



REQUEST FOR PROPOSALS 2016-155

KITSAP COUNTY HUMAN RESOURCES DEPARTMENT

On-Line Electronic Benefit Enrollment System

Response Deadline: Tuesday, September 27, 2016 at 3:00 PM

Current Status

Kitsap County Human Resources currently uses paper enrollment forms, internally developed excel spreadsheets and carrier websites for employee benefit enrollment. We are currently contracting with third party vendors for COBRA, FSA and ACA compliance.

Objective

Kitsap County desires to provide an integrated benefit enrollment system to centralize information for employee self-service, carrier eligibility, COBRA compliance and ACA compliance and reporting.

Objectives include:

1. Implement a user-friendly enrollment system that can manage employee and dependent demographic and enrollment information; maintain coverage history and documentation, assist in maintaining COBRA compliance, meet ACA reporting requirements, provide self-service information to employees, and produce various reports, including eligibility and census reports.
2. Implement an easy-to-use enrollment system that is integrated with the insurance carrier systems to provide updates on demographics and enrollment.
3. Standardize and improve business processes to provide increased efficiency in Human Resources and accessible coverage information for employees.
4. Provide for flexibility and expansion opportunities to meet Kitsap County's changing business needs.
5. Comply with HIPAA and other Federal and State requirements. System maintenance and updates required to maintain compliance included in annual maintenance fees.
6. Provide a remote solution that allows information to be read and updated. This system should operate in a cloud-based environment with backed-up data and allows real-time reviews and updates.

Mandatory Requirements

Responses must provide information that demonstrates the system's ability to meet the following mandatory requirements.

1. Employee Self-Service

- a. HIPAA. The system must meet all HIPAA compliance requirements.
- b. Provide access for employees to enroll themselves and eligible dependents in medical, dental, life and supplemental insurance plans.
- c. For employee plan education, must have the capability to link to plan summaries, plan costs and carrier information and/or provide educational videos on benefit plans and options.
- d. Must allow employees to make certain changes to their demographic and enrollment information; i.e.: address, phone number and open enrollment changes to coverage as well as authorized family status changes outside of open enrollment.
- e. Accountability and Auditing. Track accurate data, changes and approvals as well as providing historical enrollment information of plans, dependents and coverage start and end dates with audit records of the changes made.
- f. Notification Task Bar. Must be capable of providing notification to the assigned staff when modifications are made to an employee's record.
- g. Authorizing Changes. Must be capable of pending changes requested by an employee until approved by Human Resources.
- h. Data Tracking and Analysis. Must allow for data export to multiple external databases and must link with carrier databases to update demographic and enrollment information.
- i. Reports. Must support the capability to generate accessible reports as needed and download data into an Excel format.
- j. Customer Service. Provides password reset capability for employees without contacting Human Resources.

Desired Elements

Please provide information that demonstrates the system's ability to meet the following desired elements.

- a. Notes and Documentation. Should allow for note entries by employees and HR staff. The system should also have the ability to track notes including but not limited to the type of contact (face to face, online, phone, etc.).
- b. Backup Documentation. Should allow employees to upload documents to allow HR to verify eligibility for dependent coverage and/or status changes.

- c. Employee Notifications. Should be able to provide employee notifications of incomplete tasks required for enrollment as well as providing HR with the ability to push notifications out to employees based on their enrolled plans.
- d. ACA Compliance. Should have the capability to comply with ACA reporting requirements, or alternatively, be able to produce a downloaded report to provide required information to a third party administrator for IRS reporting purposes with the following information:
 - a. Employee Name
 - b. Dependent Names
 - c. SSN's
 - d. Dates of Birth
 - e. Coverage
 - f. Coverage months
- e. ACA Compliance. Track requests to employees to provide missing SSN's.
- f. ACA Compliance. Capable of tracking employee hours for ACA eligibility.
- g. COBRA Compliance. Ability to comply with COBRA laws, provide COBRA notifications to employees, track participants, collect premiums and remit payments to carriers or County. Notify participants when coverage is cancelled due to non-payment.
- h. Total compensation reports. The ability to provide total compensation reports is preferable.

