**JEFFERSON COUNTY**
**BOARD OF COUNTY COMMISSIONERS**

**CONSENT AGENDA REQUEST**

**TO:** Board of County Commissioners
Mark McCauley, County Administrator

**FROM:** Brent A. Butler, AICP, Director, Community Development
Josh D. Peters, AICP, Deputy Community Development Director/Planning Manager

**DATE:** February 13, 2023

**SUBJECT:** Fee Study

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**STATEMENT OF ISSUE:**

In September 2022, the Jefferson County Department of Community Development (DCD) advertised a Request for Qualifications (RFQ) for professional services to evaluate the cost for services related to DCD permits and other governmental approvals. Jefferson County's parameters for regular review are codified in the Jefferson County Code (JCC) Appendix FEE SCHEDULES and establishes procedures to ensure compliance with RCW 82.02.020 which requires costs to be reasonable. Generally, DCD needs a third party to determine the cost to the municipality of processing applications, inspecting and reviewing plans or preparing detailed statements required by the State Environmental Policy Act (RCW 43.21C) and other associated governmental reviews. These include, among others:

- Condominium conversions pursuant to RCW 64.34.440;
- Impact fees pursuant to RCW 82.02.050 & 090;
- Comprehensive plans and development regulations including optional elements pursuant to RCW 43.21C.420;
- Nonproject environmental impact statements pursuant to RCW 43.21C.428; and
- Contracts with owners of real estate for water or sewer facilities pursuant to RCW 35.91.020.

The competitive bidding process included an RFQ advertised through notices in the Daily Journal of Commerce and the Port Townsend Leader, posting the RFP on the county website and directly e-mailing firms listed on the Municipal Research Services Center's consultant roster (*See* advertisements and e-mail lists, attached as Attachment A). Interested parties were requested to submit their qualifications and fee schedules by Wednesday, October 5, 2022 (*See* RFQ, Attachment B). In conclusion, Jefferson County received only one response. This agenda request seeks the BoCC approval of a contract between the County and the one responsive applicant, FCS Group.

## BACKGROUND:

Several years ago, the Jefferson County Administrator Mark McCauley budgeted funding for completion of a comprehensive fee study, which DCD recommends completing in the current biennium. DCD fees are comprised of direct and indirect costs to deliver permits or services. Indirect costs typically include: (1) Technologies used to monitor and manage permits and track residential and commercial inspections; (2) Telephony including internet/broadband, hard-wired phones and mobile devices; (3) Vehicle maintenance and operating costs including fuel; and (4) Office costs such as desks, cabinets, rents, office supplies, copiers, electricity, heating and garbage collection. In 1996, the Board of County Commissioners' (BoCC) adopted *Permit Center – Building Division* fees (Ordinance No. 1209-96) and set forth the existing continuous review guidelines as set forth below this paragraph. Subsequently in 2001, Jefferson County established a Fee Review Advisory Board under the direction of the County Administrator Charles Saddler to ensure that local fees were reasonable per RCW 82.02.020.

*Continuous Fee Review Guidelines*

> "At minimum, once every three years, but no more frequently than once per year, fees established under the appendix entitled fee schedule forming part of the Jefferson County Code will be evaluated for consistency with applicable laws, regulations and fee policies adopted by the board of commissioners. Periodic fee review will consider at least the following factors: service cost recovery; public versus private service benefit; departmental goals; other available funding sources; and comparison fees in adjacent counties, statewide averages and other comparable areas. [Ord. 12-96 § 5]"

Amendments to fees in response to building code updates, extraordinary cost increases not captured by the annual Consumer Price Index (CPI) fee update, or new services are set forth more fully in Table 1. Since the adoption of Ordinance No. 12-1209-96, the county ordinance history documents that the BoCC amended DCD's fee schedule thirteen times.

