



**REQUEST FOR PROPOSALS (RFP) FOR
REAL ESTATE BROKER SERVICES
RFP NO. 2023-0035-01**

PROPOSAL DUE DATE: August 31, 2023 prior to 4:00 PM local time. Cowlitz County will not accept and/or review proposals received after this date and time.

SUBMISSION REQUIREMENT: One (1) electronic copy in PDF form must be submitted via email to claussena@cowlitzwa.gov prior to the due date shown above. The subject line must read "Real Estate Broker Services RFP #2023-0035-01."

ESTIMATED TIME PERIOD FOR CONTRACT: October 1, 2023 – September 30, 2024. The County reserves the right to extend the contract for four (4) additional one-year periods at the sole discretion of the County.

CONSULTANT ELIGIBILITY: This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

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I. INTRODUCTION

A. PURPOSE

Cowlitz County, Washington ("County"), is seeking proposals from real estate brokers/firms who specialize in commercial and/or residential properties to provide general consulting and to assist in the sale, lease and licensing, and purchase of County real estate properties.

The County intends to award one (1) agreement to provide as-needed real estate broker services as outlined in this RFP. The selection will be based on the proposal most advantageous to the County.

B. BACKGROUND

The County's Public Services Department is responsible for reviewing all County-owned, real property and determining which, if any, real property parcels are appropriate for disposition as surplus. In addition, the Board of County Commissioners may request that specific properties be evaluated for potential purchase, or lease or licensed use, or surplus sale disposition at any time. Such a review may also be initiated by, and upon the receipt of, an unsolicited purchase, lease, or licensing offer. Any purchase or other disposition of County real property will require Board of County Commissioner approval as provided in [County Property Management Code, Chapter 3.50](#).

C. QUALIFICATIONS AND MINIMUM REQUIREMENTS

All firms submitting proposals under this RFP shall demonstrate the knowledge, experience, and products necessary to meet or exceed the following minimum requirements:

1. Must possess necessary license(s) pursuant to Washington State License Law RCW 18.85 and be in good standing with all applicable Federal, State, County, and local units of government, which specifically includes good tax payment status and satisfactory corporate registration status.
2. Must have a minimum of 3 years' experience in commercial real estate.
3. Must be knowledgeable in the local commercial real estate market and have experience with small and large commercial properties, unimproved land, and right-of-way acquisition.
4. Must be knowledgeable in the use of public real estate records maintained by the County Assessor and County Auditor.
5. Knowledge and experience in the acquisition and sale, and leasing and licensing of government owned property is desired.
6. Must be financially solvent and each of its members if a joint venture, its employees, agents, or sub consultants of any tier shall be competent to perform the services required under this RFP document.
7. Must provide all personnel, equipment, transportation, supplies, tools, and materials necessary to maintain the level of service detailed in this RFP throughout the term of the agreement.

D. SCOPE OF SERVICES

The successful firm shall agree to a contract with Cowlitz County in substantially the same form as provided in Exhibit B to provide the following:

1. Develop strategies for sale, lease, and licensing of designated County-owned properties (such as conducting a study of comparable properties).
2. Develop marketing materials (electronic and/or hard copy) to advertise sites for sale, distribute the materials to potential buyers via the appropriate form(s) of media and report the results to the County on an agreed upon frequency.
3. Advise the County on strategies to promote and sell the designated sites. Public presentations may be required.
4. Participate in site tours of County-owned property with potential buyers.
5. Analyze offers from potential buyers and advise the County with respect to negotiations.
6. Assist and perhaps represent the County in negotiations with a prospective buyer, lessee, or licensee from the time of offer until closing, as applicable.
7. Coordinate real estate transaction closings.
8. Conduct all other customary activities and services associated with real estate transactions.
9. Provide as needed counselling on miscellaneous real estate matters.

10. Represent/coordinate, as needed, real estate transactions and appraisals for purchase/sale or lease/licensing of property.

E. COOPERATIVE PURCHASING

Cowlitz County has made this Request for Proposal subject to Washington State statute RCW 39.34. Therefore, the proposer may, at the proposers' option, extend identical prices and services to other public agencies wishing to participate in this RFP. Each public agency wishing to utilize the contract that results from this RFP will be binding only their agency. Each contract is between the proposer and the individual agency with no liability to Cowlitz County.

F. PERIOD OF PERFORMANCE

The period of performance resulting from this RFP is tentatively scheduled to begin on or about **October 1, 2023** through **September 30, 2024**. The County reserves the right to extend the contract for four (4) additional one-year periods at the sole discretion of the County.

