



***REQUEST FOR PROPOSALS
KITSAP COUNTY***

2024-011

**STORMWATER ASSET MANAGEMENT/ENHANCED MAINTENANCE
PLANNING PROJECT**

**Proposal Response Deadline:
(Wednesday, March 6, 2024 @2:00 PM)**

STORMWATER ASSET MANAGEMENT/ENHANCED MAINTENANCE PLANNING PROJECT

PROJECT BACKGROUND

Kitsap County Public Works Stormwater Division (“Stormwater Division”) is seeking proposals from qualified firms to conduct an evaluation of the County’s existing stormwater management assets and systems and develop a strategic asset management plan (SAMP) based on ISO 55000, 55001, and 55002 standards to optimize infrastructure performance, reduce stormwater impacts to waterbodies, and guide decisions regarding maintenance, planning, budgeting and program management.

The Stormwater Division provides surface water planning and management services for unincorporated Kitsap County and the County’s MS4 (Municipal Separate Storm Sewer System). The MS4 includes conventional assets as well as green infrastructure and stormwater parks. The drainage system spans several major watersheds featuring abundant freshwater lakes and salmon-bearing streams, has direct drainage to Hood Canal and Puget Sound, and three TMDL waterbodies (Dyes Inlet, Sinclair Inlet, Liberty Bay). The Division’s Stormwater program supports stormwater system operation, maintenance, and administration; National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit and other regulatory compliance; various programs and partnerships designed to reduce runoff pollution; and capital construction. These activities serve approximately 180,000 residents and provide protection and restoration of local waterbodies and Puget Sound.

The County has invested significantly in GIS-based solutions (Cartegraph, ArcGIS®/ArcGIS® Online, SeeClickFix) to manage its assets and activities (e.g., stormwater/sanitary sewer assets, customer complaints, illicit discharges/spills, etc.). They provide field data collection, asset location/information, and work order fulfillment.

The County has developed key management actions to move the Stormwater program forward, determine asset types and locations, and meet regulatory requirements, including critical elements like the Stormwater Comprehensive Plan/Stormwater Management Action Plan (SMAP); M&O/SOP manual with guidelines for all asset classes; an Overburdened Communities/Environmental Equity Atlas; and a fully-mapped storm system in an existing data management solution.

The proposed project will add a SAMP that defines how the County manages and enhances maintenance and replacement of assets, provide AMPs that complement the Cartegraph system, and provide a long-term view that considers organizational needs, stakeholder expectations and the realities of existing assets and asset management capabilities to define a clear path forward.

Project goals:

- evaluate current tools/decision-making processes, and how resources can more effectively be allocated
- provide a framework to increase efficiency in work practices and integrate information that will inform project priority decisions
- pinpoint critical assets, measure risk and reliability across asset types
- set key performance indicators

- incorporate climate change data, risk assessment, targeted pollution data, environmental equity, and other decision-making tools to allow us to direct resources to areas with the most impact
- Inform policy and procedure, fine-tune SOPs
- inform future needs - equipment, staff, or enhanced technology
- identify where enhanced maintenance may benefit water quality
- track hotspots and support an enhanced monitoring plan to determine assets performance
- integrate with existing systems, and amplify stormwater actions and planning efforts

The selected firm will conduct an asset management analysis for the Stormwater Utility and develop a Strategic Asset Management plan (SAMP) for the Stormwater Division, Asset Management Plans (AMPs) for two selected asset classes, and an AMP Development User Guide and Template sufficient to enable staff to independently develop AMPs for all remaining asset classes.

PROCUREMENT SCHEDULE

The Procurement Schedule outlines the tentative schedule for important action dates and times. All dates after the proposal submission due date are approximate and may be adjusted as conditions indicate, without amending this document. It is the Responder’s sole responsibility to periodically check the County’s website for amendments to this document.