**Table 1: Jefferson County Department of Community Development Fee Update History**

1) Ordinance 02-0503-99: Establishing a Fee for Site Specific Comprehensive Plan Amendments
2) Ordinance 10-1108-99: Amending Ordinance No. 12-1209-96 Fee Schedule for the Public Services Departments in order to allow for conditional refunding of Comprehensive Plan Amendment fees.
3) Ordinance 13-1213-99: Ordinance Amending Ordinance No. 12-1209-96; Fee Schedule for the Permit Center – Building Division and Public Works – Facilities, Parks and Recreation Division
4) Ordinance 03-0312-02: Amending Specific Fee Schedules Contained in Ordinances 12-1209-96, 11-1115-99 and 10-1108-99, for the Health & Human Services, Environmental Health Department, Animal Services and Community Development
5) Ordinance 02-0315-04: Amending Specific Fee Schedules Contained in Ordinances 12-1209-96, 11-1115-99, 10-1108-99, 03-0312-02 Department of Community Development
6) Ordinance 13-1211-06: In the Matter of a New Fee Schedule for the Department of Community Development (Repeals and replaces Permit Center – Building Div Section of the Ordinance No. 12-1209-96, Permit Center-Building Div Section of Ordinance No. 13-1213-99, Ordinance No. 10-1108-00, Ordinance No. 03-0312-02 and Ordinance No. 02-0315-04
7) Ordinance 02-0223-09: In the Matter of a Fee Schedule Increase for the Department of Community Development
8) Ordinance 02-0312-12: Public Works and Community Development Fee Schedule

9) Ordinance 04-1112-13: Amending the Jefferson County Code Fee Appendix to add certain new fees and adjust other fees of the Department of Community Development
10) Ordinance 04A-1216-13: In the Matter of a corrected ordinance amending the Jefferson County Code Fee Appendix: to add certain new fees and adjust other fees of the Community Development Fee (Corrects Ordinance 04-1112-13)
11) Ordinance 08-1123-15: Fee Schedule Increase for the Department of Community Development
12) Ordinance 05-0625-18: Amending Fee Schedules for the Departments of Community Development and Public Works
13) Ordinance 01-0211-19: In the Matter of Fee Schedule Modifications for the Jefferson County Department of Community Development

## ANALYSIS

As mentioned previously, after a competitive bidding process DCD received only one proposal which was tendered by the FCS Group. Prior to submitting this contract for BoCC approval, DCD completed the following due diligence including:

1. Contacted the five firms listed as references
   As part of the due diligence, the Director contacted all five firms listed as a reference on January 31, 2023. The cities of Olympia and Bainbridge Island responded and provided excellent references for the FCG Group. No others had responded by the time this report was prepared.
2. Reviewed the Fee Review Advisory Board's files.
   The BoCC requested an advisory board "to ensure the policy for development fees to cover the cost of the program or service, and 75% of the division/department administrative cost." This included the "review the recommended fee schedules in view of the division/department's cost estimate for the program or service. Benchmark our cost/fees to other jurisdictions. Recommend appropriate fees for the services if different from those recommended by staff."
3. Contracted Other Departments or Offices
   The Directed contacted the Jefferson County Treasurer and Auditor and the Municipal Research Services Center. They contributed a better understanding of fee development and analysis and encouraged the RFQ or respondent firm.
4. Developed Local Data
   After training led by the PAO in December 2021, DCD staff began the process of documenting the time they spend on permit review, processing and issuance.

DCD recognizes the need to review comprehensively fees charged applicants. This ensures that (1) the fees continue to be reasonable; (2) that the BoCC is aware of and approves fee subsidies either intended or otherwise; and (3) that staff communicate these findings through an adopted fee schedule available for the general public. Typically, a fee for service is subsidized if the amount charged is less than the cost of delivery. This is important because by statute local governments are prohibited from generating a profit in the delivery of services or permits. In fact, according to the proposal submitted by FCS Group, the Washington State Supreme Court has drawn a bright line on the permissibility of using fee revenues to fund programs that have a broad social benefit.

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Staff identified several areas where fees have failed to keep up with the costs to deliver permits in addition to new anticipated services or best practices for which fees should be established.

Bulleted below are specific examples:

- *County implementation of new programs,*

The anticipated 2023 third-quarter adoption of the Commercial Property Assessed Clean Energy + Resiliency (C-PACER) program requires DCD with the County Assessor's assistance to administer a new program and charge a fee for services for the purpose of assisting commercial property owners retrofit and/or build sustainably, e.g., seismically retrofit, floodproof and/or improve the energy efficiency of farms, multifamily homes (five plus units), mixed use structures etc. Additionally, the Office of the Fire Marshal fees should be sufficient to ensure that it conducts annual inspections of all commercial properties. This service should minimally extend to schools, businesses, churches, nursing homes, child care facilities, warehouses, correctional facilities, and assembly buildings (see Thurston County, WA Fire Marshal https://www.co.thurston.wa.us/permitting/firemarshall/firemarshall-home.html ).