G. CONTRACTING WITH FORMER WASHINGTON PUBLIC EMPLOYEES

Washington State Department of Retirement System reporting requirements apply to public entities contracting with former Washington public employees pursuant to WAC 415-02-110, DRS Email 13-011 and DRS Email 09-001. Proposers should familiarize themselves with these reporting requirements to the County before submitting a proposal that includes former public employees. Information regarding these requirements can be found on the WA Department of Retirement System's Independent Contractor Verification and State Retirement Status Reporting Form located on the last page of this document.

H. DEFINITIONS

Definitions for the purposes of this RFP include:

Apparent Successful Consultant – The consultant selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

County – Cowlitz is the County in the state of Washington that is issuing this RFP.

Proposal – A formal offer submitted in response to this solicitation.

Proposer - Individual or company that submits a proposal to attain a contract with the County. May also be seen in this document as Respondent, Vendor, Contractor, Consultant, Firm, Licensee, etc.

Public Works – the department acting on behalf of Cowlitz County in requesting proposals.

Request for Proposals (RFP) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

I. ADA

Cowlitz County complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

II. GENERAL INFORMATION FOR CONSULTANTS

A. RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the County for this procurement. All communication between the Consultant and the County upon release of this RFP shall be with the RFP Coordinator, as follows:

Name	Ashley Claussen
E-mail Address	ClaussenA@cowlitzwa.gov
Mailing Address	1600 13 th Ave S Kelso, WA 98626
Phone Number	360-577-3030 ext. 6856

Any other communication will be considered unofficial and non-binding on the County. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

B. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	August 1, 2023
Question & answer period ends	August 11, 2023
Issue last addendum to RFP	August 15, 2023
Proposals due	August 31, 2023
Begin contract work	October 1, 2023

The County reserves the right to revise the above schedule.

C. PRE-PROPOSAL CONFERENCE

There will be NO pre-proposal conference held for this RFP.

The County will be bound only to the County's written answers to questions. Questions arising in subsequent communication with the RFP Coordinator will be documented and answered in written form. A copy of the questions and answers will be sent to each prospective Consultant that has made the RFP Coordinator aware of its interest in this procurement.

D. SUBMISSION OF PROPOSALS

Proposers are required to submit one (1) copy of their proposal in PDF format to claussena@cowlitzwa.gov. The subject line of the email must read "**Real Estate Broker Services RFP #2023-0035-01.**" The proposal must arrive no later than **4:00 PM** local time on **August 31, 2023**.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the County and will not be returned.

E. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Proposals submitted in response to this competitive procurement shall become the property of the County and shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Consultant is making the claim must be cited. Each

page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right-hand corner of the page. Marking the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Consultant has marked as "Proprietary Information," the County will notify the Consultant of the request and of the date that the records will be released to the requester unless the Consultant obtains a court order enjoining that disclosure. If the Consultant fails to obtain the court order enjoining disclosure, the COUNTY will release the requested information on the date specified. If a Consultant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, the County shall maintain the confidentiality of the Consultant's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

F. REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail to all individuals who have made the RFP Coordinator aware of their interest. Addenda will also be published on <http://www.co.cowlitz.wa.us/bids.aspx>. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFP and will be placed on the website. If you downloaded this RFP from the County website you are responsible for sending your name, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP addenda.

The County also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

G. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

Cowlitz County encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

H. ACCEPTANCE PERIOD

Proposals must provide 120 days for acceptance by County from the due date for receipt of proposals.

I. RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

Proposers must respond to all sections to be considered. The County also reserves the right at its sole discretion to waive minor administrative irregularities.

J. AMBIGUOUS STATEMENTS

All responses to Proposal requirements should be stated as concisely as possible. Ambiguous statements such as "all reasonable effort to provide" and the like may be grounds to declare the proposal non-responsive.

K. BACKGROUND INVESTIGATION

By submitting a proposal in response to this Request for Proposals, you are giving permission to the County to investigate your company and background with regard to any matter bearing on the desirability of the County doing business with you. The results of the investigation may be taken into consideration by the County in making its decision.

L. MOST FAVORABLE TERMS

The County reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Consultant can propose. There will be no best and final offer procedure. The County does reserve the right to contact a Consultant for clarification of its proposal.

The Apparent Successful Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Consultant's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the County, and that the public may view proposal documents

M. CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful consultant will be expected to enter into a contract which is substantially the same as the County's standard Professional Agreement and in accordance with the general terms and conditions therein, attached as Exhibit B to this solicitation. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit proposed exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted by Consultant as an attachment to Exhibit A, Certifications and Assurances form, or the standard contract shall be deemed accepted, as attached. **The County will review requested exceptions and accept or reject the same at its sole discretion in awarding the contract.**

N. ORAL AGREEMENTS

No oral agreement or conversation with the County or any official, employee, or agent of Cowlitz County, either before or after execution of a contract, shall affect, modify, or add to any of the terms or obligations contained in the contract documents. Any such oral agreement or conversation shall be considered as unofficial information and in no way binding upon Cowlitz County, unless subsequently put in writing.

