

# City of Kelso

## Janitorial Services Contract

### Request for Proposals



**Due: Thursday, August 29, 2024 - 10:00 am**  
**2nd Fl. City Hall**  
**203 S. Pacific Ave. Kelso, WA 98626**

The City of Kelso is requesting proposals for a janitorial services contract for the City's buildings for an initial period of three years from October 1, 2024 to September 30, 2027, with the option for (2) one-year renewal periods.

All proposals must be submitted on the regular form furnished with the specifications in a sealed envelope clearly marked with the name of the bidder, the name of the RFP, and the date and time of the bid opening.

The City of Kelso 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 insure 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 grounds of race, color, national origin, or sex in consideration for an award.

The City of Kelso reserves the right to reject any or all bids, waive informalities or irregularities and to accept any bid for the project, which appears to serve the best interest of the City.

#### Pre-Bid Site Visit

In order to fully understand the City's needs, Prospective Bidders are strongly encouraged to attend the following site visit. The submission of a bid shall constitute an acknowledgement upon which the City may rely that the bidder has thoroughly examined and is familiar with the Contract Provisions, including addenda, work site identified in such documents, and all applicable statutes, regulations, ordinances, and resolutions dealing with or related to the work and services to be provided herein. The failure or neglect of a bidder to examine such documents, work site(s), statutes, regulations, ordinances, or resolutions shall in no way relieve the bidder from any contract obligations. No claim for additional compensation will be allowed based upon lack of knowledge or due diligence.

**Date/Time:** Tuesday, August 20, 2024 at 9:00 am

**Location:** Kelso City Hall  
203 S. Pacific Ave. (2<sup>nd</sup> Floor)  
Kelso, WA 98626

**Contact:** Jason Gorans (360) 957-6872 or jgorans@kelso.gov

The site visit will include the Kelso City Hall, Train Depot, Operations Shop, and Library. The site visit is anticipated to take less than two hours.

### Bidder Responsibility

Responsible bidders, as defined in RCW 39.04.010 and 39.04.350, must meet the following criteria:

- Be a registered contractor, tradesperson or business
- Have a current Unified Business Identifier (UBI) number
- Have industrial insurance/workers' comp coverage
- Have an Employment Security Department (ESD) account
- Have a state excise tax registration number
- Not be disqualified from bidding under RCW 39.06.010 or 39.12.065(3)
- Not have any apprenticeship violations, if applicable
- Certify through a sworn statement that they are not a willful violator of labor laws in reference to RCW 49.48.082 within the past three years.
- Have received, or be exempt from, training provided by the Department of Labor and Industries or by a provider whose curriculum has been approved by L&I, on the requirements related to public works and prevailing wages. (See ESSHB 1673.)

This project is a Public Work as defined in RCW 39.04.010. The Awarded Contractor shall comply with all state laws relating to employment and wages. The hourly wages to be paid laborers, workers, or mechanics shall not be less than the prevailing rates for an hour's work in the same trade or occupation in Cowlitz County. The State of Washington prevailing wage rates applicable for this public works project may be found at the following website address of the Department of Labor and Industries, and is made part of this contract:

<http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>

The applicable effective date for prevailing wages for this project is the bid submittal date. A copy of the applicable prevailing wage rates are also available for viewing at City Hall. Upon request, the City will mail a hard copy of the applicable prevailing wages for this project.

The cost of filing Prevailing Wage forms with the State Department of Labor and Industries shall be borne by the bidder and at no additional cost to the City.

No payment will be made on this contract until the contractor and each and every subcontractor has submitted a 'Statement of Intent to Pay Prevailing Wages' that has been approved by the Department of Labor and Industries. No final payment or release of any retainage will be made until the contractor and each and every subcontractor has submitted an 'Affidavit of Wages Paid' following L&I filing requirements, and that has been approved by the Department of Labor and Industries.

Contractor is responsible for filing forms pursuant to L&I requirements. Intents and affidavits for prevailing wages paid must be submitted annually for all work completed within the previous twelve month period of the contract.