- *County implementation of best fiscal practices*

Governments often collect a retainer similar to persons who retain attorneys in advance of incurring significant project costs to ensure that contracted third party services are paid for by the applicant in the event of the applicant's insolvency. This is significant because contracted services may exceed five figures, and therefore leave the county liable for payment. Since DCD neither has the competency nor resources to determine an applicant's financial health, the county has historically accepted the applicant's full faith and credit essentially authorizing an unsecured method of backing debt incurred on the applicant's behalf solely based on an applicant's trust and reputation. DCD argues that this does not implement a fiscal best practice, and instead exposes the county to financial loss. Research demonstrates county retainer as high as $80,000 plus consultant fees for planned communities. (see Elmore County, Idaho, https://elmorecounty.org/wp-content/uploads/2021/07/exhibit-a-final-fee-schedule-2021.pdf )

- *County Technology Costs Continue to Increase*

In anticipation of converting to Tyler Tech's new permit tracking system, Jefferson County adopted a new technology fee (Tech Fee) in 2018. Unfortunately, Tidemark - the county database since the 1990s - is no longer supported by the vender. Furthermore, DCD uses outside technical support for conversion of Tidemark data and also pays for additional trainings on the new system (Energov). It is entirely possible that the Tech Fee neither recovers the Tidemark's costs nor additional costs associated with the Microsoft, Bluebeam or Adobe suite of software products.

- *County Fee Increase not keeping up with 2022 inflationary impacts*

Pursuant to the Jefferson County Code, the county cannot increase fees above 5% in a year even if the Consumer Price Index exceeds this amount, as highlighted in section four (4) below. Currently the annual fee update is tied to the US City average for All Urban Wage Earners and Clerical Workers in the Bureau of Labor Statistics for the US Dept. of Labor. In September 2022, this specific CPI figure increased 8.5%. (see https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm). A 5% cap on the maximum authorized fee increase meant that the 2023 fee increase failed to capture 3.5 % of the increased cost for services and permits; it is instead borne by the taxpayers through the BoCC's regular General Fund transfer. Section four (4) creates the annual fee indexing, which states:

*Basis for Annual Fee Increase*

> "Fixed amount fees established by this ordinance shall be adjusted annually on the first business day of January (Adjustment Day) by the amount of the increase in the Consumer Price Index (CPIW). The CPIW is the Consumer Price Index – US City average for All Urban Wage Earners and Clerical Workers, published by the Bureau of Labor Statistics for the United States Department of Labor. The annual fee adjustment shall be calculated as follows: each fee in effect immediately prior to the Adjustment Date will be increased by the percentage increase in the CPIW as reported for the month of September preceding the Adjustment Date. Increases will be rounded to the nearest dollar. A fee shall not be reduced by reason of such calculation. However, fee increases in accordance with this calculation shall not exceed 5 percent per year."

*Statutory Limitations prohibits recovery of Shoreline Management, Comp Plan Update Fees*

According to the one proposal received by the FCS Group, governments may neither use fee revenue to fund programs that have social benefit as illustrated by San Telmo Associates v. Seattle nor recover long range planning costs associated with Comprehensive Plan updates as documented by Tiger Mountain LLC vs. King County. Attempts to recover these costs were found to violate the intent of the Washington State legislature's enactment of RCW 82.02.020.

**FISCAL IMPACT/COST-BENEFIT ANALYSIS:**

DCD does not anticipate any fiscal impacts as this was included tin the biennial budget.

**RECOMMENDATION:**

DCD recommends approving the contract with FCS Group, as included as Attachment C.

**REVIEWED BY:**

Mark McCauley, County Administrator    Date 2/10/23

ATTACHMENT A - Advertisements and E-mail Lists

**From:** Jodi Adams <jadams@co.jefferson.wa.us>
**Sent:** Tuesday, September 6, 2022 2:33 PM
**To:** jennifer@initiatives-group.com; Lindsey.gregory@wsp.com; mark.longtine@wsp.com; scottl@fcsgroup.com; seattlemarketing@wsp.com; wamktg@hdrinc.com
**Subject:** RFQ- Jefferson County Fee Study

Good afternoon,

Jefferson County is submitting an RFQ for a permit fee study. Please review the attached request and respond if interested.

Proposals are due October 5, 2022

Jodi Adams
she/her/hers
Permit & Admin Manager
Jefferson County Department of Community Development
Phone 360-379-4494

Monday-Thursday 9:00-12:00 1:00-4:30

*Jefferson County is following state guidelines, masks are recommended but not required.*



**From:** Legals <legals@djc.com>
**Sent:** Tuesday, September 6, 2022 2:43 PM
**To:** Morgan Higdon <MHigdon@co.jefferson.wa.us>
**Subject:** RE: Public Notice add



Your ad will run tomorrow

Thank you for advertising with us.

