

	ATTACHMENT J RFP 2025-007 RADIO TOWER PURCHASE AND INSTALLATION	Purchasing Department 619 Division St., 4 <sup>th</sup> Floor Port Orchard, WA 98366
	CONTRACT	

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20XX between Kitsap County, a political subdivision of the State of Washington, having its principal offices at 614 Division Street, Port Orchard, Washington 98366 (“County”), and [CONTRACTOR], a [CONTRACTOR TYPE], having its principal offices at [CONTRACTOR ADDRESS] (“Contractor”).

WHEREAS, the County desires to construct the [PROJECT NAME AND LOCATION] in Commissioner District #A and

WHEREAS, the Contractor has been selected by competitive bid [BID#] as the responsible bidder with the lowest responsive bid as is required by Chapter 39.04 RCW.

NOW THEREFORE, in consideration of the terms and conditions of this Contract, the County and the Contractor mutually agree as follows:

**SECTION 1. DEFINITIONS**

- 1.1 Claim means all losses, claims, suits, actions, liabilities, damages, demands, judgments, settlements, expenses, fines, or other liabilities of any kind or nature whatsoever, including, without limitation, all costs, including costs of Claim processing, investigation, reasonable attorneys’ fees, consequential damages, and punitive damages, for any personal or bodily injury, sickness, disease, disability, or death, or loss or damage to tangible or intangible business or property, including the loss of use. Claim includes any infringement, violation, or misappropriation of any third parties' copyright, patent, trademark, or other proprietary rights.
- 1.2 Contract means this Contract and any exhibits, amendments, specifications, schedule, the Invitation for Bid and all exhibits, and the accepted Bid Proposal. All such documents are incorporated herein in full by this reference.
- 1.3 Personnel means the Contractor and its employees, subcontractors, volunteers, interns, agents, and any other person the Contractor utilizes directly or indirectly or through third parties to provide goods and/or perform any services under the Contract. The Contractor shall have and maintain complete responsibility for its Personnel. The Contractor remains liable for all acts, errors, and omissions of its Personnel as if they were the acts or omissions of the Contractor. The Contractor will remove any Personnel performing services upon a request from the County.

**SECTION 2. WORK, LIQUIDATED DAMAGES, TIME FOR COMPLETION**

- 2.1 Description. This Contract provides for the construction of [Brief Project Description] in accordance with the Plans and Specifications entitled “[PROJECT NAME].” Contractor agrees to furnish all material, labor, carriage, tools, equipment, apparatus, facilities, and anything else necessary to complete the work in a professional and workmanlike manner.

The Contractor shall complete its Work in a timely manner and general accordance with the agreed schedule submitted by the Contractor and approved by the County.

- 2.2 Certification. The parties certify that each understands that the Contract is funded in whole or part with federal grant funds and subject to all applicable federal grant rules and other laws and requirements associated with federally funded programs now in effect and as amended and agree to comply with the same.
- 2.3 Notice to Proceed. The County shall issue a Notice to Proceed after executing the Contract and receipt of all necessary required documents, including, where applicable, Performance and Payment Bond, a copy of insurance policies and/or any Certificates of Insurance and Additional Insured Endorsements. The Notice to Proceed shall provide the Start Date.
- 2.4 Time is of The Essence; Liquidated Damages. Time is of the essence in the performance of this Contract. The Contractor agrees to work promptly and fully complete the work within the limits as described in the Contract Documents. Failure to complete the work within the allowed time limit will subject the Contractor to the payment of liquidated damages as described herein.

Delays in the completion of this Contract will negatively affect the efficient and continuous operation of [PROJECT SITE]. Delays also cost taxpayers undue sums of money, adding time needed for additional administration, engineering, inspection, and supervision. Accordingly, the Contractor agrees to pay liquidated damages in the amount of \$XX.00 for each working day beyond the number of working days established below and to authorize the County to deduct these liquidated damages from any money due to coming due to the Contractor.

When the Contract Work has progressed to Substantial Completion as defined below, the County may determine that the Contract Work is Substantially Complete. The County will notify the Contractor in writing of the Substantial Completion Date. For overruns in Contract time occurring after the date so established, liquidated damages identified above will not apply. For overruns in Contract time occurring after the Substantial Completion Date, liquidated damages shall be assessed based on direct engineering and related costs assignable to the project until the actual Physical Completion Date of all the Contract Work. The Contractor shall complete the remaining Work as promptly as possible. Upon request by the County, the Contractor shall furnish a written schedule for completing the physical Work on the Contract.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract.

- 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.
- 2.6 Time For Completion. The work to be performed under this Contract shall commence upon receipt of the Notice to Proceed. Time for Completion of the Contract Documents and Substantial Completion of the work shall be achieved within number [#] Working Days, exclusive of a Procurement Suspension.

