

Contract (COTS)

Rev 04/2023



Department of Executive Services
Finance and Business Operations Division
Procurement and Payables Section
206-263-9400 TTY Relay: 711

THIS CONTRACT # _____ ("Contract") is entered into by **KING COUNTY**, Washington, a political subdivision of the State of Washington (the "County"), and _____ (the "Contractor"), whose address is _____. The County is undertaking certain activities related to, _____ and, the County desires to engage the Contractor to provide Work in connection with such undertakings of the County, **NOW, THEREFORE**, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

I. CONTRACT DOCUMENTS

The Contractor shall provide all Work described in this Contract, each of which are made a part hereof by this reference:

Contract, which consists of this page, the Terms and Conditions, and the following:

- ☐ Scope of Work Exhibit 1
- ☐ Price Exhibit 2
- ☐ Certificate(s) of Insurance and Policy Endorsement..... Exhibit 3
- ☐ Software License Agreement Exhibit 4
- ☐ Maintenance Agreement Exhibit 5
- ☐ Source Code Escrow Agreement (Optional)..... Exhibit 6
- ☐ [Additional Exhibits TBD] Exhibit TBD

II. ORDER OF PRECEDENCE

In the event of a conflict, the following order of precedence shall apply:

1. Contract Amendment(s)
2. Contract, with its Exhibits as noted above

III. CONTRACT TERM

This Contract shall be effective when countersigned by King County and shall expire five (5) years after the County signs the Contract, unless extended or terminated earlier pursuant to the terms and conditions of this Contract. The Warranty Period begins at Final Acceptance and continues for a period of twelve (12) months. Upon the completion of the Warranty Period, the Maintenance Agreement begins and continues biannually unless terminated as described in this Contract. The maximum term for this Contract, consisting of the initial term plus extensions, is ten (10) years. Any Software License provided under this Contract shall be perpetual.

IV. ACKNOWLEDGEMENT, MERGER, AND AUTHORITY

The parties acknowledge that they have consulted with their respective attorneys and have had the opportunity to review this Contract. Therefore, the parties expressly agree that this

Contract shall be given full force and effect according to each and all of its express terms and provisions and the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

This Contract constitutes the entire agreement and understanding between the parties hereto and supersedes any, and all prior agreements and understandings, oral or written, relating to the subject matter hereof. Any terms or conditions in Contractor's purchase order or any other document issued by Contractor are void and of no force and effect.

The parties executing this Contract have authority to sign and bind its represented party to this Contract.

COMPANY NAME

KING COUNTY

Authorized Signature

Authorized Signature

Name and Title (Print or Type)

Name and Title (Print or Type)

Date

Date

Accepted: _____

Accepted: _____

Approved as to form only:
King County Prosecuting Attorney

TERMS AND CONDITIONS

SECTION 1 DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract Documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of the County's determination that the Contractor's Work has been completed in accordance with the Contract.

Administrator: The Director of Finance and Business Operations Division.

Business Development and Contract Compliance (BDCC): The Business Development and Contract Compliance section in King County Finance and Business Operations Division.

Contract Specialist: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate Contracts, resolves contractual issues and supports the Project Manager during Contract performance.

Certified SCS Firm: A business that has applied for participation in King County's Contracting Opportunities Program and has been certified as an SCS by the King County BDCC office.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or Scope of Work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page 1 of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of Services or Work under the Contract.

County: King County and its officers, employees, agents, contractors, and subcontractors.

Day: Calendar day.

Documentation: Technical publications and/or documentation relating to the use of the Software or Services to be Provided and delivered by Contractor under this Contract, such as reference manuals, training manuals, user manuals, maintenance manuals, installation, systems administration and technical guides designed to instruct the County on the features, uses, and functions of the Software or Services.

Effective Date: The date the Contract is signed by the County.

Enhancement: Technical or functional additions to the Software to improve Software functionality and/or operations. Enhancements are delivered with new releases of the Software.

Error: An unanticipated Software problem resulting in program behavior not following the Software's logical design and/or the Contract.

Final Acceptance: The point when King County acknowledges that the Contractor has performed the entire Work in accordance with the Contract.

Measurable Amount of Work: For purposes of payment of a living wage, Measurable Amount of Work means a definitive allocation of an employee's time that can be attributed to work performed on a specific matter, but that is not less than a total of one hour in any one-week period.

Object Code: The executable, machine-readable, form of a Software program. Object code is instruction code in machine language produced as the output of a compiler or an assembler.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration. This Contract may be part of a larger County project. Such representation does not imply the authority to change, modify, amend, or otherwise alter the prices, terms, conditions, and specifications of the Contract

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Scope of Work (SOW): An exhibit to the Contract consisting of written descriptions of Services to be performed, or the goods to be Provided or the technical requirements to be fulfilled under this Contract.