Jeff Mosely

Manager-Public Notices
Seattle Daily Journal of Commerce

DAILY JOURNAL OF COMMERCE



**From:** Morgan Higdon <MHigdon@co.jefferson.wa.us>
**Sent:** Tuesday, September 6, 2022 2:34 PM
**To:** Legals <legals@djc.com>
**Subject:** Public Notice add

This is a request for RFQ we need posted in the up-coming paper:

> Jefferson County, Washington FEE UPDATE: Jefferson County Department of Community Development solicits qualifications from consulting firms who wish to be considered for assessing the department's building and land use fees are more fully set forth in the attached link. Proposals are due October 5, 2022, send to jadams@co.jefferson.wa.us or 621 Sheridan St. Port Townsend, WA 98368

*Morgan Higdon*
*Office Coordinator*
*Jefferson County Community Development*
*621 Sheridan St., Port Townsend, WA 98368*
*Mon-Thurs 9am - 4:30pm, closed from 12-1*
*mhigdon@co.jefferson.wa.us*
*http://www.co.jefferson.wa.us*

ATTACHMENT B – Request for Qualifications (RFQ)

**DEPARTMENT OF COMMUNITY DEVELOPMENT**
621 Sheridan Street, Port Townsend, WA 98368
Tel: 360.379.4450 | Fax: 360.379.4451
Web: www.co.jefferson.wa.us/communitydevelopment
E-mail: dcd@co.jefferson.wa.us

**Date:** September 2, 2022

**From:** Brent A Butler, Community Development Director

**To:** Municipal Research Service Center
Consultants Roster

**RE:** Fee Study for Jefferson County Department of Community Development

Jefferson County is seeking qualifications and fee schedules from consultants qualified to assist Jefferson County review the fees charged applicants to ensure consistency with statute, Revised Code of Washington ("RCW") 82.02.020. The Jefferson County Code ("JCC") provides guidance in how this regular review occurs. The JCC states:

> "At minimum, once every three years, but no more frequently than once per year, fees established under the appendix entitled fee schedule forming part of the Jefferson County Code will be evaluated for consistency with applicable laws, regulations and fee policies adopted by the board of commissioners. Periodic fee review will consider at least the following factors: service cost recovery; public versus private service benefit; departmental goals; other available funding sources; and comparison fees in adjacent counties, statewide averages and other comparable areas. [Ord. 12-96 § 5]"

Acknowledging that many counties and cities enact fees that are later challenged in local courts, the Department of Community Development seeks to forestall the possibility of a successful challenge of fees when it updates the current schedule by deleting fees for permits no longer issued and adopting fees for new programs and services. Based on case law, a municipality has the burden of showing that the fees comply with a statutory exception and are reasonable (*see Home Builders Association of Kitsap County v. City of Bainbridge Island*).

Parties wishing to submit their qualifications and fees schedule must also provide the information in the attachment.

Interested parties are encouraged to submit their qualifications and fee schedule by Wednesday, October 5, 2022 to:

Brent A. Butler, AICP
Community Development Director
Jefferson County
621 Sheridan Street
Port Townsend, WA 98368

Sincerely,

Brent A. Butler, Director
Department of Community Development

**DEPARTMENT OF COMMUNITY DEVELOPMENT**
621 Sheridan Street, Port Townsend, WA 98368
Tel: 360.379.4450 | Fax: 360.379.4451
Web: www.co.jefferson.wa.us/communitydevelopment
E-mail: dcd@co.jefferson.wa.us

# Request for Qualifications
# FEE SCHEDULE REVIEW AND UPDATE

Jefferson County, Washington, a municipal corporation, is seeking qualified consultants to assist in assessing the reasonableness of fees charged for a range of land use and building permits. To help us evaluate your qualifications and what this effort might cost please provide the information below.

- How long have you been involved in developing Fee Schedules or assessing their reasonableness?
- Please provide a sample fee scheduled completed for our review.
- Please provide a comprehensive list of communities for which you have provided this assessment
- Please provide at least five (5) references for fee studies you have completed.
- Please provide the names and resumes of the staff you would commit to assessing fees for Jefferson County's Community Development Department.
- Please provide the hourly wages of the staff above.
- Please provide a timeline to complete the fee update process

Jefferson County has a number permits for which an analysis is needed. These are:

- Building fees
- Land Use Fees
- Proposed Fees
    - Retainer Fees
    - Mitigation Monitoring Fees
    - C-PACER Program Fees
    - Lot of Record Certification Fees
    - Fire Inspection Fees

