



Thurston County, Washington

Public Works Department

Noxious Weeds & Lakes Management Program

9605 Tilley Road S, Suite C

Olympia, Washington 98512

REQUEST FOR PROPOSAL (RFP) NO. 034-2021-WR-R002

LONG LAKE MANAGEMENT DISTRICT

PHOSPHORUS MITIGATION FOR ALGAE CONTROL

Solicitation Documents

All solicitation documents, including any addenda, are published on the Thurston County Public Works website at <https://www.co.thurston.wa.us/publicworks/delectus.html>.

Proposal Due Date

Proposals are due: 4:00 P.M. PT on April 1, 2021

Proposal Acceptance Location

Proposals will be received by:

Thurston County Public Works

Noxious Weeds & Lakes Management Program

9605 Tilley Road S, Suite C

Olympia, Washington 98512

Office Hours: 8:00 a.m. to 5:00 p.m., Monday through Friday

Paula Cracknell: email paula.cracknell@co.thurston.wa.us

Phone: 360-628-1420

Thurston County reserves the right to reject any and all Proposals, cancel this solicitation, and to waive any informalities or irregularities in procedure.

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1.0 INTRODUCTION AND PURPOSE

1.1 Thurston County Department of Public Works, Noxious Weeds & Lakes Management Program is seeking a qualified and commercially licensed aquatic pesticide applicator to provide treatment to Long Lake.

1.2 Qualifications:

1.2(a) Contractor shall have proven experience in implementing phosphorus mitigation programs in eutrophic lakes using Aluminum sulfate and Phoslock algae mitigation products.

1.2(b) Contractor shall have experience and expertise in water sampling or core sampling of sediment.

1.2(c) Contractor shall have documented current licenses, endorsements, qualifications, insurance, and proven experience in algae management which must include familiarity with Aluminum sulfate and Phoslock. References will be required for consideration of contract award.

1.3 Purpose: Algal toxins present in Long Lake pose a major health concern. The goal of this project is to target and sequester the available phosphorus in the water column to provide longer term algae management and reduce the frequency and intensity of algal blooms in 2021.

1.4 This project is a formal competitive procurement and will be advertised in 'The Olympian' and is open to all qualified firms. All solicitation documents, including any addenda, are published on the Thurston County Public Works website at <https://www.co.thurston.wa.us/publicworks/delectus.html>.

2.0 PROJECT DESCRIPTION:

The contractor will provide all management, materials, equipment, labor, and other items necessary for pesticide application to Long Lake and required reporting documentation. Treatment will be in 2 Phases (1) Phase 1 Aluminum sulfate application to approximately 300 surface acres and (2) Phase 2 Phoslock application to areas of the lake deeper than 12 feet. Bathymetry of Long Lake is provided for the Proposer to assess areas greater than 12 feet (see SOW, Figure 1). Sediment testing may be required to determine dosage rates. Contractor is responsible for all permits and compliance with all rules and regulations. Contractor will work with the Thurston County Aquatic Resource Specialist.

3.0 STATEMENT OF WORK

See Attachment 2 Statement of Work.

4.0 ACQUISITION MILESTONES (Estimated)

| Date | Activity |
|-----------|---------------------------------------|
| 3/18/2021 | RFP Issuance |
| 3/29/2021 | Cut-off Date for Questions |
| 4/01/2021 | Proposal Due Date |
| 4/07/2021 | Proposal Review and Select Contractor |

| | |
|-----------|-------------------|
| 4/22/2021 | Executed Contract |
|-----------|-------------------|

5.0 GENERAL REQUIREMENTS:

5.1 Prime Contractor Responsibilities: The prime contractor is solely responsible for fulfillment of any contract with the County awarded under this RFP and for all performance whether or not subcontractors are used. The County will make contract payments to the prime contractor only.

5.2 Subcontractors: Use of subcontractors and their qualifications must be clearly explained in the Proposal. Subcontractors directly involved with product applications must submit qualifications, experience with the Proposer and provide evidence of a current commercial license to apply aquatic herbicides in Washington State.