O. COSTS TO PROPOSE

The County will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

P. NO OBLIGATION TO CONTRACT

This RFP does not obligate the County to contract for services specified herein.

Q. REJECTION OF PROPOSALS

The County reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

R. COMMITMENT OF FUNDS

The Board of County Commissioners or duly elected officials are the only individual(s) who may legally commit the County to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

S. ELECTRONIC PAYMENT

Cowlitz County prefers to utilize electronic payment such as EFT (Electronic Funds Transfer) or ACH (Automated Clearing House) in its transactions. The successful consultant will be provided a form to complete with the contract to authorize such payment methods.

T. INSURANCE COVERAGE

The Consultant is to furnish the County with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Consultant shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Consultant shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the County within fifteen (15) days of the contract effective date.

The Consultant shall maintain in full force and effect during the term of this Agreement, and until final acceptance of the work, public liability and property damage insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended. The County, its appointed and elected officials, agents and employees, shall be specifically named as additional insureds in a policy with the same company which insures the Consultant or by endorsement to an existing policy or with a separate carrier approved pursuant to RCW Title 48, as now or hereafter amended, and the following coverages shall be provided:

<input checked="" type="checkbox"/> PROFESSIONAL/ E&O:	\$1,000,000	per occurrence
	\$2,000,000	aggregate
<input checked="" type="checkbox"/> EMPLOYER'S LIABILITY/STOP GAP Can be endorsement or standalone policy	\$1,000,000	per occurrence
<input checked="" type="checkbox"/> AUTOMOBILE	\$1,000,000	combined single limit
<input checked="" type="checkbox"/> WORKERS COMPENSATION:	Statutory amount	

All Consultant and Consultant's subcontractors' insurance policies and additional named insured endorsements shall provide primary insurance coverage and be non-contributory.

Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and not contributory to such insurance policies. All Consultant's and Consultant's subcontractors' liability insurance policies must be endorsed to show this primary coverage.

Upon request, the Consultant shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Agreement. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington. Any deductibles and/or self-insured retentions exceeding \$10,000, stop loss provisions, and/or exclusions contained in such policies must be approved by the County in writing. For any deductibles or self-insured retentions exceeding \$10,000 or any stop-loss provisions, the County shall have the right to request and review the Consultant's most recent annual financial reports and audited financial statements as a condition of approval.

Consultant hereby agrees to waive subrogation with respect to each insurance policy maintained under this Agreement. When required by an insurer, or if a policy condition does not permit Consultant to enter into a pre-loss agreement to waive subrogation without an endorsement, then Consultant agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Consultant enter into such a waiver of subrogation on a pre-loss basis.

With the exception of Professional Liability coverage, the County, its departments, elected and appointed officials, employees, agents and volunteers shall be named as additional insureds on Consultant's and Consultant's subcontractors' insurance policies by way of endorsement for the full available limits of insurance maintained by the Consultant and subcontractor, and all coverage shall be primary and non-contributory. A statement or notation of additional insured status on a Certificate of Insurance shall not satisfy these requirements. [This endorsement shall not be required if the Consultant is a governmental entity and is insured through a governmental entity risk pool authorized by the State of Washington.]

The Consultant shall, for each required insurance policy, provide a Certificate of Insurance, with endorsements attached, evidencing all required coverages, limits, deductibles, self-insured retentions and endorsements and which is conditioned upon the County receiving thirty (30) days prior written notice of reduction in coverages, cancellation or non-renewal. Each Certificate of Insurance and all insurance notices shall be provided to: ATTN: Risk Manager, Cowlitz County Administrative Svc., 207 4th Ave. N., Kelso, WA 98626. This Agreement shall be void ab initio if the proof of coverage is not timely supplied.

The insurance maintained under this Agreement shall not in any manner limit or qualify the liabilities or obligations of the Consultant under this Agreement. All insurance policy deductibles and self-insured retentions for policies maintained under this Agreement shall be paid by the Consultant.

Compensation and/or payments due to the Consultant under this Agreement are expressly conditioned upon the Consultant's strict compliance with all insurance requirements. Payment to the Consultant shall be suspended in the event of non-compliance. Upon receipt of evidence of Consultant's compliance, payments not otherwise subject to withholding or set-off will be released to the Consultant. This Agreement shall be void ab initio if the proof of coverage is not timely supplied.