The selected consultant would be required to establish and work with Jefferson County staff performing administrative functions and consisting of team members from the building and planning divisions. The consultant would work with the Community Development Department's Senior Management team consisting of the Planning Manager, Permit and Administrative Manager and Community Development Director, and staff as assigned to establish goals for this effort, including but not limited to:

- Advising department of fees that should be accompanied by standard operating procedures
- Develop recommendations for annual updates to the fees using the five-point approach codified in the Jefferson County Code including: (1) service cost recovery; (2) public versus private service benefit; (3) departmental goals; (4) other available funding sources; and (5) comparison fees in adjacent counties, statewide averages and other comparable areas
- Assessing the reasonableness of fees in accordance with RCW 82.02.020
- Reviewing timesheets and associated tracking used by planners.

# ATTACHMENT C- Professional Services Agreement

# CONTRACT REVIEW FORM

*(INSTRUCTIONS ARE ON THE NEXT PAGE)*

Clear Form

**CONTRACT WITH:** FCS Group Contract No:

Contract For: Department of Community Development Fee Study Term: February 7, 2023 to February 7, 2024

| | |
|---|---|
| **COUNTY DEPARTMENT:** | Jefferson County Department of Community Development |
| **Contact Person:** | Brent A. Butler |
| **Contact Phone:** | 3603694493 |
| **Contact email:** | bbutler@co.jefferson.wa.us |

**AMOUNT:** $24,000

| | |
|---|---|
| Revenue: | 0 |
| Expenditure: | $24,000 |
| Matching Funds Required: | 0 |
| Sources(s) of Matching Funds | Not Applicable |
| Fund # | 001 |
| Munis Org/Obj | 14339700 / 397010 |

**PROCESS:**

- ☐ **Exempt from Bid Process**
- ☐ **Cooperative Purchase**
- ☐ **Competitive Sealed Bid**
- ☐ **Small Works Roster**
- ☐ **Vendor List Bid**
- ☑ **RFP or RFQ**
- ☐ **Other:**

**APPROVAL STEPS:**

**STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.**

**CERTIFIED:** ■ **N/A:** ☐

Brent A Butler
Signature

February 1, 2023
Date

**STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.**

**CERTIFIED:** ■ **N/A:** ☐

Brent A Butler
Signature

February 1, 2023
Date

**STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):**

Risk approved

**STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):**

Prosecutor approved

**STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).**

**STEP 6: CONTRACTOR SIGNS**

**STEP 7: SUBMIT TO BOCC FOR APPROVAL**

# PROFESSIONAL SERVICES AGREEMENT FOR THE JEFFERSON COUNTY FEE STUDY

THIS PROFESIONAL SERVICES AGREEMENT ("this Agreement") is entered into between the County of Jefferson, a municipal corporation ("the County"), and FCS Group ("the Contractor"), in consideration of the mutual benefits, terms, and conditions specified below.

1. Project Designation. The Contractor is retained by the County to perform the following Project:

   The consultant shall review, analyze, and recommend reasonable Community Development Department (DCD) fees in accordance with RCW 82.02.020. The consultant will coordinate with DCD's Senior Management team consisting of the Deputy Community Development Director/Planning Manager, Permit and Administrative Manager and Community Development Director and staff as assigned.

2. Scope of Services. The Contractor agrees to perform the services identified on Exhibit "A" attached hereto including the provision of all labor.

3. Time for Performance. This Agreement shall commence on January 2, 2023 and continue through July 2023. Work performed consistent with this Agreement during its term, put prior to the adoption of this Agreement, is hereby ratified. The Contractor shall perform all services pursuant to this Agreement as outlined on Exhibit "A". Time is of the essence in the performance of this Agreement.

4. Payment. The Contractor shall be paid by the County for completed work and for services rendered under this Agreement as follows:

   a. Payment for the work provided by the Contractor shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Contractor shall not exceed $24, 200 without express written modification of this Agreement signed by the County.
   b. Invoices must be submitted by the 15th of the month for the previous month's expenses. Such invoices will be checked by the County, and upon approval thereof, payment will be made to the Contractor in the amount approved. Failure to submit timely invoices and reports pursuant to Exhibit B of this Agreement may result in a denial of reimbursement. Invoices not submitted within 60 days may be denied.
   c. Final payment of any balance due the Contractor of the total contract price earned will be made promptly upon its ascertainment and verification by the County after

the completion of the work and submittal of reports under this Agreement and its acceptance by the County.

d. The Contractor's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the County and state for a period of six (6) years after final payments. Copies shall be made available upon request.