5.3 Examination: Each Proposer is responsible for examining the RFP, including the Contract, prior to submitting a Proposal. Failure to examine such documents and any errors made in preparation of a Proposal are at the Proposer's own risk.

5.4 No Obligation: This solicitation in no manner obligates Thurston County or any of its Departments to use any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

5.5 Cancellation: This RFP may be cancelled at any time and all Proposals may be rejected in whole or in part if the County determines such action to be in the best interest of Thurston County or the Lake Management District.

5.6 Investigations: The County may make such investigations as are necessary to determine the ability of the proposing firm to meet the requirements specified within this RFP, and verify the representations, oral and written, made in the selection process.

6.0 PRE-PROPOSAL INQUIRIES (PPIs):

Paula Cracknell, Aquatic Resource Advisor is the point of contact for this acquisition. All Pre-Proposal inquiries shall be submitted in writing to Paula at the following email address paula.cracknell@co.thurston.wa.us or by postal mail to the following address:

Paula Cracknell, Aquatic Resource Specialist
Noxious Weeds and Lakes Management Program
Thurston County Department of Public Works
9605 Tilley Road S. Suite C
Olympia, WA 98512

Questions should be submitted as soon as possible; a response is not guaranteed if PPis are not submitted at least 3 business days prior to the closing date. Any oral exchanges/responses shall not be construed as a change to the requirements. All changes will be issued in writing via an Addendum.

7.0 PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS

7.1 Offerors shall submit their Proposal to Paula Cracknell using one of the following methods: (1) email at paula.cracknell@co.thurston.wa.us , (2) postal service to the address in the cover sheet or

(3) hand delivery to the address in the cover sheet.

7.1(a) Proposals submitted via email shall clearly identify the RFP# and Project Title in the subject line. The email must be received in Paula Cracknell's electronic in-box by the due date and time specified in the RFP. Offerors are responsible for verifying receipt. The Proposal shall be in a single PDF document.

7.1(b) Proposals that are hand carried or mailed using postal service shall be submitted in a sealed envelope clearly marked with the RFP# and Project Title. Offerors are responsible for timely delivery of their Proposal.

7.2 Proposal is due no later than **April 1, 2021/4:00 p.m.** local time. Proposals received after the deadline will not be considered for award.

7.3 Proposal Requirements and Contents: Offerors shall submit the following:

7.3(a) Cover Letter signed by authorized official of the company.

(1) Cover Letter to include Company name, address, telephone number and contact person. If the name of the principal owner or the company has changed within the last three years, provide all prior names.

(2) Statement the contractor has made its own examination, investigation, and research regarding the proper method of doing the work under the RFP and Contract, all conditions affecting the work to be done, the necessary labor, equipment and materials, and the quantity of work to be performed.

7.3(b) Technical Submission:

(1) Submit 3 verifiable references that demonstrate your experience on similar projects.

Reference submissions shall include the following information:

Project Title and location

Description of Work performed

Point of Contact including Name, phone number and email address.

Similar projects include phosphorous sequestration.

Reference Checks will be conducted by the County.

(2) Resumes of all personnel to be assigned to this project. Resumes shall include:

Job titles

Years of Experience

Years with the Company

Education

Professional Certificates

Role/Responsibility on this project

Experience on previous similar projects

(3) List of infractions or violations cited by the Departments of Ecology or Agriculture over the past five years for the company, principal, and applicators. The thoroughness of the list will be verified with the Department's records. Any error or omission may be used as a basis for

disqualification.

(4) Proposed Work Plan

Describe approach to the work addressing application method for both phases and estimated quantities.

Describe detailed method for distributing and posting information to inform affected parties.

Identify risks and how they will be mitigated.

7.3(c.) Pricing Submission:

Submit price on Attachment 1 - Bid Sheet

The project budget maximum allowance is \$240,000.00. Proposals shall not exceed this amount.

Offeror shall submit a break-out of costs including Material/Product, Equipment, Labor Classification, Unit Prices/Rates, Quantity/Hours and Extended amounts for:

(1) Phase 1 – whole lake spring Alum treatment.