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

The Consultant will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The County will not be held responsible in any way for claims filed by the Consultant or their employees for services performed under the terms of this contract.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

III. PROPOSAL CONTENTS

Interested firms shall submit a proposal which exhibits and substantiates extensive knowledge of and experience providing the detailed scope of services to clients. The seven (7) major sections of the proposal are to be submitted in the order noted below:

A. **COVER LETTER**

The Cover Letter and the attached [Exhibit A - Certifications and Assurances](#) form must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship. The Introductory Letter shall include the following:

1. Expression of interest in serving as the County's real estate agent/firm and attest to the accuracy of the entire proposal.
2. A statement acknowledging adherence to all minimum qualifications and work requirements, clearly noting any areas of non-conformance.
3. Indicate the proposal will remain valid for at least 120 days.
4. Provide the name, address, telephone, and email address of the Proposer.
5. Describe any current, pending, or past litigation (within the last 10 years) to which the firm has been, is, or is expected to be a party.
6. Outline all conflicts of interest, or potential conflicts, that may exist for your firm in relation to providing real estate services for Cowlitz County.
7. If the Proposer has had a contract terminated for default (due to Proposer's non-performance or poor performance) in the last five years, describe such incident.
8. If the Proposer's staff or subcontractor's staff was a public employee within the state of Washington during the past 24 months, or is currently a Washington public employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
9. If applicable, include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-owned firm and/or women-owned firm(s) will be participating on this project. For more information visit: <http://www.omwbe.wa.gov>.

B. **BACKGROUND INFORMATION**

List years in business with a description of your firm to include size, location, number of professional staff to be assigned to this contract, and brief resumes for all key personnel listed.

C. **EXPERIENCE SUMMARY**

Describe your firm's pertinent real estate experience. In addition to general real estate experience, proposers should articulate experience and knowledge of real estate procedures and requirements for state and federal public works projects.

D. **MARKETING METHODS**

Describe preferred methods of identifying target user groups and a description of the marketing materials and strategies for presenting the site to a regional and national marketplace (when appropriate).

E. **ADDITIONAL SERVICES**

Describe additional relevant/unique services offered through your firm.

F. **FEE SCHEDULE**

1. State your commission rate for listing and selling of properties and for advertising on miscellaneous real property matters.
2. State any other costs the County should anticipate incurring because of real estate services to be provided.

G. **REFERENCES**

Provide a list of three (3) applicable references. Include name, title, and contact information for each reference as well as a brief description of the specific services provided. Do not include current County staff as references. By submitting a proposal in response to this RFP, the Proposer grants permission to the County to contact these references who, from the County's perspective, may have pertinent information. The County may or may not, at the County's discretion, contact references. The County may evaluate references at the County's discretion.

IV. EVALUATION AND CONTRACT AWARD

A. EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team(s), to be designated by the County, which will determine the ranking of the proposals.

The County, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation. The RFP Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

B. EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Background and Experience	<u>20</u> maximum points
Personnel and References	<u>20</u> maximum points
Marketing Methods	<u>20</u> maximum points
Fee Schedule	<u>30</u> maximum points
Quality and Responsiveness	<u>10</u> maximum points
TOTAL	<u>100</u> points

The County reserves the right to award the contract to the Consultant whose proposal is deemed to be in the best interest of the County.

C. ORAL PRESENTATIONS/ PRODUCT DEMONSTRATIONS (MAY BE REQUIRED)

The County may, after evaluating the written proposals, elect to schedule oral presentations of the finalists. Should oral presentations become necessary, the County will contact the top-scoring firm(s) from the written evaluation to schedule a date, time and location. Commitments made by the Consultant at the oral interview, if any, will be considered binding.

The oral presentation will determine the apparent successful consultant OR the scores from the written evaluation and the oral presentation combined will determine the apparent successful consultant.

D. NOTIFICATION TO PROPOSERS

The County will notify the Apparently Successful Consultant of their selection in writing upon completion of the evaluation process. Individuals or firms whose proposals were not selected for further negotiation or award will be notified separately by e-mail or facsimile.

E. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Any Consultant who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Unsuccessful Consultant Notification is e-mailed or faxed to the Consultant. Debriefing requests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Kelso, Washington on the third business day following the transmittal of the Unsuccessful Consultant Notification. The debriefing must be held within three (3) business days of the request.

Discussion at the debriefing conference will be limited to the following:

1. Evaluation and scoring of the firm's proposal;
2. Critique of the proposal based on the evaluation;
3. Review of proposer's final score in comparison with other final scores without identifying the other firms.

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person, virtually, or on the telephone and will be scheduled for a maximum of one hour.

F. PROTEST PROCEDURE

Protests may be made only by Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 4:30 PM, local time, at 1600 13th Avenue S, Kelso, WA 98626 on the third business day following the debriefing. Protests may be submitted by e-mail or facsimile but must then be followed by the document with an original signature.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing, addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

1. A matter of bias, discrimination or conflict of interest on the part of an evaluator;
2. Errors in computing the score;
3. Non-compliance with procedures described in the procurement document or County policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) County's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the County. The County Purchasing Manager or an employee delegated by the Purchasing Manager who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant that also submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

1. Find the protest lacking in merit and uphold the County's action; or
2. Find only technical or harmless errors in the County's acquisition process and determine the County to be in substantial compliance and reject the protest; or
3. Find merit in the protest and provide the County options which may include:
4. Correct the errors and re-evaluate all proposals, and/or
5. Reissue the solicitation document and begin a new process, or
6. Make other findings and determine other courses of action as appropriate.

