

**Community Buildings Program Technical Assistance and Program Design Support**

**THIS** **AGREEMENT** ("Contract") KC00XXXX (CPA 6XXXXXX) is entered into by and between **KING COUNTY,** Washington, a political subdivision of the State of Washington (the "County"), and       (the "Contractor," and when referred to jointly with the County, the “Parties”).

The purpose of the Community Building Decarbonization program is to equitably decarbonize community-oriented buildings in King, Kitsap, Pierce, and Snohomish Counties, with a specific focus on buildings located in or serving low-income, disadvantaged communities (LIDAC), as defined by U.S. Environmental Protection Agency (EPA)[[1]](#footnote-2) The purpose of this Request for Applications (RFA) is to establish a contract to provide goods and/or services. Contractor(s) selected through this RFA will support two parts of the Community Buildings Program that are both explicitly focused on building sizes and construction types similar to small-medium commercial buildings:

1. Decarbonization services for non-government owned community buildings that serve as gathering spaces and/or provide community services.
2. Grants for local governments to fund decarbonization of government-owned community buildings that serve as gathering spaces and/or provide community services.

This Contract has been funded wholly or in part by the United States Environmental Protection Agency (“EPA”) under assistance agreement 84101001 to King County, of which the General Terms and Conditions and all flow-through requirements are hereby incorporated by reference. The contents of this Contract do not necessarily reflect the views and policies of the EPA, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this Contract, as well as any images, video, text, or other content created by generative artificial intelligence tools, nor does any such content necessarily reflect the views and policies of the EPA.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, and terms and conditions contained in the Contract Documents that are included herein and also attached hereto as Exhibits A - D, the Parties covenant and do mutually agree as follows:

1. The Contractor agrees to complete the Work on the terms and conditions specified in the Contract Documents. The Contractor further agrees to assume and perform all of the covenants and conditions required of the Contractor pursuant to the Contract Documents, for an amount not to exceed the Contract Price of $\_\_\_\_\_\_\_\_.
2. The County agrees to pay the Contractor for fulfillment of the Work and performance of the covenants set forth in the Contract Documents in accordance with the Contract Documents.
3. Except as expressly provided in the Contract Documents, no liability shall attach to the County by reason of entering into this Contract.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective authorized officers or representatives as of the day and year written below.

|  |  |  |
| --- | --- | --- |
| **COMPANY NAME** |  | **KING COUNTY** |
| Authorized Signature |  | Authorized Signature |
|  |  |  |
| Printed Name |  | Printed Name |
|  |  |  |
| Title |  | Title |
| Date Accepted: |  |  | Date Accepted: |  |
|  |  |  |

TERMS AND CONDITIONS

1. GENERAL PROVISIONS
	1. Definitions

|  |  |
| --- | --- |
| Acceptance or Accepted | A written determination by the County that the Contractor has completed the Work in accordance with the Contract. |
| Contract Amendment | A written change to the Contract modifying, deleting or adding to the terms and conditions or Scope of Work, signed by both parties. |
| Contractor | The individual or business entity contracting with the County to perform the Work. |
| Day | Calendar day. |
| KCC | The King County Code. |
| Measurable Amount of Work | A definitive allocation of an employee’s time that can be attributed to Work performed under this Contract, but that is not less than a total of one hour in any one-week period.  |
| Person | Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures. |
| Project | Refers to all activity relative to this Contract including activity of the Contractor, its Subcontractor(s), and the County. |
| Project Manager | The individual designated by the County to manage the project daily and who may represent the County for purposes of Contract administration. |
| RCW | The Revised Code of Washington. |
| Scope Of Work or SOW | An exhibit to the Contract consisting of a written description of the Work to be performed. |
| Subcontractor | The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor, or with any Subcontractor of any tier, to perform any portion of the Work covered by this Contract. |
| Work | Everything to be provided and all activities necessary to fulfill all of the Contractor’s obligations under the Contract Documents. |
| Minority and/or Women Business Enterprise or M/WBE | A business that has met the eligibility criteria and has been certified by the Office of Minority and Women Business Enterprises (OMWBE) as a Minority and/or Women Business Enterprise-certified business. |
| Good Faith Efforts | The Contractor’s efforts to ensure that the applicable “fair share” objectives of federal funds are made available to organizations owned and controlled by socially and economically disadvantaged individuals and women. |

* 1. Contract Documents

The Contractor shall provide all Work described in this Contract, which comprises the entire document in addition to the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence:

1. Terms and Conditions

[x]  Supplemental Federal Terms and Conditions Exhibit A

[x]  Scope of Work Exhibit B

[x]  Price Attachment Exhibit C

[x]  Certificate(s) of Insurance and Policy Endorsements Exhibit D

1. Contract Amendment(s)
2. EPA Grant Agreement 84101001 King County CPRG Implementation Grant
3. King County’s Request For Applications and Contractor’s corresponding submission
	* + 1. Davis-Bacon Wage Determinations (where relevant)
	1. Contract Term

This Contract shall be effective when countersigned by the County and shall expire on \_\_\_\_\_\_\_, unless extended or terminated earlier pursuant to the terms and conditions of this Contract.