(2) Phase 2 – partial lake Phoslock treatment in lake depths greater than 12 feet.

(3) Include buffer for alum commensurate with the pounds proposed for use in the lake.

7.3 (d) Certificate of Insurance (proof) demonstrating compliance with the below Insurance levels and Paragraph 8 of the draft contract (Attachment 3).

INSURANCE REQUIREMENTS

The contractor is required to have active insurance that meets the following:

A. Professional Legal Liability

\$2,000,000 per occurrence

B. Commercial General Liability

\$1,000,000 per occurrence

\$2,000,000 aggregate

C. Pollution Legal Liability

\$1,000,000 per occurrence

\$2,000,000 annual aggregate

D. Automobile Liability

\$500,000 each accident combined Bodily Injury and Property Damage

7.4 Firm Offer: Proposal shall remain firm and unaltered after the time of closing and for 60 calendar days from said date. The County and the Proposer may mutually agree to extend the period during which the Proposal shall remain firm and unaltered.

7.5 Modification/Withdrawal of Proposals: Written requests to modify or withdraw a Proposal received by the County prior to the scheduled time of closing will be accepted and will be corrected after opening. No oral requests will be allowed. Requests to modify or withdraw a Proposal must be addressed and labeled in the same manner as the Proposal and marked as a MODIFICATION or WITHDRAWAL of the Proposal. Requests for withdrawal after the time of closing will be allowed at the County's sole discretion.

7.6 Public Record: Any information in offeror's Proposal considered exempt from Public Records Act, Section 42.56 Revised Code of Washington (RCW), those items must be clearly marked as such and may be returned upon request once the contract award has been determined.

8.0 PROPOSAL EVALUATION:

8.1 Technical – Proposal will be evaluated for completeness, compliance, and quality of Proposal. References will be evaluated to ensure contractor has the requisite qualifications and experience required to perform this effort.

8.2 Price – Proposal will be evaluated for price realism and reasonableness.

8.3 Contractor Responsibility – Contractor must be determined responsible to receive an award.

8.4 Additional Information: The County reserves the right to use short lists, interviews, and requests for additional information as a part of the selection criteria. The County may obtain and use information, in addition to that contained in the Proposals, from any source desired. This includes government regulators and customers of the Proposers, regardless of whether or not the references were supplied by the Proposers.

NOTE: Proposals not in compliance with Paragraph 7.0 will be disqualified without consideration for award.

9.0 BASIS FOR AWARD:

Award will be made to the responsible Proposer that represents the Best Value to the County considering quality and price. Proposals will be scored based on the evaluation criteria in the below Table.

| EVALUTION CRITERIA | POINTS POSSIBLE |
|---|-----------------|
| Proposal Presentation: The information presented is in a clear, concise, logical manner and well organized. All required information has been submitted. | 5 |
| | |
| Qualifications and Experience: The qualifications of the Proposer, any subcontractors, and key personnel assigned to this project meet/exceed the needs of the County. | 30 |
| | |
| References: Quality of performance submitted with Proposal or known to the County. | 10 |
| | |
| Approach to Work: The Proposer's approach to the work demonstrates an understanding of the scope of work, including compliance requirements; innovative offerings; awareness of risks; and other related matters. | 25 |
| | |
| Cost & Availability of Resources: The Proposer's cost for the work is reasonable, reflects an understanding of the scope and is an exceptional value for the approach to the work. Proposer has the size, resources, and capacity to perform the work. | 30 |
| | |
| Total Points | 100 |

10.0 CONTRACT AGREEMENT:

Attachment 3 is a copy of the Draft Contract Agreement. By submission of a Proposal, offeror agrees to the terms and conditions set forth in the Contract Agreement.

