



REQUEST FOR PROPOSALS 2015-177

**Kitsap County Public Works Department,
Solid Waste Division**

for

**On-Site Testing, Collection, Transportation, Processing and Final Use and/or
Disposal Services for Used Motor Oil, Antifreeze, and Oil Filters**

RESPONSE DEADLINE: FRIDAY, JANUARY 15, 2016 @ 3:00 P.M.

PROJECT DESCRIPTION

Kitsap County Public Works Solid Waste Division (the County) is requesting proposals from qualified vendors to provide On-Site Testing, Collection, Transportation, Processing and Final Use and/or Disposal Services for Used Motor Oil, Antifreeze and Oil Filters.

SCOPE OF WORK

The selected Contractor shall provide all labor, equipment, and materials for the on-site testing, collection, transportation, processing and final use and/or disposal of used motor oil, antifreeze and oil filters collected from residential vehicles at these seven (7) sites within Kitsap County:

FACILITY	LOCATION	HOURS OF OPERATION
Bainbridge Disposal Transfer Station	7215 Vincent Road Bainbridge Island, WA 98110	Wednesday – Monday 10:00 a.m. to 4:00 p.m.
Hansville Recycling and Garbage Facility	7791 NE Ecology Road Kingston, WA 98346	Wednesday – Monday 8:00 a.m. to 3:30 p.m.
Household Hazardous Waste Collection Facility	5551 SW Imperial Way, Bremerton, WA 98312	Thursday – Saturday 10:00 a.m. to 4:00 p.m.
Olalla Recycling and Garbage Facility	2850 SE Burley-Olalla Road Olalla, WA 98359	Friday – Tuesday 9:00 a.m. to 5:00 p.m.
Olympic View Transfer Station	9300 SW Imperial Way Bremerton, WA 98312	Monday – Sunday 8:00 a.m. to 5:00 p.m.
Poulsbo Recycle Center	21868 NW Viking Way Poulsbo, WA 98370	Tuesday – Saturday 8:00 a.m. to 3:30 p.m.
Silverdale Recycling and Garbage Facility	8843 NW Dickey Road Silverdale, WA 98383	Monday – Sunday 9:00 a.m. to 5:00 p.m.

Used Motor Oil: Used, uncontaminated motor oil will be collected from each of the seven (7) sites identified above. Samples will be taken and retained of the oil collected from each lube cube. “Clor-D-Tect” kits for on-site checking of chlorine contamination of used motor oil will be provided by Contractor free of charge and results will be recorded on the bill of lading.

Used oil collected at Olympic View Transfer Station (OVTS) shall be sampled, tested and cleared for detection of polychlorinated biphenyls (PCB's), prior to pumping and hauling off-site. The Contractor must ensure timely enough testing and clearing to allow at least one of three available tanks to be open to the public at all times. OVTS is open 7 days a week. ***PLEASE NOTE: Kitsap County reserves the right to expand this sample/test/pump protocol at any or all other recycling locations.***

In accordance with the State of Washington Department of Ecology and U.S. Environmental Protection Agency (EPA) regulations, all used oil is subject to further detailed tests at the Contractor's facility to identify contaminants such as polychlorinated biphenyls (PCB's). If such tests disclose contamination, the retained collection samples will be used to identify the collection source where the contamination originated. If the contamination originated from a County collection source, the County will be notified in writing within one (1) business day and will be responsible for the costs of disposing of the contaminated County-sourced oil only. The County shall not be liable for the disposal of non-County sourced oil in the event the contaminated oil is mixed with other oil.

"Uncontaminated Motor Oil" shall be defined as used motor oil that passes the on-site testing normally done when collecting used motor oil. "Contaminated Motor Oil" shall be defined as used motor oil that does not pass the testing normally done when collecting used motor oil.

Serviced used oil tanks require periodic cleaning out of residual sludge. This is reflected in the Proposal Sheet for pricing (Exhibit A).

Spent Antifreeze: Spent uncontaminated antifreeze will be picked up at sites. All antifreeze will be tested on site for glycol percentage. Prior to charging the County for contaminated antifreeze, the County will be notified in writing within one (1) business day. The County shall not be liable for the disposal of non-County sourced antifreeze in the event the contaminated antifreeze is mixed with other antifreeze.

Oil Filters, Uncrushed: Filters are currently not collected for recycling at the sites. However, the County reserves the right to introduce the service during the term of the awarded Contract.