The City shall adjust the prevailing wages (hourly wage rates and fringe benefits) annually as per WAC 296-127-023. In order to calculate the change in prevailing wages due to the Awarded Contractor, the Awarded Contractor shall provide to the City a breakdown of the fully loaded labor rates for each classification of labor including hourly wage rates, fringe benefits, overhead and profit. The City shall not pay for any price escalation for overhead, profit, equipment, material, or any other costs except for changes in the prevailing wages (hourly wage rates and fringe benefits).

### Service Company Qualifications

The following requirements shall be provided in the prospectus and considered as the minimum standards for a service company to be considered as qualified to provide services under this contract, and shall be a prerequisite to any award.

1. A period of five (5) years' experience in the performance of commercial janitorial services as specified shall be considered a minimum.
2. Services that are to be provided shall be performed by qualified and trained service personnel that are directly employed by the service company.

### Locations and Services List

The following equipment and locations shall be included:

#### **Public Library (351 Three Rivers Mall Drive)**

- Building – 11,627 sq. ft.
- Carpet – 11,000 sq. ft.

#### **Train Depot (501 S. 1st Ave)**

- Building – 6,740 sq. ft.
- Carpet – 780 sq. ft.

#### **Operations (2300 Parrott Way)**

- Building – 2,000 sq. ft.
- Carpet – 1,290 sq. ft.

#### **City Hall (203 S. Pacific Ave)**

- Building - 26,423 sq. ft.
- Carpet – 20,000 sq. ft.

### *Specific Requests/Expectations:*

**DAILY (Each weekday, except for the Train Depot which also includes weekend service)**

- Clean entryway glass doors; inside and out
- Clean the window glass to the Police Department reception office
- Empty all waste receptacles and remove all cardboard
- Clean and disinfect restrooms, shower and kitchen areas; including all fixtures, mirrors, sinks, and floors
- Clean and sanitize water fountains
- Refill paper products and soap dispensers as needed including dispensers in shower room
- Clean the counter tops in reception areas, break rooms, City Hall entry, and council chambers
- Clean all table tops in conference, kitchen, lunch and break rooms
- Clean all work area desk tops
- Spot sweep, vacuum, and mop as needed
- Spot damp mop as needed
- Spot clean carpets as needed
- Spot clean work surfaces
- Sanitize all stair rails, door handles, bars and plates, including restroom stalls
- Secure **all** buildings upon departure

**WEEKLY (all locations)**

- Dust all surfaces
- Damp mop
- Sweep exterior entry, remove cigarette butts and clean ashtrays in smoking area
- Sweep stairways, floors, and entryways
- Vacuum all carpet areas including throw rugs, offices, exercise equipment area, elevator and edging; including cubicles
- Sweep shop floor and wipe down all handrails at PW Operations
- Clean out and wipe down refrigerators and microwaves

**MONTHLY (all locations)**

- Clean outside fixtures bulbs & globes; under 8' tall
- Dust wainscotings and chair rail in all rooms
- High dusting for cobweb control (excludes Operations equipment bays and City Hall atrium)
- Dust walls
- Spot clean interior windows
- Clean door trim, light switches, walls, woodwork, file cabinets and shelving
- Clean and sanitize telephones
- Vacuum cloth covered chairs/couches
- Wipe lockers and vending machines
- Wax all maroleum/vinyl floors according to specifications (Johnson Wax product as recommended by manufacturer)

**EVERY THREE (3) MONTHS (all locations)**

- Clean interior windows

**EVERY SIX (6) MONTHS (all locations)**

- Oil woodwork

- Clean light diffusers and fixtures
- Dust blinds and window coverings and sills

**YEARLY (all locations)**

- Shampoo all carpets
- Strip and wax all floors according to manufacturer recommendation

Supplies provided by the City of Kelso:

- Light bulbs
- Paper towels
- Toilet tissue
- Hand soap
- Shower soap
- Restroom deodorant spray
- Trash bags

Contractor shall provide equipment and all other supplies necessary to complete job assignments. All equipment and supplies shall meet OSHA requirements for the safety and protection of employees of the contractor as well as City staff.

