

AGREEMENT FOR PROFESSIONAL SERVICES

FOR

**ARCHITECTURAL, ENGINEERING, AND RELATED SERVICES FOR NORTH KING
COUNTY ACCESS BASE**

CONTRACT NO. KC001658

BETWEEN

KING COUNTY

AND

LEGALNAME

DRAFT

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CONTRACT NO. KC001658

SECTION 1. AGREEMENT SUMMARY

AGREEMENT PARTIES	
CONSULTANT Name LegalName ConsultantName	KING COUNTY Department/Division Metro Transit Department Capital Division
CONSULTANT Address @address line 1 @address line 2	KING COUNTY Address @@@-@@-@@@@@ @201 South Jackson Street Seattle, WA 98104
NOTICE	
CONSULTANT Project Manager @Project Manager Name @email address @phone number	KING COUNTY Project Representative @Project Representative Name @email address @phone number
AGREEMENT DETAILS	
Completion Date:	@Click here to enter a date.
Total Price:	@\$
Prime Fixed Professional Fee:	@\$
Subconsultants Fixed Professional Fee:	@\$
Labor Escalation Pool:	@\$
Lump Sum Other Direct Costs:	@\$
Maximum Direct Labor Rate:	\$94.31
Maximum Billing Rate:	\$302.00
Labor Escalation Rate:	5.4%
Labor Rate Adjustment Date:	@Click here to enter a date.
Overhead Rate Adjustment Date:	@Click here to enter a date.
Contract Purchase Agreement (CPA):	@number
Invoice Due Date:	@of every month
Aspirational MBE Goal:	@% of the Total Price

Aspirational WBE Goal:	@% of the Total Price
Funding Source:	King County

THIS AGREEMENT, made and entered into by and between the parties specified in Section 1, Agreement Summary, collectively referred to as “Parties”, shall be effective upon the authorized signatures of both Parties to this Agreement on the date last signed below (“Effective Date”).

The Consultant agrees to perform professional services as required by the County in accordance with the terms and conditions contained herein. A description of the services to be performed are set forth in Exhibit A, Scope of Work.

SECTION 2. DEFINITIONS

As used throughout this Agreement, the following terms are defined as follows:

- A. **“Administrator”** means the Manager of the King County Business Development and Contract Compliance (BDCC) office.
- B. **“Agreement”** and **“Contract”** shall be used interchangeably and refer to this Agreement.
- C. **“Certified Firm”** means a business that has been certified by King County BDCC as a SCS firm, or by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE) as a CBE, MBE, WBE, MWBE, or SBE.
- D. **“Combination Business Enterprise”** (CBE) means a firm that has been certified by the Washington State Office of Minority and Women’s Business Enterprises as a CBE.
- E. **“Consultant”** shall include ConsultantName performing services under this Agreement.
- F. **“Good Faith Efforts”** means efforts to achieve a goal or other requirements of the ESJ Innovation Plan (Plan) that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the Plan requirements.
- G. **“Minority Business Enterprise”** (MBE) means a firm that has been certified by the Washington State Office of Minority and Women’s Business Enterprises as an MBE.
- H. **“Minority Women’s Business Enterprise”** (MWBE) means a firm that has been certified by the Washington State Office of Minority and Women’s Business Enterprises as an MWBE.
- I. **“Small Contractor or Supplier”** (SCS) means a business that has applied for participation in King County’s Contracting Opportunities Program and has been certified as an SCS by King County Business Development and Contract Compliance (BDCC) office.
- J. **“Women’s Business Enterprise”** (WBE) means a firm that has been certified by the Washington State Office of Minority and Women’s Business Enterprises as a WBE.

SECTION 3. PERIOD OF PERFORMANCE

- A. All required work and services specified in the terms and conditions of this Agreement for phase one, shall be completed by the Completion Date specified in Section 1, Agreement Summary unless extended or terminated earlier by the County pursuant to the terms and conditions of this Agreement. The County reserves the right to amend this Agreement to add future phases. The County also reserves the right to let the

Agreement expire at the completion of phase one and to select another consultant to perform the additional study and/or phases.

- B. Time. Time is a material consideration in the performance of all work by the Consultant under this Agreement. The Consultant shall complete its work and services within the project schedule, including any established milestones and task completion dates, and the Period of Performance, set forth in the Scope of Work. The completion dates for tasks may be modified by a written directive; however, the Period of Performance for the Agreement may only be modified through an amendment. The Period of Performance and Contract milestones shall not be extended because of any unwarranted delays attributable to the Consultant. The Period of Performance and Contract milestones may be extended in the event of a delay caused by the County which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not be reasonably anticipated, and which results in a delay in the Period of Performance and Contract milestones.
- C. The Total Price, Fixed Professional Fee, Period of Performance, and task budgets shall not be increased because of any unwarranted delays or costs attributable to the Consultant. In the event of a delay not attributable to the Consultant which (1) delay could not be reasonably anticipated and (2) results in an increase in costs to perform the work, the County may, through the execution of an amendment, adjust the Total Price, Period of Performance and/or task budget in accordance with the provisions of the Agreement.