Invoicing and Payment: Except as otherwise provided in the Contract, the Contractor shall submit monthly invoices for those services rendered under the Contract and to which the Contractor is entitled to compensation. Invoicing must consist of specific information needed for Solid Waste reporting such as but not limited to: Date of Service, Site Serviced, Bill of Lading, and Number of Gallons pumped, per waste stream from each identified site. If filters are collected, data showing the number of drums of filters shall be provided. The Contractor shall maintain adequate records to support billings under the Contract.

The County reserves the right to refuse payment for collections that do not occur within 24 hours of request for collection.

CONTRACT TERM

Services are expected to begin March 1, 2016. The contract term will be for one (1) year with four (4) annual renewal options. The selected contractor is expected to adhere to terms and conditions of the Contract for Service and must be able to meet the minimum insurance requirements as shown in Exhibit B: Draft Contract for Services.

QUESTIONS

All questions regarding this solicitation must be submitted *in writing via e-mail* by **12:00 p.m. on Monday, January 4, 2016**, and should be directed to:

Rick Gilbert, Moderate Risk Waste Program Manager
Kitsap County Public Works Solid Waste Division
Rgilbert@co.kitsap.wa.us

Responses to all questions received will be published as an Addendum to this RFP by **Thursday, January 7, 2016** and will be posted on the Kitsap County Bid Information page at: www.kitsapgov.com/purchasing/bids.htm.

Failure to request clarification of any inadequacy, omission, or conflict will not relieve the vendor of any responsibilities under this solicitation or any subsequent contract. It is the responsibility of the interested vendor to assure that they received responses to questions if any are issued.

PROPOSAL REQUIREMENTS

Submitted proposal must include the following information:

- Letter of Interest;
- Coversheet containing pertinent contact information;
- Proposal Sheet (Exhibit A) showing unit price for each requested item;
- Detailed Statement of Qualifications showing the Proposer's experience providing on-site testing, collection, transportation, processing and final use and/or disposal services for used motor oil, antifreeze, and oil filters. Particular attention will be paid to the Proposer's handling of PCB sampling, testing and procedures for handling contaminated loads;
- References and current contact information for at least three (3) customers with service needs and/or programs similar in size and scope to Kitsap County;
- Detailed information about the Proposer's environmental compliance history, including:
 - All current applicable permits required for the proper handling and recycling/disposal of used motor oil, antifreeze and oil filters;
 - A history of compliance inspections, violations, and corrective actions for the past three (3) years; and
 - If the material is sent to another facility for final management, include similar information for the final facility.
- Copy of the Proposer's current Certificate of Liability Insurance showing evidence of proper insurance, including the required levels shown in Exhibit B: Sample Contract;
- Any additional information the Proposer feels addresses the selection criteria;

SELECTION CRITERIA

Selection shall be based on the following:

1. Service costs as shown in Proposal Sheet (Exhibit A) (30 points)
2. Recent relevant experience in providing comparable services of similar size and scope (20 points)
3. Environmental compliance inspections, violations and corrective actions (20 points)
4. Procedures for removing oil and antifreeze from facilities, including ability to sample and test for PCB contamination and pump cleared tanks in a timely fashion (20 points)
5. Final recycling/disposal facilities for all collected materials, including appropriateness for wastes collected and compliance records (10 points)

Should the County determine that interviews and/or reference checks are desirable, up to 25 additional points may be granted based on those criteria. Ranking will be made on a total point basis of the proposal and the interviews and reference checks, if conducted.

PROPOSAL SUBMITTAL

Four (4) copies of the proposal must be submitted with the Request for Proposal (RFP) Number, the date and time of the response deadline and the name and address of the respondent clearly stated on the outside of the envelope.

Proposals for additional Kitsap County open bid opportunities must be submitted separately. Proposals received after the specified date and time will automatically be rejected and will not receive any further consideration. Postmarked, faxed or e-mailed proposals will not be accepted.

Please submit by mail to:

OR

Hand deliver to:

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

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

Proposals must be received by 3:00 pm on Friday, January 15, 2016.

All costs for proposal preparation and negotiation incurred by the proposer, whether or not they lead to execution of a contract and agreement with Kitsap County, must be borne entirely and exclusively by the proposer.

Kitsap County reserves the following rights for acceptance, modification, and/or rejection of submitted proposals such as:

1. Rejection of any or all proposals.
2. Rejection of any proposal not in compliance with proposal requirements.
3. Providing of addenda, amendments, supplementary material or other modifications to the proposal specifications.

4. Cancellation of this Request for Proposals without issuance of another Request for Proposals.
5. Issuance of subsequent requests for new proposals.
6. Request for submission of further information by the proposer in order to complete evaluation by Kitsap County.
7. Determination to select one or more proposers for attempted negotiation of a final contract(s). Decisions made by Kitsap County will be final.

