at minimum the limits identified in Section 7, or the limits available under the policies maintained by the Contractor without regard to the Contract, whichever is greater.
- 7.2. Professional Liability. *(Check one of the following options):*
- Not applicable.
  - Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage will apply to liability for professional error, act or omission arising out of or in connection with the Contractor's Services under the Contract. The coverage shall not exclude bodily injury, property damage, or hazards related to the work rendered as part of the Contract or within the scope of the Contractor's services under the Contract, including testing, monitoring, measuring operations, or laboratory analysis where such Services are rendered under the Contract.
- 7.3. Commercial General Liability ("CGL"). Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include personal injury, bodily injury, and property damage for premise-operations liability, products/completed operations, personal/advertising injury, contractual liability, independent contractor liability, and stop gap/employer's liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required herein, without the prior written approval of the County. The certificate of insurance for the CGL policy shall expressly cover the indemnification obligations required by the Contract.

7.4. Automobile Liability. (Check one of the following options):

- Contractor shall maintain personal automobile insurance on all vehicles used for Contract purposes as required by law.
- Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include liability for any and all owned, hired, and non-owned vehicles. Coverage may be satisfied with an endorsement to the CGL policy.
- Not less than \$100,000 per occurrence and \$300,000 annual aggregate. If a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If the Contractor will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.

7.5. Umbrella or Excess Liability. The Contractor may satisfy the minimum liability limits required for the CGL and Automobile Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the annual aggregate limit shall not be less than the highest "Each Occurrence" limit for either CGL or Automobile Liability. The Contractor agrees to an endorsement naming the County as an additional insured as provided in Section 7, unless the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

7.6. Workers' Compensation and Employer Liability. If applicable, the Contractor shall maintain workers' compensation insurance as required under the Title 51 RCW (Industrial Insurance), for all Contractor's Personnel eligible for such coverage. If the Contract is for over \$50,000, then the Contractor shall also maintain employer liability coverage with a limit of not less than \$1,000,000.

7.7. Primary, Non-Contributory Insurance/Subcontractors. The Contractor's and its subcontractors' insurance policies and additional named insured endorsements will provide primary insurance coverage and be non-contributory. Any insurance or self-insurance programs maintained or participated in by the County will be excess and not contributory to such insurance policies. All Contractor's and its subcontractors' liability insurance policies must be endorsed to show as primary coverage. The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All subcontractors shall comply with all insurance and indemnification requirements herein.

7.8. Review of Policy Provisions. Upon request, the Contractor shall provide a full and complete copy of all requested insurance policies to the County. The County reserves the right without limitation, but has no obligation to revise any insurance requirement, or to reject any insurance policies that fail to meet the requirements of the Contract. The County also has the right, but no obligation to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington. The County has the right to request and review the self-insurance retention limits and deductibles, and the Contractor's most recent annual financial reports and audited financial statements, as conditions of approval. Failure to demand evidence of full compliance with the insurance requirements or failure to identify any insurance deficiency

shall not relieve the Contractor from, nor be construed or deemed a waiver, of its obligation to maintain all the required insurance at all times as required herein.

- 7.9. Waiver of Subrogation. In consideration of the Contract award, the Contractor agrees to waive all rights of subrogation against the County, its elected and appointed officials, officers, employees, and agents. This waiver does not apply to any policy that includes a condition that expressly prohibits waiver of subrogation by the insured or that voids coverage should the Contractor enter into a waiver of subrogation on a pre-loss basis.
- 7.10. Additional Insured, Endorsement, and Certificate of Insurance. All required insurance coverage, other than the workers' compensation and professional liability, shall name the County, its elected and appointed officials, officers, employees, and agents, as additional insureds and be properly endorsed for the full available limits of coverage maintained by the Contractor and its subcontractors. Endorsement is not required if the Contractor is a self-insured government entity, or insured through a government risk pool authorized by Washington State.

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

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

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

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

County's Contract Representative

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

Contractor's Contract Representative

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

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

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

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

- 10.1. Ownership. Any and all work product, deliverable, equipment, or any other materials created, prepared, constructed, assembled, made, performed, or otherwise produced by

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

- 10.2. Personal Identifying Information/Breach. The Contractor shall ensure all personal identifying information, financial information, and other information made available to the Contractor by, or on behalf of, the County, or acquired or developed by the Contractor in the performance of the Contract (unless publicly available) is kept confidential, secured, and protected to prevent unauthorized access. In the event of unauthorized access or other security breach, the Contractor shall immediately notify the County and at its sole expense comply with all requirements of RCW 19.255.010. Upon Contract expiration or termination all confidential information shall be returned to the County or destroyed at the County’s discretion.
- 10.3. Medical Records. If applicable, medical records shall be maintained and preserved by the Contractor in accordance with all applicable laws, including but not limited to RCW 70.41.190, RCW 70.02.160, and standard medical records practice. Contractor shall also be responsible for the proper maintenance and disposal of such medical records.
- 10.4. Unauthorized Disclosure. Contractor agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.
- 10.5. Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). If applicable, Contractor shall not use protected health information created or shared under this Contract in any manner that would constitute a violation of HIPAA or applicable regulations. Contractor shall read and maintain compliance with all HIPAA requirements at the U.S. Office of Civil Rights website: <https://www.hhs.gov/hipaa/index.html>.