5. Ownership and Use of Documents. All non-confidential or de-identified documents, drawings, specifications, and other materials produced by the Contractor in connection with the services rendered under this Agreement shall be the property of the County whether the project for which they are made is executed or not. The Contractor shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with the Contractor's endeavors. The Contractor shall not be held liable for reuse of documents or modifications thereof, including electronic data, by County or its representatives for any purpose other than the intent of this Agreement.

6. Compliance with laws. The Contractor shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this Agreement.

7. Audit. An audit will be submitted to the County upon request. Upon request, the Contractor will submit the most recent financial audit within 30 days.
   a. Upon request the County shall have the option of performing an onsite review of all records, statements, and documentation.
   b. If the County finds indications of potential non-compliance during the monitoring process, the County shall notify the Contractor within ten (10) days. County and the Contractor shall meet to discuss areas of contention in an attempt to resolve issues.
   c. Audit will provide statements consistent with the guidelines of Reporting for Other Non-Profit Organizations AICPA SOP 78-10, and is performed in accordance with generally accepted auditing standards and with Federal Standards for Audit of Governmental Organizations, Programs, Activities and Functions, and meeting all requirements of 2 C.F.R. Part 200, as applicable.

8. Indemnification. The Contractor shall indemnify and hold harmless the County, its past or present employees, officers, agents, elected or appointed officials or volunteers (and their marital communities), from and against all claims, losses or liability, or any portion thereof, including reasonable attorney's fees and costs, arising from injury or death to persons, including injuries, sickness, disease or death to the Contractor's own employees, or damage to property occasioned by a negligent act of the Contractor. The Contractor shall be liable only to the extent of the Contractor's proportional negligence. The Contractor specifically assumes potential liability for actions brought against the County by the Contractor's employees, including all other persons engaged in the performance

of any work or service required of the Contractor under this Agreement and, solely for the purpose of this indemnification and defense, the Contractor specifically waives any immunity under the state industrial insurance law, Title 51 R.C.W. The Contractor recognizes that this waiver was specifically entered into pursuant to provisions of R.C.W. 4.24.115 and was subject of mutual negotiation.

9. Insurance. Prior to commencing work, the Contractor shall obtain at its own cost and expense the following insurance coverage specified below and shall keep such coverage in force during the terms of this Agreement.
    a. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than $500,000 each occurrence with the County named as an additional insured in connection with the Contractor's performance of this Agreement. This insurance shall indicate on the certificate of insurance the following coverage: (a) Owned automobiles; (b) Hired automobiles; and, (3) Non-owned automobiles.
    b. Commercial General Liability Insurance in an amount not less than a single limit of one million dollars ($1,000,000) per occurrence and an aggregate of not less than two (2) times the occurrence amount ($2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications. The insurance coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:
        i. Broad Form Property Damage, with no employee exclusion;
        ii. Personal Injury Liability, including extended bodily injury;
        iii. Broad Form Contractual/Commercial Liability – including coverage for products and completed operations;
        iv. Premises – Operations Liability (M&C);
        v. Independent Contractors and subcontractors;
        vi. Blanket Contractual Liability.
    c. The County shall be named as an "additional named insured" under all insurance policies required by this Agreement, except Professional Liability Insurance when not allowed by the insurer.
    d. Such insurance coverage shall be evidenced by one of the following methods: (a) Certificate of Insurance; or, (b) Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.
    e. The Contractor shall furnish the County with properly executed certificates of insurance that, at a minimum, shall include: (a) The limits of overage; (b) The project name to which it applies; (c) The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368, and, (d) A statement that the insurance policy shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County. If the proof of insurance or certificate indicating the County is an "additional insured" to a policy obtained by the Contractor refers to an endorsement (by number or name)

but does not provide the full text of that endorsement, then it shall be the obligation of the Contractor to obtain the full text of that endorsement and forward that full text to the County. Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this Agreement.

f. Failure of the Contractor to take out or maintain any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.
g. The Contractor's insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies, with the exception of Professional Liability Insurance, so affected shall protect both parties and be primary coverage for all losses covered by the above described insurance.
h. Insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy.
i. All deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Contractor.
j. Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of this Agreement by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention, or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
k. Insurance companies issuing the Contractor's insurance policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of insurance policy.
l. Any judgments for which the County may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to the Contractor until the Contractor shall furnish additional security covering such judgment as may be determined by the County.
m. Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance the Contractor must provide in order to comply with this Agreement.
n. The County may, upon the Contractor's failure to comply with all provisions of this Agreement relating to insurance, withhold payment or compensation that would otherwise be due to the Contractor.
o. The Contractor's liability insurance provisions shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.