EXHIBIT A: PROPOSAL SHEET

RFP 2015-177 for ON-SITE TESTING, COLLECTION, TRANSPORTATION, PROCESSING, AND FINAL USE AND/OR DISPOSAL SERVICES OF USED MOTOR OIL, ANTIFREEZE, AND OIL FILTERS

The undersigned Contractor proposes to furnish Kitsap County all labor, equipment and materials for on-site testing, collection, transportation, processing and final use and/or disposal services for used motor oil, antifreeze, and oil filters.

PLEASE NOTE: Oil filter collection is an optional service. Currently, not all sites collect oil filters for recycling. This service option may or may not be exercised by Kitsap County.

MATERIAL	UNIT PRICE
Uncontaminated Used Motor Oil	\$ per gallon
Uncontaminated Used Antifreeze	\$ per gallon
Contaminated Used Motor Oil (Water)	\$ per gallon
Contaminated Used Motor Oil (Gas/Other Solvents)	\$ per gallon
Contaminated Used Motor Oil (PCB's)	\$ per gallon
Contaminated Used Motor Oil (Other Chlorinated)	\$ per gallon
Contaminated Used Antifreeze (Oil)	\$ per gallon
Contaminated Used Antifreeze (Gas/Other Solvents)	\$ per gallon
Oil Filters, Uncrushed	\$ per 55 gallon drum
Materials Testing Per Pickup (e.g. Chlor-D-Tect and/or lab test for PCB's)	\$ per test \$ per test \$ per test
Sludge Removal/Tank Cleaning (350 gallon Lube Cube)	\$ per tank

If prices are different depending on contamination, provide multiple quotes. For oil, contaminants could include water, gas/other solvents, polychlorinated biphenyls, and other chlorinated liquids. For antifreeze, contaminants could include gas/other solvents.

Cost/credit per gallon for such items as uncontaminated used oil, based on current fuel pricing indices, is allowable.

This proposal is made in accordance with the published scope of work and warrants, receipt of which is hereby acknowledged, and is offered in accordance with Invitation for Bid authority by the Kitsap County Purchasing Office.

Proposer

Contact Person

Company Name (Print)

Name (Print)

Company Address

Signature

City, State Zip Code

Title

Phone

Email

Company Tax ID Number

Date

EXHIBIT B: DRAFT CONTRACT FOR SERVICES

DRAFT

CONTRACT FOR SERVICES

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

SECTION 1. EFFECTIVE DATE OF CONTRACT

The Contract will become effective on _____. The duration of the contract will be for _____ year with annual renewal options for a period of _____ years. In no event will the Contract become effective unless and until it is approved and executed by the duly authorized representative of Kitsap County.

SECTION 2. SERVICES TO BE PROVIDED

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

SECTION 3. CONTRACT REPRESENTATIVES

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

County's Contract Representative

Contractor's Contract Representative

SECTION 4. COMPENSATION

- 4.1 A description of the compensation to be paid to the Contractor is set forth in Exhibit B: Compensation, which is attached to the Contract and incorporated by this reference.
- 4.2 The total amount payable under the Contract by the County to the Contractor in no event will exceed \$_____.
- 4.3 Unless otherwise provided in the Contract, the Contractor may submit an invoice to the County once a month for payment of work actually completed to date. Subject to the other provisions of the Contract, the County generally will pay such an invoice within 30 days of receiving it.
- 4.4 The Contractor will be paid only for work expressly authorized in the Contract.
- 4.5 The Contractor will not be entitled to payment for any services that were performed prior to the effective date of the Contract or after its termination, unless a provision of the Contract expressly provides otherwise.
- 4.6 If the Contractor fails to perform any substantial obligation and the failure has not been cured within 10 days following notice from the County, the County may, in its sole discretion and upon written notice to the Contractor, withhold all monies due the Contractor, without penalty, until such failure to perform is cured.

SECTION 5. AMENDMENTS AND CHANGES IN WORK

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

SECTION 6. HOLD HARMLESS AND INDEMNIFICATION

- 6.1 The Contractor will hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions,

suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of the Contract. Provided, however, that the Contractor's obligation under this provision will not extend to injury, sickness, disability, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

- 6.2 With regard to any claim against the County, its officers, officials, employees and agents by any employee of the Contractor, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. It is clearly agreed and understood by the parties to the Contract that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing the Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section will be incorporated, as relevant, into any contract the Contractor makes with any subcontractor or agent performing work under the Contract.
- 6.3 The Contractor's obligations under these provisions include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the Contractor, the Contractor's employees, agents or subcontractors.