* 1. Contract Amount

The County shall reimburse the Contractor upon Acceptance of the Work specified in this Contract in an amount not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_payable as set forth in Exhibit B.

1. General provisions
	1. Administration

The Contractor shall be responsible for performing the Work. The County is not a party to defining the division of Work between the Contractor and its Subcontractor(s), if any.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform the Work under this Contract.

* 1. Warranty

Contractor warrants that the Work shall in all material respects conform to the requirements of this Contract. Contractor further warrants that qualified professional personnel with in-depth knowledge shall perform the Work in a timely and professional manner, and that the Work shall conform to the standards generally observed in the industry for similar Work.

* 1. Contractor Name or Tax Structure Change

If at any time during the Contract term the Contractor experiences a change in its name or federal tax status either through acquisition, novation, assignment, re-organization or some other change that affects its Taxpayer Identification Number (TIN) or Tax Reporting Name, it shall notify the County immediately upon the information becoming publicly available. This notification shall be sent by the Contractor to the current King County Project Manager via email along with:

* + 1. Any official announcements from the firm’s representative(s) regarding the changes.
		2. A new King County W-9, located at: [https://kingcounty.gov/en/dept/executive-services/about-king-county/business-operations/finance-business-operations/procurement-payables/forms.](https://kingcounty.gov/en/dept/executive-services/about-king-county/business-operations/finance-business-operations/procurement-payables/forms)
		3. A current statement, listing of unfilled orders and electronic versions of all outstanding invoices and credit memos at the time of the change shall be provided to the Contract Specialist as soon as possible.

Any delay on the part of the Contractor to provide these items to the Project Manager may result in the delay of payment and orders. The County may create a new contract number to replace the existing one. All future orders and Contracts Amendments will reference the new contract number.

* 1. Payment Procedures; Prompt Payment of Subcontractors

For Work Accepted by the County, the Contractor shall furnish invoices to both the County Project Manager, jencooper@kingcounty.gov and invoices.ap@kingcounty.gov. All invoices shall contain the following information:

* + 1. Invoice date
		2. Purchase order number (if provided by King County)
		3. Ship to address/location
		4. Remit address
		5. Date(s) of service(s)
		6. Item number(s)
		7. Description of supplies or services
		8. Quantities
		9. Unit prices
		10. Subtotal and totals amount
		11. Discount terms or amount, if applicable
		12. Applicable sales tax with correct tax rate based on destination

For each item invoiced, provide the complete description of the products, services, phases or milestones accepted, hours worked and Contract hourly rates, or authorized fees.

For services, identify specific deliverables, and/or hourly rates, hours worked, total hours or related fees.

The County will take advantage of any prompt payment discount terms bid. Discount periods shall be extended if the invoice is returned for credit or correction.

When a purchase order is issued against the Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery accepted by the County.

Failure to comply with these requirements or to provide an invoice in conformance with the Contract may delay payment.

The County will not be bound by prices contained in an invoice that are higher than those in Exhibit C, or if not used as part of this Contract, then the current price list for this Contract approved by the County. Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the invoice.

If the Contractor is registered with the State of Washington, it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the County will make payment directly to the State.

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within ten (10) Days from the receipt of each payment the Contractor receives from the County.

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to the Contract.

King County will not be bound by prices contained in an invoice that are higher than those in the currently approved price list. If a price increase has not been accepted in writing by King County, the invoice may be rejected and returned to the Contractor for a correction.

* 1. Advance Payment

If approved by the County, the Contractor may submit an advance payment request to cover immediate cash needs in carrying out the purpose of the approved program or project. The Contractor must then submit invoices and Monthly Expenditure Reports for each month’s expenditures within five (5) business days of the end of the month. No additional funding will be released until the County has reconciled and confirmed documentation, and this rolling pattern may continue until all contracted funds are expended and accounted for. If there are any unobligated advanced funds left at the termination of the Contract, Contractor will issue a check in that amount to the County. Advance payments must be deposited and maintained in insured accounts whenever possible. Contractor must comply with any applicable requirements set forth in 2 CFR 200.305.

Contractor represents that advance payments provided for herein are the minimum amounts needed and timed in accordance with Contractor’s actual, immediate cash requirements to perform the activities set forth in the Scope of Work and this Contract.

* 1. Purchasing Card (P-Card) Acceptance

The Contractor agrees to accept the County’s authorized VISA P-Card or other P-Card types as a method of payment whenever possible. Price change(s) or additional fee(s) may not be assessed when accepting the P-Card as a form of payment. Prompt pay discounts shall apply to payments made by P-Cards.

* 1. Pricing

Prices shall remain firm for the duration of the Contract. The Contractor may request a price change(s) in writing delivered to the county. The Contractor shall provide documentation satisfactory to the County in support of its request, such as changes to the Producers Price Index for the commodity, the Consumer Price Index for the Seattle-Tacoma-Bellevue area, or a manufacturer's published notification of price change(s). The County reserves the right, in its sole discretion, to grant the request as submitted, engage the Contractor in a discussion about modifications to the request, or deny the request in its entirety. Any change in pricing granted by the County shall be affected through a Contract Amendment instituting the price adjustment and establishing an effective date.