Services: The furnishing of labor, time or effort by a Contractor, including Software Maintenance or support, custom Software, or consulting but not involving the delivery of any specific manufactured goods.

Small Contractor or Supplier or "SCS": A business and the person or persons who own and control it that are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting Opportunities Program is based the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' personal net worth less than \$1,320,000 dollars.

Software: All or any portion of the then commercially available version(s) of the computer Software programs and Enhancements thereto, including Source Code, localized versions of the computer Software programs and Enhancements thereto, including Source Code and Documentation licensed and delivered by Contractor to the County.

Source Code: A set of instructions, written in a programming language, that must be translated to machine instructions before the program can run on a computer. These instructions must be compiled into Object Code before the computer can understand them.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Update: All published revisions to the Documentation and copies of the new release of the Software, which are not designated by Contractor as new products.

Upgrade: Subsequent releases of the Software and Documentation that generally have a new major version number, i.e. version 6.3 to version 7.0 or minor releases, such as 6.3 to 6.4.

Virus: Software code that is intentionally and specifically constructed for the purpose of destroying, interrupting or otherwise adversely impacting other code or data in a computer, such as replicating itself or another program many times without any useful purpose.

Work: Everything to be Provided and done for the fulfillment of the Contract and shall include all Software, Hardware and Services specified under this Contract, including Contract Amendments and settlements.

SECTION 2 GENERAL PROVISIONS

2.1 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 Subcontractors, if any.

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

2.2 Acceptance Testing

The County may give iterative acceptances as the Work is accomplished either by phase or milestone. The Contractor will give the County “notice of completion” of Work related to a specific milestone following the Contractor’s completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

- A. **Acceptance Process.** Upon completion of either the phase or milestone, the Contractor will notify the County and the Acceptance process will commence. Acceptance shall be based on conformance with the phase or milestone requirements set forth in the Contract. After notice by Contractor of completion of the phase or milestone, County will issue a written notice of phase or milestone Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining items not in compliance with the deliverable guidelines.
- B. **Correction of Deficiencies Process.** If the work of the phase or milestone is rejected, Contractor will have ten (10) Days to correct items documented in the County’s notification of rejection. Following the delivery of Contractor’s notice that the work has been corrected, the Acceptance test will start again, and the County will either issue a written notice of Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining work not in compliance with the phase or milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the work fails to comply with the phase or milestone after Contractor’s second attempt to correct the work and no clear plan can be agreed upon between the County Project Manager and the Contractor’s Project Manager, the County will determine the appropriate corrective action(s), up to and, including declaring a material breach of Contract.

2.3 Final Acceptance Testing

The County shall begin the Final Acceptance testing as follows:

- A. The parties shall agree on the start date for the Acceptance test.
- B. The Acceptance test shall include ninety (90) Days of continuous operation of the Work without material defect in accordance with the Contract in the County’s fully implemented production environment.
- C. If the County Accepts the Work, the County will send a notice of Final Acceptance to the Contractor.

- D. If the County determines that the Work is not Acceptable, the County shall notify the Contractor, describing the deficiencies.
- E. The Contractor shall either Provide a detailed, written plan to achieve Final Acceptance or to make corrections or replacements within ten (10) Days of the County's notification. The parties shall mutually agree on a start date for beginning another Acceptance test.
- F. Another ninety (90) Day successful operation period shall follow any corrections or replacements to the Work. Two (2) or more ninety (90) Day operation Acceptance test periods can occur if mutually agreed to by the parties.
- G. If the County Accepts the Work following a second or subsequent Acceptance test, the County will send a notice of Final Acceptance to the Contractor.

If the Contractor does not correct or replace the unacceptable Work the County may declare a material breach of Contract.

2.4 Warranty

A. No Waiver of Warranties and Contract Rights

Conducting of tests and inspections, review of Scope of Work or plans, payment for Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.

B. Warranty Term

The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this paragraph to the same extent as the Work initially Provided.

C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors

The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

2.5 Express Warranties for Services

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

- C. Contractor warrants that the Services shall be in compliance with all applicable laws, rules and regulations.
- D. Contractor warrants that the performance of the Services and any Software Provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as “backdoor shutdown mechanisms”, “time bombs”, “automatic unauthorized connection to outside systems”, programming that responds to or provides information to outside systems’ “pinging”, and features that can “retire”, “shut down”, “cripple” or “stop” the Software. Contractor further warrants that neither the Software alone or through contact with the Contractor is capable of electronic self-help that may deprive the County of the use of the licensed Software.