If the County determines that the protest is without merit, the County will enter into a contract with the apparently successful consultant. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

V. RFP EXHIBITS

A. EXHIBIT A – CERTIFICATIONS AND ASSURANCES

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the COUNTY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. I/we understand that the COUNTY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the COUNTY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
5. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
6. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
7. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
8. I/we grant the COUNTY the right to contact references and other, who may have pertinent information regarding the ability of the Consultant and the lead staff person to perform the services contemplated by this RFP.
9. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section II, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

On behalf of the Consultant submitting this proposal, my name below attests to the accuracy of the above statement.

Signature of Proposer

Title

Date

B. EXHIBIT B – PROFESSIONAL SERVICES AGREEMENT



PROFESSIONAL SERVICES AGREEMENT

Contract Number:

THIS AGREEMENT is entered into between COWLITZ COUNTY, a political subdivision of the State of Washington, (hereinafter called "County" or "Cowlitz County") and

Name:

Address:

Phone N°:

(hereinafter called "Contractor").

This Agreement is comprised of:

- Attachment A – Scope of Work
- Attachment B – Compensation
- Attachment C – General Conditions
- Attachment D – Special Terms and Conditions

copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

The term of this Agreement shall commence on the day of 20 and shall, unless terminated as provided elsewhere in the Agreement, terminate on the day of , 20 .

IN WITNESS WHEREOF, the parties have executed this Agreement on this day of 20 .

CONTRACTOR:

COWLITZ COUNTY:

Print name:

Richard R. Dahl, Chairman

Title:

Arne Mortensen, Commissioner

Date:

(Optional for Commissioner Approval)
ATTEST:

Dennis P. Weber, Commissioner

(BOCC approval subject to Board ratification or authorization)

Kelly Dombrowsky, Clerk of the Board

[2014_ver. 3]

CONTRACT HAS BEEN APPROVED AS TO FORM BY
COWLITZ COUNTY PROSECUTING ATTORNEY

SCOPE OF WORK

The Contractor agrees to complete the professional services work for Cowlitz County, as described below (or in the attached document), including the following elements:

SAMPLE

In the event the Contractor, or its agents or assigns, are unable to complete their work as scheduled, the contract period and compensation may be adjusted by mutual agreement of the County and Contractor.

COMPENSATION

1. **a. FIXED FEE FOR SERVICE:** For services rendered, the County shall pay to the Contractor a fixed fee of DOLLARS (\$) for the completed work set forth in Attachment "A.". Payments for completed tasks shall be made no more frequently than bi-monthly; quarterly; semi-annually; annually; at completion of project; other (specify):

Each request for payment shall be supported by an invoice specifying the tasks completed up to the request for payment and the payment amount requested. In no event shall payment be sought in an amount which represents a percentage of the fee greater than the percentage of completed tasks.

OR

b. HOURLY RATES: For services rendered, the County shall compensate the Contractor at the following hourly rates:

<i>Name/Position</i>	<i>Hourly Rate</i>
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Payments for completed tasks shall be made no more frequently than monthly; quarterly; semi-annually; annually; at completion of project; other (specify):

Each request for payment shall be supported by an invoice specifying: the name/position of the Contractor's employee if two or more are identified above; number of hours worked; completed tasks for which compensation is sought and; payment amount requested.

In no event shall Contractor be compensated in excess of _____ DOLLARS for the completed work set forth in Attachment "A."

2. AND

a. The compensation set forth herein includes, without limitation: labor, materials, equipment, travel, telephone, computer, copiers and the like.

OR

b. The County shall reimburse the Contractor for actual expenses incurred for travel, telephone, copiers and computer. Reimbursement for airfare, mileage, meals and/or accommodations shall be at the same rate as that applicable to county employees traveling on county business.

OR

c. Other (specify) The County, in addition to the compensation herein set forth shall provide to the Contractor the following:

GENERAL CONDITIONS

1. Scope of Contractor's Services. The Contractor agrees to provide to the County services and materials set forth in the project narrative identified as Attachment A during the agreement period. No material, labor, or facilities will be furnished by the County, except as provided for herein.
2. Accounting and Payment for Contractor Services. Payment to the Contractor for services rendered under this Agreement shall be as set forth in Attachment B. Unless specifically stated in Attachment B, the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.
3. Delegation and Subcontracting. Contractor's services are deemed personal, and no portion of this contract may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the County Project Manager.
4. Independent Contractor. The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Attachment B 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, or any other rights or privileges afforded to Cowlitz County employees. The Contractor represents that it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent contractor relationship such that Cowlitz County is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Contractor agrees to reimburse Cowlitz County for any payments made or required to be made by Cowlitz County. Should any payments be due to the Contractor pursuant to this Agreement, the Contractor agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed.