ACH Preference

The Kitsap County Auditor is requiring that all vendor payments be processed through Direct Deposit via Automated Clearing House (ACH). Please contact the Kitsap County Auditor if you wish to arrange an alternative payment method. No other payment method will be available unless agreed to by the Kitsap County Auditor in writing prior to commencement of work and/or purchase.

Procurement Contact Information

Upon release of this RFP, all communications concerning this RFP must be directed only to the RFP Coordinator listed below. Any communication directed to Kitsap County staff or consultants other than the RFP Coordinator may result in disqualification.

Contact: Colby Wattling

Mailing Address: Kitsap County Purchasing Office
614 Division St., MS-7
Port Orchard, WA 98366

Physical Address: Purchasing Office – Fourth Floor
619 Division St.
Port Orchard, WA 98366

Telephone: 360/337.4410

E-mail Address: cwattling@co.kitsap.wa.us

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 Proposer's sole responsibility to periodically check the Kitsap County website for amendments to this document.

Figure 1. **PROCUREMENT SCHEDULE**

Item	Action	Date
1.	Proposer may submit written questions and comments until 3 p.m. Pacific Time	September 15, 2016
2.	Kitsap County will issue responses to questions. (If any received)	September 19, 2016
3.	Proposer must submit Proposal by 3 p.m. Pacific Time	September 27, 2016

Proprietary Information/Public Disclosure

Materials submitted in response to this RFP shall become the property of Kitsap County and the proposals shall be deemed public records as defined by RCW 42.56.

The proposal must include a statement on the Cover Letter identifying the pages, if any, which contain information that the Proposer considers proprietary. Each page claimed to be proprietary must be clearly marked by stating the work "Proprietary" on the lower right hand corner. Proposers must be reasonable in designating information as proprietary or confidential. **Proposers may not mark their entire proposal proprietary. Doing so will not be honored and will disqualify your proposal from further consideration.**

If Kitsap County receives a request to view or copy a Proposer's proposal, the County will respond according to applicable law and the County's policy governing public disclosure. Kitsap County will not disclose any information marked "Proprietary" in a proposal without giving the Proposer ten (10) days notice to seek relief in superior court per RCW 42.56.540.

Do not include any HIPAA sensitive information in your proposal. Doing so will disqualify your proposal from further consideration. If you wish to include examples of any forms or processes, use a blank form or ensure that the sensitive information is redacted.

Questions and Answers

Proposer's may e-mail or mail written questions to the RFP Coordinator. Questions will be accepted until the date set forth in the Procurement Schedule. Early submission of questions is encouraged. Questions and answers will be posted on the Kitsap County website by amendment. Proposers may only rely on

written statements issued by the RFP Coordinator. Any oral communications are unofficial and are not binding on Kitsap County.

RFP Amendments

Kitsap County reserves the right, at any time before the execution of a contract to amend all, or a portion of this RFP. Amendments will be posted on the Kitsap County website. If there is any conflict between amendments or between an amendment and this document, whichever document was issued last in time shall be controlling.

Submittal Requirements

1. A brief cover letter and statement of interest in conducting this work
2. A proposal which addresses the criteria for selection for the written submission (below), including the proposed approach to scope of work and deliverables, schedule, and detailed budget. Describe any departures from our requested services that you would recommend. The proposal should be a maximum of 6 pages.

To be considered for this RFP, 1 copy marked **“Original” and seven (7) copies** of the proposal must be submitted with the 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. All copies must be identical in content to the “Original” as the evaluators will only be evaluating the copies.

The Proposer must include in the “Original” one soft copy in Microsoft Word or Microsoft Excel if appropriate, on a portable media or electronic readable media (CD or thumb drive), with a label identifying the Proposer’s name and RFP 2015-146.