The Express Warranties Set Forth In This Section Are In Lieu Of All Other Warranties, Express Or Implied, Including But Not Limited To The Implied Warranties Of Merchantability And Fitness For A Particular Purpose.

2.6 Express Warranties for Software

- A. Contractor warrants that on the date of Final Acceptance, the Software Provided hereunder shall be free from significant programming Errors and when used in accordance with this Contract shall operate and conform to the Scope of Work, performance capabilities, functions and other descriptions and standards as identified in this Contract and all supplemental information Provided by Contractor.
- B. Contractor warrants that it has full power and authority to license or sublicense the Software to the County without the consent of any other Person.
- C. Contractor warrants that the Software, the License to the County to use the Software, instructions for use of the Software, Documentation and the performance by Contractor of the Services, shall be in compliance with all applicable laws, rules and regulations.
- D. Contractor warrants the tapes, CDs, DVDs or other media delivered to the County to be free of defects in materials and workmanship under normal use for sixty (60) Days from the date of receipt by the County.
- E. Contractor warrants that the Software Provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited intentional programming defects include, but are not limited to, features such as “backdoor shutdown mechanisms”, “time bombs”, “automatic unauthorized connection to outside systems”, programming that responds to or Provides information to outside systems’ “pinging”, and features that can “retire”, “shut down”, “cripple” or “stop” the Software. Contractor further warrants that neither the Software alone or through Contract with the Contractor is capable of electronic self-help that may deprive the County of the use of the licensed Software.
- F. Contractor warrants that future maintenance or Software releases shall not degrade the Software, cause a breach of any other warranty or require the County to purchase new or additional hardware or Software for continued operation of the Software.

- G. The Contractor warrants functionality as described in the Contract and represents that the configuration identified in the Contract has been specifically selected and designed for the County as being an operationally efficient integration of hardware, Software and Services.
- H. Contractor shall be responsible for Providing and implementing a Software system that is successfully integrated into the existing system environment of the County and meets the functional requirements as specified in this Contract.

The Express Warranties Set Forth In This Section Are In Lieu Of All Other Warranties, Express Or Implied, Including But Not Limited To The Implied Warranties Of Merchantability And Fitness For A Particular Purpose.

2.7 Warranty Remedies

- A. If at any time during the twelve (12) month period immediately following Final Acceptance of any Work covered by this Contract, Contractor or the County discovers one or more material defects or Errors in the Work or any other aspect in which the Work materially fails to meet the provisions of the warranty requirements herein Contractor shall, at its own expense and within thirty (30) Days of notification of the defect by the County, correct the defect, Error or nonconformity by, among other things, making additions, modifications or adjustments to the Software as may be necessary to keep the Software in operating order in conformity with the warranties herein. Any Work corrected shall be subject to this subsection to the same extent as the Work initially Provided.
- B. During the sixty (60) Day media warranty period, the County may return defective media to Contractor and it shall be replaced without charge to the County.
- C. In order to qualify for remedial action under these warranties, the County shall report a warranty failure to the Contractor in writing within thirteen (13) months from the date of Final Acceptance. The Contractor shall not be responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the product(s) by the County or anyone other than the Contractor or its Subcontractors, unless under Contractor's or its Subcontractor's direction.
- D. The County shall give written notice of any defect to the Contractor. If the Contractor has not corrected the defect within thirty (30) Days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case, the County shall charge-back the cost for such warranty repair to the Contractor.
- E. The Contractor is responsible for all costs of repair or replacement in order to restore the Work to the applicable Contract requirements or Scope of Work, including shipping charges, for Work found defective within the warranty period, regardless of who actually corrects the defect.

2.8 Defective Work

Prior to Final Acceptance or any Acceptance testing, when and as often as the County determines that the Work, furnished under the Contract is not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such

non-compliance to the Contractor. Within ten (10) Days of receiving such notification, the Contractor shall correct items documented in the County's notification or supply the County with a detailed, written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. The County may reject or accept this plan at its discretion. If the County rejects the plan the Contractor may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the County by law, including those available under the Uniform Commercial Code, Title 62A RCW.

2.9 Software Warranty Process

During the warranty period, Software support shall be as described in Exhibit 5 Maintenance Agreement.

2.10 Software Maintenance

After the warranty period, Software Maintenance support shall be as described in Exhibit 5 Maintenance Agreement.