**Additional Terms and Conditions**

- This service shall not be subcontracted.
- All workers shall have passed a background check prior to working on-site.
- Services shall be provided before or after business hours for each location.

**Evaluation of Proposals and Award**

**Evaluation Procedure:** An evaluation team will review each responsive proposal. Each proposal will be rated on a point system with the top-scoring proposal selected.

**Evaluation Criteria:** A maximum score of 100 points will be used to evaluate proposals. Each of the following elements shall have the stated maximum point value:

- A. Total Price/Fee Structure:.....30 Points
  - a. As provided in the proposal documents
- B. Qualifications and Past Performance .....40 Points
  - a. As gathered from the proposal documents and references
- C. Approach to Providing Services .....30 Points
  - a. As gathered from proposal documents

**Award:** The City reserves the right to award the contract to the Bidder deemed to offer the best overall proposal. The City is therefore not bound to accept any proposal solely on the basis of the lowest price. The City further reserves the right to cancel this RFP and to reject any and all proposals, waive any and all informalities and or irregularities.

# Proposal Form

30 pts.

## Janitorial Services Monthly/Annual/Total Costs

**Bidder Name:** \_\_\_\_\_

### Year 1 Provide Detail Per Location

	Monthly Charge		Annual Charge
<b>Public Library:</b>		x 12	\$
<b>Train Depot:</b>		x 12	\$
<b>Operations:</b>		x 12	\$
<b>City Hall:</b>		x 12	\$
<b>Subtotal Year 1:</b>			<b>\$</b>

### Years 2-3 Summary Subtotal All Locations

	Monthly Charge		Annual Charge
<b>Year 2:</b>		x 12	\$
<b>Year 3:</b>		x 12	\$
<b>Subtotal Years 2-3:</b>			<b>\$</b>

### Total Proposal

Three Year Total:	\$
8.1% WSST	\$
<b>Total Proposal:</b>	<b>\$</b>

### Cost Per Additional Carpet Cleaning Beyond Annual Service

	Charge
<b>Public Library:</b>	\$
<b>Train Depot:</b>	\$
<b>Operations:</b>	\$
<b>City Hall (Police Dept):</b>	\$
<b>City Hall (Council Chambers)</b>	\$
<b>City Hall (Finance Department)</b>	\$
<b>City Hall (2<sup>nd</sup> Floor)</b>	\$

### Addenda Receipt Acknowledgement

Receipt of the following Addenda to the Drawings and/or Specifications is hereby acknowledged.

ADDENDUM #'s	DATES OF RECEIPT	SIGNED ACKNOWLEDGMENT

**Failure to acknowledge receipt of addenda may be considered an irregularity in the proposal.**

### Non-Collusion Declaration

**I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:**

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. **That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration.**

\_\_\_\_\_  
Name of Bidder (Company)

\_\_\_\_\_  
E-mail

\_\_\_\_\_  
Physical WA State Mailing Address

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
City State and Zip

\_\_\_\_\_  
ESD Account No.

\_\_\_\_\_  
Washington Registration Number

\_\_\_\_\_  
Expiration Date

\_\_\_\_\_  
Name of Bidder's Representative

\_\_\_\_\_  
UBI No.

\_\_\_\_\_  
Signature of Bidder's Representative

\_\_\_\_\_  
Date

## Qualifications and Past Performance

40 pts.