* 1. Contract Amendment

All changes to the Contract shall be made in writing through a Contract Amendment. No oral statement or other conduct by the County or Contractor shall change or modify the Contract. The County may perform an analysis of cost, price, or schedule to determine the reasonableness of the proposed change to the Contract.

* 1. Changed Requirements

New federal, state and county laws, regulations, ordinances, policies, and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements, if any, shall be implemented through a Contract Amendment.

* 1. Taxes, Licenses, and Certificate Requirements

If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing. The Contractor and Subcontractor(s) shall maintain and be liable for payment of all applicable taxes (except sales/use taxes), fees, licenses, permits, and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

* 1. Notices

Unless otherwise specified in the Contract, all notices or documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when received at the addresses first set forth below via certified or registered first class mail, return receipt requested, personal delivery or electronic mail. However, if any of the following occur: "notice to cure" a default, Contractor communication in connection with an alleged default, or notice of termination, such notice or communication shall only be delivered personally, or by certified or registered first class mail, return receipt requested.

|  |  |
| --- | --- |
| **KING COUNTY** | **COMPANY NAME** |
| Jenny Cooper | [Contact Name] |
| 401 5th Ave, Suite 1300 | Address |
| Seattle, WA 98104 | Address |
|  | [City], [State] |
| (206) 263-3771 | [Telephone Number] |
| jencooper@kingcounty.gov  | [Email Address] |
|  | [Fax Number] |

* 1. Certification Regarding Debarment, Suspension and Other Responsibility Matters

This Contract is a covered transaction for purposes of federally funded grant requirements. To this end, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the County. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while performing its Work pursuant to this Contract and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1. Legal Relations; Indemnity and Insurance
	1. Independent Status of Contractor

In the performance of this Contract, the Parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

* 1. Indemnification and Hold Harmless

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. If the County incurs any judgment, award and/or expense or cost, including attorney’s fees, arising from the provisions of this Section 3.2, or to enforce the provisions of this Section 3.2, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

The indemnification, hold harmless, protection and defense obligations contained herein shall survive the expiration, abandonment, or termination of this Contract.

Nothing contained within this Section 3.2 shall affect and/or alter the application of any other section contained within this Contract.

* 1. **Evidence and Cancellation of Insurance**
1. Prior to execution of the Contract, the Contractor shall furnish the County certificates of insurance and endorsements certifying the issuance of all insurance required by this Contract. All evidence of insurance shall be signed by a properly authorized officer, agent, general agent or qualified representative of the insurer(s), shall certify the name of the insured(s), the type and amount of insurance, the location and operations to which the insurance applies, the inception and expiration dates, contract or RFP number, shall specify the form number of any endorsements issued to satisfy this Contract’s insurance requirements, and shall state that the County shall receive notice at least thirty (30) Days prior to the effective date of any cancellation, lapse or material change in the policy. Similar documentation confirming renewal of required insurance shall be provided on each insurance renewal date. All insurance renewal certificates shall be sent to the Project Manager.
2. The County reserves the right to require complete, certified copies of all required insurance policies, including all endorsements and riders, which may be redacted of any confidential or proprietary information. Contractor shall deliver such polices to the County within five (5) Days of County’s request.
3. Failure to provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Contractor’s Work hereunder in accordance with the Contract provision titled “Termination for Convenience/Default/Non-appropriation.”
4. County’s receipt or acceptance of Contractor’s or any Subcontractor’s evidence of insurance at any time without comment or objection, or County’s failure to request certified copies of such insurance, does not waive, alter, modify, or invalidate any of the insurance requirements set forth in this Section or, consequently, constitute County’s acceptance of the adequacy of Contractor’s or any Subcontractor’s insurance or preclude or prevent any action by County against Contractor for breach of the requirements of this Section.
	1. Insurance Requirements
		1. Contractor shall purchase and maintain, at its sole cost and expense, the minimum insurance set forth below. By requiring such minimum insurance, the County does not and shall not be deemed or construed to have assessed the risks that may be applicable to Contractor, or any Subcontractor, under this Contract, or in any way limit the County’s potential recovery to insurance limits required hereunder. To the contrary, this Contract’s insurance requirements may not in any way be construed as limiting any potential liability to the County or the County’s potential recovery from Contractor. Contractor and any Subcontractor shall assess their own risks and if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage.
		2. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.
		3. Each insurance policy shall be written on an “occurrence” basis/form; excepting insurance for professional liability (errors and omissions), and/or pollution liability; and/or cyber liability (technology errors and omissions). Professional liability (errors and omissions), pollution liability, and cyber liability (technology errors and omissions) required by this Contract is acceptable on a “claims made” basis/form.
		4. If coverage is approved and purchased on a "claims made" basis/form, the coverage provided under that insurance shall be maintained through: (i) consecutive policy renewals for not less than three (3) years from the date of completion of the Work which is subject of this Contract or, if such renewals are unavailable, (ii) the purchase of a tail/extended reporting period for not less than three (3) years from the date of completion of the Work which is the subject of this Contract. All insurance written on a “claims made” basis/form must have its policy inception or retroactive date be no later than the Effective Date of the Contract, unless otherwise approved in writing by the County’s Risk Management Office.
		5. Minimum Scope and Limits of Insurance