2.11 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 King County immediately upon the information becoming publicly available. This notification shall be sent by the Contractor to the current King County Contract Specialist via email along with:

- A. Any official announcements from the firm's representative(s) regarding the changes;
- B. A new King County W-9, located at: <https://cdn.kingcounty.gov/-/media/king-county/depts/executive-services/finance-business-operations/procurement-payables/documents/forms/kc-w9.pdf?rev=4f8b31da45574466a7c7ac764d3bd688&hash=4E5B9F4585D1BA404215A188943F491D>. Instructions for completing the document can be found at: https://cdn.kingcounty.gov/-/media/king-county/depts/executive-services/finance-business-operations/procurement-payables/documents/forms/kc-w9_instructions_for_business.pdf?rev=0f4d4dfb6bab4a0b8e09ca66a38439e8&hash=329117AB724CCF83099130E474F38C13
- C. 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 Contract Specialist 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 Contract Amendments will reference the new contract number.

2.12 Payment Procedures; Prompt Payment of Subcontractors

For Work Accepted by the County the Contractor shall furnish invoices to King County **[insert agency, contact name, phone, email, and mailing address]** and invoices.ap@kingcounty.gov. All invoices shall contain the following information:

- A. Invoice date;
- B. Purchase order number (if provided by King County)
- C. Ship to address/location
- D. Remit address
- E. Item number(s)
- F. Description of supplies or services
- G. Quantities
- H. Unit prices
- I. Subtotal and totals amount
- J. Discount terms or amount, if applicable
- K. 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.

The County will not be bound by prices contained in an invoice that are higher than those in Exhibit 2, 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.

2.13 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.

2.14 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-Bremerton 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.

2.15 Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

2.16 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 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.

2.17 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 shall be implemented through Section 2.17, Contract Amendment.

2.18 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.

2.19 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	CONTRACTOR

xxx@kingcounty.gov	

2.20 Certification Regarding Debarment, Suspension and Other Responsibility Matters

If this Contract is a covered transaction for purposes of federally funded grant requirements, 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 King County. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to King 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 this Contract and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

2.21 Responsible Contractor

As a condition of award for contracts valued at \$100,000 or more, the Contractor agrees that it shall comply with the applicable criteria in King County [Ordinance 19925](#), to which the Contractor attested on the Responsibility Detail Form. Failure to comply with the criteria specified in the ordinance and to which the Contractor attested on the Responsibility Detail Form will constitute a material breach and the County may terminate the contract, in whole or in part, for default.

SECTION 3 LEGAL RELATIONS; INDEMNITY and INSURANCE

3.1 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 parties intend that an independent contractor relationship shall be created by this Contract. 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.

3.2 Indemnification and Hold Harmless

A. Patent, Copyright and Privacy Indemnity

The Contractor shall protect, indemnify, defend and save harmless County from any and all claims or lawsuits alleging a violation of a third party's copyright, patent or privacy (including without limitation proprietary or personal information) rights due to Work or Services performed by or on behalf of Contractor or County's implementation or use of Software provided by Contractor in conjunction with this Contract ("IP/Privacy Claim"). Contractor shall be responsible for all costs, fees (including reasonable attorney fees), expenses, settlements, judgments and/or damage awards relating to such claims or lawsuits. To the extent reasonably possible, County shall give Contractor prompt notice of an IP/Privacy Claim brought against County regarding the Software, and give Contractor information, reasonable assistance, and sole authority to defend or settle any IP/Privacy Claim at Contractor's sole expense. In the defense or settlement of any IP/Privacy Claim, Contractor shall, in its reasonable judgment and at its sole expense:

1. Obtain for County the right to continue using the Software;
2. Replace or modify the Software, in accordance with the timeline set forth in section 2.8 "Defective Work" or as mutually agreed to by the parties, so that it becomes non-infringing while giving equivalent performance; or
3. If Contractor cannot obtain either of the remedies in (i) or (ii), the parties to this Contract may proceed to a court of competent jurisdiction to determine the remedies afforded to the County by Contract and by law.

Contractor shall, if requested by County, furnish acceptable documentation evidencing resolution of any IP/Privacy Claim.

Contractor shall have no liability to indemnify or defend County to the extent the alleged infringement is based on: (a) a modification of the Software by the County or others authorized by County but not by Contractor; or (b) failure to use the Software in accordance with the Documentation or Contract.

B. Indemnification For All Other Actions

To the maximum extent permitted by law, and except to the extent caused by County's intentional or willful acts or sole negligence, Contractor shall protect, defend, indemnify, and hold harmless County from any and all claims, demands, suits, penalties, losses, damages, settlements, judgments, expenses (including reasonable attorney fees), or costs of whatsoever kind or nature arising out of or in any way resulting from Work or

Services performed or Software provided by or on behalf of Contractor, its officers, employees, agents, or Subcontractor(s) pursuant to or in connection with this Contract.