Name of Business: \_\_\_\_\_

Number of years in business under present name: \_\_\_\_\_

Number of regular full-time employees: \_\_\_\_\_

Ratio of field supervisors to workers: \_\_\_\_\_

Has the bidder, or any representative thereof:

Failed to complete a contract? .....  Yes  No

Been found guilty of any violation of State or Federal Employment Laws? .....  Yes  No

Ever filed for Chapter Eleven or other bankruptcy? .....  Yes  No

Have had any adverse legal judgments rendered in past five years? .....  Yes  No

Filed any claims with Washington State Workman’s Compensation? .....  Yes  No

Had a prior contract terminated early? .....  Yes  No

Provide details on any question answered “yes” above:

List a minimum of three public contracts of a similar nature which have been performed by the bidder within the last five years and the gross dollar amount of each project:

Business Name, Contact Name and Phone Number	Contract Type	Contract Amount	Dates of Performance



## Approach to Providing Services

30 pts.

Bidders must provide a detailed plan indicating how they intend to service each location being bid on relevant to the detailed specifications, that explains:

**Transition** – Describe the plan for overtaking service(s) from current Contractor to your company. *If Bidder is current Contractor, so indicate and provide a transition plan from current contract to the anticipated new contract.*

**Implementation** – Describe how you plan to provide the service(s) without disrupting the current service level(s). *If Bidder is current Contractor, and provide an implementation plan from current contract to the anticipated new contract.*

**Contingency** – Describe your plan to still provide the service(s) due to any unforeseen circumstance (i.e. staff no show, equipment failure, etc.).

**Staffing** – Number, titles, and responsibility of staff needed to provide service, with estimated man-hours needed to perform the service

**Quality Assurance** - How will you verify that your staff adequately performs work for the delivery of the services described under this RFP? Also describe your process for responding to and resolving customer complaints.



## Certification of Compliance with Wage Payment Statutes

Effective July 23, 2017, before award of a public works contract, the bidder under consideration for award of a public works project must submit to the public agency a sworn statement that they have not willfully violated wage payment laws within the past three years in order to be considered a responsible bidder. (See [RCW 39.04.350](#) as modified by [SSB 5301](#), Laws of 2017, ch. 258.)

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (9/10/19), the bidder is not a “willful” violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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Bidder’s Business Name

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Signature of Authorized Official\*

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Printed Name

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Title

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Date

---

City

---

State

*Check One:*

Sole Proprietorship  Partnership  Joint Venture  Corporation\*

State of Incorporation, or if not a corporation, State where business entity was formed:

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If a co-partnership, give firm name under which business is transacted:

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*\* If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

# City of Kelso

## Services Contract

<b>Contract No:</b>		<b>Contract Name:</b>	
<b>Owner:</b>	City of Kelso	<b>Consultant:</b>	

This Contract is entered between the Owner and the Consultant and shall be effective on the date executed by the Owner. In consideration of the terms and conditions contained herein and attached and made part of this contract, the parties covenant and agree as follows:

**Contract Type:**

- Professional Architectural & Engineering Services    
  Professional Personal Services, Not A&E    
  Purchased Services

1. **Description of Work:** The Consultant agrees to furnish all personnel, materials, and services and to otherwise do all things necessary for or incidental to the performance of the work set forth and more particularly described in the Consultant’s Qualifications, Proposal, Scope of Work, and/or any other related Contract Documents which are attached hereto and are incorporated herein by this reference (hereinafter “Services”).
2. **Time of Completion:** The term of this contract shall commence upon execution and shall continue until the completion of the Services, but in any event no later than \_\_\_\_\_ This Contract may be extended for up to one year upon mutual written agreement of the Owner and Consultant.
3. **Payment Amount:** The Owner agrees to pay the Consultant for Work completed according to attached proposal **OR** schedule of rates and charges **AND** including applicable taxes:  
 Total Contract Fixed Price: \$ \_\_\_\_\_ Not to exceed total: \$ \_\_\_\_\_
4. **Insurance:** The Consultant shall provide the Owner with a certificate of insurance in accordance with the PSTC. The Owner will not provide an executed contract until the certificate has been received.
5. **General Terms and Conditions:** The Consultant agrees to the City of Kelso’s Professional Services Terms and Conditions and Conditions (PSTC), which are incorporated by reference. Should any work performed under this contract be subject to the Washington State Prevailing Wages on Public Works Act, the Consultant agrees to the City of Kelso’s Public Works Terms and Conditions (PWTC), which are also incorporated by reference. The PSTC and the PWTC may both be found at <https://www.kelso.gov/engineering/doing-business-kelso> .
6. **Counterparts:** Original signatures transmitted and received via electronic submission are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature.