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

- 11.1. No Fee. The Contractor certifies it has not received, nor paid or agreed to pay another person or entity, other than a bona fide employee working exclusively for the Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of the Contract.



- 11.2. Licenses, Permits, and Taxes. The Contractor shall, at its own expense, have and maintain all licenses, registrations, permits, and approvals necessary for the performance of the Contract, including without limitation, registration with the Washington State Department of Revenue. The Contractor shall pay all fees (including licensing fees) and applicable federal, state, and local taxes.
- 11.3. Nondiscrimination. In the performance of this Contractor, 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 Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part
- 11.4. Public Records. The Contractor agrees that the Contract and all records associated with the Contract shall be available to the County for inspection and copying by the public pursuant to the Public Records Act, Chapter 42.56 RCW ("Act"). If the County determines that records in the custody of the Contractor are needed to respond to a request under the Act, the Contractor shall make all such records promptly available to the County at no cost to the County. With the exception of the Contract, if the Contractor considers any portion of any record, electronic or hard copy, to be protected from disclosure under the Act, the Contractor shall clearly identify all specific information it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy proprietary information that has been identified by the Contractor as protected from disclosure and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligation will be to make a reasonable effort to notify the Contractor of the request and the date that such protected information will be released unless the Contractor obtains a court order to enjoin disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County will not be liable to the Contractor for releasing records pursuant to the Act.
- 11.5. Advertising. The Contractor shall not advertise or use the name, trademark, or logo of the County, without the County's prior written consent.
- 11.6. Audit and Record Retention. The Contractor and its Personnel shall retain all records relating to performance of the Contract for six (6) years after completion of the Contract or longer if requested by the County. All records shall be subject to inspection and audit by the County. Upon request, the Contractor shall promptly make all records available to the County at no cost to the County.

## SECTION 12. RIGHTS AND REMEDIES

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

12.9. The County may, upon termination of the Contract, procure on terms and in the manner that it deems appropriate, Goods and Services to replace those under the Contract. The Contractor shall be liable to the County for any and all costs, expenses, penalties, and fees incurred by the County in procuring Goods and Services in substitution for those due from the Contractor.

**SECTION 13. GOVERNING LAW, DISPUTES**

13.1. Governing Law; Venue. The Contract will be governed in all respects by the laws of the Washington State, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington or as provided by RCW 36.01.050.

13.2. Disputes. Conflicts and disagreements between the parties related to the Contract will be promptly brought to the attention of the County. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's Contract Representative. All decisions of the County's Contract Representative are considered final; however, nothing herein prohibits either party from seeking judicial relief.

**SECTION 14. PREVAILING WAGE**

14.1 To the extent applicable, Contractor shall comply with the prevailing wage requirements identified in Attachment C, which is incorporated in full by this reference

**SECTION 15. GENERAL PROVISIONS**

15.1. Force Majeure. Neither party shall be liable to the other or be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform any of their respective obligations in relation to the Contract, if the delay or failure was due to any cause beyond said party's reasonable control including, but not limited to, any act of God, government or state action, war, fire, civil commotion, insurrection, or industrial action of third parties out of the Contractor's control.

15.2. Time of the Essence. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

15.3. Implied Contract Terms. Each provision of law and any terms required by law to be in the Contract are made a part of the Contract as if fully stated in it.

15.4. Headings/Captions. Headings and captions are for convenience only and are not a part of the Contract and do not limit or amplify the terms and provisions hereof.

15.5. No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.

15.6. No Third-Party Beneficiary. No provision of the Contract is intended to, nor will it be construed to, create any third-party beneficiary or provide any rights or benefits to any person or entity other than the County and the Contractor.

- 15.7. Severability. If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid, or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid.
- 15.8. Precedence. The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the federal terms shall prevail.
- 15.9. Counterparts/Electronic Signature. The Contract may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. A facsimile, email, or other electronically delivered signatures of the parties shall be deemed to constitute original signatures and deemed to constitute duplicate originals.
- 15.10. Non-Exclusive Contract. The County may obtain the same or similar goods or services that are the subject of this Contract from another source or have its own employees perform the same or similar services contemplated by the Contract.
- 15.11. Survival. Those provisions of this Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, without limitation: Sections 5 (Standards, Acceptance, Risk of Loss, Warranty), 6 (Indemnification), 7 (Insurance), 9 (Amendment, Subcontract, and Independent Contractor), 10 (Ownership, Confidential Information and Breach), 12 (Rights and Remedies), 13 (Governing Law, Disputes), and 15 (General Provisions).
- 15.12. Entire Agreement. The parties acknowledge the Contract is the product of negotiation between the parties and represents the entire agreement of the parties with respect to its subject matter. All previous agreements, oral or written, are hereby revoked and superseded by the Contract.
- 15.13. 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.

END OF ADDENDUM NO. [ ]