SECTION 4. AGREEMENT COMPENSATION

- A. Subject to the provisions set forth in this Agreement, the County will pay ConsultantName on a monthly basis for authorized and satisfactorily completed work and services rendered under this Agreement. The amounts to be paid to ConsultantName shall be computed as herein set forth. Progress payments shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall the total progress payment(s) exceed the Total Price as defined herein. The amount to be paid to the Consultant shall be computed as hereinafter set forth; provided, that such payment shall not exceed the Total Price specified in Section 1, Agreement Summary. In the event the Consultant incurs costs in excess of the Total Price, the County shall not be required to pay any part of such excess and the Consultant shall pay such excess from its own funds and shall have no claim against the County on account thereof unless (1) ConsultantName has filed a timely request for cost and/or time adjustment (Section 6, Amendments to the Agreement) and timely claim and/or dispute (Section 23, Disputes and Remedies) and (2) resolution of the adjustment and/or claim or dispute is favorable to ConsultantName.
- B. Compensation for work and services shall be on a cost-plus fixed fee basis but not to exceed the Total Price. Compensation and the Total Price shall be the sum of Direct Labor Costs, Indirect Costs, Other Direct Costs, and a Fixed Professional Fee, as described and defined below. Costs to be paid are identified on the Cost Summary, which is attached hereto as Exhibit B and incorporated herein by this reference, and comprise the following:

1. **Direct Labor Costs.** Direct Labor Costs shall be the total number of allowable hours worked on the project by each individual multiplied by the Labor Rate identified in Exhibit B, Cost Summary for such individual.
 - a. The County shall only pay the Labor Rate and shall not pay any premium associated with overtime.
 - b. Labor Rates may be subject to reasonable adjustments in accordance with the following provisions:
 - (1) Labor Rates shall not be modified prior to the Labor Rate Adjustment Date specified in Section 1, Agreement Summary. Thereafter, any increase in Labor Rates shall be effective for a minimum period of at least 365 calendar days.
 - (2) The County has established a maximum labor rate limitation. Labor rates shall not exceed the maximum labor rate limitation except in exceptional and rare circumstances when the County, in its sole discretion, determines it is appropriate to pay a greater rate.
 - (3) The current Maximum Direct Labor Rate and current Maximum Billing Rate is specified in Section 1, Agreement Summary. The County will review the maximum labor rate limitation and adjust it either upward or downward in June of every year.
 - (a) If the new maximum labor rate limitation is greater than the current maximum labor rate established in this Contract, the new maximum labor rate will be effective at the next regularly scheduled date for labor rate adjustments. Adjustments are based on the most recent June maximum labor rate.
 - (b) If the new maximum labor rate is less than the current maximum labor rate established in this Contract:
 - (i) For personnel already assigned to the Contract who have reached the older higher maximum rate will maintain the rate previously approved by the County;
 - (ii) For new personnel or personnel who have not reached the maximum labor rate limitation, the new lower maximum labor rate limitation will apply.
 - (4) A Labor Rate increase must be based on an actual and verifiable increase in labor costs.
 - (5) The County has the right to refuse increases that lack reasonable justification.
 - (6) This Agreement includes a Labor Escalation Pool established to cover increases in labor rates. The Labor Escalation Pool is specified in Section 1, Agreement Summary. The Labor Escalation Pool is calculated based on the labor escalation rate specified in Section 1, Agreement Summary, starting on the Labor Rate Adjustment Date specified in Section 1, Agreement Summary. The Consultant shall manage the project to ensure that increases in Labor Rates do not exceed the Labor Escalation Pool. Any funds that are not used for increases in Labor Rates shall not be paid to the Consultant.