Procurement Schedule- Figure 1

Item	Action	Date
1.	Kitsap County Issues Request for Proposals	Wednesday, February 7, 2024
2.	Final Questions Due	Wednesday, February 21, 2024 @2:00 PM
3.	Addendum Issued Regarding Questions (If Needed)	Tuesday, February 27, 2024
2.	Responder must submit Proposal by 2:00 p.m. Pacific Time	Wednesday, March 6, 2024
3.	Kitsap County evaluation of Proposals	Week of March 11, 2024
4.	Announce successful Proposal	On or about Wednesday, March 20, 2024

SUBMISSION OF PROPOSALS

The Letter of Intent and proposals must be prepared and submitted no later than the submission date and time specified in the Procurement Schedule. The Proposal is to be sent to the Procurement Coordinator either by mail, **email (preferred) or hand/mail delivered.**

Responders should allow sufficient time to ensure timely receipt by the Procurement Coordinator. Responders assume the risk for the method of delivery and for any delay in the delivery of the Proposal. Kitsap County will disqualify any Proposal and withdraw it from consideration if it is received after the proposal submission due date and time.

All responses and any accompanying documentation and material become the property of Kitsap County and will not be returned.

If mailed, two (2) copies of the proposal must be submitted with the Request for Proposal (RFP) number and the name and address of the respondent clearly stated on the outside of the envelope.

Please submit proposal documents to the Kitsap County Purchasing Office at:

By Mail

Glen McNeil
Kitsap County Department of
Administrative Services
Purchasing Office
614 Division Street MS-7
Port Orchard, WA 98366

OR

Express, Courier, or Hand delivery

Glen McNeil
Kitsap County Department of Administrative
Services
Purchasing Office – Fourth Floor
619 Division Street
Port Orchard, WA 98366

By email: Attention Glen McNeil at Purchasing@kitsap.gov (Preferred)

SCOPE OF WORK

The selected Contractor shall perform the following services and deliver the products described:

- A. **Review/Assess Background Info and Existing Systems:** Provide a background review of the Stormwater Division's existing program, systems, policies, and processes, including assessing asset management program maturity. This task includes review of all relevant local and regional planning documents, as well as relevant regulatory requirements, for coordination and consistency; and holding interviews with stakeholders.

Task includes but is not limited to:

- Review existing asset inventory
- Review existing County-collected condition assessment data
- Review and analyze all available historic financial data regarding life cycle costs of assets
- Review existing Operations and Maintenance, inspection, and data collection procedures
- Review and analyze all available information regarding local water quality, impacts, and goals
- Review existing systems and standard operating procedures (SOPs)

- Evaluate the Stormwater Division's current tools and decision-making processes, and how resources can more efficiently and effectively be allocated.
- Review all relevant local, State and Federal regulatory requirements
- Review all relevant local plans and policies (Examples: Kitsap County and Kitsap County Public Works Stormwater Comprehensive Plans, Stormwater Monitoring Action Plan (SMAP), Kitsap County Water as a Resource policy, Stormwater Capital Facility Plan, Kitsap County Natural Resources Asset Management project, Kitsap County Equity Outreach Analysis, local waterbody TMDL's, Puget Sound Action Plan, Watershed Plans, Salmon Recovery and Shoreline Master Plans)
- Interview relevant stakeholders

Key Deliverables:

- Meeting agendas and summary notes
- List of relevant regulatory requirements
- Summary of key findings from interviews with stakeholders

- B. **Gap Analysis:** Perform Gap Analysis between target Levels of Service (LOS) and current system performance.

Task includes but is not limited to:

- Identify gaps in data/data collection methodology
- Identify gaps between existing resources (including equipment, staffing and materials) and those necessary for optimizing O&M
- Develop a plan for performing necessary CMMS (computerized maintenance management system) updates, including any recommended additional software and/or analysis tools
- Coordinate review and comment with stakeholders and grant funding agency (Department of Ecology)

Key Deliverables:

- Draft Stormwater Asset Management Needs Assessment/Gap Analysis chapter for SAMP
- Summary identifying necessary updates to County's Cartegraph CMMS

- C. **Strategic Asset Management Plan (SAMP) Development:** Create a Strategic Asset Management Plan that supports in measuring risk and reliability across asset types, monitoring key performance indicators, and considering asset life cycle management.

1. **Evaluate** the Stormwater Division's Asset Management program, develop needed elements, and compare system performance to level of service and ISO standards.