Attachment 1 – Pricing Schedule

| Item | Description | Amount |
|-------------|---|---------------|
| 1 | Phase 1 – Whole Lake Alum Treatment Provide attached detailed break-out of costs | \$ _____ |
| 2 | Phase 2 – Partial Lake Phoslock Treatment Provide attached detailed break-out of costs | \$ _____ |
| | Total Item 1 & 2 | \$ _____ |

The undersigned hereby certifies that they have examined and have read and thoroughly understands the Sample Contract including insurance requirements and the method by which payment will be made for said work.

Company Name: _____

Company Representative Name & Title: _____

BY: _____

 **Sign here**

SIGNATURE OF AUTHORIZED REPRESENTATIVE

(NOTE: Signature is required for Proposal to be valid)

Title: _____

Physical Address: _____

Mailing Address: _____

Telephone: _____ Fax: _____

E-mail: _____

ALL OFFERORS MUST COMPLETE THIS SECTION

Bidder acknowledges receipt of the following addenda:

Addendum No. _____ Date Received _____

By _____

Addendum No. _____ Date Received _____

By _____

Attachment 2

Statement of Work

Long Lake Management District

Phosphorus Mitigation Project for Algae Control

1.0 PURPOSE

Thurston County Department of Public Works is seeking a qualified and commercially licensed aquatic pesticide applicator with proven experience in implementing phosphorus mitigation programs in eutrophic lakes using Aluminum sulfate and Phoslock algae mitigation products. Additionally, the selected contractor shall have experience and expertise in water sampling or core sampling of sediment.

2.0 BACKGROUND ON LONG LAKE

Long Lake is a eutrophic and urbanized lake that is third in a trifecta of lakes draining to Woodland Creek. Long Lake is approximately 330 acres in size, with two equally sized large basins (referred to as the North and South Basins) connected by a narrow channel. Located in suburban Lacey, WA, it has many small coves and canals, along with large wetland areas.

Water flows into Long Lake from the south through a series of wetlands and small channels from Pattison Lake, then out to other small lakes and Woodland Creek. Other water sources for Long Lake are groundwater, springs, precipitation, and stormwater flow. The average depth of Long Lake is six meters, with variable depths throughout both basins. The lake experiences seasonal stratification during the warmer months. Typically, during these periods of stratification and during initial fall lake turnover is when algae blooms in Long Lake reach their peak before dissipating.

Long Lake has a history of algae issues and treatment to mitigate and lessen the severity of the blooms. The most recent algae treatment was in 2008 and entailed a partial lake Aluminum sulfate (alum) treatment applied in the South Basin only. The effects of this Alum treatment have dissipated. In 2020 Long Lake experienced the most severe and pronounced algal bloom to date, restricting recreation and forcing homeowners inside to escape the foul odor of decaying algae that persisted for months. The bloom started in early spring 2020 and is still present as of February 2021.

Algal toxins are a major concern in Long Lake. In 2020 a total of twenty algae samples were collected by Thurston County Environmental Health and were sent to the King County toxin laboratory for microcystin and anatoxin-*a* testing. Three of these samples yielded results for microcystin toxins well above the state guidelines for human health. The Washington State water quality guidelines for acceptable microcystin levels is 8 µg/L, microcystin levels reached

Long Lake Phosphorous Mitigation for Algae Control

496 µg/L in August 2020, far above the state recreational guideline and forced closure of the lake.

Phosphorus is prevalent in the water column during periods of stratification. Historical and current Total Phosphorus data is available electronically from Thurston County Environmental Health and show recurrent high phosphorus levels during the warmer months. These data are available at <https://www.co.thurston.wa.us/health/ehrp/annualreport.html>. The goal of this project is to target and sequester the available phosphorus in the water column to provide longer term algae management and reduce the frequency and intensity of algal blooms in 2021.

3.0 SCOPE OF SERVICES

The algae management strategy in 2021 will utilize Alum and Phoslock in a whole lake and partial lake treatment to sequester phosphorus available to algal cells and prevent algal blooms from forming.

Phase one will entail an entire lake stripping treatment for both the North and the South Basin in spring 2020. Approximately 300 surface acres will be treated with Aluminum sulfate with a pH buffer on hand if needed.