- (a) Every year the County establishes the escalation percentage applicable on architectural and engineering and professional service contracts executed during the next 12 months. This rate shall remain effective for the phase.
 - (b) For amendments adding new work to an existing phase, the escalation percentage shall be the escalation rate established for that phase.
 - (c) When a new phase of work is added to an existing contract, the escalation percentage shall be the most recent escalation rate established by the County.
- (7) ConsultantName shall provide a minimum of 30 days advance written notice of a change in Labor Rate. ConsultantName shall submit only one written notice of a change in Labor Rate per year (365 calendar day time period) that must include all individual Labor Rate increases. All proposed changes to Labor Rates for ConsultantName and subconsultants shall be submitted in the one written notice. Unless the County disagrees in writing with the proposed Labor Rate(s), the Consultant may start billing at the new Labor Rate 30 days after the advance notice; provided however, all new Labor Rates shall be effective at the beginning of a billing period. Labor Rates increases shall not be retroactive. Only services performed after the 30-day time period shall be billed at the new Labor Rate. The written notice of the Labor Rate changes is considered a part of the Agreement documents and shall be incorporated into the Agreement in the next amendment. Written notice shall contain the following information:
- (a) For each Labor Rate increase, identify the name of each individual, job title/position, old Labor Rate, new Labor Rate, percentage rate increase; projected hours for the remainder of the Period of Performance, and
 - (b) Affirmation that:
 - (i) The new Labor Rate represents the actual labor rate that is being paid to the employee as of the effective date of the rate increase;
 - (ii) The cumulative increases in Labor Rates will not exceed the funds allowed for escalation;
 - (iii) Labor Rate increases shall have no impact on the Scope of Work or Total Price; and
 - (iv) The County will receive all services identified in the Scope of Work for the Total Price of the Agreement.
 - c. The County or County's designee may audit the Consultant's books, records, and other supporting data relevant to the Labor Rate, including but not limited to other Agreement rates, terms, and conditions in order to evaluate and validate any rate increases or decreases. Should the County determine that the Labor Rate charged to the County is more than the Labor Rate paid to an individual, the County shall be entitled to a refund of the difference between the actual rate paid to the individual and the rate paid by the County plus associated overhead on the overpaid portion of the Direct Labor Costs.
2. **Indirect Costs.** Indirect Costs shall be the Overhead Rate identified in Exhibit B, Cost Summary for the firm multiplied by the Direct Labor Rates for every allowable hour worked on the project and billed by the individual.

- a. Overhead Rates shall not be modified prior to the Overhead Rate Adjustment Date specified in Section 1, Agreement Summary. Thereafter, any change in the Overhead Rates shall be effective for a minimum period of at least 365 calendar days. ConsultantName shall submit only one request per year that must include all changes to the Overhead Rate for ConsultantName and subconsultants.
- b. Overhead Rates shall be increased or decreased based on the County's review and approval of proposed Overhead Rate(s).
 - (1) The Consultant shall provide the County, on an annual basis, a copy of financial statements and Overhead Rates within 30 days of completion of the most current fiscal year review for ConsultantName and subconsultants. The Consultant is further obligated to provide the County with sufficient information concerning the Overhead Rate, including but not limited to annual audited Overhead Rates, any actual or provisional federal (FAR) Overhead Rates, and additional information as requested to validate overhead costs.
 - (2) The County or County's designee may audit the Consultant's books, records, and other supporting data relevant to the Overhead Rate, including but not limited to other Agreement rates, terms, and conditions in order to evaluate and validate any rate increases or decreases.
 - (3) In the event the Consultant does not provide the County with the financial statement and supporting documentation and new Overhead Rate for each fiscal year, should the County determine that the Overhead Rate charged to the County is greater than the County verified Overhead Rate for that fiscal period, the County shall be entitled to a refund of the difference between the rate paid by the County and the Overhead Rate.
 - (4) When the County reviews requests to adjust Overhead Rates, the County will review and consider the actual historical overhead costs incurred by the firm with respect to Business & Occupational taxes; however, should the B&O tax percentage be increased or decreased, the County will make no adjustment to the Overhead Rate to account for future B&O taxes associated with costs for this project.
- 3. **Other Direct Costs.** Other Direct Costs ("ODC") are identified in Exhibit B, Cost Summary. ODC shall be billed at cost, without markup. Allowable ODC fall into two categories: Invoiced ODC and Lump Sum ODC. Invoiced ODC are approved in advance by the Project Representative and are actually incurred. For all Invoiced ODC, the Consultant shall have a receipt from an independent company for goods or services and include Subcontract Costs and Travel Costs. Lump Sum ODC are negotiated and defined in the Agreement as Lump Sum ODC. All other ODC are unallowed costs.
 - a. Subcontract Labor Costs. Authorized subcontract services (which include services provided by subconsultants) shall be compensated through (i) Labor Costs, Indirect Costs, and Fee, specifically authorized by the County and identified in Exhibit B, Cost Summary or (ii) Billing Rate specifically authorized by the County and identified in Exhibit B, Cost Summary. Any labor costs or indirect costs that are not utilized and billed by the subconsultant shall not be paid to the Consultant.
 - (1) Labor Costs. Labor Costs shall be calculated in the same manner as specified in Section 4, Agreement Compensation and subject to the

provisions defined therein. Labor Rates for the subconsultants are identified for each individual in Exhibit B, Cost Summary.