Substantial Completion is when all physical work is complete except for punch list items. In other words, this is the date that the contracting agency has full and unrestricted use of the facilities, both from an operational and safety standpoint. Only minor incidental work remains, such as the replacement of temporary substitute facilities or minor corrections or repairs.

Contract Time may be suspended for procurement of critical materials (Procurement Suspension). In order to receive a Procurement Suspension, the Contractor shall, within number (#) calendar days

after approved submittals, place purchase orders for all materials deemed critical by the County for physical completion of the Contract. The Contractor shall provide copies of purchase orders for critical materials. Such purchase orders shall disclose the purchase order date and estimated delivery dates for such critical material.

The Contractor shall show procurement of the materials listed below as activities in the Project Schedule. If the approved Project Schedule indicates that the materials procurement are critical activities, and if the Contractor has provided documentation that purchase orders are placed for the critical materials within the prescribed number (#) calendar days, then Contract Time will be suspended for physical completion of critical work dependent upon the below listed critical materials:

**MATERIAL.** Charging of the final ten [10] Working Days of Contract Time in accordance with the Work Sequence within the Project Specifications shall resume upon delivery of the critical materials to the Contractor.

### SECTION 3. COMPENSATION, PAYMENT, PREVAILING WAGE, BONDS

- 3.1 **Compensation.** The County hereby agrees to pay the Contractor according to the Contractor's Bid in the amount of \$[CONTRACT AMOUNT] (including accepted alternates and Washington State Sales Tax, at the time and manner and upon the conditions provided for in this Contract.
- 3.2 **Payment.** At monthly intervals, unless determined otherwise by the County, the Contractor shall submit to the County an invoice or billing statement. Within thirty (30) calendar days of receiving an invoice or billing statement, the County shall pay ninety-five (95) percent of the invoice if such invoice or statement is acceptable to the County. Five (5) percent of the invoice or statement amount shall be retained in accordance with Chapter 60.28 RCW. No invoice or billing statement will be paid until all schedules for the previous month have been met and other documentation required by the Contract Documents have been submitted.

In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Contract and such failure has not been cured within ten (10) working days following notice from the County, then, in its sole discretion and upon written notice to the Contractor, the County may withhold any monies due and payable to the Contractor without penalty until such failure to perform is cured or otherwise adjudicated.

Unless otherwise provided for in this Contract or any of the Contract Documents, the Contractor will not be paid for any billings or invoices presented for payment prior to the execution of this Contract and the Notice to Proceed or for work performed after the Contract's termination. No payment shall be made for any work performed by the Contractor except for work identified and set forth in this Contract or the Contract Documents.

- 3.3 **Prevailing Wages.** Contractor shall be responsible for complying with the prevailing wage requirements associated with Chapter 39.12 RCW and WAC 296-127.

Pursuant to Chapter 39.12 RCW and WAC 296-127, the Contractor shall pay its employees no less than the prevailing rate of per diem wages and provide documentation to the County of its compliance with prevailing wage laws and regulations. The prevailing rate shall be calculated as of [DATE] for Kitsap County and the applicable trade. For all subcontractors, the Contractor agrees that the date for determining prevailing wages will be the date of the contract between the Contractor and the subcontractor. A copy of such prevailing rates of per diem wages can be found at <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/> and shall be

posted by the Contractor at the work site.

A "Statement of Intent to Pay Prevailing Wages" (hereinafter "Statement of Intent") must be submitted to and approved by the State Department of Labor and Industries prior to beginning work by the Contractor. The Statement of Intent shall include the Contractor's registration number, the prevailing wage for each classification of workers, and an estimate of the number of workers in each classification. An 'Affidavit of Wages Paid' must be submitted to and approved by the State Department of Labor and Industries by the Contractor prior to release of the retained percentage. Copies of these documents shall be provided to the County prior to any payment being made to the Contractor. The fee for each of these documents shall be paid by the Contractor.

- 3.4 Performance and Payment Bonds; Retainage. The Contractor agrees to provide Performance and Payment Bonds on forms approved by the County. Pursuant to Chapter 39.08 RCW, the Contractor shall make, execute, and deliver to the County the performance and payment bonds for the full contract amount of \$[CONTRACT AMOUNT]. The bonds shall also cover any and all approved change orders. The bonds must be submitted within ten (10) days after contract execution.

The County shall reserve a contract retainage of five (5) percent of every invoice in accordance with chapter 60.28 RCW. The County shall promptly release any retained percentage withheld if after sixty (60) calendar days of final completion and acceptance of all contract work, no liens or claims are filed against the project, and after receipt of the Department of Revenue's Certificate designating taxes due or to become due are discharged and receipt by the County of an "Affidavit of Wages Paid."