Contractor's obligations under this section shall include, but not be limited to:

1. The duty to promptly accept tender of defense, using counsel acceptable to the County, at Contractor's sole expense.
2. The duty to defend and indemnify County from any claims, demands, or suits brought by, or on behalf of, any employee, former employee, or agent of Contractor or any Subcontractor. To the extent necessary to carry out this obligation, Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects County only, under any industrial insurance act or workers compensation law, including without limitation Title 51, other workers compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

County may, at its sole discretion, withhold amounts sufficient to pay the amount of any claim for damages or injury arising out of Contractor's performance of this Contract.

Any amount withheld from Contractor may be held until Contractor secures a written release from the claimant, obtains a court decision that such claim is dismissed, or satisfies any judgment on such claim.

C. Limitation of Liability

Except for (i) injuries to persons, (ii) damage to property, (iii) any exposure of confidential information, (iv) loss of data, or (v) infringement of intellectual property or privacy rights, neither party will be liable to the other party for any indirect, incidental, special or consequential damages, however arising, whether in Contract or Tort, even if it has been advised of the possibility of such damages. Except for (i)-(v) listed above, either party's liability for damages to the other shall be limited to the greater of One Million U.S. Dollars (\$1,000,000) or three times (3x) the value of the Contract. The parties agree to the allocation of liability and risk set forth in this paragraph.

- D.** If County is required to defend itself, enter into a settlement, and/or pay an adverse judgment after Contractor fails or refuses to defend County pursuant to this section, Contractor shall indemnify County for its actual defense and settlement costs and expenses incurred, as well as the full amount of any judgment entered against County. In the event County incurs any costs including attorney's fees to enforce the provisions of this section, all such costs and fees shall be recoverable from Contractor as indemnitor.

3.3 Evidence and Cancellation of Insurance

- A.** Prior to the Effective Date of the Contract, Contractor shall file with the County, certificates of insurance and endorsements certifying the issuance of all insurance required herein. All such evidence of insurance shall be signed by a properly authorized officer, agent, general agent or qualified representative of the insurer(s), shall set forth 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, shall specify the form number of any endorsements issued to satisfy this Contract's insurance requirements, and shall

state that County shall receive notice at least thirty (30) Days prior to the effective date of any cancellation, lapse or material change in the policy. Contractor also shall obtain and provide to County, upon County request, that same documentation regarding the insurance held by any Subcontractor that is not insured under Contractor's insurance.

Certificates of Insurance and Endorsements shall be sent to:

King County Contact	Email Address

- B. In the event of a loss, 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 policies to the County within five (5) business days of County's request.

Failure to provide such policies of insurance in the required timeframe shall enable County to suspend or terminate Contractor's Work or Services or use of Contractor's Software hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve Contractor from its insurance obligations hereunder.

- C. County's receipt or acceptance of Contractor's and 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.

3.4 Insurance Requirements

- A. Contractor shall purchase and maintain the minimum insurance set forth below. By requiring such minimum insurance, County does not and shall not be deemed or construed to have assessed the risks that may be applicable to Contractor, or that of any Subcontractor, under this Contract or in any way limit 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 County or County's potential recovery from Contractor. Contractor and its Subcontractor(s) shall assess their own risks and, if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage.
- B. 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 in this provision shall affect and/or alter the application of any other provision contained within this Contract.

C. For all coverages/policies:

1. Each insurance policy shall be written on an "occurrence" basis/form; excepting insurance for professional liability (errors and omissions) or cyber liability/technology errors and omissions. Professional liability (errors and omissions) and cyber liability/technology errors and omissions required by this Contract is acceptable on a "claims made" basis/form.
2. If any insurance required by this Contract is purchased on a "claims made" basis, the coverage provided under that insurance shall be maintained, either through consecutive policy renewals, or through the purchase of a tail/extended reporting period if such renewals are unavailable, for not less than three (3) years from the date of completion of the Work or Services which are the subject of this Contract. All insurance written on a "claims made" basis 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.

D. All required liability policies purchased and maintained by Contractor and any Subcontractor, except professional liability (errors and omissions) and workers compensation policies, shall contain or be endorsed to contain the following provisions:

1. County, its officials, employees and agents shall be covered as additional insured, for full coverage and policy limits, as respects liability arising out of ongoing and completed Work or Services performed and Software provided by or on behalf of Contractor or its agents, representatives, employees, or subcontractor(s) in connection with this Contract. Additional insured endorsements shall be included with the certificate of insurance.

E. All required liability policies purchased and maintained by Contractor and any Subcontractor shall contain or be endorsed to contain the following provisions:

1. Coverage shall be primary insurance as respect 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 the Contractor's or any 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 the insurer's liability.

F. Before the Effective Date of this Contract, Contractor shall provide County with a copy of the additional insured endorsement(s) or other policy forms satisfying each of the foregoing requirements imposed upon Contractor and any Subcontractor. County's receipt or acceptance of this policy documentation does not in any way alter, modify, the foregoing requirements or, consequently, constitute County's acceptance of the adequacy of Contractor's insurance or preclude or prevent any action by County against Contractor for breach of the foregoing requirements.