- (2) Indirect Costs. Indirect Costs shall be calculated in the same manner specified in Section 4, Agreement Compensation and subject to the provisions defined therein. The Overhead Rate for each subconsultant is identified in Exhibit B, Cost Summary.
 - (3) Fee. The Fee for each subconsultant is established in Exhibit B, Cost Summary and shall be managed and paid out in the same manner as the provisions dealing with Fixed Professional Fee (Profit) defined later in this section.
 - (4) Billing Rate. Billing Rate(s) for the subconsultants are identified for each individual working on the project in Exhibit B, Cost Summary. Billing Rate costs shall be the total number of allowable hours worked on the project by each employee multiplied by the Billing Rate for such employee. Billing Rates include all costs associated with labor, overhead and fee. The County shall only pay the Billing Rate and shall not pay any additional compensation for overtime, nor shall the County pay premium rates. The parties agree the Billing Rates identified in Exhibit B, Cost Summary, shall be used during the entire term of this Agreement, including all amendments; provided however, Billing Rates may be subject to reasonable adjustments at the discretion of the County. Requests for increases to Billing Rate(s) shall be presented at the same time Labor Rate increases are submitted.
- b. Travel Costs. The Consultant shall only be reimbursed for travel costs while in approved Travel Status in accordance with U.S. General Services Administration (GSA) standards. Travel Status shall be limited to out-of-town experts who will be brought to Washington or individuals who reside in Washington and are sent out-of-town for a limited duration. Reimbursement of travel costs, including transportation, lodging, meals, and incidental expenses incurred while in a Travel Status in connection with project work is limited as follows:
- (1) That local travel while on Travel Status shall be by bus, taxi, or compact rental car;
 - (2) That reimbursement for meals inclusive of tips shall not exceed the limits identified in [King County Code 3.24.080](#);
 - (3) That accommodation shall be at a reasonably priced hotel/motel and shall not exceed the Federal maximum lodging rate limit established by the federal government for the appropriate locality (41 CFR 301 Appendix A); and
 - (4) That air travel shall be by coach class at lowest available commercial price taking into consideration the costs of transportation, other travel expenses, and salary.
 - (5) Lodging and meals and incidentals shall be reimbursed at the current GSA Per Diem Rate in effect at the time the services were provided.
 - (6) Mileage shall be reimbursed at the current IRS rate in effect at the time the services were provided.
- c. Reproduction, Copies, and Printing Costs. Reproduction or printing services on paper larger than 11" by 17" performed by an independent copy or reproduction

company must be reasonable and not be considered by the County to be included within the Lump Sum Other Direct Costs.

- d. Lump Sum Other Direct Costs. The County and Consultant have agreed to a lump sum cost, specified in Section 1, Agreement Summary (Lump Sum Other Direct Costs), which shall be paid in equal monthly installments, for all costs associated with the following items:
 - (1) Copies and Other Miscellaneous Reproduction and Duplication Costs. Copies and Other Miscellaneous Reproduction and Duplication is defined to include copying, reproduction and duplication of documents that is not performed by an independent copy or reproduction service, including but not limited to:
 - (a) Photocopies, Merlin plotter, or documents printed on printer, plotter, copier, or similar office equipment;
 - (b) Information printed on vellum, Mylar, transparencies; and
 - (c) Documents copied, printed, or reproduced in any manner in black and white and/or color.
 - (2) Courier Services, Mail, and Delivery Services. Courier services, mail, and delivery services includes all delivery services including but not limited to couriers, mail, UPS delivery, overnight or second day delivery, etc.
 - (3) Mileage, Parking, and Related Costs for Local Travel. The costs include mileage, parking, and related costs associated with Local Travel. Local Travel is considered travel within the State of Washington.
4. **Fixed Professional Fee (Profit).** The County shall pay a Fixed Professional Fee, which amount shall not exceed the maximum total sum specified in Section 1, Agreement Summary (Prime Fixed Professional Fee) for all work satisfactorily performed by ConsultantName. The County shall pay a Fixed Professional Fee, which amount shall not exceed the maximum total sum specified in Section 1, Agreement Summary (Subconsultants' Fixed Professional Fee) for all work satisfactorily performed by the subconsultants.
 - a. The Fixed Professional Fee is developed on the Direct Labor Costs. The Consultant acknowledges and agrees that the Fixed Professional Fee does not and shall not include any profit or other markup on Indirect Costs, subconsulting costs or Other Direct Costs.
 - b. The Parties acknowledges and agrees that the Fixed Professional Fee is a fixed amount, which cannot be increased because of any differences between the Total Price and actual costs of performing the work required by this Agreement. In no event shall payments to the Consultant exceed said Total Price.
 - c. The Consultant acknowledges and agrees that the Fixed Professional Fee is only due and payable for project work for which the County has given notice to proceed and which the Consultant has satisfactorily completed. The Fixed Professional Fee will not be paid for any tasks in the Scope of Work and Cost Summary that the Project Representative does not authorize the Consultant to perform.
 - d. The Consultant acknowledges and agrees that the amount of the Fixed Professional Fee may be adjusted by the County to:

- (1) Reduce the Fixed Professional Fee associated with Scope of Work that was not authorized by the Project Representative or performed by the Consultant;
 - (2) Reduce the Fixed Professional Fee associated with deletions in the Scope of Work;
 - (3) Increase the Fixed Professional Fee for additional work added to the Scope of Work through an amendment.
- e. The Fixed Professional Fee shall be paid as follows:
- (1) The Fixed Professional Fee will be paid monthly in proportion to the project work satisfactorily completed. The proportion of work completed shall be determined by earned value of the deliverables satisfactorily completed. Exhibit B, Cost Summary shall identify the deliverables for payment of the Fixed Professional Fee.
 - (2) A payment for an individual month shall include that portion of the Fixed Professional Fee allocable to the project work satisfactorily completed during said month and not previously paid; and
 - (3) Any portion of the Fixed Professional Fee not previously paid in the monthly payments shall be included in the final payment provided that the Consultant satisfactorily completed the entire Scope of Work subject to the limitations set forth above.
- C. Unallowable Direct Costs. The County shall not pay for any direct costs or charges associated with or relating to the following activities:
1. Any resubmission, changes to or adjustments in the invoices, and fixing improper invoices and the preparation and submission of monthly invoices if this cost is not included in the Consultant's overhead.
 2. Preparation of, discussion and/or negotiation of a request for:
 - a. Adjustments in any Labor Rate, Overhead Rate; and
 - b. Travel Status.
 3. Preparation for and negotiation of changes to Scope of Work, including but not limited to request for change, proposal preparation, drafting Scope of Work, Level of Effort, and Cost Summary, and negotiation of Scope of Work or related Level of Effort/Cost Summary, etc.
 4. Changing or reassigning personnel or subconsultants, including but not limited to preparing requests concerning Transfer of Knowledge for Key Personnel.
 5. Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, claims or Section 23, Disputes and Remedies.
 6. Compliance with Section 8C, Duty of Confidentiality.
 7. Providing the County or its designee(s) with access to project documentation and the project file.
 8. Relocation costs.
 9. Meals, except when in Travel Status.
 10. Compliance with Section 18, Audit and Access to Records.

11. Office supplies, facsimile machines, cell phones, communication equipment, and other miscellaneous company owned equipment; facsimiles; long distance; computer time charges; computer hardware, software, peripherals; computer support, information technology support.
12. Except as negotiated in the Lump Sum Other Direct Costs, photocopies, or documents printed on a printer, copier, or similar office equipment provided (a) the paper used was no larger than an 11" by 17" piece of paper; and (b) the document was not sent to an independent copy service for duplication.
13. Safety equipment and training.

D. Invoice Process.

1. Invoices shall be submitted to the Project Representative, or its designee no later than the Invoice Due Date specified in Section 1, Agreement Summary of each month. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Failure to provide timely invoices that comply with the invoice process of this Agreement may result in denial of payment and/or late payment.
2. A properly documented invoice for ConsultantName and subconsultant shall:
 - a. For each individual, detail the work by task, hours, and contract rates for labor, overhead, and fee.
 - b. Include copies of all invoices from authorized subconsultants for which payment is being requested.
 - c. Include only those individuals who are identified in the Agreement or have been approved in writing by the Project Representative.
 - d. Itemize and include copies of receipts and invoices for the Other Direct Costs, except Lump Sum Other Direct Costs for which reimbursement is being requested.
 - e. Receipts are not needed for reimbursement of meals if allowed while in Travel Status.
 - f. Provide a written representation of the accuracy of the rates billed, task completed, allowability, and percentage of work completed.
3. At no time shall the total cumulative amounts paid for project work exceed the Total Price multiplied by the percentage of the required work satisfactorily completed, as determined by the County.
4. The County will review a timely submitted invoice within 15 business days to determine if it is properly documented and inform in writing ConsultantName of any problems with such documentation. ConsultantName shall correct the inaccuracy in the invoice and resubmit within seven business days. Once the County receives a resubmitted and corrected invoice, the County shall have 15 business days to review and determine if it is properly documented.
5. The County shall pay a properly documented invoice within 20 business days after the County has determined that it has received a properly documented invoice.
6. The County is not obligated to review or pay an untimely invoice within the time periods described above.

7. The Consultant's Contract Purchase Agreement number in the King County Oracle financial system for submitting and processing invoices is included in Section 1, Agreement Summary. This CPA number shall be placed on each invoice submitted by the Consultant to the County.
 8. Compliance with Section 7, Reporting Requirements shall be made prior to the County processing and paying any progress payment.
- E. Prompt Payment of Subconsultants. Within 10 business days of receipt of a progress payment from the County that includes dollars for work performed by subconsultants, ConsultantName shall pay such subconsultants out of such amounts as are paid by the County, for all work satisfactorily completed by the subconsultant. If ConsultantName fails or neglects to make such payment within 10 business days, ConsultantName shall pay to the subconsultant interest computed at one percent per month on amounts due for the period beginning on the day after the required payment date and ending on the day on which payment of the amount is made. ConsultantName shall ensure that this paragraph is included in all subconsultant contracts for work on this project.
- F. Final Payment. Final payment for work completed by the Consultant under this Agreement shall be approved and paid for by the County within 60 business days after the following have been fulfilled:
1. Submittal of a properly documented final invoice from the Consultant;
 2. Satisfactory completion of all work required by Consultant and its subconsultants;
 3. Receipt by the County of all deliverables, documents and tangible items purchased for the County under the Agreement; and
 4. The acceptance of the final payment by the Consultant will constitute and operate as a release to the County of all claims and liability to the Consultant, its representatives, and assigns, for any and all work performed, furnished, or relating to the services rendered by or in connection with this Agreement or any part thereof. The Consultant agrees to reimburse the County for any overpayment discovered by the County or its authorized representative.
- G. No payment, whether monthly or final, to the Consultant for any project work shall constitute a waiver or release by the County of any claims, right or remedy it may have against the Consultant under this Agreement or by law; nor shall such payment constitute a waiver, remission, or discharge by the County of any failure or fault of the Consultant to satisfactorily perform the project work as required under this Agreement.