Task includes but is not limited to:

- Determine asset assessment methodology standards for each asset class
- Determine asset values

- Determine local costs for repair, renewal and replacements of assets
- Determine target levels of service for assets, based on local, State and Federal regulatory requirements
- Determine remaining life of the assets based on industry standards
- Identify revisions and additions to existing procedures to maximize the life of assets and contribute to achieving the desired LOS (including but not limited to alternative methods of maintenance, optimal methods for field data capture, etc.)
- Identify areas of cross-functional/cross-discipline collaboration
- Identify risk exposure and pinpoint our critical assets
- Create decision making trees to determine whether to maintain and repair, refurbish or replace each asset

Key Deliverables:

- Summary of identified Kitsap County Stormwater asset types
- Draft Risk Assessment/Criticality chapter for SAMP
- Decision making trees for determining necessary actions for an asset

2. **Develop** a documented Strategic Asset Management Program (SAMP) as a framework for condition assessments, inspections, activity tracking, and cost tracking to evaluate and enhance maintenance, optimize maintenance resources to ensure the effectiveness of infrastructure, reduce stormwater impacts to water quality, increase efficiency in work practices, inform project priority decisions, and provide documented asset history. The SAMP must align asset management practices with core business functions and allow the Stormwater Division to measure risk and reliability across asset types, monitor key performance indicators, consider asset life cycle management, impact to service levels, water quality, and budget to optimize and manage projects and resources more effectively. The Plan needs to organize activities such as data collection, data management, data analysis, reporting, and documentation to prioritize projects across asset classes. The expected outcome is the development of an Asset Management Program that will be implemented throughout the Division.

Task includes synthesizing all the material in the previous tasks into a comprehensive SAMP, and coordination of review and comment with stakeholders and grant funding agency (Department of Ecology). Plan must include but is not limited to:

- Executive summary that tells the story in a way that is understandable to the community and decision makers
- Creation of SOPs that are readily understandable to personnel who will implement the procedures, including:
 - O&M protocols
 - ongoing update of criticality ratings
 - ongoing data management and collection
 - ongoing financial analyses
- Connection to existing plans, policies, and regulatory requirements, including asset management policies and objectives

- Planning-level renewal needs forecast and investment strategies
- Risk management analysis
- Condition assessment rating scale and methodology
- Consequence of failure rating scale
- Plan for performance evaluation and improvement, including monitoring or evaluating the success of the SAMP
- Plan for continuous update of the SAMP, including roles, responsibilities, scheduled review dates, and 'ownership' of each element

Key Deliverables:

- DRAFT and FINAL Strategic Asset Management Plan (SAMP) for Stormwater Division
- Response to Ecology comments on Draft SAMP

D. **Asset Management Plan (AMP) for Asset Classes:** Develop Asset Management Plans (AMPs) for Stormwater assets using ISO standards and industry benchmarks, which demonstrate specific actions, programs of work and investment plans for managing a specific asset type over its lifespan. AMPs should be aligned with County policy and the SAMP, document the processes and methods to be employed in managing the asset over their life cycles, and include the following elements:

- Inventory
- Asset profiles
- Standards/specifications
- O&M standards and schedules
- Repair and replacement standards
- Where information will be stored
- Data management/standards
- Performance measures (levels of service, future demand, etc.)
- Risk rating framework
- Life cycle cost analysis
- Value optimization
- How results will be evaluated
- Actions to address risks and opportunities over time associated with managing the asset

Task includes synthesizing information from previous tasks to develop:

- AMP for two (2) identified specific asset classes (gravity storm pipes and one other TBD)
- One AMP template, to be utilized by staff to develop AMPs for all other asset classes
- User Guide for AMP template, containing methodology used to develop each element of AMP with sufficient reference, detail, and in a format that is replicable by staff

Key Deliverables:

- DRAFT and FINAL Asset Management Plan (AMP) for up to 2 major asset classes
- DRAFT and FINAL Asset Management Plan (AMP) template for additional asset classes
- DRAFT and FINAL Asset Management Plan (AMP) Development User Guide
- Response to Ecology comments on Draft AMPs, Template, and User Guide

E. **Work Plan/Implementation Roadmap and Adaptive Management:** Develop a work plan/roadmap for implementation of the Plan (SAMP, AMPs and all associated SOPs, policies, procedures, etc.). Provide a clear path forward that includes change management considerations, training requirements, communications, and next steps. Roadmap should include analysis of the potential for expansion to other Public Works Utilities or Divisions, with recommended next steps.