For purposes of the RCW 60.28.011, the term "completion of all contract work" has the same meaning as the "date of final acceptance" under RCW 36.08.010.

Neither the County nor the County's Representative shall have an obligation to pay or ensure the payment of money to any subcontractor except as may otherwise be required by law.

Payment and performance bonds for this project have been issued by [SURETY COMPANY NAME], Street address: [ADDRESS], City: [CITY], Telephone: [PHONE NUMBER], Contact Person: [CONTACT PERSON], in the amount of [BOND AMOUNT].

#### SECTION 4. CONTRACT REPRESENTATIVES.

- 4.1 Each party to this Contract shall have a representative. Each party may change its representative upon providing written notice to the other party. These representatives will be:

**County's Contract Representative**

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

**Contractor's Contract Representative**

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

Email: [Contractor Rep Email]

All instructions, modifications, and changes to the Contract shall be conveyed to the Contractor through the County's Representative. Any work executed upon the direction of any person or entity other than the County's Representative may be considered defective and will be performed without reimbursement for said work to the Contractor. The County's Representative shall have the authority to reject any and all nonconforming or defective work under the Contract Documents.

## SECTION 5. INDEMNIFICATION.

5.1 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless Kitsap County and its elected and appointed officials, officers, employees, and agents (collectively "Indemnitees") from and against all Claims resulting from or arising out of the performance of the Contract, whether such Claims arise from the acts, errors, or omissions of the Contractor, its Personnel, third parties, or anyone directly or indirectly employed by any of them, or anyone for whose acts, errors, or omissions for which any of them may be liable. It is the specific intent of the parties that the Indemnitees shall, in all instances except Claims arising from the sole negligence or willful misconduct of the Indemnitees, be indemnified by the Contractor from and against any and all Claims. With regard to any Claim against any Indemnitee by any of the Contractor's Personnel, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification obligation shall not be limited in any way by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or the Contractor's Personnel under workers compensation acts, disability benefit acts, or other employee benefit acts. Solely for the purposes of this indemnification provision, the Contractor expressly waives its immunity under Title 51 RCW (Industrial Insurance) and acknowledges this waiver was mutually negotiated by the parties.

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.

5.2 Obligations/Notice of Claim. The County will provide the Contractor notice of the assertion of liability by a third party that may give rise to a Claim by the County against the Contractor based on the indemnity contained herein. The Contractor shall respond to the County's tender of defense of a claim in writing within fourteen (14) calendar days from the notice date and will advise the County if the Contractor accepts or denies tender of the claim. The County may in its discretion withhold all or part of any payment due the Contractor under the Contract until the Contractor responds to such notice. The Contractor shall keep the County timely and fully informed through all stages of the defense and promptly respond to and comply with the County's requests for information. The County at all times reserves the right but has no obligation to participate in the defense and settlement of any Claim. Such participation shall not constitute a waiver of the Contractor's indemnity and defense obligations under the Contract. The Contractor shall not settle or compromise any Claim in any manner that imposes any obligations upon the County without the prior written consent of the County. The Contractor shall promptly advise the County of any occurrence or information known to the Contractor that could reasonably result in a Claim against the County. The violation of any provisions of 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 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. *(Check one of the following options):*
- Not Applicable.
  - Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage will apply to liability for professional error, act or omission arising out of or in connection with the Contractor’s Services under the Contract. The coverage shall not exclude bodily injury, property damage, or hazards related to the work rendered as part of the Contract or within the scope of the Contractor’s services under the Contract, including testing, monitoring, measuring operations, or laboratory analysis where such Services are rendered under the Contract.
- 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 and such other insurance required below.
- Not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall include liability for any and all owned, hired, and non-owned vehicles. Coverage may be satisfied with an endorsement to the CGL policy.
  - Not less than \$100,000 per occurrence and \$300,000 annual aggregate. If a personal automobile liability policy is used to meet this requirement, it must include a business rider and cover each vehicle to be used in the performance of the Contract. If the Contractor will use non-owned vehicles in performance of the Contract, the coverage shall include owned, hired, and non-owned automobiles.
- 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 Section 7, 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 the Contractor and its subcontractors. Endorsement is not required if the Contractor is a self-insured government entity or insured through a government risk pool authorized by Washington State. The Certificate of Insurance and endorsement shall identify the Contract number and shall require not less than thirty (30) days’ prior notice of termination, cancellation, nonrenewal, or reduction in coverage. At the time of execution, the Contractor shall provide the Certificate of Insurance, endorsement, and all insurance notices to: Risk Management Division, Kitsap County Department of Administrative Services, 614 Division Street, MS-7, Port Orchard, WA 98366.
- 6.11 No Limitation on Liability. The coverage limits identified herein are minimum requirements only and will not in any manner limit or qualify the liabilities or obligations of the Contractor under the

Contract. All insurance policy deductibles and self-insured retentions for policies maintained under the Contract shall be paid by the Contractor. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its elected and appointed officials, officers, employees, or agents. The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, subject to the limits of the insurer's liability.