Proposals must be received no later than 3:00 p.m. on September 27, 2016.

Please submit by mail to:

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

OR

For hand delivery, express , or courier:

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

Proposers are solely responsible for all costs incurred in the development and submission of the response to this RFP, including proposal preparation or any other presentations, whether or not they lead to execution of a contract and agreement with Kitsap County. All materials submitted become the property of Kitsap County.

Non-responsive Proposals

All proposals will be reviewed by the RFP Coordinator to determine compliance with instructions specified in this RFP. Kitsap County may reject or withdraw a proposal at any time as nonresponsive for any of the following reasons:

- a. Incomplete proposal
- b. Submission of a proposal that proposes services that deviate from the technical requirements set forth in this document
- c. Failure to comply with any part of this RFP or any attachment to this RFP
- d. Submission of incorrect, misleading, or false information

Kitsap County may waive minor administrative irregularities related to any proposal.

Execution of the Contract

Kitsap County expects to sign a contract with the Apparently Successful Proposer and any subsequent amendments that may be required to address specific work or services as needed. A sample contract is attached as Attachment A.

Kitsap County reserves the right to negotiate the specific wording of the Statement of Work, based on the requirements of this RFP and the terms of the winning proposal.

If the Apparently Successful Proposer fails or refuses to sign the contract or any subsequent amendment within ten (10) business days of delivery, Kitsap County may elect to cancel the award and may award the contract to the next-highest ranked finalist.

Any subcontracts necessary to perform the contract shall be subject to the prior written approval of Kitsap County.

NOTE: The Apparently Successful Proposer must comply with the insurance requirements identified in the sample contract attached hereto as Attachment A.

Criteria for Selection

Kitsap County will use the following criteria to evaluate proposals to select the most qualified team. The selection process is twofold, and the top ranked firms will be invited to Kitsap County for oral evaluations/product demonstrations.

Written Submission

1. Executive Summary

The executive summary should describe the Bidder's response at a high level in terms of Engagement approach, perspective, staffing, skill levels, and overall Work Description. It should demonstrate that the Bidder understands the scope and objectives of the Engagement.

2. Implementation/Project Management

Provide your estimated timeline for implementation based on the objectives and mandatory elements. It is the County's desire to have a system available for open enrollment, which is generally conducted from the end of October through the middle of November. Please note that due to potential changes in administration of our benefits, the open enrollment period may be later in 2016.

- a. Provide your timeframes on implementing other similarly-sized employers and your success in meeting the deadlines. Present information of specific experience in the performance of similar engagements to manage, plan, design, develop, and implement successful efforts that meet the criteria of this request. Clearly describe the scope and scale of those engagements. Describe why your experience positions your firm as the best candidate for this engagement.
- b. The successful vendor will independently manage their work deliverables. Outline your previous project management experience.
 - Describe your project management process and the methodology that will be used for this project.

- Provide sample project reports from previously managed projects and describe how the projects were constructed, status and other reports.
- c. The successful vendor will be required to provide written status reports to the Kitsap County Human Resources Project Manager on a weekly basis throughout the project. More frequent verbal or written reports or electronic files may be required as deemed necessary by the Project Manager.
 - Provide a proposed format for the written weekly status report.
 - Provide examples of any other reports commonly used to report exceptions and/or project status.
- d. The successful vendor in partnership with Kitsap County Human Resources will be responsible for using an issue resolution process for recording and tracking any system development problems, issues and changes.
 - Describe your proposed process for managing issues, problems, and changes. Consider the entire system development cycle.
 - Explain by whom and how issues, problems, and changes should be resolved.
- e. The ideal Bidder will have conducted at least three (3) successful implementations. At least one of the engagements should be similar or larger in scope and complexity.