Task includes but is not limited to:

- Provide an implementation roadmap including but not limited to implementation schedule, change management recommendations, adaptive management planning, and a communication plan
- Provide recommendations for any necessary recommended training for staff to implement SAMP/AMPs
- Identify any potential next steps for integration or expansion to other Public Works Divisions
- Establish ongoing needs, data gathering, and feedback mechanisms; and create an adaptive management plan to evaluate performance and make necessary refinements

Key Deliverables:

- DRAFT and FINAL Work Plan/Implementation Roadmap
- Response to Ecology comments on Work Plan/Implementation Roadmap
- Adaptive Management Plan

F. **Meetings, Coordination and Outreach:** This task includes but is not limited to:

- Coordinate review and comment, including review milestones and incorporation of feedback from Department of Ecology (grant funding agency)
- Coordinate meetings and communications with project team and stakeholders
- Coordination with elected officials, other agencies or County departments, and others as applicable
- Coordination of public information and outreach activities including presentations, web posting, and other similar activities with County outreach and communications staff
- Project management and administration including routine communications/ coordination, scope of work, budget and schedule management and control
- Provide input in support of funding agency (Department of Ecology) grant closeout requirements

The project will include a minimum of three (3) up to a maximum of seven (7) meetings. At least one briefing will be provided to the Kitsap County Board of Commissioners.

Key Deliverables:

- Meeting notes and outreach summary

The County intends to award this to a single firm to provide the services required. The work for this project generally consists of Tasks A through F discussed above.

The County will furnish the selected Contractor with all reasonably available records and information, including reports, budgets, and other pertinent data.

Additional details:

- Current Kitsap County Public Works Stormwater Division 6-Year Capital Facility Plan (2023-2029): [https://www.kitsapgov.com/Public Works/Documents/Stormwater%20CFP.pdf](https://www.kitsapgov.com/Public%20Works/Documents/Stormwater%20CFP.pdf)
- Current Kitsap County Public Works Stormwater Management Program (SWMP): <https://www.kitsapgov.com/pw/Documents/Q2%20-%20Kitsap%202023%20SWMP.pdf>
- Kitsap County Public Works Stormwater Comprehensive Plan and Stormwater Management Action Plan (2020): [https://www.kitsapgov.com/Public Works/Documents/Kitsap%20Stormwater%20Comp%20Plan%20FINAL.pdf](https://www.kitsapgov.com/Public%20Works/Documents/Kitsap%20Stormwater%20Comp%20Plan%20FINAL.pdf)
- Kitsap County Overburdened Communities/Environmental Equity Atlas (2022): <http://kcowa.us/EA>

CONTRACT TERM

Services are expected to begin by January 1, 2024 with project completion by June 30, 2025.

Attached as Appendix C is Kitsap County's Goods and Services Contract. Please review this document carefully as it is intended to be non-negotiable. However, reasonable requests for modification may be granted at the County's sole discretion. If an offeror takes exception to any provision in Appendix C, those exceptions must be noted on the Exceptions and Assumptions Form (Appendix B).

PROPOSAL REQUIREMENTS

Submitted proposal must include the following information:

- Proposal Certification (Exhibit A)
- Exceptions and Assumptions Form (Exhibit B)
- Contractor References (Exhibit C)
- Project Budget
- Detailed description of the Offeror's general approach for conducting the project, including a tentative timeline for project completion.
- Detailed Statement of Qualifications showing the Offeror's experience providing similar services and highlighting the Offeror's approach to quality control for this project
- If sub-consultants will be used, identification of the proposed firm(s) and information on their experience, qualification, responsible personnel, and anticipated responsibilities
- References and contact information for at least three (3) current or former customers with service needs and/or programs similar in size and scope to Kitsap County
- Copy of the Offeror's current Certificate of Liability Insurance showing evidence of proper insurance, including the required levels shown in Appendix C, Draft Contract
- Any additional information the Offeror feels addresses the selection criteria

SELECTION CRITERIA

Selection shall be based on the following:

- | | |
|-------------------------------------------------|-----------|
| 1. Methodology and technical approach | 30 points |
| 2. Project consultant/staff experience | 20 points |
| 3. Similar Project Experience to the project | 20 points |
| 4. Project costs of proposed work plan/approach | 15 points |
| 5. Project Schedule | 10 points |
| 6. References | 5 points |