**In Witness Whereof:** Each individual executing this Contract on behalf of the City and the Consultant represents and warrants that such individuals are duly authorized to execute and deliver this Contract on behalf of the Consultant or the City.

OWNER	CONSULTANT
Signature <div style="text-align: right; padding-right: 50px;">Andrew Hamilton</div>	Signature
Printed Name <div style="text-align: right; padding-right: 50px;">City Manager</div>	Printed Name
Title	Title
Date	Date
<b>Attest/Authentication:</b>	<b>Approved as to form:</b>
City Clerk <div style="text-align: right; padding-right: 50px;">Brian Butterfield</div>	City Attorney <div style="text-align: right; padding-right: 50px;">Janean Parker</div>

# CITY OF KELSO – PROFESSIONAL SERVICES TERMS AND CONDITIONS

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1. **Contract Documents.** The Contract Documents include, but are not limited to, the Services Contract, requests for qualifications/proposals, scope of work, and professional services terms and conditions (PWTC). The Contract Documents contain all of the agreements of the Parties with respect to any matter covered or mentioned in the Contract Documents and no prior contracts shall be effective for any purpose.

2. **Consultant's Obligation.** The Consultant warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities.

All duties of the Consultant or designees shall be performed in accordance with all applicable Federal, State, and City laws as now existing or hereafter adopted or amended.

The Consultant shall control and direct the performance of the work. The Owner reserves the right to inspect, review and approve the work to assure that the Services have been completed as specified prior to payment.

All Services to be performed by the Consultant or his designees shall be performed pursuant to the direction of the City Manager or designee in a manner consistent with the care and skill ordinarily exercised in the profession under similar conditions and performed to the Owner's reasonable satisfaction, within the time period prescribed by this Contract.

3. **Owner's Obligation.** In consideration of the faithful performance of the Services and compliance with the terms and conditions required by the Contract Documents to the satisfaction of the Owner, the Owner agrees to pay the Consultant in the manner and in the times provided in the Contract Documents and in accordance with the ordinances of the City of Kelso and the laws of the State of Washington. The final amount to be paid, however, is variable upon the amount of work done and/or materials furnished pursuant to unit prices, if any, fixed in the Consultant's Proposal or Scope of Work and as modified by any or all approved change orders or Contract amendments.

4. **Compensation.** Payment by the Owner for the Services will only be made after the Services have been performed and an itemized billing statement has been submitted in the form specified by the Owner and approved by the appropriate Owner representative, which shall specifically set forth the Services performed, the name of the person performing such Services, and the hourly labor charge rate for such person. Payment shall be made on a monthly basis thirty (30) days after receipt of such billing statement.

The Consultant shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of performance and payment under this Contract.

If sufficient funds are not appropriated or allocated for payment under this Contract for any future fiscal period, the Owner will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Contract will terminate upon completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the Owner in the event this provision applies.

5. **Independent Contractor.**

**A.** It is the intention and understanding of the Parties that the Consultant shall be an independent contractor. The Consultant or his or her employees or agents performing under this Contract are not employees or agents of the Owner. The Consultant will not hold himself or herself out as nor claim to be an officer or employee of the Owner. The Consultant will not make any claim of right, privilege, or benefit which would accrue to an employee under law. The Owner shall neither be liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Consultant shall pay all income and other taxes as due. Industrial or any other insurance which is purchased for the benefit of the Consultant shall not be deemed to convert this Contract to an employment contract.

**B.** It is recognized that the Consultant may or will be performing professional services during the term for other parties and that the Owner is not the exclusive user of the Consultant's services; provided, however, that the performance of other professional services shall not conflict with

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or interfere with the Consultant's ability to perform the Services. The Consultant agrees to resolve any conflict in favor of the Owner.

