

**COWLITZ COUNTY  
DEPARTMENT OF PUBLIC WORKS**

**REQUEST FOR QUALIFICATIONS**

**Engineering Consultant  
Services For:**

**Camelot Large Onsite Septic System Replacement Project**

**Response Deadline: 3:00 p.m., Tuesday, May 24, 2022**

**Cowlitz County Department of Public Works  
1600 13<sup>th</sup> Ave. S  
Kelso, WA 98626  
(360) 577 – 3030**

NOTE: If you download this RFQ from the County website located at <https://www.co.cowlitz.wa.us/Bids.aspx?CatID=37> you are responsible for sending your name, e-mail address, and telephone number to [Publicworks@co.cowlitz.wa.us](mailto:Publicworks@co.cowlitz.wa.us) with the subject line Camelot Large Onsite Septic System Replacement Project, in order for your organization to receive any RFQ addenda or bidder questions/COUNTY answers.

**TABLE OF CONTENTS**  
**REQUEST FOR QUALIFICATIONS**  
**CAMELOT LARGE ONSITE SEPTIC SYSTEM REPLACEMENT PROJECT**

1.0 OBJECTIVE ..... Page 1

2.0 BACKGROUND AND AGENCY NEEDS..... Page 1

3.0 SCOPE OF WORK ..... Page 1

4.0 ESTIMATE AND SCHEDULE ..... Page 2

5.0 REQUEST FOR QUALIFICATION (RFQ) PROCESS..... Page 2

    5.01 STATEMENT OF QUALIFICATIONS (SOQ) SUBMITTAL AND GENERAL  
    GUIDELINES..... Page 2

    5.02 SOQ SUBMITTAL CONTENT..... Page 2

    5.03 COUNTY PROJECT MANAGER ..... Page 3

    5.04 ANTICIPATED SCHEDULE..... Page 4

    5.05 ACCEPTANCE/REJECTION OF RESPONSES..... Page 4

    5.06 ADDENDUMS TO THE RFQ ..... Page 4

6.0 CONSULTANT EVALUATION PROCESS..... Page 5

    6.01 EVALUATION CRITERIA..... Page 5

    6.02 INTERVIEWS ..... Page 5

7.0 CONTRACT NEGOTIATION PROCESS ..... Page 5

8.0 COUNTY CONTACT INFORMATION ..... Page 5

AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION ..... Page 6

TITLE VI STATEMENT..... Page 6

APPENDIX A ..... Page 7

    Cowlitz County’s Standard Professional Services Agreement\*\*\*

\*\*\*Included as indicated but numbered independently.

## REQUEST FOR QUALIFICATIONS

### CAMELOT LARGE ONSITE SEPTIC SYSTEM REPLACEMENT PROJECT

#### 1.0 OBJECTIVE

The Cowlitz County Department of Public Works (County) is requesting Statements of Qualifications from qualified consultants able to provide professional engineering services with specific expertise in design and construction engineering of large onsite septic systems (LOSS). The consultant will provide engineering services to design a replacement LOSS for its current LOSS system and decommissioning of the existing LOSS.

The County will contract with one engineering firm to complete design services with the option to amend the contract to include construction support.

#### 2.0 BACKGROUND AND AGENCY NEEDS

The existing LOSS was installed in 1981 to serve the Camelot subdivision along the Cowlitz River. This system serves 51 existing residences. The existing system consists of a gravity collection system, septic tank and drain field. Effluent from the septic tank is distributed to the drain field with alternating Miller's siphons and a control valve header.

The system as designed is no longer compliant with the Washington Administrative Code (WAC) 246-272B and needs to be replaced to allow new connections.

The County needs to continue providing sewage services to the residents and needs to replace the aged failing system.

#### 3.0 SCOPE OF WORK

The work to be performed by the CONSULTANT consists of preparing civil engineering design and permitting for replacement of the Camelot LOSS. The proposed project includes replacing the existing LOSS (12,900 gpd capacity) with a new LOSS that serves the existing customers and has the capacity to serve the same number of units (73 residential) as the associated water system. Included in the project will be abandonment of the existing LOSS system. The County will provide the topographic survey, and boilerplate specifications. The County will be responsible for developing acquisition plans, obtaining appraisals and negotiating for property or easement acquisition if needed, and for project bidding and award.