	EXHIBIT A	PURCHASING DEPARTMENT 619 DIVISION ST. MS-7 PORT ORCHARD, WA 98366 PHONE: (360) 337-4788
	PROPOSAL CERTIFICATION	

All information requested below must be provided. Failure to properly complete, sign and return this Bidder's Certification form may cause the bid to be rejected. Bidder, through the duly authorized undersigned representative ("Representative") makes this certification as a required element of submitting a responsive bid. Bidder certifies, to the best of its knowledge and belief, that the following are true, complete, correct, and made in good faith:

BIDDER AND REPRESENTATIVE INFORMATION			
Legal Name of Bidder: (Provide full legal name)			
Bidder's Trade Names			
Bidder's Street Address:			
Bidder's Website			
Bidder Organization Type: (Check applicable box)	Corporation:	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
	Limited Liability Company (LLC):	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
	Partnership:	<input type="checkbox"/> Domestic	<input type="checkbox"/> Foreign
	Sole Proprietorship:	<input type="checkbox"/>	
State and Date of Formation:	Identify the state where the corporation, LLC, or partnership is formed – e.g., 'Washington' if domestic and the name of the state if 'Foreign' (i.e., not Washington)		
Federal Tax ID No.			
Washington State UBI No.			
State Industrial Acct ID No.			
Name/Title of Bidder's Representative:			
Representative's Address:			
Representatives Phone Nos			

Representative's Email Address:	
Identify all Addenda received by Bidder:	Addendum No/Date Addendum No/Date Addendum No/Date Addendum No/Date Addendum No/Date
Did an outside individual/agency assist with the bid preparation? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please identify the individual/agency:	

1. UNDERSTANDING. Bidder certifies that Bidder has read, thoroughly examined, and fully understands all of the provisions, requirements and scope of the Solicitation (including all exhibits and attachments), the extent the local conditions affect the services to be provided, and the terms and conditions of the Contract and any amendments or clarifications to the Solicitation, and agrees to abide by the same. Bidder will make no claim against the County based upon ignorance of conditions or misunderstanding of the solicitation documents, or the goods and/or services to be provided.
2. ACCURACY. While the County has used considerable efforts to ensure the information in the solicitation is accurate, the County does not guarantee or warrant the information to be accurate nor is it necessarily comprehensive or exhaustive. Nothing in this solicitation is intended to relieve the Bidder from forming their own opinions and conclusions with respect to the matters addressed in the solicitation. Bidder certifies that Bidder has carefully prepared and reviewed its bid and fully supports the accuracy of the same. Bidder understands and acknowledges that the County shall not be responsible for any errors or omissions on the part of Bidder in preparing its bid and that the continuing compliance with these statements and all requirements of the Solicitation are conditions precedent to the award or continuation of the resulting Contract.
3. LEGAL CONSIDERATION. Bidder understands and acknowledges that it is the Bidder's responsibility to comply with all applicable federal, state, and local laws, ordinances, rules, and regulations applicable to the goods and services to be provided under this Solicitation.
4. LIABILITY FOR ERRORS. While the County has used considerable efforts to ensure the information in the solicitation is accurate, the County does not guarantee or warrant the information to be accurate nor is it necessarily comprehensive or exhaustive. Bidder understands and acknowledges that nothing in this solicitation is intended to relieve the Bidder from forming their own opinions and conclusions with respect to the matters addressed in the solicitation.
5. NO COLLUSION OR ANTI-COMPETITIVE PRACTICES. Bidder certifies that Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Solicitation. Bidder certifies that Bidder's bid prices have been arrived at independently, without engaging in collusion, bid rigging, or any other illegal activity, and without for the purpose of restricting competition any consultation, communication,

or agreement with any other bidder or competitor relating to (a) those prices, (b) the intention to submit a bid, or (c) the methods or factors used to calculate the prices offered. Bidder certifies that Bidder has not been and will not knowingly disclose its bid prices, directly or indirectly, to any other bidder or competitor before award of a Contract, unless otherwise required by law. Bidder certifies that Bidder has made no attempt and shall not make any attempt to induce any other person or firm to submit or not to submit a bid for the purpose of restricting competition. However, Bidder may join with other persons or organizations for the purpose of presenting a bid.