Notwithstanding any determination by the state or federal government that an employer/employee or master/servant relationship exists, the Contractor, its officers, employees and agents, shall not be entitled to any benefits which Cowlitz County provides to its employees.

5. No Guarantee of Employment. The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.
6. Regulations and Requirements. This Agreement shall be subject to all federal, state and local laws, rules, and regulations.
7. Right to Review. This contract is subject to review by any federal or state auditor. The County shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County Project Manager. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for six (6) years after contract termination, and shall make them available for such review, within Cowlitz County, State of Washington, upon request, during reasonable business hours.
8. Modifications. Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
9. Termination for Default. If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors, the County

may, by depositing written notice to the Contractor in the U.S. Mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor agrees to bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

10. Termination for Public Convenience. 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 interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.
11. Termination Due to Insufficient Funds. If sufficient funds for payment under this contract are not appropriated or allocated or are withdrawn, reduced, or otherwise limited, the County may terminate this contract upon thirty (30) days written notice to the Contractor. No penalty or expense shall accrue to the County in the event this provision applies.
12. Termination Procedure. The following provisions apply in the event that this Agreement is terminated:
 - (a) The Contractor shall cease to perform any services required hereunder as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination, if any.
 - (b) The Contractor shall provide the County with an accounting of authorized services provided through the effective date of termination.
 - (c) If the Agreement has been terminated for default, the County may withhold a sum from the final payment to the Contractor that the County determines necessary to protect itself against loss or liability.
13. Defense and Indemnity Agreement. To the fullest extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify, defend and hold the County and its appointed and elected officers, agents and employees, and volunteers, harmless from and against any and all claims for any injuries, death or damage to persons or property (including any loss of use resulting therefrom), directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees. Contractor expressly agrees to indemnify, defend and hold harmless the County from any claims arising out of or incident to either Contractor's or its Subcontractor's performance or failure to perform the Agreement.

It is further agreed by and between the parties that in no event shall any County appointed or elected officer, agent, employee, or volunteer, when executing their official duties in good faith, be in any way personally liable or responsible for any agreement or performance contained herein, whether express or implied, nor for any statement or representation made herein or in any connection with this Agreement.

14. Industrial Insurance Waiver. With respect to the performance of this Agreement and as to claims against the County, its appointed and elected officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, or other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction otherwise applicable, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. Along with the other provisions of this Agreement, this waiver is mutually negotiated by the parties to this Agreement.
15. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action shall be in the courts of the

State of Washington in and for the County of Cowlitz. This Agreement shall be governed by the law of the State of Washington.

16. Withholding Payment. In the event the County Project Manager determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the County Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the County Project Manager set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provision of the Disputes clause of this Agreement. The County may act in accordance with any determination of the County Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Contractor by reason of good faith withholding by the County under this clause.
17. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available bylaw.
18. Contractor Commitments, Warranties and Representations. Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.
19. Patent/Copyright Infringement. Contractor will defend, indemnify and save harmless County, its appointed and elected officers, agents and employees from and against all loss or expense, including but not limited to claims, demands, actions, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of the Contractor's alleged infringement on any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County, its appointed and elected officers, agents and employees in any action. Such defense and payments are conditioned upon the following:
 - (a) That Contractor shall be notified promptly in writing by County of any notice of such claim.
 - (b) Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.
20. Disputes.
 - (a) General. Differences between the Contractor and the County, arising under and by virtue of the contract documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the County Project Manager shall be final and conclusive thirty (30) days from the date of mailing unless the Contractor mails or otherwise furnishes to the County Project Manager a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the County Project Manager are in error.

In connection with any appeal under this clause, the Contractor and County shall have the opportunity to submit written materials and argument and to offer documentary evidence in support of the appeal. Oral argument and live testimony will not be permitted. The decision of the County Project Manager for the determination of such appeals shall be final and conclusive. Reviews of the appellate determination shall be brought in the Superior Court of Cowlitz County within fifteen (15) days of mailing of the written

appellate determination. Pending final decision of the dispute, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