**6. Indemnification and Hold Harmless.** The Consultant shall defend, indemnify and hold the Owner, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in the performance of the Contract, except for injuries and damages caused by the sole negligence of the Owner.

Should a court of competent jurisdiction determine that the Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the Owner, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of the Contract.

**7. Consultant's Insurance.**

A. **Insurance Term** - The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. For Purchased Services contracts the insurance, as required in this Section, shall be maintained without interruption from commencement of the Consultant's work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. **No Limitation** - Consultant's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the Owner's recourse to any remedy available at law or in equity.

C. **Minimum Scope of Insurance** - Consultants required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

2. Commercial General Liability

a. For Purchased Services Contracts, CGL insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Owner shall be named as additional an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the Owner using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

b. For Personal/Professional Services/A&E Contracts, GCL insurance shall be at least as broad as ISO occurrence form CD 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors and personal injury and advertising injury. The Owner shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the Owner using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

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3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. For Professional/Personal Services, Professional A&E Contracts, Professional Liability insurance appropriate to the Consultant's profession.

D. **Minimum Amounts of Insurance** - Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$2,000,000 policy aggregate limit.

E. **Owner Full Availability of Consultant Limits** - If the Consultant maintains higher insurance limits than the minimums shown above, the Owner shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by the Contract or whether any certificate of insurance furnished to the Owner evidences limits of liability lower than those maintained by the Consultant.

F. **Other Insurance Provision** - The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Owner. Any insurance, self-insurance, or self-insured pool coverage maintained by the Owner shall be excess of the Consultant's insurance and shall not contribute with it.

G. **Acceptability of Insurers** - Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

H. **Verification of Coverage** - Consultant shall furnish the Owner with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Consultant before commencement of the work. Upon request by the Owner, the Consultant shall furnish certified copies of all required insurance policies, including endorsements, required in the Contract and evidence of all subconsultants' coverage.

I. **Subconsultants' Insurance** - The Consultant shall cause each and every Subconsultant to provide insurance coverage that complies with all applicable requirements of the Consultant-provided insurance as set forth herein, except the Consultant shall have sole responsibility for determining the limits of coverage required to be obtained by Subconsultants. The Consultant shall ensure that the Owner is an additional insured on each and every Subconsultant's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. **Notice of Cancellation** - The Consultant shall provide the Owner and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

K. **Failure to Maintain Insurance** - Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the Owner may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Owner on demand, or at the sole discretion of the Owner, offset against funds due the Consultant from the Owner.

9. **Nondiscrimination.** In the performance of all Services under this Contract, the Consultant, or its employees, agents, sub-consultants or representatives, shall not discriminate against any person because of sex, age (except

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minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental, or physical handicaps, based upon a bona fide occupational qualification in relationship to hiring and employment. The Consultant shall comply with the Washington Law Against Discrimination (Chapter 49.60 RCW) and with any other applicable federal or state law or local ordinance regarding nondiscrimination. Any material violation of this provision shall be grounds for immediate termination of this Contract by the Owner and, in the case of the Consultant's breach, may result in ineligibility for further Owner Contracts.

**10. Intellectual Property.** Consultant represents and warrants that the Consultant is either the author of all deliverables to be provided under this Contract or has obtained and holds all rights necessary to carry out this Contract. Consultant further represents and warrants that the Services to be provided under this Contract do not and will not infringe any copyright, patent, trademark, trade secret or other intellectual property right of any third party.

Unless otherwise provided, data which originates from this Contract shall be a "work for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Owner upon full payment. Data shall include, but not be limited to reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, films, tapes, and sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights

The Consultant assumes no liability for any unintended use of any stamped engineered plans prepared by a licensed engineer under this Contract beyond the use anticipated under this Contract. The City shall release, defend, indemnify, and hold harmless the Consultant from all claims, costs, expenses, damage, or liability arising out of or resulting from the use or modification of any such engineered plans prepared by the Consultant except use by the City's contractors and the City on those portions of the project(s) for which such plans were prepared.