The major features of the project are as follows:

- Predesign report meeting the Washington State Department of Health (DOH) requirements.
- Geotechnical engineering to determine soil characteristics.
- Environmental documentation and preparation of permit applications for all federal, state and local permits.

- Design of new LOSS system and connection to existing collection system.
- Preparation of DOH required Engineering Report for the Operating Permit
- Biddable plans and specifications for the new LOSS system.
- Assistance responding to contractor questions during bidding.
- Decommission the existing LOSS system.
- Development of the Operation and Maintenance Manual.

Construction is planned for 2023 with an advertisement date first quarter of 2023.

All work and deliverables shall be in accordance with all current and applicable local, State and Federal requirements and shall comply with the department's standards and schedules.

#### **4.0 ESTIMATE AND SCHEDULE**

Anticipated maximum value of resultant contract is \$80,000.

The contract is expected to be executed in July 2022 with construction of the project being completed in 2023.

#### **5.0 REQUEST FOR QUALIFICATION (RFQ) PROCESS**

Proposers are solely responsible for all costs incurred in the development and submission of the response statement to this RFQ or any other presentations whether in response to this RFQ or to any subsequent requirements of the consultant selection and contract negotiation process.

To be considered responsive to this RFQ the Consultant must follow the directions presented in this solicitation and include the information required.

##### **5.01 SOQ SUBMITTAL AND GENERAL GUIDELINES**

Please submit FOUR copies of your Statement of Qualifications to: Cowlitz County Department of Public Works, 1600 13<sup>th</sup> Avenue South, Kelso, WA 98626, Attention Susan Eugenis, PE, County Engineer, no later than **3:00 p.m. on Tuesday, May 24, 2022**. Sealed envelopes containing the submittals shall be labeled "Camelot Large Onsite Septic System Replacement Project SOQ". Submittals will not be accepted after that time and date.

##### **5.02 SOQ SUBMITTAL CONTENT**

The SOQ package must include an introductory letter. The letter is limited to one page and shall contain:

- The firm/consultant name and contact person with name, title, mailing address, e-mail address, and phone number.
- Name and title of the proposed Project manager (if not the contact person) and his/her contact information.

Writing styles should be concise and straightforward. Lengthy narratives containing extraneous information are discouraged. The length of the submittal document shall not exceed 15 pages (single-sided) using 12-point font for the main text. Consultants may use their discretion for the font size of other materials (e.g. graphics, charts). Foldouts not exceeding 11x17, are permitted. Supporting documentation attached as appendices, cover sheet and introductory letter are not included in the determination of total page count.

The firm/consultant must demonstrate competence and qualifications related to the services performed including:

- Successful experience in the aforementioned services including the firm's ability to provide the technical details, reports and recommendations that may be required related to LOSS development.
- The consultant must demonstrate the ability to manage projects and coordinate with other design team members, and County staff, to ensure the project as a whole is delivered on time and within budget, with potential risks and opportunities identified.
- Ability to work collaboratively in a regulatory environment with other agencies, interest groups, and the County.

### **Demonstrated Experience**

The Qualifications shall list previous work experience that describes and demonstrates that the firm and team members have recent experience in performing design of LOSS.

- The names of firm's employees that are intended to participate in this contract, including principal employees, and a clear delineation of their responsibilities. Identify their expertise and experience, and their proposed interaction with County staff, within the firm and with other agencies.
- Your company's demonstrated expertise in performing design and permitting of large onsite septic systems, the dates in which the work was completed, and project contact information.
- Your firm is invited to describe any particular aspects of its organization or qualification that, by way of background, experience, unique qualifications, or other basis, sets this company (team) apart from the competition in its ability to accomplish the identified services.

### **5.03 COUNTY PROJECT MANAGER**

Work performed under the contract shall be under the direction of the County's project manager. Please direct questions and inquiries regarding the request for qualifications to:

Patrick Harbison, Utility Manager  
Cowlitz County Department of Public Works  
1600 13<sup>th</sup> Avenue S.  
Kelso, WA 98626  
(360) 577-3030  
[harbisonp@co.cowlitz.wa.us](mailto:harbisonp@co.cowlitz.wa.us)

Any questions must be submitted in writing (e-mail is acceptable) by May 17, 2022.