- (b) Notice of Potential Claims. The Contractor shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the County Project Manager or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
 - (c) Detailed Claim. The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.
21. Ownership of Items Produced and Public Disclosure. All writings, programs, data, art work, music, maps, charts, tables, illustrations, records or other written, graphic, analog or digital materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the County and constitute "work made for hire" as that phrase is used in federal and/or state intellectual property laws and Contractor and/or its agents shall have no ownership or use rights in the work. Except as to data or information in the public domain or previously known to Contractor or required to be disclosed by law, subpoena or other process, the following shall apply:
- (a) Correspondence, emails, reports and other electronic or written work product will be generated between the Contractor and County during the course of this Contract. This Contract and such work product in the possession of Contractor may be deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the County shall be required, upon request, to disclose this Contract and all documents related to it unless an exemption under the Public Records Act or other laws applies. Contractor shall fully cooperate with and assist the County with respect to any request for public records received by the County related to the services performed under this Contract.
 - (b) Should County receive a request for disclosure, County agrees to provide Contractor ten (10) days written notice of impending release, and to cooperate with any legal action which may be initiated by Contractor to enjoin or otherwise prevent such release, provided that all expense of any such litigation shall be borne by Contractor, including any damages, attorney's fees or costs awarded by reason of having opposed disclosure, and further provided that County shall not be liable for any release where notice was provided and Contractor took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to Contractor according to the "Notice" provision herein. If the Contractor has not obtained an injunction and served the County with that injunction by the close of business on the tenth business day after the County sent notice, the County will then disclose the record unless it makes an independent determination that the record is exempt from disclosure. Notwithstanding the above, the Contractor must not take any action that would affect (a) the County's ability to use goods and services provided under this Contract or (b) the Contractor obligations under this Contract. The Contractor will fully cooperate with the County in identifying and assembling records in case of any public disclosure request.
 - (c) Contractor's failure to timely provide such records upon demand shall be deemed a material breach of this Contract. To the extent that the County incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Contractor shall fully indemnify and hold harmless County as set forth in Section 13. For purposes of this section, the terms "public records" and "agency" shall have the same meaning as defined by Chapter 42.56 RCW, as said chapter has been construed by Washington courts. The provisions of this section shall survive the expiration or termination of this Agreement.
22. Recovery of Payments to Contractor. The right of the Contractor to retain monies paid to it is contingent upon satisfactory performance of this Agreement, including the satisfactory completion of the project described in the Scope of Work (Attachment A). In the event that the Contractor fails, for any reason, to perform obligations

required of it by this Agreement, the Contractor may, at the County Project Manager's sole discretion, be required to repay to the County all monies disbursed to the Contractor for those parts of the project that are rendered worthless in the opinion of the County Project Manager by such failure to perform.

Interest shall accrue at the rate of 12 percent (12%) per annum from the time the County Project Manager demands repayment of funds.

23. Project Approval. The extent and character of all work and services to be performed under this Agreement by the Contractor shall be subject to the review and approval of the County Project Manager. For purposes of this Agreement, the County Project Manager is:

Name:
Title:
Address:

Phone:
E-Mail:

In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the County Project Manager as to the extent and character of the work to be done shall govern subject to the Contractor's right to appeal that decision as provided herein.

24. Non-Discrimination. The Contractor shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.
25. Subcontractors. In the event that the Contractor employs the use of any subcontractors, the contract between the Contractor and the subcontractor shall provide that the subcontractor is bound by the terms of this Agreement between the County and the Contractor. The Contractor shall insure that in all subcontracts entered into, County is named as an express third-party beneficiary of such contracts with full rights as such.
26. Third Party Beneficiaries. This agreement is intended for the benefit of the County and Contractor and not for the benefit of any third parties.
27. Standard of Care. The Contractor shall perform its duties hereunder in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession as Contractor currently practicing under similar circumstances. The Contractor shall, without additional compensation, correct those services not meeting such a standard.
28. Time is of the Essence. Time is of the essence in the performance of this contract unless a more specific time period is set forth in either the Special Terms and Conditions or Scope of Work.
29. Notice. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, any notices shall be given by the Contractor to the County Project Manager. Notice to the Contractor for all purposes under this Agreement shall be given to the person executing the Agreement on behalf of the Contractor at the address identified on the signature page.
30. Severability. If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.
31. Precedence. In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:
- (a) Applicable federal, state and local statutes, ordinances and regulations;
 - (b) Scope of Work (Attachment A) and Compensation (Attachment B);
 - (c) Special Terms and Conditions (Attachment D); and
 - (d) General Conditions (Attachment C).
32. Waiver. Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

33. Attorney Fees. In the event that litigation must be brought to enforce the terms of this agreement, the prevailing party shall be entitled to be paid reasonable attorney fees.
34. Construction. This agreement has been mutually reviewed and negotiated by the parties and should be given a fair and reasonable interpretation and should not be construed less favorably against either party.
35. Survival. Without being exclusive, Paragraphs 4, 7, 13-19, 21-22 and 30-35 of these General Conditions shall survive any termination, expiration or determination of invalidity of this Agreement in whole or in part. Any other Paragraphs of this Agreement which, by their sense and context, are intended to survive shall also survive.
36. Contract Documents. The Contract Documents for this Agreement, except for modifications issued after execution of this Agreement, form a contract and all are as fully a part of the contract as if attached to this Agreement or repeated herein. The contract represents the entire and integrated Agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein. An enumeration of the contract documents is set forth below:
 1. Notice of Award; and
 2. Addenda; and
 3. Agreement; and
 4. Conditions of Cowlitz County Request For Proposals No. ; and
 5. Quoted proposal of Contractor dated .