SECTION 5. ESJ INNOVATION PLAN REQUIREMENTS

- A. M/WBE Aspirational Goals. Consultant has committed to the M/WBE aspirational goals identified in Section 1, Agreement Summary. The aspirational goals are expressed as a percentage of the total value of the contract, as amended, to be performed by MBE and WBE firms over the life of this Agreement.
1. During the course of performing the work under the Agreement, the Consultant shall report its use of all MBE and WBE subconsultants. See Section 7.B Diversity Compliance Management System (DCMS) Reports below.
- B. The Consultant agrees to make the following Good Faith Efforts whenever procuring subcontracts, equipment, services, and supplies, and shall retain records documenting compliance:

1. Ensuring M/WBE firms are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This includes placing M/WBE firms on solicitation lists and soliciting them whenever they are potential sources.
 2. Making information on forthcoming opportunities available to M/WBE firms and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by M/WBE firms in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
 3. Considering in the contracting process whether firms competing for large contracts could subcontract with M/WBE firms. This includes dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by M/WBE firms in the competitive process.
 4. Encourage contracting with a consortium of M/WBE firms when a contract is too large for one of these firms to handle individually.
 5. Using services and assistance of the Small Business Administration, the Washington State Office of Minority and Women's Business Enterprises, and the Minority Business Development Agency of the Department of Commerce.
 6. If the prime consultant awards subcontracts, requiring the subconsultants to take the five Good Faith Efforts in paragraphs one through five above.
- C. Calculating M/WBE Participation.
1. For purposes of calculating the utilization of MBE and WBE firms, the County will count the participation as follows:
 - a. Firms must be certified as CBE, MBE, MWBE, or WBE to count towards the M/WBE goals. Firms who are certified as CBE or MWBE may count towards either MBE or WBE goals but not both.
 - b. Self-performance by an M/WBE prime Consultant can be counted toward the goal percentages.
 - c. Percentage of contract amount. The M/WBE subconsultant participation shall be calculated as a percentage of the total contract amount.
 - d. Commercially Useful Function. M/WBE participation shall be counted only for M/WBE 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 some other non-M/WBE firm. An M/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 M/WBE firm having the contract. If an M/WBE firm is performing at least 51% of the subcontract amount, 100% of the subcontract amount will count towards the goal percentages.
 - e. Brokers. M/WBE firms that act as a broker in a transaction shall not count towards the good faith M/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 M/WBE firm will be considered a broker if it subcontracts more than 49% of its work.

- f. Joint Ventures. Joint ventures shall be counted toward the percentage of M/WBE participation by crediting the M/WBE partner's portion of the hours proposed for the joint venture. Where the M/WBE's risk of loss, control or management responsibilities are not commensurate with the share of profit, the Administrator or designee may direct an adjustment in the percentage of participation. In the case of a joint venture that includes a M/WBE, credit will be calculated proportionately toward their respective objective.

D. Corrective Action Plan.

1. During Contract performance, if the Consultant is not meeting the M/WBE aspirational goals or making satisfactory progress towards the objectives identified in the ESJ Innovation Plan, the County may request submission of a corrective action plan. The Consultant shall submit a corrective action plan within 10 business days of a written request from the County. The corrective action plan shall contain the following elements:
 - a. An explanation of the circumstances contributing to the M/WBE aspirational goal shortfall.
 - b. A summary of the impacts to M/WBE firms on the project due to the shortfall.
 - c. A detailed list of actions that the Consultant will take to correct the shortfall and meet the aspirational goals for M/WBE participation for the project.
 - d. A summary of the status of activities and actions identified in the ESJ Innovation Plan, and the effectiveness of each one toward meeting the aspirational goals.
 2. If the County determines that the corrective action plan submitted by the Consultant is unsatisfactory, the County may withhold payments, or terminate the contract for default.
- E. The obligation of the Consultant is to make Good Faith Efforts to meet the M/WBE aspirational goals. The Consultant can demonstrate that it has achieved this objective by either meeting the M/WBE aspirational goals or documenting its Good Faith Efforts. If the Consultant does not meet the M/WBE aspirational goals, the County will make a determination on whether the Consultant made adequate Good Faith Efforts to meet the stated goals. The County will consider the quality, quantity, and intensity of the documented Good Faith Efforts made by the Consultant. The County will not consider mere pro forma efforts as Good Faith Efforts.
- F. The Consultant's unexcused failure to comply with the Good Faith Efforts requirements and provisions of this Contract to meet the M/WBE aspirational goals 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 months, or (ii) a debarment for a period not more than two 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.
1. Before imposing any suspension or debarment, the Administrator shall first provide written notice of a potential violation to the Consultant. The Consultant shall have an opportunity to submit a written reply within 10 calendar days from the date the