Phase two will entail Phoslock treatment in areas of the lake deeper than 12 feet and experience stratification in the warmer months to target phosphorus precipitating from the lake sediment during stratification periods.

Sediment testing may be a requirement of this contract to help inform dosage rates for Alum and Phoslock.

Contractor will be responsible for communication with Thurston County to follow the work plan, mobilization on the lake, all shoreline notifications, procurement of Alum, buffer and Phoslock and application of these products on the Lake at application rates that are acceptable under the Department of Ecology Aquatic Plant and Algae Management General Permit held by Thurston County Public Works. More information on phosphorus sequestration requirements under this permit is available on Ecology's website at <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Aquatic-pesticide-permits/Aquatic-plant-algae-management>

The tasks required for the 2021 contract include, but are not limited to the following:

1. Comply with all laws, regulations, permits, conditions, requirements, and Thurston County IPM Policy (http://www.co.thurston.wa.us/health/ehipm/ipm_cntyimp.html) related to this project, including posting affected parcels, and notifying all affected property owners.

Long Lake Phosphorous Mitigation for Algae Control

2. Using digital ARCGIS maps, shapefiles, and bathymetry provided by Thurston County, use high accuracy GPS equipment to treat areas during product application and provide documentation of treated areas, if requested.
3. In selected areas, apply the phosphorus sequestration products in a manner that will ensure that aquatic life is not adversely impacted. This will require use of bathymetry data to accurately calculate pounds or gallons of the product used across the treatment areas and consistent monitoring of pH during treatment to adjust buffer when applying alum. Monitoring the pH of the water during application is a requirement of this contract.
4. Apply Aluminum sulfate and Phoslock in a safe manner that complies with all permits and achieves the desired concentrations in treatment sites as agreed upon between the contractor and County staff.
5. Maintain contact with County staff to report issues or problems and to provide expertise in project planning.

4.0 DURATION:

The period of performance will be from the date of execution to the termination of the project. The chosen contractor will work with County staff to determine the best time to begin treatment based on biological activity in the lake. Work orders will be issued once treatment dates are agreed upon by the contractor and County staff.

No project work can be performed after December 31, 2021.

5.0 PERMITS

Thurston County has existing permit coverage from the Washington State Department of Ecology's 2016-2021 Aquatic Plant and Algae Management Permit for discharges associated with the control of nuisance and noxious submerged aquatic vegetation and phosphorus sequestration projects in Washington State. Permit coverage has been extended to the 2021-2026 Permit.

The County shall be responsible for the initial Business and Residential Notifications for each control season. The contractor shall be responsible for complying with all other conditions and requirements including shoreline posting, public notifications and providing documentation to the County of compliance with Ecology's permit. The contractor shall also provide copies of both Ecology's and the provided Washington State Department of Agriculture's herbicide application reports to the County as applications proceed, and copies of the final state reports within a month following the last treatment. Although Alum and Phoslock are not herbicides, reporting daily usage of these products in a manner compliant with WSDA herbicide application records are required. Thurston County will issue work orders (appendix i) for each treatment area on the lake as recommended by the contractor.

Contractor will be responsible for obtaining a permit from the Washington Department of Fish and Wildlife, Region 6, Lands Program Manager, Habitat Management Program to use the public

boat ramps for the duration of the projects. The public Fish and Wildlife boat launch is the only source of lake access for the chosen contractor on Long Lake.

6.0 INSURANCE REQUIREMENTS

The contractor shall maintain insurance, including pollution liability coverage, as set forth in the sample contract included in the RFP package.

Figure 1. Map of Long Lake with Bathymetry Contours



PROFESSIONAL SERVICES CONTRACT

THURSTON COUNTY / [CONTRACTOR].
[Long Lake Phosphorous Mitigation Algae Control]

THIS CONTRACT is entered into in duplicate originals between **THURSTON COUNTY**, a municipal corporation, with its principal offices at 2000 Lakeridge Drive S.W., Olympia, Washington 98502, hereinafter "**COUNTY**," and **[NAME OF COMPANY]**, with its principal offices at [contractor address], hereinafter "**CONTRACTOR**."