SECTION 7. INSURANCE

- 7.1 **Workers' Compensation and Employer Liability.** The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Kitsap County Risk Management Division. If the Contract is for over \$50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than \$1 million.
- 7.2 **Commercial General Liability.** The Contractor will maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to a limit of not less than \$1 million per occurrence. The general aggregate limit will apply separately to the Contract and be no less than \$2 million. The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of the Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard commercial general liability policy, including contractual liability coverage.

7.3 **Automobile Liability.** The Contractor will maintain automobile liability insurance as follows:

Not Applicable.

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

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

7.4 **Pollution Liability.** The Contractor shall carry pollution errors and omissions liability not less than two million (\$2,000,000) each loss, two million dollars (\$2,000,000) aggregate.

7.5 **Miscellaneous Insurance Provisions.**

- A. The Contractor's liability insurance provisions will be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents.
- B. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will include the County, its officers, officials, employees and agents with respect to performance of services.
- C. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will contain no special limitations on the scope of protection afforded to the County as an additional insured.
- D. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees or agents.
- E. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, subject to the limits of the insurer's liability.

- F. The Contractor will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements stated in these provisions.
- G. The insurance limits mandated for any insurance coverage required by the Contract are not intended to be an indication of exposure, nor are they limitations on indemnification.
- H. The Contractor will maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements scheduled to expire before completion of services will be renewed before expiration. If the Contractor's liability coverage is written as a claims-made policy, then the Contractor must evidence the purchase of an extended-reporting period or "tail" coverage for a three-year period after completion of the services.

7.6 Verification of Coverage and Acceptability of Insurers.

- A. The Contractor will place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-VII, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.
- B. The Contractor will furnish the County with properly executed certificates of insurance or a signed policy endorsement which will clearly evidence all insurance required in this Section within 10 days after the effective date of the Contract. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract may not be canceled, or allowed to expire, except on 30-days' prior written notice to the County. Any certificate or endorsement limiting or negating the insurer's obligation to notify the County of cancellation or changes must be amended so as not to negate the intent of this provision.
- C. The Contractor will furnish the County with evidence that the additional-insured provision required above has been met. Acceptable forms of evidence are the endorsement pages of the policy showing the County as an additional insured.
- D. Certificates of insurance will show the certificate holder as Kitsap County and indicate "care of" the appropriate County office or department. The address of the certificate holder will be shown as the current address of the appropriate County office or department.

- E. The Contractor will request that the Washington State Department of Labor and Industries, Workers Compensation Representative, send written verification to Kitsap County that the Contractor is currently paying workers' compensation.
- F. Written notice of cancellation or change will be mailed to the County at the following address:

Risk Management Division
Kitsap County Department of Administrative Services
614 Division Street, MS-7
Port Orchard, WA 98366
- G. The Contractor or its broker will provide a copy of all insurance policies specified in the Contract upon request of the Kitsap County Risk Manager.

SECTION 8. TERMINATION

- 8.1 The County may terminate the Contract in whole or in part whenever the County determines, in its sole discretion that such termination is in the best interests of the County. The County may terminate the Contract upon giving the Contractor 10-days' written notice. In that event, the County will pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice, subject to the other provisions of the Contract.
- 8.2 If funding for the underlying project or matter is withdrawn, reduced or limited in any way after the Contract is signed or becomes effective, the County may summarily terminate the Contract notwithstanding any other termination provision in the Contract. Termination under this provision will be effective upon the date specified in the written notice of termination sent by County to the Contractor. No costs incurred after the effective date of the termination will be paid.
- 8.3 If the Contractor breaches any of its obligations under the Contract, and fails to cure the breach within 10 days of written notice to do so by the County, the County may terminate the Contract. In that event, the County will pay the Contractor only for the costs of services accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor will bear all costs and expenses incurred by the County in completing the work and all damages sustained by the County by reason of the Contractor's breach.

SECTION 9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

- 9.1 The Contractor will perform under the Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under the

Contract will not be assigned, delegated or subcontracted to any other person or firm without the prior express written consent of the County.

- 9.2 The Contractor warrants that it has not paid, nor has it agreed to pay, any company, person, partnership or firm, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the Contract.