p. Any failure to comply with reporting provisions of the insurance policies shall not affect coverage provided to the County, its officers, officials, employees, or agents.
q. 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.
r. The Contractor shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all the requirements stated herein.
s. The insurance limits mandated for any insurance coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.
t. The Contractor shall maintain all required insurance policies in force from the time services commence until services are completed. Certificates, insurance policies, and endorsements expiring before completion of services shall be promptly replaced. All the insurance policies required by this Agreement shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the Jefferson County Public Health Contracts Manager by registered mail, return receipt requested.
u. 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.
v. The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

10. <u>Worker's Compensation (Industrial Insurance).</u>

a. If and only if the Contractor employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of the Contractor, the Contractor shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to Jefferson County Public Health, upon request.
b. Worker's compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws.
c. This coverage shall extend to any subcontractor that does not have their own worker's compensation and employer's liability insurance.
d. The Contractor expressly waives by mutual negotiation all immunity and limitations on liability, with respect to the County, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

e. If the County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from the Contractor.

11. Independent Contractor. The Contractor and the County agree that the Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. The Contractor specifically has the right to direct and control the Contractor's own activities, and the activities of its subcontractors, employees, agents, and representatives, in providing the agreed services in accordance with the specifications set out in this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. Neither the Contractor nor any employee of the Contractor shall be entitled to any benefits accorded County employees by virtue of the services provided under this Agreement, including, but not limited to: retirement, vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to Jefferson County employees. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor.

12. Subcontracting Requirements.
    a. The Contractor is responsible for meeting all terms and conditions of this Agreement including standards of service, quality of materials and workmanship, costs, and schedules. Failure of a subcontractor to perform is no defense to a breach of this Agreement. The Contractor assumes responsibility for and all liability for the actions and quality of services performed by any subcontractor.
    b. Every subcontractor must agree in writing to follow every term of this Agreement. The Contractor must provide every subcontractor's written agreement to follow every term of this Agreement before the subcontractor can perform any services under this Agreement. The Public Health Director or their designee must approve any proposed subcontractors in writing.
    c. Any dispute arising between the Contractor and any subcontractors or between subcontractors must be resolved without involvement of any kind on the part of the County and without detrimental impact on the Contractor's performance required by this Agreement.

13. Covenant Against Contingent Fees. The Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or, in its discretion to deduct from the contract price or

consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. Discrimination Prohibited. The Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, gender, sexual orientation, material status, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.

15. No Assignment. The Contractor shall not sublet or assign any of the services covered by this Agreement without the express written consent of the County. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.

16. Non-Waiver. Waiver by the County of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

17. Termination.
    a. The County reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Contractor.
    b. In the event of the death of a member, partner, or officer of the Contractor, or any of its supervisory personnel assigned to the project, the surviving members of the Contractor hereby agree to complete the work under the terms of this Agreement, if requested to do so by the County. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Contractor and the County, if the County so chooses.
    c. The County reserves the right to terminate this contract in whole or in part, with 10 days' notice, in the event that expected or actual funding from any funding source is withdrawn, reduced, or limited in any way after the effective date of this agreement. In the event of termination under this clause, the County shall be liable for only payment for services rendered prior to the effective date of termination.

18. Notices. All notices or other communications which any party desires or is required to give shall be given in writing and shall be deemed to have been given if hand-delivered, sent by facsimile, email, or mailed by depositing in the United States mail, prepaid to the party at the address listed below or such other address as a party may designate in writing from time to time. Notices to the County shall be sent to the following address:

Jefferson County Risk Management
P.O. Box 1220
Port Townsend, WA 98368

Notices to the Contractor shall be sent to the following address:

Attn: Todd Chase, Principal-in-Charge
FCS GROUP
7525 166th Ave. NE, Ste. D-215
Redmond, Washington 98052

19. Integrated Agreement. This Agreement together with attachments or addenda represents the entire and integrated Agreement between the County and the Contractor and supersedes all prior negotiations, representations, or agreements written or oral. No representation or promise not expressly contained in this Agreement has been made. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, by the County within the scope of this Agreement. The Contractor ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in its proposal, and the supporting material submitted by the Contractor, accepts this Agreement and agrees to all of the terms and conditions of this Agreement.

20. Modification of this Agreement. This Agreement may be amended only by written instrument signed by both County and the Contractor.