The Contractor shall maintain the following types of insurance and minimum insurance limits:

* + - 1. Commercial General Liability: $1,000,000 per occurrence and $2,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall include coverage for, but not limited to premises liability, products and completed operations, ongoing operations, and contractual liability. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including but not limited to additional insured status for the County.
			2. Professional Liability (Errors and Omissions): $1,000,000 per claim and in the aggregate.
			3. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as that afforded under ISO form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy. Policy shall be endorsed to include endorsement CA 9948 (or its substantive equivalent).
			4. Cyber Liability (Technology Errors and Omissions): Coverage at a minimum limit of $1,000,000 per claim or occurrence and in the aggregate. Coverage shall include loss resulting from data security/privacy breach, or other unauthorized access or related violations including identity fraud and privacy law violations, denial of service attacks, introduction of virus and malicious code, extortion, dissemination or destruction of electronic data, business interruption, privacy law violations, disclosure of non-public, personal or confidential information, identity fraud, loss of income due to system crashes, breach of contract, and acts by rogue employees. Coverage shall include notification and other expenses incurred in remedying a privacy breach as well as costs to investigate and restore data.
			5. Workers Compensation: Workers Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable Federal or “Other States” State Law.
			6. Employers Liability or “Stop Gap” coverage: $1,000,000 each occurrence and shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability), or, in monopolistic states including but not limited to Washington, the protection provided by the “Stop Gap” endorsement to the commercial general liability policy.
		1. Other Insurance Provisions and Requirements

All insurance policies purchased and maintained by Contractor and any Subcontractor required in this Contract shall contain, or be endorsed to contain the following provisions:

With respect to all liability policies except professional liability (errors and omissions), cyber liability (technology errors and omissions), and workers compensation:

* + - 1. The County, its officials, employees, and agents shall be covered as additional insured for full coverage and policy limits as respects liability arising out of activities performed by or on behalf of the Contractor, its agents, representatives, employees, contractor(s), or subcontractor(s) in connection with this Contract. Additional Insured status shall include products-completed operations CG 20 10 11/85 or its substantive equivalent. **The County requires a copy of the additional insured endorsement(s) to complete the Contract.**

With respect to all liability policies (except workers compensation):

* + - * 1. Coverage shall be primary insurance as respects the County, its officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officials, employees, or agents shall not contribute with any Contractor’s or Subcontractor’s insurance or benefit the Contractor or any Subcontractor, or their respective insurers in any way.
				2. Insurance shall expressly state that it applies separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of insurer’s liability.
		1. Deductibles/ Self-Insured Retentions

Any deductible and/or self-insured retention of the policies shall not in any way limit County’s right to coverage under the required insurance, or to Contractor’s or any Subcontractor’s liability to the County and shall in all instances be the sole responsibility of Contractor and any Subcontractor, even if no claim has actually been made or asserted against Contractor or Subcontractor.

* + 1. Acceptability of Insurers
		Unless otherwise approved by the County, insurance is to be placed with insurers with an A.M. Best rating of no less than A:VIII.

Professional Liability (errors and omissions) insurance may be placed with insurers with an A.M. Best rating of no less than B+:VII.

If at any time any of the foregoing policies fail to meet the above stated requirements, Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for review.

* + 1. Subcontractors

Contractor shall include all Subcontractors as insureds under its policies or, alternatively, the Contractor must require each of its Subcontractors to procure and maintain appropriate and reasonable insurance coverage and insurance limits to cover each of the Subcontractor’s liabilities given the Subcontractor’s scope of work and the services being provided herein.

To the extent reasonably commercially available, insurance maintained by any Subcontractor must comply with the specified requirements of Sections 3.3 and 3.4 (inclusive) above, including the requirement that all liability insurance policies (except professional liability and workers compensation) provided by the Subcontractor(s) must include County, its officials, agents and employees as additional insured for full coverage and policy limits. Contractor is obligated to require and verify that each Subcontractor maintains the required insurance and ensure County is included as additional insured. Upon request by the County, and within five (5) business days, Contractor must provide evidence of each Subcontractor(s) insurance coverage, including endorsements.

* + 1. Work Site Safety

The Contractor shall have the “right to control” and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state, and local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor’s compliance with these provisions.

1. Conflicts of Interest and Non-Competitive Practices
	1. Conflicts of Interest and Non-Competitive Practices
		1. Conflict of Interest - By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict.
		2. Contingent Fees and Gratuities - By entering into this Contract to perform Work, the Contractor represents that:
			1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
			2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
			3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.
		3. Disclosure of Current and Former County Employees - To avoid any actual or potential conflict of interest or unethical conduct:
			1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
			2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this Contract may result in termination of this Contract.
			3. After Contract award, the Contractor is responsible for notifying the County’s Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.
		4. King County Consultant Disclosure - In accordance with King County Code 3.04.120, as a condition of award of a professional or technical services contract, the Contractor agrees that, unless otherwise specified, any information required to be disclosed below shall cover the period twenty-four months before and including the date of filing the sworn statement.