SAMPLE

SPECIAL TERMS AND CONDITIONS

1. **Reporting.** The Contractor shall submit written progress reports to the County Project Manager as set forth below:

- With each request for payment.
- Monthly.
- Quarterly.
- Semi-annually.
- Annually.
- Project completion.
- Other (specify):

Progress reports shall include, at a minimum, the following:

Reports shall include any problems, delays or adverse conditions which will materially affect the Contractor's ability to meet project objectives or time schedules together with a statement of action taken or proposed to resolve the situation. Reports shall also include recommendations for changes to the Scope of Work, if any. Payments may be withheld if reports are not submitted.

2. **Insurance.** The Contractor shall maintain in full force and effect during the term of this Agreement, and until final acceptance of the work, public liability and property damage insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended. The County, its appointed and elected officials, agents and employees, shall be specifically named as additional insureds in a policy with the same company which insures the Contractor or by endorsement to an existing policy or with a separate carrier approved pursuant to RCW Title 48, as now or hereafter amended, and the following coverages shall be provided:

- COMPREHENSIVE GENERAL LIABILITY:**
 - Bodily injury, including death. \$1,000,000 Per occurrence
 - Property damage \$1,000,000 Aggregate
- ERRORS AND OMISSIONS or PROFESSIONAL LIABILITY with an Extended Reporting Period Endorsement (two year tail).**
 - \$1,000,000 Per occurrence
 - \$2,000,000 Aggregate
- WORKERS COMPENSATION:** Statutory amount
- AUTOMOBILE: coverage on owned, non-owned, rented and hired vehicles**
 - Bodily injury, including death, and property damage \$1,000,000 Combined Single Limit

All Contractor's and Contractor's subcontractors' insurance policies and additional named insured endorsements shall provide primary insurance coverage and be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and not contributory to such insurance policies. All Contractor's and Contractor's subcontractors' liability insurance policies must be endorsed to show this primary coverage.

Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Agreement. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington. Any deductibles and/or self-insured retentions exceeding \$10,000, stop loss provisions, and/or exclusions contained in such policies must be approved by the County in writing. For any deductibles or self-insured retentions exceeding \$10,000 or any stop-loss provisions, the County shall have

the right to request and review the Contractor's most recent annual financial reports and audited financial statements as a condition of approval.

Contractor hereby agrees to a waive subrogation with respect to each insurance policy maintained under this Agreement. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.

The County, its departments, elected and appointed officials, employees, agents and volunteers shall be named as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance maintained by the Contractor and subcontractor, and all coverage shall be primary and non-contributory. A statement or notation of additional insured status on a Certificate of Insurance shall not satisfy these requirements. [*This endorsement shall not be required if the Contractor is a governmental entity and is insured through a governmental entity risk pool authorized by the State of Washington.*]

The Contractor shall, for each required insurance policy, provide a Certificate of Insurance, with endorsements attached, evidencing all required coverages, limits, deductibles, self-insured retentions and endorsements and which is conditioned upon the County receiving thirty (30) days prior written notice of reduction in coverages, cancellation or non-renewal. Each Certificate of Insurance and all insurance notices shall be provided to: ATTN: Risk Manager, Cowlitz County Administrative Svc., 207 4th Ave. N., Kelso, WA 98626. This Agreement shall be *void ab initio* if the proof of coverage is not timely supplied.

The insurance maintained under this Agreement shall not in any manner limit or qualify the liabilities or obligations of the Contractor under this Agreement. All insurance policy deductibles and self-insured retentions for policies maintained under this Agreement shall be paid by the Contractor.

Compensation and/or payments due to the Contractor under this Agreement are expressly conditioned upon the Contractor's strict compliance with all insurance requirements. Payment to the Contractor shall be suspended in the event of non-compliance. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor. This Agreement shall be *void ab initio* if the proof of coverage is not timely supplied.

If the Errors and Omissions or Professional Liability insurance obtained is an occurrence policy as opposed to a claims-made policy, the Extended Reporting Period Endorsement is not required.

2. Liquidated Damages. For delays in timely completion of the work to be done or missed milestones of the work in progress, the Contractor shall be assessed _____ Dollars (\$) per day as liquidated damages and not as a penalty because the County finds it impractical to calculate the actual cost of delays. Liquidated damages will not be assessed for any days for which an extension of time has been granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire project.