G. Minimum Scope and Limits of Insurance

Contractor shall maintain the following types of insurance and minimum insurance requirements:

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 04 13. Such insurance shall include coverage for, but not limited to, ongoing operations, products and completed operations, and contractual liability. Such 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 to County.
2. NOT USED - Automobile Liability:
3. NOT USED - Professional Liability (Errors and Omissions)
4. Cyber Liability (Technology Errors and Omissions): Coverage at a minimum limit of \$15,000,000 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 and Services by applicable federal or "Other States" State Law.
6. Employers Liability or "Stop Gap": Coverage with minimum limits of \$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 states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

3.5 Deductibles and Self-Insured Retentions

Any deductibles and/or self-insured retentions 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 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.

3.6 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 B+:VII.

If at any time one of the foregoing policies shall 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.

3.7 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 through 3.6 (inclusive) above, including the requirement that all liability insurance policies (except Professional Liability (errors and omissions) 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 that County is included as additional insured. Upon request by County, and within five (5) business days, Contractor must provide evidence of each Subcontractor's insurance coverage, including endorsements.

SECTION 4 CONFLICTS of INTEREST and NON-COMPETITIVE PRACTICES

4.1 Conflicts of Interest and Non-Competitive Practices

- A. 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.
- B. 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.
- C. 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.

- D. 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, by signing this Contract, the Contractor swears under penalty of perjury of the laws of the state of Washington that, for the period twenty-four months before through the date of Contractor signature of this Contract the statements in D.1. to. 4. below are true and correct:
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:
 - a. Ownership of over five percent of the stock or other form of interest in the Contractor; and
 - b. 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. There is no 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.
 5. 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.
 6. Alternative Compliance. If the Contractor cannot swear to the above statements, then the Contractor must complete and return a King County Consultant Disclosure Form to King County. The Consultant Disclosure Form can be found at:
<https://cdn.kingcounty.gov/-/media/king-county/depts/executive-services/risk-management-services/documents/financial-disclosure-consultant-2023.pdf?rev=d337675590414c12ae4b59b84a0bfd0b&hash=3CBC9785013215D32D403032BB3ACA13>
 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.

SECTION 5 RECORDS AND AUDITS

5.1 Retention of Records, Audit Access and Proof of Compliance with Contract

A. 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 for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

The Contractor shall provide access to its facilities, including those of any Subcontractors, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

5.2 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.

5.3 Federal Funding Audit

If the Contractor expended a total of \$750,000.00 or more in federal awards during its fiscal year, 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.

5.4 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.

SECTION 6 INTELLECTUAL PROPERTY

6.1 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 the foregoing subsections is included in each subcontract for the Work under this Contract.

6.2 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.

6.3 Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor and Subcontractors may encounter personal information, licensed technology, drawings, schematics, manuals, data, sealed court records, 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.

6.4 Software License

Subject to the terms and conditions set forth in this Contract and the Software License Agreement, Exhibit 4, including payment of the license fees by County to Contractor, Contractor hereby grants to County a perpetual, non-exclusive, non-transferable license to use the Software, including any Software and Source Code released pursuant to any applicable Source Code Escrow Agreement, as well as any Documentation and training materials.

6.5 Disaster Recovery

In the event a disaster is declared at any County site(s), Contractor will allow the County the right to use the Software in accordance with the Software License Agreement, Exhibit 4, at the recovery site identified by the County, at no additional cost to the County for moving the Software to the recovery site.

6.6 Bug Status Reports

The Contractor shall Provide bug status reports specifying all known outstanding bugs in the current version of the Software. The initial bug status report shall accompany the Software when delivered. Subsequent reports shall be Provided monthly or as agreed to by the County Project Manager.

6.7 Enhancements, Upgrades, Replacements and New Versions of Software

- A. The Contractor agrees to provide to the County, at no cost, prior to, and during installation and implementation of the System any Software/firmware Enhancements, Upgrades and replacements which the Contractor initiates or generates, and the delivery, installation, and implementation of such Enhancement, Upgrade and replacement shall be borne solely by the Contractor.
- B. As long as the County has a Maintenance Agreement, the Contractor shall notify the County of the availability of newer versions of the Software and within thirty (30) Days Provide the County with this new version. The Contractor shall Provide Updated Documentation in the form of new revision manuals or changed pages to current manuals consistent with the original Documentation supplied and reflecting the changes included in the new version of the Software. The Contractor shall Provide bug status reports specifying all known, outstanding bugs in the new Software version(s). The information shall be updated periodically as new information and workarounds become known. The Contractor shall also Provide installation instructions, procedures and any installation program required by the Enhancement, Upgrade, Replacement or New Versions of the Software.