SECTION 10. INDEPENDENT CONTRACTOR

- 10.1 The Contractor's services will be furnished by the Contractor as an independent contractor and not as an employee, an agent or a servant of the County. The Contractor will perform the services in strict accordance with the provisions of the Contract, but will be free from control or direction over the performance of the services.
- 10.2 At least one of the following applies: (a) the services to be provided are outside the usual course of business for which the services are performed; (b) the services to be provided will be performed outside all of the places of business of the County; or (c) the Contractor is responsible for the costs of the principal place of business from which the services will be performed.
- 10.3 The Contractor warrants that it either: (a) is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the Contract; or (b) has a principal place of business for the business it is conducting that is eligible for a business deduction for federal income tax purposes.
- 10.4 The Contractor acknowledges or warrants that it: (a) is responsible for filing at the next applicable filing period a schedule of expenses with the Internal Revenue Service for the type of business the Contractor is conducting; (b) has established an account with the State of Washington Department of Revenue and any other applicable state agencies for the business the Contractor is conducting for the payment of all state taxes normally paid by employers and businesses; and (c) has registered for and received a unified business identifier number from the State of Washington.
- 10.5 The Contractor warrants that it maintains a separate set of books or records that reflect all items of income and expenses of the business that the Contractor is conducting.
- 10.6 The Contractor acknowledges that the entire compensation for the Contract is set forth in the compensation provisions of the Contract and that the Contractor is not entitled to any County benefits, including, but not limited to: vacation pay;

holiday pay; sick leave pay; medical, dental or other insurance benefits; fringe benefits; or any other rights or privileges afforded to Kitsap County employees.

- 10.7 The Contractor will hold harmless, indemnify and defend the County, its officers, officials, employees and agents from and against any loss or expense, including, but not limited to, settlements, judgments, set-offs, attorneys' fees or costs, incurred or suffered by reason of claims or demands arising in connection with the provisions of this Section.

SECTION 11. NONDISCRIMINATION

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

SECTION 12. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

SECTION 13. PATENT/COPYRIGHT INFRINGEMENT

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

SECTION 14. DISPUTES

Differences, disputes and disagreements between the Contractor and the County arising under or out of the Contract will be brought to the attention of the County at the earliest possible time so that the matter may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance or compensation due the Contractor will be decided by the County's contract representative or designee. All rulings, orders, instructions and decisions of the County's contract representative will be final and conclusive.

SECTION 15. CONFIDENTIALITY

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

SECTION 16. CHOICE OF LAW, JURISDICTION AND VENUE

- 16.1 The Contract will be construed as having been made and delivered within the State of Washington and it is agreed by each party that the Contract will be governed by the laws of the State of Washington, both as to its interpretation and performance.
- 16.2 Any action at law, suit in equity or other judicial proceeding arising under or out of the Contract may be instituted and maintained only in a court of competent jurisdiction in Kitsap County, Washington.

SECTION 17. MISCELLANEOUS

- 17.1 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the Contract, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the Contract at a later time.
- 17.2 **Tax Payments.** The Contractor will pay all applicable federal, state and local taxes, fees (including licensing fees) and other amounts.
- 17.3 **Personnel Removal.** The Contractor agrees to remove immediately any of its subcontractors, employees, agents or representatives from assignment to perform services under the Contract upon receipt of a written request to do so from the County's contract representative or designee.

- 17.4 **Legal Compliance.** The Contractor and its subcontractors, employees, agents and representatives will comply with all applicable federal, state and local laws, rules and regulations in their performance under the Contract.
- 17.5 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of the Contract. The Contractor will retain for audit purposes all Contract-related records for at least six years after termination of the Contract.
- 17.6 **Successors and Assigns.** The County, to the extent permitted by law, and the Contractor each bind themselves, their partners, successors, executors, administrators and assigns to the other party to the Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Contract.
- 17.7 **Severability.** If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 17.8 **Entire Agreement.** The parties acknowledge that the Contract is the complete expression of their agreement regarding the subject matter of the contract. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.
- 17.9 **Notices.** Any notices will be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the contract representative's provision of the Contract. Notice may also be given by facsimile with the original to follow by regular mail. Notice will be deemed to be given three days following the date of mailing, or immediately if personally served. For service by facsimile, service will be effective at the beginning of the next working day.
- 17.10 **Survival.** Those provisions of the Contract that by their sense and purpose should survive expiration or termination of the Contract shall so survive. Those provisions include, but are not necessarily limited to, the following: Sections 6.1-6.3 (Hold Harmless and Indemnification), 8.3 (Termination), 13 (Patent/Copyright Infringement), 14 (Disputes), 15 (Confidentiality), 16.1-16.2 (Choice of Law, Jurisdiction and Venue), 17.1 (Miscellaneous – No Waiver), 17.5 (Miscellaneous – Records Inspection and Retention) and Section 17.7 (Miscellaneous – Severability).