1. No County employee or any member of the County employee’s immediate family holds an office or directorship in the Contractor;

2. No County employee or any member of the County employee’s immediate family has a financial interest in the Contractor as identified below:

* 1. Ownership of over five percent of the stock or other form of interest in the Contractor; and
	2. Receipt of any compensation, gift or thing of value from the Contractor;

3. No officer or director of the Contractor has had a position on any County board or commission, whether salaried or unsalaried, in the five years immediately preceding the present Contract.

4. Absent authorization for alternative compliance as referenced below, failure to comply with this provision shall be considered a material breach of this Contract and may subject the Contractor to administrative sanctions and remedies for breach.

5. Any other information known to the Contractor about any interest or relationship whatsoever between any County employee, including any member of his or her immediate family, and the Contractor, other than what is designated above.

6. Alternative Compliance. If a Contractor is seeking authorization from King County for alternative compliance with the requirements of the King County Consultant Disclosure, the Contractor must complete and return a King County Consultant Disclosure Form to King County. The Consultant Disclosure Form can be found at:

 <https://kingcounty.gov/~/media/depts/risk-management/documents/financial-disclosure-consultant.ashx?la=en>

7. All contracts between the Contractor and the County in the five years immediately preceding the presently contemplated contract, including the amount of money paid by the County to the Contractor, is maintained by Procurement & Payables.

1. Records AND Audits
	1. Retention of Records, Audit Access and Proof of Compliance with Contract
		1. Retention of Records

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain all financial information, data and records for all Work for six (6) years after the date of final payment, or until after all litigation, claims, or audit findings involving the records have been resolved, whichever is later.

* + 1. Audit Access

All documents pertaining in whole or in part to the Work under this Contract shall be clearly identified and readily accessible, and the County and EPA shall have the right to audit the records of Contractor and all Subcontractors as they relate to the Work, upon two (2) business days’ notice.

* 1. Audit Exception

The Contractor agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract.

* 1. Federal Funding Audit

If the Contractor expended a total of $750,000.00 or more in federal awards during its fiscal year, and is a non-profit organization, and is, under this Contract, carrying out or administering a program or portion of a program, it shall have an independent audit conducted in accordance with OMB Circular A-133 , which shall comply with the requirements of GAAS (generally accepted auditing standards), GAO’s Government Audit Standards and OMB Circular A-133, as amended and as applicable. Contractors expending federal awards from more than one source shall be responsible for determining if the combined financial awards are equal to or greater than $750,000.00. The Contractor shall provide one copy of the audit report to each County division providing federal awards to the Contractor no later than nine (9) months subsequent to the end of the Contractor’s fiscal year.

* 1. Public Records Requests

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the “Act”). If the Contractor considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as “CONFIDENTIAL,” “PROPRIETARY” or “TRADE SECRET” (collectively, “DESIGNATED MATERIAL”). If a request is made for disclosure of DESIGNATED MATERIAL, the County will determine whether the DESIGNATED MATERIAL is subject to disclosure under the Act. If the County, in its judgment, determines the DESIGNATED MATERIAL is arguably exempt, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to obtain a court order enjoining release in accordance with RCW 42.56.540. If the Contractor fails or neglects to take such action within said period, the County will release the portions of the DESIGNATED MATERIAL deemed by the County to be subject to disclosure. The County shall not be liable to the Contractor for releasing records, including DESIGNATED MATERIAL, in response to a public records request. The Contractor is advised that pricing extended to the County and overly broad designations of confidentiality, for example, covering information publicly available on the Contractor’s website, are not considered to be a DESIGNATED MATERIAL.

1. Intellectual Property
	1. Patents, Copyrights and Rights in Subject Data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County. The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the County. The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract.

* 1. Nondisclosure of Data

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the prior express written approval of the County.

* 1. Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as “Confidential”, “Proprietary” or “Business Secret”. The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County’s or the third party’s confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

1. Nondiscrimination AND PAYMENT OF A LIVING WAGE
	1. Nondiscrimination and Equal Employment Opportunity
		1. Nondiscrimination in Employment

During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

* + 1. Equal Employment Opportunity Efforts

The Contractor will undertake and require all Subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post, and to require Subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, “equal employment opportunity efforts” shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination.

Ref: KCC 12.16.020.

* + 1. Nondiscrimination in Subcontracting Practices

During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

* + 1. Compliance with Laws and Regulations

The Contractor and all Subcontractors shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor and all Subcontractors shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

* + 1. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA).

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs, or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King County is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16.