Administrator's notice of a potential violation is mailed or emailed to the Consultant. The Administrator shall notify the Consultant in writing of their final determination.

SECTION 6. AMENDMENTS TO THE AGREEMENT

- A. The County may, at any time, by written amendment direct the Consultant to make changes within the general scope of the services or work to be performed under this Agreement. Any direction from the County to perform work that results in an increase or decrease in Scope of Work, changes to the Total Price or Period of Performance, or changes impacting the Fixed Professional Fee shall be made only by a written amendment prior to the work being performed.
 - 1. The Department Director or its designee is the only authorized County representative who may sign amendments.
 - 2. If agreement cannot be reached by the County and ConsultantName, the amendment may be signed by the County requiring changes to Agreement and directing the Consultant to perform the related work.
 - 3. An amendment executed by the County and ConsultantName represents full and final agreement and resolution of all issues associated with the amendment.
- B. Consultant Notice of Issues that May Impact Scope, Schedule, and Cost.
 - 1. In the event the Consultant identifies something that may impact the Scope of Work, Project Schedule, Total Price, task budget(s), or cost of performing work, ConsultantName shall inform the Project Representative in writing prior to exceeding the task budget(s) and within seven calendar days of the event and possible impacts to scope, schedule, and cost or task budget. If appropriate, the parties shall execute an amendment prior to the work being performed.
- C. Authority of the Project Representative.
 - 1. Directives
 - a. The Project Representative may, at any time, by written or oral directive require the Consultant to perform work consistent with Exhibit A, Scope of Work; provided that this directive does not add scope or cost to the project.
 - b. If the Project Representative gives the Consultant an oral directive, the Consultant shall document the oral directive and provide the Project Representative with a copy of the documented oral directive within seven calendar days of the directive.
 - c. A written or oral directive to the Consultant from anyone other than the Project Representative is not binding on the County.
 - d. Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment.
 - 2. Adjustments to Task Budgets
 - a. The Project Representative may adjust the task budgets in Exhibit B, Cost Summary provided that the Total Price, Period of Performance, and/or the Fixed Professional Fee are not impacted or affected by the adjustment to the task budget.
 - b. Adjustments to task budgets must be authorized in writing by the Project Representative prior to the work being performed and such authorization must

specifically identify the task budgets impacted and the specific Scope of Work to be performed. Written authorization will include a budget crosswalk for task budget adjustment on the County authorized form (See Exhibit F, Budget Crosswalk) and a detailed description of the dollars that are being moved from a particular task and subtask to the new task and subtask.

- c. Adjustments to task budgets are only authorized when:
 - (1) Money is taken from a task budget where the work is complete and there is money remaining in the task budget; or
 - (2) Money is moved between tasks and there is no impact on the Period of Performance, Fixed Professional Fee, or the Total Price of the Agreement.
- 3. Any directive and any adjustment in the task budgets shall not constitute a change or entitle the Consultant to additional compensation or a time adjustment.
- D. Work Order Tasks. If the Agreement includes work order tasks, Consultant shall not perform any services related to the work order tasks until the Project Representative provides written direction. Written direction shall include a defined Scope of Work, associated deliverables, and agreement on the cost of the work.
- E. Request for Amendment.
 - 1. If the Consultant believes work identified in a directive and/or adjustment to a task budget is not within the Scope of Work (Exhibit A) and/or causes an increase or decrease in cost or time required for performance of any services under this Agreement, ConsultantName shall within seven calendar days of the directive or adjustment to a task budget, on behalf of itself or its subconsultants, and prior to performing any work, request in writing a cost or time adjustment to the Agreement. Such request for an adjustment shall be submitted to the Project Representative.
 - 2. The Consultant shall not perform the work identified in the directive and/or adjustment to the task budget until the County and Consultant execute an amendment pursuant to this section or the County issues a written letter denying the Consultant's request for a cost and/or time adjustment.
 - 3. After receiving the County's denial letter, even if the Consultant disagrees with the County's decision, the Consultant shall perform the work as indicated in the directive and/or task budget adjustment. If the Consultant disagrees with the County's denial, ConsultantName shall notify the Project Representative of its disagreement and the reasons for its disagreement within seven calendar days of receipt of the County's denial letter and the Consultant shall submit in accordance with Section 23, Disputes and Remedies a claim for adjustment in writing to the Department Director's designee within 30 calendar days from the date of receipt of the County's decision. The County shall identify the Department Director's designee for purposes of this paragraph and Section 19, Prohibited Interests in the County's denial letter. Failure to file a written claim for adjustment shall constitute acceptance of the County's decision and shall waive the Consultant's right to additional compensation or a time extension.