4. Experience and Qualifications of Staff

Provide resumes for the proposed staff, which includes information on the individual's particular skills and qualifications related to this Engagement, education, experience, significant accomplishments and any other pertinent information. Describe how your company will ensure continuity of service in the event one or more of your staff becomes unavailable during the term of implementation.

3. Costs

In this section of the proposal, the Bidder is to identify all costs, including expenses to be charged for performing the tasks necessary to accomplish the objectives of the contract. The Bidder is to submit a fully detailed report of all services included in the bid as well as any additional costs or optional fees to be charged. Include system set-up fees and County staff training costs.

Oral Evaluation/Product Demonstrations

If selected to participate in oral evaluations/product demonstrations, your firm will be evaluated based on the following criteria:

1. Proposed model
 - How adaptive is the demonstration model to our current system and needs.
 - Ability to search for information by multiple parameters.
 - Provides administrative control over changes that can be made by employees.
 - Demonstrates reports and required forms (to include statistical analysis)
 - Ability to provide sample program for department testing.
 - Hyperlinks.
 - In addition to managing employee records, must have the ability to manage and track family and relationship history and status.
 - Demonstrate a tracking and notification system.

2. The software is straight forward and user friendly
 - Employee Interface - Appearance is well defined, user friendly and clear.
 - Administrative Interface – Appearance is well defined, user friendly and clear. Updates to system can be accomplished with minimal effort.
 - Demonstrate the ability to interface (data push/pull) with other external systems.
 - Local customization of drop-down fields, forms, queries, and reports.
 - Hard copy and online user manual and support system.
 - Clearly demonstrates ability to create reports and maintain statistics.
3. Storage and security – system is HIPAA compliant and meets security and storage requirements.
 - Customizable permission web-based system. Ability to locally manage who can view, modify and delete data. Must be clear to understand, user friendly, and easily modifiable.
 - Demonstrates information storage capability and disaster recovery protocols.
4. Onsite and Remote Access
 - System must be cloud/web accessible from on-site and remote locations via internet access. Access must be security controlled (login ID and password, etc). Access to information must be available/modified in real time.
 - System should not be stored on a local server. The system should be cloud-based with an off-site server location with routine back-ups being stored at the off-site server location (primary) with a copy maintained on a local server.
5. Ability to connect/interface with external carrier information systems
 - Examples of external programs: Premera, Group Health, BSI, Navia Benefits, CMS, AFLAC

Attachment A – Sample Contract

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CONTRACT FOR PROFESSIONAL SERVICES

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

SECTION 1. EFFECTIVE DATE OF CONTRACT

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

SECTION 2. SERVICES TO BE PROVIDED

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

SECTION 3. CONTRACT REPRESENTATIVES

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

County's Contract Representative

Contractor's Contract Representative

SECTION 4. COMPENSATION

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

SECTION 5. AMENDMENTS AND CHANGES IN WORK

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

SECTION 6. HOLD HARMLESS AND INDEMNIFICATION

- 6.1 The Contractor will hold harmless, indemnify and defend the County, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or

death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of the Contract. Provided, however, that the Contractor's obligation under this provision will not extend to injury, sickness, disability, death or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees or agents.

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

SECTION 7. INSURANCE

- 7.1 **Professional Legal Liability.** The Contractor will maintain professional legal liability or professional errors and omissions coverage appropriate to the Contractor's profession. The coverage will have a limit of not less than \$1 million per occurrence. The coverage will apply to liability for a professional error, act or omission arising out of the Contractor's services under the Contract. The coverage will not exclude bodily injury or property damage. The coverage will not exclude hazards related to the work rendered as part of the Contract or within the scope of the Contractor's services under the Contract, including testing, monitoring, measuring operations or laboratory analysis where such services are rendered under the Contract.
- 7.2 **Workers' Compensation and Employer Liability.** The Contractor will maintain workers' compensation insurance as required by Title 51, Revised Code of Washington, and will provide evidence of coverage to the Kitsap County Risk Management Division. If the Contract is for over \$50,000, then the Contractor will also maintain employer liability coverage with a limit of not less than \$1 million.
- 7.3 **Commercial General Liability.** The Contractor will maintain commercial general liability coverage for bodily injury, personal injury and property damage, subject to a limit of not less than \$1 million per occurrence. The general aggregate limit will apply separately to the Contract and be no less than \$2 million. The Contractor will provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of the Contract. Specialized forms specific to the industry of the Contractor will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard commercial general liability policy, including contractual liability coverage.