6. FIRM OFFER. Bidder certifies that its bid, attached hereto, is a firm offer which cannot be withdrawn for a period of **ninety (90)** days following the bid due date and time. County may accept such bid, with or without further negotiation, at any time within such period. In the event of a protest, Bidder's bid shall remain valid for such period or until the protest and any related court action is resolved, whichever is later.
7. CONFLICT OF INTEREST. Bidder certifies that, in preparing this bid, Bidder has not been assisted by any current or former employee of the County whose duties relate (or did relate) to this Solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this bid.
8. NO REIMBURSEMENT. Bidder certifies that Bidder understands that the County will not reimburse Bidder for any costs incurred in preparing, submitting, developing, demonstrating, presenting, negotiating, or providing a response, and/or samples, for this solicitation. All such activities are done at the bidder's own expense.
9. PERFORMANCE. Bidder certifies that Bidder understands that its submittal of a bid and execution of this Bidder's Certification certifies bidder's willingness to comply with the Contract, if awarded such. By submitting this bid, Bidder hereby offers to furnish the goods and/or services solicited pursuant to this Solicitation in compliance with all terms, conditions, and performance requirements contained in this Solicitation and the resulting Contract.
10. PUBLIC RECORDS. Bidder understands and acknowledges that all bids and other records submitted to the County in response to the Solicitation are the property of the County and subject to the Public Records Act (Act), chapter 42.56 RCW. If a bidder considers any portion of its bid, electronic or hard copy, to be protected from inspection and copying under Washington law, it is the responsibility of the bidder to specifically identify each page and item the bidder claims to be exempt from disclosure. If the County receives a request under the Act to inspect or copy the information that has been identified by the bidder as exempt from disclosure, the County's sole obligation will be to make a reasonable effort to notify the bidder of the request and the date the exempt information will be released to the requestor unless the bidder 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 has, and by this section assumes, no obligation to claim any exemption from disclosure under the Act on behalf of the bidder. The County will not be liable to the bidder for the County's release of records that have been marked by the bidder as exempt.
11. INSURANCE. Bidder certifies that Bidder will provide a current, valid Certificate of Insurance for each and all of the required insurance coverages as specified in the Contract within the timeframe requested by the County, but no later than the execution date of the Contract.
12. DEBARMENT. Bidder certifies as follows (must check one):

- NO DEBARMENT.* Bidder and/or its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with any federal, state, or local governmental entity; **OR**
- DEBARRED.* As detailed on the attached explanation (Bidder to provide), Bidder and/or its principals presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with a federal, state, or local governmental entity.

13. CRIMINAL OFFENSE, CIVIL JUDGMENT. Bidder certifies as follows (must check one):

- NO CRIMINAL OFFENSE, CIVIL JUDGMENT.* Bidder and its officers, directors, and managers have not, within the three (3) year period preceding the date of this Solicitation, been convicted or had a civil judgment rendered against Bidder or such officers, directors, and managers for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a governmental contract; violation of any federal or state antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. Bidder further certifies that Bidder, and its officers, directors, and managers are not presently indicted or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in this paragraph; **OR**
- CRIMINAL OFFENSE, CIVIL JUDGMENT.* As detailed on the attached explanation (Bidder to provide), within the three (3) year period preceding the date of this Solicitation, Bidder or its officers, directors, or managers have been convicted or had a civil judgment rendered against Bidder or such officers, directors, or managers for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a governmental contract; violation of any federal or state antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

14. WAGE THEFT PREVENTION. Bidder certifies as follows (must check one):

- NO WAGE VIOLATIONS.* Bidder has NOT been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapters 49.46, 49.48, or 49.52 RCW within three (3) years prior to the above-referenced Solicitation date; **OR**
- VIOLATIONS OF WAGE LAWS.* Bidder has been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, a provision of chapters 49.46, 49.48, or 49.52 RCW within three (3) years prior to the above-referenced Solicitation date.

15. TERMINATION FOR DEFAULT OR CAUSE. Bidder certifies as follows (must check one):

- NO TERMINATION FOR DEFAULT OR CAUSE.* Bidder has not, within the three (3) year period preceding the date of this Solicitation, had one (1) or more federal, state, or local governmental contracts terminated for cause or default; **OR**
- TERMINATION FOR DEFAULT OR CAUSE.* As detailed on the attached explanation (Bidder to provide), within the three (3) year period preceding the date of this Solicitation, Bidder has had one (1) or more federal, state, or local governmental contracts terminated for cause or default.