The Contractor shall not discriminate against persons with disabilities in providing the Work. In any subcontracts for the programs, activities and services under their Contract, the Contractor shall include the requirement that the Subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16; that the Subcontractor shall not discriminate against persons with disabilities in providing the Work under the Contract; and that the Subcontractor shall provide that the County is a third party beneficiary to that required provision.

* + 1. Sanctions for Violations - Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.
	1. Requirements of King County Living Wage Ordinance

In accordance with King County Ordinance 17909, as a condition of award for contracts for services with an initial or amended value of $100,000 or more, the Contractor agrees that it shall pay and require all Subcontractors to pay a living wage as described in the ordinance, to employees for each hour the employee performs a Measurable Amount of Work on this Contract. The requirements of the ordinance, including payment schedules, are detailed at:

<http://www.kingcounty.gov/operations/procurement/Resources/ordinance-17909.aspx>.

Violations of this requirement may result in disqualification of the Contractor from bidding on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.

1. Claims and Appeals / Dispute Resolution
	1. Claims and Appeals

The Contractor shall address claims for additional time or compensation under the Contract in writing to the Project Manager within ten (10) Days of the date in which the Contractor knows or should know of the basis for the claim. Claims shall be accompanied by supporting documentation and citation to applicable provisions in the Contract documents. The County reserves the right to request additional documentation necessary to adequately review the claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. The Project Manager shall ordinarily respond to the Contractor in writing with a decision issued jointly, but absent such written response, the claim shall be deemed denied upon the tenth (10th) Day following receipt by the Project Manager of the claim, or requested additional documentation, whichever is later.

In the event the Contractor disagrees with the determination of the Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Executive Climate Office Director. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Executive Climate Office Director shall review the appeal and make a determination in writing, which shall be final. Appeal to the Executive Climate Office Director on claims for additional time or compensation shall be a condition precedent to litigation.

At all times, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Project Manager. Failure to comply precisely with the time deadlines under this Section 8.1 as to any claim and appeal shall operate as a waiver and release of that claim and appeal and an acknowledgment of prejudice to the County.

* 1. Alternative Dispute Resolution

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through the required claims and appeal process set forth in Section 8.1, the parties may, upon mutual agreement, endeavor to settle the dispute in an amicable manner by mediation or other agreed form of alternative dispute resolution process prior to commencing litigation.

* 1. Applicable Law and Forum

This Contract shall be governed by and construed according to the laws of the State of Washington. The Parties agree that any dispute related to or arising out of this Contract will be brought pursuant to RCW 36.01.050.

1. Termination
	1. Termination for Convenience/Default/Non-Appropriation
		1. Termination for Convenience

This Contract may be terminated by the County without cause, in whole or in part, upon providing the Contractor ten (10) Days' advance written notice of the termination. If the Contract is terminated pursuant to this Section 9.1.A, the County will be liable only for payment in accordance with the terms of this Contract for Work performed and Accepted prior to the effective date of termination.

* + 1. Termination for Default

If the Contractor does not perform the Work, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

* + - 1. A “notice to cure” shall be served on the Contractor by certified or registered first class mail in accordance with Section 2.10. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the County with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
			2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract by serving a "notice of termination" in accordance with Section 2.10 setting forth the manner in which the Contractor is in default and the effective date of termination.
			3. The Contractor shall only be paid for Work performed and Accepted less any damages to the County caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the County to verify compliance with the Contract, applicable laws and regulations.
			4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.
		1. Termination for Non-Appropriation
			1. If expected or actual funding is withdrawn, reduced, or limited in any way prior to Final Acceptance and/or Completion of the Project, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part for lack of appropriation. Such termination shall be in addition to the County’s rights to terminate for convenience or default. In the event of termination under this section the following shall apply:
				1. Subject to subsection B., the County will be liable only for payment in accordance with the terms of this Contract for Work performed prior to the effective date of termination;
				2. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs; and
				3. The Contractor shall be released from any obligation to provide further Work under the Contract affected by the termination.
1. Miscellaneous
	1. Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party.

* 1. Force Majeure

The term "force majeure" means an event that is unforeseeable at the time of Contract execution, and that is beyond the reasonable control of the Contractor and County. A “force majeure” event is limited to: 1) A natural disaster declared by the Governor of Washington or President of the United States, or declared an emergency by the King County Executive including, but not limited to, earthquakes; 2) Acts or omissions of any government entity acting within its governmental capacity; 3) Fire and/or flood for which the Contractor or its Subcontractors is not responsible; 4) Quarantine, epidemic, or pandemic; and, 6) Unusually Severe Weather Conditions.

If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

* 1. No Third-Party Beneficiary

This Contract is for the sole and exclusive benefit of the County and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third parties.

* 1. Severability

The provisions of this Contract shall be effective in all cases unless otherwise prohibited by Washington law or applicable federal law. The provisions of this Contract are separate and severable. The invalidity of any sentence, paragraph, provision, section, article, or portion of this Contract shall not affect the validity of the remainder of this Contract.

* 1. Non-Waiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

* 1. Background Checks

Contractor warrants and represents that each and every Contractor employee can meet the following requirements: (a) No convictions within the past ten (10) years for crimes involving computers, moral turpitude, including fraud, perjury, dishonesty; and (b) No adverse employment actions within the past ten (10) years regarding dishonesty or the use or misuse of computers.