#### **5.04 ANTICIPATED SCHEDULE**

The following schedule has been established for the submission and evaluation of the SOQs and selection of the Consultant. These are tentative dates only and the County reserves the right to adjust these dates at its sole discretion:

- Question Period Ends                      May 17, 2022
- SOQs due:                                        3:00 P.M., Tuesday, May 24, 2022
- Interviews (Virtual):                        The second week of June 2022

#### **5.05 ACCEPTANCE/REJECTION OF RESPONSES**

The County reserves the right and holds at its discretion the following rights and options:

- To waive any or all informalities in any SOQ,
- To reject any or all responses
- To issue subsequent requests

This RFQ solicitation does not commit the County to enter into a contract or proceed with the procurement of the project. The County assumes no obligations, responsibilities and liabilities fiscal or otherwise, to reimburse all or part of the costs incurred by the parties submitting an RFQ response.

#### **5.06 ADDENDUMS TO THE RFQ**

In the event it becomes necessary to revise any part of this RFQ, addenda will be provided via e-mail to all individuals who have made the County aware of their interest. Any revisions, updates, clarifications of the RFQ will also be posted on the County's webpage at <https://www.co.cowlitz.wa.us/Bids.aspx?CatID=37> . If you downloaded this RFQ from the County website, you are responsible for sending your name, e-mail address and telephone number to [publicworks@co.cowlitz.wa.us](mailto:publicworks@co.cowlitz.wa.us) with the subject line Camelot Large Onsite Septic System Replacement Project in order for your organization to receive any addenda.

## **6.0 CONSULTANT EVALUATION PROCESS**

A team of County staff will evaluate the SOQs according to the consultant evaluation criteria. At the discretion of the County interviews may be conducted and a firm's final score will be a combination of the SOQ and the oral interview.

### **6.01 EVALUATION CRITERIA**

The SOQs will be evaluated and ranked based on the criteria listed below.

- 1) Key Personnel and Organization competence and qualifications (30 points)
- 2) Demonstrated experience with design of LOSS (30 points)
- 3) Demonstrated ability to communicate and work effectively with staff and review bodies (15 points)
- 4) The firm's ability to allocate appropriate resources (10 points)
- 5) Past Performance/References (10 points)
- 6) Responsiveness to this request for qualifications (5 points)

### **6.02 INTERVIEWS**

Following evaluations of the SOQs, the highest ranking firms may be invited to participate in an interview process. The project manager will schedule interviews with the contact person provided in the SOQ. Additional interview information shall be provided at the time of the invitation. The intent of the interviews is to help clarify and verify information provided in the SOQ and to give the County's evaluation team an opportunity to learn more about the firm's relevant experience and expertise.

## **7.0 CONTRACT NEGOTIATION PROCESS**

Negotiation of the Scope of Work and budget will be completed upon selection of the consultant. The apparent successful firm will be expected to enter into a contract which is substantially the same as the County's standard professional services contract and in accordance with the general terms and conditions therein, attached as Appendix A.

## **8.0 COUNTY CONTACT INFORMATION**

Questions regarding this RFQ should be directed to:

Patrick Harbison, Utilities Manager  
(360) 577 – 3030  
[harbisonp@co.cowlitz.wa.us](mailto:harbisonp@co.cowlitz.wa.us)

All questions related to this RFQ must be submitted in writing via e-mail to the contact person identified above. The email subject line should state the following, Camelot LOSS Replacement Project RFQ Question. Material question received by May 17, 2022 will be answered in the

form of an addendum and posted to the Cowlitz County website. No verbal answers to questions by County personnel will be binding on the County.

Persons with disabilities may request this information be prepared and supplied in alternate forms by calling (360) 577 – 3030.

### **Americans with Disabilities Act (ADA) Information**

Cowlitz County in accordance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by emailing Cowlitz County Department of Public Works at [publicworks@co.cowlitz.wa.us](mailto:publicworks@co.cowlitz.wa.us) or by calling 360-577-3030.

### **Title VI Statement**

Cowlitz County in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.