16. TAXES. Bidder certifies as follows (must check one):

- TAXES PAID.* Except as validly contested, Bidder is not delinquent and has paid or has arranged for payment of all taxes due by the Bidder and has filed all required returns and reports as applicable; **OR**
- DELINQUENT TAXES.* As detailed on the attached explanation (Bidder to provide), Bidder has not paid or arranged for payment of all taxes due by the Bidder and/or has not timely filed all required returns and reports as applicable.

17. LAWFUL REGISTRATION. Bidder, if conducting business other than as a sole proprietorship (e.g., Bidder is a corporation, limited liability company, partnership) certifies as follows (must check one):

- CURRENT LAWFUL REGISTRATION.* Bidder is in good standing in the State of Washington and the jurisdiction where Bidder is organized, including having timely filed all required annual reports; **OR**
- DELINQUENT REGISTRATION.* As detailed on the attached explanation (Bidder to provide), Bidder currently is not in good standing with the State of Washington and/or the jurisdiction where Bidder is organized.

18. REGISTRATION WITH WASHINGTON STATE DEPARTMENT OF REVENUE. Bidder certifies as follows (must check one):

- BIDDER IS REGISTERED WITH WASHINGTON STATE DEPARTMENT OF REVENUE.* Bidder is registered with the Washington State Department of Revenue, has a business license to do business in Washington, and has identified its Unified Business Identifier (UBI) number above. **OR**
- BIDDER WILL REGISTER WITH WASHINGTON STATE DEPARTMENT OF REVENUE.* Bidder is not registered with the Washington State Department of Revenue but, if designated as the Apparent Successful Bidder, Bidder will register with the Washington State Department of Revenue and obtain a business license within twenty-four (24) hours of such designation or notification by County or be deemed a nonresponsive bid; **OR**
- BIDDER IS NOT REGISTERED WITH WASHINGTON STATE DEPARTMENT OF REVENUE.* Bidder is not registered with the Washington State Department of Revenue and Bidder declines to register with the Washington State Department of Revenue. *Note:* County requires all awarded bidders (including Washington firms and out of state firms) to be registered with the Washington State Department of Revenue. Bidders who are not registered will not be awarded a Contract.

19. SUBCONTRACTORS. Bidder certifies as follows (must check one):

- NO SUBCONTRACTORS.* If awarded a Contract, Bidder will not utilize subcontractors to provide the goods and/or services subject to this Solicitation; **OR**
- SUBCONTRACTORS.* As detailed on the attached explanation (Bidder to provide), if awarded a Contract, Bidder will utilize subcontractors to provide the goods and/or services subject to this Solicitation. In such event, Bidder certifies that, as to County, Bidder shall retain responsibility for its subcontractors, including, without limitation, liability for any subcontractor's acts or omissions. Bidder must provide the precise legal name (including state of organization), business address, and federal tax identification number for each subcontractor. Do not provide any social security numbers.

20. REFERENCES. Bidder certifies the references provided to the County have worked with Bidder and that such individuals and firms have full permission, without any additional requirement or release, to provide such references and information to the County. Bidder hereby authorizes the County (or its agent) to

contact Bidder's references and others who may have pertinent information regarding Bidder's prior experience and ability to perform the Contract, if awarded. Bidder further authorizes such individuals and firms to provide references and release such information to the County.

21. REQUIRED LICENSES/CERTIFICATIONS. Bidder certifies that Bidder is fully licensed and certified (in good standing) for the type of work to be performed in Washington state as identified in the Solicitation at the time of the bid and will remain so throughout the Contract term.
22. AUTHORIZATION. The undersigned certifies that he/she is an authorized representative of the Bidder identified above; is authorized to submit this bid and make these certifications on behalf of the Bidder; and further certifies under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and made in good faith:

Bidder's Signature (*Authorized Representative*): _____

Print Name and Title of Signer: _____

Dated this ____ day of _____, 20____



EXHIBIT B

EXCEPTIONS AND ASSUMPTIONS FORM

PURCHASING DEPARTMENT
 619 DIVISION ST. MS-7
 PORT ORCHARD, WA 98366
 PHONE: (360) 337-4788

BIDDER'S NAME: _____

The County does not intend to make changes to the terms and conditions of the solicitation, unless necessary to clarify the scope of work and technical requirements. Failure to accept the terms and conditions may result in a proposal being deemed nonresponsive. Offerors shall identify all Exceptions and/or Assumptions taken to any terms, conditions, and specifications of the solicitation and associated documents must be clearly identified on the table below and returned with the proposal. Unallowable or questionable Exceptions and/or Assumptions may cause a proposal to be non-responsive. Exceptions or Assumptions noted elsewhere in the solicitation and not specified on this form will be considered void and may disqualify the offer. All cells below must be completed for each Exception and Assumption.