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. DURATION OF CONTRACT

The term of this Contract shall begin on the date last executed below and shall terminate on [December 31, 2021].

2. SERVICES PROVIDED BY THE CONTRACTOR

The CONTRACTOR represents that it is qualified and possesses the necessary expertise, knowledge, training, and skills, and has the necessary licenses and/or certification to perform the services set forth in this Contract.

The CONTRACTOR shall perform the following services:

[pesticide application to Long Lake and required reporting documentation completed in two phases (1) Phase 1 Aluminum sulfate application and Phase 2 Phoslock application. Sediment testing may be required.]

a. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided for in the Contract, no material, labor, or facilities will be furnished by the COUNTY.

c. The CONTRACTOR shall perform according to standard industry practice of the work specified by this Contract.

d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed to by the parties.

e. The CONTRACTOR shall, from time to time, during the progress of the work, confer with the COUNTY. At the COUNTY'S request, the CONTRACTOR shall prepare and present status reports on its work.

3. **SERVICES PROVIDED BY THE COUNTY**

In order to assist the CONTRACTOR in fulfilling its duties under this Contract, the COUNTY shall provide the following:

- a. Relevant information as exists to assist the CONTRACTOR with the performance of the CONTRACTOR'S services.
- b. Coordination with other County Departments or other Consultants as necessary for the performance of the CONTRACTOR'S services.
- c. Services documents, or other information identified in Exhibit A.

4. **CONTRACT REPRESENTATIVES**

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' representatives are as follows:

- a. For CONTRACTOR:

Name of Representative: _____

Title: _____

Mailing Address: _____

City, State and Zip Code: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

- b. For COUNTY:

Name of Representative: _____

Title: _____

Mailing Address: _____

City, State and Zip Code: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

5. **COMPENSATION**

- a. For the services performed hereunder, the CONTRACTOR shall be paid based upon mutually agreed rates contained in Exhibit B, which is attached hereto and incorporated herein

Contract No.:
Project Title:

by reference. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed **\$[enter dollar amount]**.

b. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract or supporting exhibits or attachments incorporated by reference into this Contract.

c. The CONTRACTOR may, in accordance with Exhibit B, submit invoices to the COUNTY not more often than once per month during the progress of the work for partial payment of work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of the work and will remit payment within thirty (30) days from the date of receipt of billing.

d. The CONTRACTOR shall not be paid for services rendered under the CONTRACT unless and until they have been performed to the satisfaction of the COUNTY.

e. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, then the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty until such failure to perform is cured or otherwise adjudicated. "Substantial" for purposes of this Contract means faithfully fulfilling the terms of the contract with variances only for technical or minor omissions or defects.

f. Unless otherwise provided for in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for payment prior to the execution of the Contract or after its termination.

6. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any, and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment, modification or renewal shall be made to this Contract unless set forth in a written Contract Amendment, signed by both parties and attached to this Contract. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTY, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, losses, expenses, damages, and judgments of any nature whatsoever, including costs and attorneys fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CONTRACTOR'S acts, errors

or omissions or the acts, errors or omissions of its employees, agents, subcontractors or anyone for whose acts any of them may be liable, in the performance of this Contract. Claims shall include, but not be limited to, assertions that information supplied or used by the CONTRACTOR or subcontractor infringes any patent, copyright, trademark, trade name, or otherwise results in an unfair trade practice. PROVIDED HOWEVER, that the CONTRACTOR'S obligations hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the CONTRACTOR'S obligations hereunder shall apply only to the percentage of fault attributable to the CONTRACTOR, its employees, agents or subcontractors.

b. In any and all claims against the COUNTY, its officers, officials, employees and agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Worker's Compensation acts, disability benefits acts, or other employee benefits acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under Title 51 RCW. By executing the Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder.

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, the CONTRACTOR'S employees, agents or subcontractors.