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

Not Applicable.

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

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

7.5 **Miscellaneous Insurance Provisions.**

- A. The Contractor's liability insurance provisions will be primary with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees and agents.
- B. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will include the County, its officers, officials, employees and agents as an additional insured with respect to performance of services.
- C. When such coverage is required, the Contractor's commercial general liability insurance and automobile liability insurance will contain no special limitations on the scope of protection afforded to the County as an additional insured.
- D. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the County, its officers, officials, employees or agents.
- E. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, subject to the limits of the insurer's liability.
- F. The Contractor will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements stated in these provisions.
- G. The insurance limits mandated for any insurance coverage required by the Contract are not intended to be an indication of exposure, nor are they limitations on indemnification.

- H. The Contractor will maintain all required policies in force from the time services commence until services are completed. Certificates, policies and endorsements scheduled to expire before completion of services will be renewed before expiration. If the Contractor's liability coverage is written as a claims-made policy, then the Contractor must evidence the purchase of an extended-reporting period or "tail" coverage for a three-year period after completion of the services.

7.6 Verification of Coverage and Acceptability of Insurers.

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

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

SECTION 8. TERMINATION

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

SECTION 9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

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

SECTION 10. INDEPENDENT CONTRACTOR

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

SECTION 11. NONDISCRIMINATION

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

SECTION 12. OWNERSHIP OF MATERIALS/WORKS PRODUCED

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

SECTION 13. PATENT/COPYRIGHT INFRINGEMENT

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

SECTION 14. DISPUTES

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

SECTION 15. CONFIDENTIALITY

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

SECTION 16. CHOICE OF LAW, JURISDICTION AND VENUE

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

SECTION 17. MISCELLANEOUS

- 17.1 **No Waiver.** The parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the Contract, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the Contract at a later time.
- 17.2 **Tax Payments.** The Contractor will pay all applicable federal, state and local taxes, fees (including licensing fees) and other amounts.
- 17.3 **Personnel Removal.** The Contractor agrees to remove immediately any of its subcontractors, employees, agents or representatives from assignment to perform services under the Contract upon receipt of a written request to do so from the County's contract representative or designee.
- 17.4 **Legal Compliance.** The Contractor and its subcontractors, employees, agents and representatives will comply with all applicable federal, state and local laws, rules and regulations in their performance under the Contract.
- 17.5 **Records Inspection and Retention.** The County may, at reasonable times, inspect the books and records of the Contractor relating to the performance of the Contract. The Contractor will retain for audit purposes all Contract-related records for at least six years after termination of the Contract.
- 17.6 **Successors and Assigns.** The County, to the extent permitted by law, and the Contractor each bind themselves, their partners, successors, executors, administrators and assigns to the other party to the Contract and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Contract.
- 17.7 **Severability.** If a court of competent jurisdiction holds any provision of the Contract to be illegal, invalid or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected, and the parties' rights and obligations will be construed and enforced as if the Contract did not contain the particular provision held to be invalid. If any provision of the Contract conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.
- 17.8 **Entire Agreement.** The parties acknowledge that the Contract is the complete expression of their agreement regarding the subject matter of the contract. Any oral or

written representations or understandings not incorporated in the Contract are specifically excluded.

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

DATED this ____ day _____, 200__.

DATED this ____ day _____, 200__.