**APPENDIX A**

Cowlitz County's Standard Professional Services Agreement



# PERSONAL 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 and Retirement Status Form (signature required)
- Attachment E – (specify)

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 \_\_\_\_\_, 2022 and shall, unless terminated as provided elsewhere in the Agreement, terminate on the \_\_\_\_ day of \_\_\_\_\_, 2022.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2022.

CONTRACTOR:

COWLITZ COUNTY:

\_\_\_\_\_

\_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2022

Date: \_\_\_\_\_, 2022

**SCOPE OF WORK**

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

INFORMATION ONLY

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:

**Name/Position**

**Hourly Rate**

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 any 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. Entire Agreement. This written contract represents the entire Agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

**SPECIAL TERMS AND CONDITIONS**  
**AND RETIREMENT STATUS FORM**

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
  - \$1,000,000 Aggregate
- WORKERS COMPENSATION:** Statutory amount
- AUTOMOBILE:** coverage on owned, non-owned, rented and hired vehicles
  - Bodily injury, liability, including death, and \$1,000,000 Combined Single Limit
  - Property damage liability

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.

3. Other (specify):

**COUNTY RETAINS THIS FORM**

***Individual contractors and service providers must complete and sign***

4. WA Department of Retirement Systems: Independent Contractor Verification and State Retirement Status Reporting Form [WAC 415-02-110; DRS Email 13-011; DRS Email 09-001]

**SECTION 1: INDIVIDUAL CONTRACTOR COMPLETES THIS SECTION AND SIGNS:**

- Did you retire from one of the State of Washington Retirement Systems?  YES  NO  
Did you retire before age 65 using the 2008 early retirement factors (ERF)?  YES  NO  
Will you be receiving direct compensation for your services?  YES  NO  
Will you be receiving indirect compensation for your services?  YES  NO

CONTRACTOR (Full, individual name of contractor):

Signature: \_\_\_\_\_ Social Security No. : \_\_\_\_\_ Date: \_\_\_\_\_

**SECTION 2: COUNTY COMPLETES THIS SECTION AND RETAINS FOR AUDIT PURPOSES:**

**[Use Member Reporting Verification (MRV) to verify the past retirement membership]**

1. Contractor **has been** a member of a Washington State Retirement System  YES  NO  
If **YES**, what system and plan?

- |  |                                 |                                 |                                 |
|--|---------------------------------|---------------------------------|---------------------------------|
| <input type="checkbox"/> Teachers' Retirement System (TRS)                                       | <input type="checkbox"/> Plan 1 | <input type="checkbox"/> Plan 2 | <input type="checkbox"/> Plan 3 |
| <input type="checkbox"/> School Employees' Retirement System (SERS)                              |                                 | <input type="checkbox"/> Plan 2 | <input type="checkbox"/> Plan 3 |
| <input type="checkbox"/> Public Employees' Retirement System (PERS)                              | <input type="checkbox"/> Plan 1 | <input type="checkbox"/> Plan 2 | <input type="checkbox"/> Plan 3 |
| <input type="checkbox"/> Public Safety Employees' Retirement System (PSERS)                      |                                 | <input type="checkbox"/> Plan 2 |                                 |
| <input type="checkbox"/> Law Enforcement Officers' &<br>Fire Fighters' Retirement System (LEOFF) | <input type="checkbox"/> Plan 1 | <input type="checkbox"/> Plan 2 |                                 |
| <input type="checkbox"/> Washington State Patrol<br>Retirement System (WSPRS)                    | <input type="checkbox"/> Plan 1 | <input type="checkbox"/> Plan 2 |                                 |
| <input type="checkbox"/> Judicial Retirement System (JRS)  |                                 |                                 |                                 |

2. Is the contractor a retiree of a Washington State Retirement System?  Yes  No  
3. Did the contractor retire before age 65 using the 2008 ERF?  Yes  No

I have verified the information above using MRV or by contacting DRS, and I have evaluated the individual Contractor, Independent Contractor or Service Provider under WAC 415-02-110 and/or DRS Form-MS 344 (R 5/09), and the Internal Revenue Service rules governing independent contractor status.

COUNTY OFFICIAL/DEPARTMENT REPRESENTATIVE:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**COUNTY RETAINS THIS FORM**