Contractor shall configure the most robust and cost-effective, latest-technology system to meet the County's needs and developing systems requirements. The Software and hardware to be delivered shall be the current production version as determined by the County.

SECTION 7 NONDISCRIMINATION AND PAYMENT OF A LIVING WAGE

7.1 Nondiscrimination and Equal Employment Opportunity

A. 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.

B. 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.

C. Equal Benefits to Employees with Domestic Partners

In accordance with King County Ordinance 14823, as a condition of award of a contract valued at \$25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners during the performance of this Contract. Absent authorization for delayed or alternative compliance, 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.

When the contract is valued at \$25,000 or more, by signing the Contract/Bid Submittal the Contractor is indicating compliance with this requirement or with the terms of an authorization for delayed or alternative compliance.

D. 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.

E. 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.

F. Small Contractors and Suppliers Policy

Policy. It is King County policy that Small Contractors and Suppliers (SCS) have equitable opportunities to participate in the performance of goods and services contracts issued by King County, and that contractors and subcontractors shall afford equal opportunity in employment while providing supplies and services for and to King County.

Inquiries and Information Regarding King County Certified SCS Firms. Direct inquiries on how to apply for SCS certification, or obtain a list of King County Certified Firms to the King County Business Development and Contract Compliance (BDCC) office by telephone at 206-477-9734. Information about becoming a King County Certified SCS Firm, as well as a Directory of King County Certified Firms is available at: <http://www.kingcounty.gov/bdcc>.

Utilization Requirements and Compliance

1. SCS Utilization Requirements. The Contractor shall ensure that at least the SCS Utilization Requirement percent identified in the Contractor's Proposal (Exhibit X) of the total value of the Contract, as amended shall be performed by Certified SCS Firms over the life of this Agreement.
2. Amendments to Contract. If the total price for all executed work is increased as a result of adding additional Work, the Contractor shall ensure that at least the SCS Utilization Requirement percent identified in Contractor's Proposal (Exhibit E) of the total value of the Contract, as amended, shall be performed by a Certified SCS firms over the life of this Agreement.
3. Counting SCS Participation. The County will only count the participation of Certified SCS Firms towards the percent requirement in Contractor's Proposal (Exhibit X) that perform a commercially useful function according to custom and practice in the industry. A commercially useful function is defined as a specific Scope of Work the SCS has the management and technical expertise to perform using its own workforce and resources.
4. A Certified SCS 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 Certified SCS Firm that has the contract. No credit will accrue for a Certified SCS Firm acting merely as a passive conduit of funds to a Non-Certified SCS Firm.

- a. If a Certified SCS Firm is performing at least 51% of the subcontract amount, 100% of the subcontract amount will be counted.
 - b. No credit shall accrue to a Certified SCS Firm that subcontracts more than 49% of its work.
- 5. Compliance with the SCS Utilization Requirements
 - a. Contractor's compliance with the SCS Utilization Requirements is a material condition of the Contract. Business Development and Contract Compliance (BDCC) will evaluate the Contractor's compliance with the SCS Utilization Requirement against the of the total value of the Contract, as amended over the life of this Agreement.
 - b. If during the term of the Contract, the Contractor determines that it will be unable to comply with the SCS Utilization Requirement, the Contractor shall make a written request for a reduction or modification of the requirement to BDCC at opportunity@kingcounty.gov. The email shall be titled "Request for Modification of SCS utilization requirement." The request shall include the contract number, contract title and written documentation of all factors that contributed to the Contractor's inability to comply with the SCS Utilization Requirements, including, but not limited to the following:
 - 1) A summary of tasks completed by Certified SCS Firms on the Project, and an explanation of any shortfall in SCS Work identified in the proposal and Contract documents for performance by Certified SCS Firms;
 - 2) Efforts made to identify additional SCS subcontracting opportunities remaining on the Project, or on an ongoing basis, for performance by Certified SCS Firms;
 - 3) Outreach and solicitation of proposals from additional Certified SCS Firms for work on the project; and
 - 4) Project factors that reduced or restricted the ability of Certified SCS Firms to perform their committed Work.

BDCC will evaluate the request for a reduction or modification and shall provide a written letter of determination to the Contractor. If appropriate, Contract Specialist shall request that a Contract Amendment be prepared by the County reducing the SCS Utilization Requirement.