21. Disputes. The parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions. Any disputed issue not resolved pursuant to the terms of this Agreement shall be submitted in writing within 10 days to the County Risk Manager, whose decision in the matter shall be final, but shall be subject to judicial review. If either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this Agreement, each party in such action shall bear the cost of its own attorney's fees and court costs. Any legal action shall be initiated in the Superior Court of the State of Washington for Jefferson County. The parties agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The Contractor hereby consents to the personal jurisdiction of the Superior Court of the State of Washington for Jefferson County.

22. Section Headings. The headings of the sections of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of the sections or this Agreement.

23. Limits of Any Waiver of Default. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.
24. No Oral Waiver. No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in

writing signed on behalf of the party against whom the waiver is asserted. Failure of a party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default.

25. Severability. Provided it does not result in a material change in the terms of this Agreement, if any provision of this Agreement or the application of this Agreement to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

26. Binding on Successors, Heirs and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest, heirs, and assigns.

27. No Assignment. The Contractor shall not sell, assign, or transfer any of rights obtained by this Agreement without the express written consent of the County.

28. No Third-party Beneficiaries. The parties do not intend, and nothing in this Agreement shall be construed to mean, that any provision in this Agreement is for the benefit of any person or entity who is not a party.

29. Signature in Counterparts. The parties agree that separate copies of this Agreement may be signed by each of the parties and this Agreement shall have the same force and effect as if all the parties had signed the original.

30. Facsimile and Electronic Signatures. The parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

31. Arms-Length Negotiations. The parties agree that this Agreement has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.

32. Public Records Act. Notwithstanding the provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW, as may hereafter be amended, the Contractor agrees to maintain all records constituting public records and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law. The Contractor further agrees that upon receipt of any written public record request, Contractor shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement.

**(SIGNATURES FOLLOW ON THE NEXT PAGE)**

| | |
|---|---|
| **JEFFERSON COUNTY WASHINGTON** | **CONTRACTOR** |
| Board of County Commissioners<br>Jefferson County, Washington | |
| By: ______________________<br>Heidi Eisenhour, Chair    Date | By: ______________________<br>Signature |
| By: ______________________<br>Kate Dean, Commissioner    Date | Name: ______________________ |
| By: ______________________<br>Greg Brotherton, Commissioner    Date | Title: ______________________<br>Date: ______________________ |

SEAL:

ATTEST:

______________________
Carolyn Galloway    Date
Clerk of the Board

Approved as to form only:

P.C. Hunsucker    February 1, 2023
______________________
Philip C. Hunsucker    Date
Chief Civil Deputy Prosecuting Attorney

# EXHIBIT A

# Scope of Services

The contractor shall perform the following tasks, including:

1) Advise the Community Development Department of fees that should be accompanied by standard operating procedures; and

2) Develop recommendations for annual updates to the fees using the five-point approach codified in the Jefferson County Code including:
    a. service cost recovery;
    b. public versus private service benefit;
    c. departmental goals;
    d. other available funding sources; and
    e. comparison fees in adjacent counties, statewide averages and other comparable areas; and

3) Assess the reasonableness of fees in accordance with RCW 82.02.020; and

4) Review timesheets and associated tracking used by planners.

# EXHIBIT B

## Project Budget

| | Budget | Hours |
|---|---|---|
| Data Gathering | $3,300 | 15 |
| Technical Analysis - time distribution | $2,200 | 10 |
| - permit history | $3,300 | 15 |
| - fee time detail | $6,600 | 30 |
| Fee survey (up to 4 jurisdictions; up to 7 fees) | $660 | 3 |
| Policy Analysis | $2,200 | 10 |
| Presentations | $1,540 | 7 |
| Documentation | $4,000 | 20 |
| **Total** | **$24,200** | **110** |

## Schedule

FCS
12/29/2022
GTZ

| | JAN ~~Dec~~ | ~~Jan~~ | ~~Feb~~ | ~~Mar~~ | ~~Apr~~ | ~~May~~ | OCT ~~Jun~~ |
|---|---|---|---|---|---|---|---|
| Data Gathering | ■ | | | | | | |
| Technical Analysis - time distribution | | ■ | ■ | | | | |
| - permit history | | ■ | ■ | | | | |
| - fee time detail | | ■ | ■ | ■ | | | |
| Policy Analysis | | | | ■ | ■ | | |
| Presentations | | | | | ■ | ■ | |
| Documentation | | | | | | ■ | ■ |

*At the discretion of DCD, data gathering may occur in January 2023, and extend the project timeline to July 2023.