**11. Books and Records.** The Consultant agrees to maintain books, records, and documents that sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the Owner to assure proper accounting of all funds paid pursuant to this Contract. These records relating to work under the Contract shall be subject, at all reasonable times until the expiration of six (6) years after final payment of Compensation under the Contract or such other time required by the Secretary of State's records retention schedule to inspection, review, or audit by the Owner, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Contract.

The making of (or failure or delay in making) such inspection or approval shall not relieve Consultant of responsibility for performance of the work in accordance with this Contract, notwithstanding the Owner's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Consultant shall provide the Owner sufficient, safe, and proper facilities for inspection, and/or shall send copies of the requested documents to the Owner. Consultant's records relating to the work will be provided to the Owner upon the Owner's request.

The records relating to the work are Owner records under the Washington State Public Records Act, Chapter 42.56.RCW, and they must be produced to third parties, if required by law.

The terms of this section shall survive any expiration or termination of this Contract.

**12. Confidentiality.** The Consultant agrees that all materials containing confidential information received pursuant to this Contract shall not be disclosed without the Owner's express written consent. Consultant agrees to provide the Owner with immediate written notification of any person seeking disclosure of any confidential information obtained for the Owner.

**13. Subcontracts/Assignment.** Consultant shall not subcontract or assign, in whole or in part, its obligations under the Contract without the prior written consent of the Owner. The Consultant shall be responsible to ensure that all requirements of the Contract shall flow down to any and all subconsultants.



## CITY OF KELSO – PROFESSIONAL SERVICES TERMS AND CONDITIONS

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14. **Warranty.** For Purchased Services Contracts, the Consultant shall at its own cost and expense, correct all work performed that the Owner deems, in its sole discretion, to have defects in workmanship or materials, which is discovered within one year of the termination of the Contract.

15. **Termination.** The Owner may terminate or suspend the Contract at any time, with or without cause, upon ten (10) days prior written notice to the Consultant. In the event of such termination or suspension, the Consultant shall be entitled to payment for all work and services performed and reimbursable expenses incurred to the date of the termination. The Owner may terminate the Contract immediately if the Consultant's insurance coverage is cancelled for any reason or if the Consultant is unable to perform the work.

16. **Performance.** Time is of the essence in this Contract and each and all of the provisions in which performance is a factor.

17. **Modification.** No provisions of the Contract may be amended or modified except by written agreement of the Parties.

18. **Interpretation and Full Force and Effect.** Any ambiguity or conflicts in the Contract documents shall not be strictly construed against the drafter of the language but shall be resolved by applying the most reasonable interpretation under the circumstances giving full consideration to the parties' intentions. Each party agrees that it has consulted or had opportunity to consult with counsel of its own choosing. Any provision of this Contract which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

19. **Successors.** The rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.

20. **Attorney's Fees.** In the event either party brings a lawsuit to enforce the terms of the Contract, or arising from a breach of the Contract, the prevailing party shall be entitled to its costs and attorneys' fees for bringing or defending against the action.

21. **No Waiver.** Failure or delay of the Owner to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the Owner to declare one breach or default does not act as a waiver of the Owner's right to declare another breach or default.

22. **Notices.** Any notices required to be given shall be delivered as follows:

To the Owner

Engineering Department  
203 S Pacific Ave  
(PO Box 819)  
Kelso WA; 98626

To the Consultant

At the address set forth in the statement of qualifications or proposal.

Any notices may be delivered personally or may be deposited in the US mail, postage prepaid, to the addresses above. Any notice so posted in the US mail shall be deemed received three (3) days after the date of mailing.

23. **Governing Law and Venue.** The Contract shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue for any disputes arising out of the Contract, the Contract Documents, or these terms and conditions shall be Cowlitz County, Washington.