Contractor personnel needing access to secure areas, records, or systems may be required to complete a security/background check by the County. The County may require Contractor’s employees, agents, consultants or Subcontractors to complete a brief questionnaire and complete fingerprinting as part of the investigation process. The required background check will review and evaluate driving records, criminal records, employment histories, military records, personal and employment references and related information. Contractor staff failing the background check may, at the sole discretion of the County, be restricted from working within secured areas or with County systems in any capacity. The Contractor will assign alternative staff who have passed the background check to meet the requirements of the Contract.

End of Terms and Conditions

EXHIBIT A- SUPPLEMENTAL FEDERAL TERMS AND CONDITIONS

**Regulatory Authority**

This Contract is supported by Federal funding. The Federal Government is not a party to any sub-agreement nor to any solicitations or request for proposals. This Contract is subject to regulations contained in 2 CFR 200, 2 CFR 1500, 40 CFR 33, and the applicable grant agreement between the County and the Federal Government. All costs charged under this Contract must meet the requirements for allowability under 2 CFR Part 200, Subpart E as well as applicable provisions of 2 CFR Part 1500. The following provisions include, in part, certain standard terms and conditions required by the Federal Government, whether expressly set forth in the following Contract provisions. Anything to the contrary herein notwithstanding, all Federally mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the Federal terms and conditions.

**Non-Discrimination in Award of Contracts (40 CFR Part 33 Appendix A)**

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

**EPA Fair Share Requirements**

The requirements of EPA’s Disadvantaged Business Enterprise (DBE) program for procurement activities under assistance agreements, contained in 40 CFR Part 33, apply to this Contract. Pursuant to 40 CFR Section 33.301, the Contractor is required to make good faith efforts whenever procuring construction, equipment, services, and supplies under an EPA financial assistance agreement. Records documenting compliance with the six good faith efforts shall be retained. The specific six good faith efforts can be found at: 40 CFR Section 33.301 (a)-(f).

*Fair Share Objectives.*

In accordance with the requirements of EPA’s policy on the utilization of socially and economically disadvantaged individuals and disadvantaged business enterprises in procurement, the Applicant agrees to ensure, to the fullest extent possible that, at least the applicable “fair share” objectives of federal funds for contracts and subcontracts for supplies, construction, equipment, or services, are made available to organizations owned or controlled by socially and economically disadvantaged individuals and women.

For the purposes of this section, Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE) is a business that has been certified as such by the State of Washington Office of Minority and Women Business Enterprises (OMWBE), An online directory of certified firms is available at [www.omwbe.wa.gov](http://www.omwbe.wa.gov).

*Calculating Participation.*

For purposes of calculating the utilization of Certified MBE and WBE firms, the County will count the participation as follows:

1. *Percentage of contract amount.* The MBE/WBE participation shall be calculated as a percentage of total contract amount.
2. *Commercially Useful Function.* M/WBE participation shall be counted only for firms performing a commercially useful function according to custom and practice in the industry. A commercially useful function includes, but is not limited to, the performance of a distinct element of work by a firm which has the skill and expertise as well as the responsibility of actually performing, managing and supervising the work using, its own work force and resources. No credit will accrue for an M/WBE acting merely as a passive conduit of funds to other non-certified firms. An MBE/WBE firm may further subcontract a portion of the work provided that the majority of work (at least 51% of the subcontract amount) is actually being performed by the MBE/WBE firm having the contract.
3. Brokers. MBE/WBE firms that act as a broker in a transaction shall not count towards the Contractor’s good faith MBE/WBE participation. A broker is a firm that does not, itself, perform or manage or supervise the work of its contract or subcontract in a manner consistent with the standard and customary business practices for consultants or subconsultants in its line of business. An MBE/WBE firm will be considered a broker if it subcontracts more than 49% of its work.
4. Joint Ventures. Joint ventures shall be counted toward the percentage of MBE/WBE participation by crediting the MWE/WBE partner’s portion of the hours proposed for the joint venture. Where the MBE’s/WBE’s risk of loss, control or management responsibilities are not commensurate with the share of profit, King County may direct an adjustment in the percentage of participation. In the case of a joint venture that includes a MBE/WBE, credit will be calculated proportionately toward their respective objective.
5. Participation by a firm that is certified by the OMWBE as a MBE/WBE will be counted only toward either the MBE or the WBE goal, but not to both; the Contractor shall designate the goal to which the dollar value is applied.