8. INSURANCE

a. **Professional Legal Liability:** The CONTRACTOR, if he is a licensed professional, shall maintain Professional Legal Liability or Professional Errors and Omissions coverage appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than **\$[2,000,000]** per loss.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude bodily injury or property damage. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract including testing, monitoring, measuring operations, or laboratory analysis where such services are rendered as part of the Contract.

b. **Workers' Compensation (Industrial Insurance):** The CONTRACTOR shall maintain workers' compensation insurance as required by Title 51 RCW and shall provide evidence of coverage to the Thurston County Risk Management Division.

The CONTRACTOR shall send to Thurston County at the end of each quarter written verification that premium has been paid to the Washington State Department of Labor and Industries for Industrial Insurance coverage. Alternatively, the CONTRACTOR shall provide

certification of approval by the Washington State Department of Labor and Industries if self-insured for Workers Compensation.

c. **Commercial General Liability:** The CONTRACTOR shall maintain Commercial General Liability coverage for bodily injury, personal injury and property damage, subject to limits of not less than **[\$1,000,000]** per loss. The general aggregate limit shall apply separately to this Contract and be no less than **[\$2,000,000]**.

- i. The CONTRACTOR shall provide Commercial General Liability coverage which does not exclude any activity to be performed in fulfillment of this Contract. Specialized forms specific to the industry of the CONTRACTOR will be deemed equivalent provided coverage is no more restrictive than would be provided under a standard Commercial General Liability policy, including contractual liability coverage.
- ii. The CONTRACTOR'S Commercial General Liability insurance shall include the COUNTY, its officers, officials, employees and agents with respect to performance of services, and shall contain no special limitations on the scope of protection afforded to the COUNTY as additional insured.
- iii. The CONTRACTOR shall furnish the COUNTY with evidence that the additional insured provision required above has been met. An acceptable form of evidence is the endorsement pages of the policy showing the COUNTY as an additional insured.
- iv. If the CONTRACTOR'S liability coverage is written as a claims made policy, then the CONTRACTOR must evidence the purchase of an extended reporting period or "tail" coverage for a three-year period after project completion, or otherwise maintain the coverage for the three-year period.
- v. If the Contract is over \$50,000 then the CONTRACTOR shall also maintain Employers Liability Coverage with a limit of not less than \$1 million.

d. **Pollution Liability Insurance** shall be written on a Contractor's Pollution Liability form or other form acceptable to County providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than **[\$2,000,000]** per claim and aggregate

e. **Automobile Liability:** The CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of not less than **[\$500,000]** each accident combined Bodily Injury and Property Damages. Coverage shall include owned, hired, and non-owned automobiles.

f. **Other Insurance Provisions:**

- i. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY, its elected and appointed officers, officials, employees, and agents.
- ii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees, or agents.

- iii. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- iv. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
- v. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification.
- vi. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced.

i. **Verification of Coverage and Acceptability of Insurers:** The CONTRACTOR shall place insurance with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

- i. Certificates of Insurance shall show the Certificate Holder as Thurston County and include c/o of the Office or Department issuing the Contract. The address of the Certificate Holder shall be shown as the current address of the Office or Department.
- ii. Written notice of cancellation or change shall be mailed to the COUNTY at the following address:

Attn: Risk Analyst
Human Resources
2000 Lakeridge Drive S.W.
Olympia, Washington 98502

- iii. The CONTRACTOR shall furnish the COUNTY with properly executed certificates of insurance or a signed policy endorsement which shall clearly evidence all insurance required in this section prior to commencement of services. The certificate will, at a minimum, list limits of liability and coverage. The certificate will provide that the underlying insurance contract will not be canceled or allowed to expire except on thirty (30) days prior written notice to the COUNTY.
- iv. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Thurston County Risk Management Division.

9. TERMINATION

a. The COUNTY may terminate this Contract for convenience in whole or in part whenever the COUNTY determines, in its sole discretion, that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by Certified Mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 5 of this Contract.