- 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. WARRANTY

- 7.1 The Contractor shall warranty all work as required in the Specifications. Further, the Contractor shall ensure that for any equipment, material, or item installed under this Agreement, the County will be a beneficiary of any and all warranties that are furnished as a customary trade practice and that installation will not void any such warranty. To effect this arrangement, all subcontracts executed in performance of this Agreement shall include the following language:

*This contract is for the benefit of [PROJECT/LOCATION], which is owned by Kitsap County. Kitsap County is therefore hereby made a third-party beneficiary to this contract and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.*

## SECTION 8. TERMINATION

The County may terminate this 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 this Contract upon giving ten (10) calendar days written notice to the Contractor. In that event, the County shall pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of such notice. Payment shall be made in accordance with this Contract.

If funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the County may immediately terminate this Contract notwithstanding any other termination provision of this Contract. Termination under this paragraph shall be effective upon the date specified in the written notice of termination sent by the County to the Contractor. After the effective date, no charges incurred under this Contract are allowable.

Termination of this Contract shall not relieve the Contractor of any responsibilities under the Contract for work performed. Nor shall termination of the Contract relieve the Surety or Sureties of obligations under the Performance and Payment Bond or any Retainage Bond for work performed.

If the Contractor breaches any of its obligations hereunder and fails to cure the breach within ten (10) calendar days of written notice to do so by the County, the County may terminate this Contract, in which case the County shall pay the Contractor only for the costs of work performed and accepted by the County. Upon such termination, the County, at its discretion, may obtain performance of the work elsewhere, and the Contractor shall bear all costs and expenses incurred by the County in completing the work and all damage sustained by the County by reason of the Contractor's breach.

## SECTION 9. 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. 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 this Contract. Furthermore, the Contractor shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives.

The Contractor agrees to immediately remove any of its employees or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the County's Representative or designee.

## SECTION 10. GOVERNING LAW, DISPUTES

10.1 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.

10.2 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 11. NOTICES

Any notices, demands and other communications required by the Contract will be effective if personally served upon the other party representative or if mailed by registered or certified mail, postage prepaid, return receipt requested, to the other party's representative identified in Section 3 at the address therein, or if emailed (with read receipt) to the other Party's representative at the email address therein. Notice will be deemed to be given three (3) days following the date of mailing, or immediately if personally served. For service by email, service will be effective upon confirmation of receipt or three (3) days after mailing the original.

## SECTION 11. GENERAL PROVISIONS

11.1 Nondiscrimination. The Contractor, its assignees, delegates, or subcontractors in the performance of this Contract shall not discriminate against any person based on race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by federal, state, or local law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88 354 and Americans with Disabilities Act of 1990.

11.2 Non-Waiver Of Rights. The parties agree that the excuse or forgiveness of performance or waiver of any provisions of this Contract does not constitute a waiver of such provisions for future performance

or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

- 11.3 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 this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants of this Contract. 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.
- 11.4 Modification. All amendments or modifications, including Change Orders, shall be in writing, signed by both parties consistent with Kitsap County Code, and incorporated into this Contract.
- 11.5 Compliance With Laws. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.
- 11.6 Compliance with Public Records Act. Contractor acknowledges that the County is subject to the Public Records Act, chapter 42.56 RCW ("Act"). All records owned, used, or retained by the County are public records subject to disclosure unless exempt under the Act, whether or not such records are in the possession or control of the County or Contractor. Contractor shall cooperate with the County so County may comply with all of its obligations under the Act. Contractor shall promptly provide County with all records relating to this Agreement requested by County for purposes of complying with the Act at no cost to the County. With the exception of this 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 label or 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. Of the contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County will not be liable to the Contractor for releasing records pursuant to the Act.
- 11.7 Records 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 at no cost to 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. In addition to its other indemnification and defense obligations under this Agreement, Contractor shall indemnify and defend the County from and against any and all losses, penalties, fines, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage arising from or relating to any failure of Contractor to comply with this subsection. This subsection shall survive expiration or termination of the Agreement.

- 11.8 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.
- 11.9 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.
- 11.10 No Party the Drafter. The Contract is the product of negotiation between the parties, and no party is deemed the drafter of the Contract.
- 11.11 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.
- 11.12 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.
- 11.13 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 order of precedence shall be this Contract, then the attachments and exhibits.
- 11.14 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.
- 11.15 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.
- 11.16 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: indemnification, insurance, governing law.
- 11.17 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.

INSERT SIGNATURE BLOCK