- c. King County Code Chapter 2.97 and the administrative rules implementing the ordinance are hereby incorporated into this Contract by reference. The Consultant's unexcused failure to comply with the ordinance, administrative rules, and provisions of this Contract shall be deemed a material breach of Contract and may subject the Consultant to either: (i) a suspension for a period of not more than six (6) months or (ii) a debarment for a period not more than two (2) years, from consideration for award of contracts with the County. King County may withhold progress payments or the final payment, and seek any other remedy allowed by law.
 - d. Before imposing any sanction, the Contract Specialist shall first provide written notice of a potential violation to the Contractor. The Contractor shall have an

opportunity to submit a written reply within ten (10) days from the date the notice of a potential violation is mailed to the Contractor. The Administrator shall notify the Consultant in writing of his or her final determination.

G. Diversity Compliance Management System (DCMS) Reports

The Contractor shall report monthly in the DCMS website located at <https://kingcounty.diversitycompliance.com>. Telephone 206-263-9745 for assistance. Such information shall be submitted prior to the County processing and paying any invoice. Reporting requirements include:

1. Payment Reports for Subcontractors and Suppliers. The Contractor must submit Payment Reports for all subcontractors and suppliers electronically using the DCMS.
 - a. Once work has commenced, the Contractor shall submit a Payment Report for subcontractors and suppliers detailing amounts paid to each subcontractors and supplier for the previous invoice not later than the 15th day of the month.
 - b. The Contractor shall notify and instruct all subcontractors and suppliers performing Work to date, to sign into the DCMS and verify payments received for each reporting period.
2. Upon completion of all Work and as a condition precedent to final payment, the Contractor shall complete the last Payment Report and identify this document as “final” and submit this document into the DCMS. The final Payment Report must list the name of and dollar amount paid to each subcontractors and supplier used by the Contractor. Failure to submit the final Payment Report may result in withholding of payments or the final payment.
3. Add Subcontractors and Suppliers. The Contractor shall add all firms used on the Project electronically using the DCMS.
4. The Contractor must submit other information as requested by the County to verify firms working on the Project and compliance with requirements for the use of certified firms. The County may add, delete, or change the information required by the Contractor, as necessary.

H. 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.

7.2 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 <https://kingcounty.gov/en/dept/executive-services/about-king-county/business-operations/finance-business-operations/procurement-payables/living-wage-ordinance>.

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.

SECTION 8 CLAIMS AND APPEALS; DISPUTE RESOLUTION

8.1 Claims and Appeals

The Contractor shall address claims for additional time or compensation under the Contract in writing to the Contract Specialist and 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 Contract Specialist and 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 Contract Specialist and Project Manager of the claim, or requested additional documentation, whichever is later.

In the event the Contractor disagrees with the determination of the Contract Specialist and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Payables Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Payables Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Payables Section Manager 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 Contract Specialist or 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.

8.2 Mediation and Arbitration

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.

8.3 Applicable Law, Forum and Policies

This Contract shall be governed by and construed according to the laws of the State of Washington and applicable County IT Policies. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

SECTION 9 TERMINATION

9.1 Termination for Convenience/Default/Non-Appropriation

A. 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.

B. 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 2.19. The Contractor shall have ten (10) Days from the date of receipt to cure the default or, at the County's discretion, 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 2.19 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.

C. 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:
 - a. 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;
 - b. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs; and

- c. The Contractor shall be released from any obligation to provide further Work under the Contract affected by the termination.
- 2. Notwithstanding subsection 1., funding of this Contract beyond the current biennium is conditional upon the appropriation by the County Council of sufficient funds to support the Work described in this Contract. Otherwise, the Contract shall terminate on December 31 of the current biennium.

SECTION 10 MISCELLANEOUS

10.1 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

10.2 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. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), section 6.1.3 is followed. If an assignment is approved, it shall be effective upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

10.3 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. 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.

10.4 HIPAA – Protecting Patient Privacy

The Work under this Contract may require compliance with "The Health Insurance Portability and Accountability Act of 1996" (HIPAA). Information on this Act can be found at the U.S. Office of Civil Rights website: <http://www.hhs.gov/ocr/hipaa/>.

10.5 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 party.

10.6 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

10.7 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.

10.8 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.

10.9 Contractor Impairment

King County is committed to a safe, healthy, drug-free, and alcohol-free work environment on all County property and worksites. Contractor's employees are prohibited from reporting to or performing work on County property or worksites with the odor of alcohol present on their person, or are observed by a County employee to be consuming alcohol or controlled substances, and/or appear to be under the influence or impaired by alcohol or controlled substances. The County employee will use specific, contemporaneous and articulable observations about the Contractor's employee's appearance, speech, behavior, and odor when making this determination. King County will notify the Contractor of the County employee's observations. The Contractor shall instruct their employee that they are prohibited from continuing to perform work and will safely remove the employee from the County property or worksite.

END OF TERMS AND CONDITIONS