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

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may terminate this Contract, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with Section 5 of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach. If, subsequent to termination, it is determined for any reason that (1) the CONTRACTOR was not in default, or (2) the CONTRACTOR'S failure to perform was not its fault or its subcontractor's fault or negligence, the termination shall be deemed to be a termination under subsection a of this section.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. The CONTRACTOR shall perform the terms of the Contract using only its bona fide employees or agents who have the qualifications to perform under this Contract. The obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.

b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time.

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an Independent Contractor and not as an agent, employee, or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and the CONTRACTOR is not entitled to any County benefits, including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, fringe benefits, or any other rights or privileges afforded to Thurston County employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent or representative of the CONTRACTOR shall be or deem to be or act or purport to act as an employee, agent or representative of the COUNTY.

d. The CONTRACTOR shall assume full responsibility for the payment of all payroll taxes, use, sales, income or other form of taxes, fees, licenses, excises, or payments required by any city, county, federal or state legislation which is now or may during the term of this Contract be enacted as to all persons employed by the CONTRACTOR and as to all duties, activities and requirements by the CONTRACTOR in performance of the work on this project and under this Contract and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S contract representative or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes.

15. NONDISCRIMINATION

The CONTRACTOR, its assignees, delegates or subcontractors shall not discriminate against any person in the performance of any of its obligations hereunder on the basis of race, color, creed, ethnicity, religion, national origin, age, sex, marital status, veteran status, sexual

orientation or the presence of any disability. Implementation of this provision shall be consistent with RCW 49.60.400.

16. OWNERSHIP OF MATERIALS/WORK PRODUCED

a. Material produced in the performance of the work under this Contract shall be “works for hire” as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. This material includes, but is not limited to, books, computer programs, plans, specifications, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefore to the extent such use is agreed to in writing by the CONTRACTOR.

b. An electronic copy of all or a portion of material produced shall be submitted to the COUNTY upon request or at the end of the job using the word processing program and version specified by the COUNTY.

17. DISPUTES

Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, 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. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY’S Contract representative or designee. All rulings, orders, instructions, and decisions of the COUNTY’S contract representative shall be final and conclusive, subject to the CONTRACTOR’S right to seek judicial relief pursuant to Section 18.

18. CHOICE OF LAW, JURISDICTION AND VENUE

a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

19. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties’ rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

c. Should the COUNTY determine that the severed portions substantially alter this Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

20. **ENTIRE AGREEMENT**

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

21. **NOTICES**

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 4. Notice may also be given by facsimile with the original to follow by regular mail. Notice shall be deemed to be given three days following the date of mailing or immediately if personally served. For service by facsimile, service shall be effective upon receipt during working hours. If a facsimile is sent after working hours, it shall be effective at the beginning of the next working day.

The parties hereto acknowledge that the waiver of immunity set out in Section 7.b. was mutually negotiated and specifically agreed to by the parties herein.

CONTRACTOR:

Thurston County, Washington

Firm: _____

By: _____

By: _____

Title: _____

Signature: _____
(Authorized Representative)

Date _____

Date _____

Title: _____

Address: _____

Approved as to Form by the Prosecuting Attorney's Office
Reviewed 1/5/05

Contract No.:
Project Title:

EXHIBIT A

PROFESSIONAL SERVICES CONTRACT

THURSTON COUNTY/ **[CONTRACTOR]**
[Long Lake Phosphorous Mitigation Algae Control]

SCOPE OF SERVICES

1. The services to be performed by the CONTRACTOR under this Contract, which are described in Section 2 of the Contract (SERVICES PROVIDED BY THE CONTRACTOR), are set forth as follows:

[list scope of services or tasks to be performed]

2. The services to be performed by the COUNTY under this Contract, which are described in Section 3 of the Contract (SERVICES PROVIDED BY THE COUNTY) are set forth as follows (if applicable):

[list scope or tasks to be performed]

EXHIBIT B

PROFESSIONAL SERVICES CONTRACT

THURSTON COUNTY/ **[CONTRACTOR]**
[Project Title]

COMPENSATION

1. The CONTRACTOR'S compensation under this Contract, which is described in Section 5 of the Contract (COMPENSATION), is set forth as follows:

[state lump sum amount and additional break-out if available]