*Compliance Requirements.*

1. The Consultant shall take affirmative steps in accordance with the Grant good faith MBE/WBE requirements to ensure the maximum practicable opportunity for MBE/WBE firms to participate in the work under this Agreement. During performance of the Agreement, if the scope of work is increased, the Consultant shall demonstrate the affirmative steps it took to ensure that MBE/WBE firms were given an opportunity to compete and participate in the increased work.
2. The County must be notified in writing by its prime consultant prior to any termination of a DBE subcontractor for convenience by the prime consultant.
3. If a DBE subconsultant fails to complete work under the subcontract for any reason, the County requires the prime consultant to employ the six good faith efforts described in § 33.301 if soliciting a replacement subconsultant.
4. The County requires its prime consultant to employ the six good faith efforts described in § 33.301 even if the prime consultant has achieved its fair share objectives under subpart D of this part.
5. In the event of failure of the Contractor to demonstrate adequate progress toward achieving the fair share goals, or to undertake and properly document evidence of the six good faith efforts, King County may require submission of a Corrective Action Plan, in a format and contents to be determined by King County. Failure to submit the required Corrective Action p=Plan, or failure of compliance with the terms of this section may result in withholding of payments, or other administrative sanctions as applicable.

**84101001 Grant Agreement Terms**

**Individual Consultant Rate**

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid daily or hourly. As of January 1, 2024, the limit is $735.60 per day and $91.95 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these using their normal travel reimbursement practices). Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.10.

**Davis Bacon and Related Acts (DBRA) Requirements (where relevant):**

Davis-Bacon and Related Acts (DBRA) (https://www.dol.gov/agencies/whd/governmentcontracts/

construction) is a collection of labor standards provisions administered by the Department of Labor, that are applicable to grants involving construction. These labor standards include the:

1. Davis-Bacon Act, which requires payment of prevailing wage rates for laborers and mechanics on construction contracts of $2,000 or more;
2. Copeland “Anti-Kickback” Act, which prohibits a contractor or subcontractor from inducing an employee into giving up any part of the compensation to which he or she is entitled; and
3. Contract Work Hours and Safety Standards Act, which requires overtime wages to be paid for over 40 hours of work per week, under contracts in excess of $100,000. By accepting this contract, the contractor acknowledges and agrees to the terms provided in the DBRA Requirements for Contractors and Subcontractors Under EPA Grants:
4. (<https://www.epa.gov/grants/contract-provisions-davis-bacon-and-related-acts>).

**Investing in America Emblem (where relevant)**

Contractor will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden's Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

Contractor will ensure compliance with the guidelines and design specifications provided by the EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investingamerica-signage>

**National Historic Preservation Act (NHPA)**

Section 106 of the NHPA requires all federal agencies to consider the effects of their undertakings,

including the act of awarding a grant or cooperative agreement, on historic properties, and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such

undertakings. Contractor must assist King County in complying with NHPA if any activities funded under this grant impact a historic property. Historic properties include: (a) land or buildings listed in or eligible for listing on the National Register of Historic Places; (b) archaeologically sensitive areas or in an area where traditional cultural properties are located; and (c) properties that are associated with significant historic events, are associated with significant people, embody distinctive characteristics, and contain important precontact information.

**Archeological and Historic Preservation Act (AHPA)**

This law applies if archeologically significant artifacts or similar items are discovered after an EPA-funded construction project has begun, and compliance may be coordinated with the NHPA, discussed above. The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific, prehistorical, historical, or archaeologic data that may be lost during the construction of federally sponsored projects to ensure that these resources are not inadvertently transferred, sold, demolished or substantially altered, or allowed to deteriorate significantly.

**Light Refreshments and/or Meals**

Contractor agrees to obtain prior approval from King County for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the King County Project Manager and include:

1. An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s)
2. A description of the purpose, agenda, location, length, and timing for the event, and
3. An estimated number of participants in the event and a description of their roles

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements. Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon, or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7).

**Build America Buy America (BABA) (Appendix I to M-24-02 Buy America) (where relevant)**

*Buy America Preference.* Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

1. All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

*Incorporation into an infrastructure project.* The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

*Categorization of articles, materials, and supplies.* An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

*Application of the Buy America Preference by category.* An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

*Determining the cost of components for manufactured products.* In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

1. For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
2. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

*Construction material standards.* The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others. through the completion of the draw, occurred in the United States.
5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

1. applying the Buy America Preference would be inconsistent with the public interest;
2. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.epa.gov/baba>.

*Definitions.*

**“Buy America Preference”** means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

**“Construction materials”** means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

1. The listed items are:
2. Non-ferrous metals;
3. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
4. Glass (including optic glass)
5. Fiber optic cable (including drop cable);
6. Optical fiber;
7. Lumber;
8. Engineered wood; and
9. Drywall.
10. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

**“Infrastructure”** means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

**“Infrastructure project”** means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

**“Iron or steel products”** means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

**“Manufactured products”** means:

1. Articles, materials, or supplies that have been:
2. Processed into a specific form and shape; or
3. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
4. If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

**“Predominantly of iron or steel or a combination of both”** means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

**“Section 70917(c) materials”** means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

EXHIBIT B- SCOPE OF WORK

EXHIBIT c- Price ATTACHMENT

EXHIBIT D – Certificate(s) of Insurance and Policy Endorsement

1. See page 7 for EPA definition of LIDAC: https://www.epa.gov/system/files/documents/2023-08/Low%20Income%20%20Disadvantaged%20Communities%20Benefits%20Analysis.pdf [↑](#footnote-ref-2)