SPECIFICALLY DESCRIBE ALL EXCEPTIONS AND ASSUMPTIONS *(attach additional pages if needed)*:

Identify All Exceptions and Deviations <i>(check one)</i>					
<input type="checkbox"/> No Exceptions Requested: Bidder is not requesting exceptions to the solicitation and associated documents.					
<input type="checkbox"/> Offeror requests the exceptions and/or assumptions identified below:					
No	Section, page, and reference	Language to which an Exception or Assumption taken	Provide basis for all Exceptions and Assumptions	Proposed Language	Price and Schedule Impact
1.					
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23.					
24.					

Signature of Bidder's Authorized Representative

Date _____

Name of Bidder's Authorized Representative (print)

Title

	EXHIBIT C	PURCHASING DEPARTMENT 619 DIVISION ST. MS-7 PORT ORCHARD, WA 98366 PHONE: (360) 337-4788
	SUBCONTRACTOR REFERENCE FORM	

OFFEROR'S NAME: _____

SUBCONTRACTOR'S NAME: _____. For each subcontractor, provide three (3) references that can verify the subcontractor's experience and ability to provide the goods and/or services subcontractor may provide on behalf of offeror under this solicitation.

Company Name:	Contract Period:
Contact Person (<i>Name and Title</i>):	
Complete Primary Address:	
Telephone Number:	E-mail Address:
Project Name:	
Services Provided:	

Company Name:	Contract Period:
Contact Person (<i>Name and Title</i>):	
Complete Primary Address:	
Telephone Number:	E-mail Address:
Project Name:	
Services Provided:	

Company Name:	Contract Period:
Contact Person (<i>Name and Title</i>):	
Complete Primary Address:	
Telephone Number:	E-mail Address:
Project Name:	
Services Provided:	

REFERENCE CHECK RELEASE STATEMENT

You are authorized to contact the references provided above for purposes of this RFP.

Offeror's Signature (*Authorized Representative*): _____

Print Name and Title of Signer: _____

Dated this ____ day of ____ 20____

	EXHIBIT D	PURCHASING DEPARTMENT 619 DIVISION ST. MS-7 PORT ORCHARD, WA 98366 PHONE: (360) 337-4788
	SAMPLE CONTRACT	

CONTRACT NO.
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 Address] (“Contractor”).

WHEREAS, the County desires to use budgeted monies to pay for professional civil engineering and geotechnical services, on-call and as needed by the Department.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and the terms and conditions set forth below, 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 the following Attachments A (Scope of Work) and B (Compensation).

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 invoice to the County month, no later than the 15th day following the end of each 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.
- 3.6. 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, for any reason or no reason, with ten days prior notice to the Contractor.

- 4.2. 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.
- 4.3. 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 Geotechnical 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 Address]

Phone: [County Rep Phone]

Email: [County Rep Email]

Contractor’s Contract Representative

Name: [Contractor Rep Name]

Title: [Contractor Rep Title]

Address: [Contractor Rep Address]

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.
- 9.3. 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.

- 9.4 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.
- 9.5 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 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. In the performance of this Contract, 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 23.
- 10.5. 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.

- 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

- 13.1 To the extent applicable, Contractor shall comply with the prevailing wage requirements.

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. 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.
- 14.7. 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.
- 14.8. 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.
- 14.9. 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).
- 14.10. 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.
- 14.11. Authorization. Each party signing below warrants to the other party, that they have the full power and authority to execute this Contract on behalf of the party for whom they sign.

Dated this ____ day of _____, 2022

Dated this ____ day of _____, 2022

CONTRACTOR NAME

KITSAP COUNTY, WASHINGTON

Signature

SIGNATORY NAME

SIGNATORY TITLE

Print Name _____