SECTION 7. REPORTING REQUIREMENTS

- A. Monthly Reports. Unless otherwise stated in Exhibit A, Scope of Work, not later than the 15th day of each calendar month during the performance of the project, the Consultant shall submit to the Project Representative, a monthly report, in a format approved by the

Project Representative, sufficient to show the activities completed and the progress as measured against Exhibit A, Scope of Work, Exhibit E Project Schedule, and Exhibit B Cost Summary. At a minimum the monthly report shall identify costs incurred, budget status (budget versus estimated balance to complete), amendments, project schedule, ESJ Innovation Plan implementation, any variance between planned versus actual project performance, all issues that may result in completion of any task beyond the established schedule or task budget, and all issues that may result in an increase in Total Price. Failure to provide timely monthly reports that comply with this provision may result in denial of payment and/or late payment.

1. ConsultantName shall submit monthly reports detailing all work completed by subconsultants during the preceding month and copies of all invoices relating thereto. Failure to provide timely monthly reports that comply with this paragraph may result in denial of payment and/or late payment.
2. ConsultantName shall submit monthly reports on implementing its ESJ Innovation Plan. The report shall include information detailing all activities completed and planned during the preceding month for each Plan element, and any potential challenges.

B. Diversity Compliance Management System (DCMS) Reports

1. The Consultant shall report monthly in the DCMS website located at <https://kingcounty.diversitycompliance.com>. Email opportunity@kingcounty.gov for assistance. Such information shall be submitted prior to the County processing and paying any invoice. Reporting requirements include:
 - a. Payment Reports for Subconsultants and Suppliers. The Consultant shall submit payment reports for all subconsultants and suppliers using DCMS.
 - (1) The Consultant shall submit a payment report detailing amounts paid to each subconsultant and supplier monthly. The Consultant shall submit the first payment report by the 15th day of the first month after work has commenced.
 - (2) Subsequent monthly payment reports for all subconsultants and suppliers must be submitted by the 15th day of every month thereafter. Within DCMS the Consultant shall identify “zero” payments for subconsultants or suppliers when no work has been performed during a report period.
 - (3) The Consultant shall notify and instruct all subconsultants and suppliers performing Work to date, to sign into DCMS and verify payments received for each reporting period.
 - (4) Upon completion of all work and as a condition precedent to final payment, the Consultant shall complete the last payment report and identify this document as “final” and submit this document into DCMS. The final payment report must list the name of and dollar amount paid to each subconsultant and supplier used by the Consultant. Failure to submit the final payment report may result in withholding of payments or the final payment.
 - b. Add Subconsultants and Suppliers. The Consultant shall add all firms used on the project electronically using DCMS following written approval from the County as specified in Section 11, Administration and Supervision in this Agreement.
 - c. The Consultant must submit other information as requested by the County to verify subconsultants 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 Consultant, as necessary. Failure to submit such reports may result in withholding payments or the final payment.

SECTION 8. RESPONSIBILITY OF THE CONSULTANT

A. Standard of Care.

1. The Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings, specifications, reports, and other services prepared or performed pursuant to this Agreement. The Consultant shall perform its work in accordance with the requirements of this Agreement and pursuant to the standards of professional care, skill, diligence, and competence as are normally exercised by other members and/or firms of the profession in good standing working under the same or similar conditions and circumstances and in similar communities as the services provided by the Consultant under this Agreement. The Consultant shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement on behalf of Consultant. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such plans, designs, drawings, specifications, reports and other services not in compliance with the requirements of this Agreement and/or not meeting the Consultant's professional standards of care, skill, diligence and competence for the work to be performed for this project; and ConsultantName shall promptly reimburse the County for any and all costs or damages incurred by the County, including but not limited to the cost to redesign the project and the cost to repair or replace the defective in-place work. The County shall also have the right to deduct from payments to the Consultant any costs or damages incurred by the County, or which may be incurred by the County, as a result of the Consultant's failure to comply with the requirements of the Agreement or failure to meet the professional standard of care and skill, or both.
2. The County's approval of plans, drawings, designs, specifications, reports, and other products of the professional services rendered hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither the County's review, approval, acceptance of, and/or payment for any services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The County shall make a good faith effort to review materials in an expeditious manner; provided however that the County shall have a minimum of 30 calendar days to review and provide comments on plans, drawings, specifications, reports, or other products. The County typically completes its review within 45 calendar days.
3. Should the Consultant produce and maintain a document criticizing, challenging, or disagreeing with any decisions by the County concerning design and/or management of the project, the design, and/or any findings or final conclusions, the Consultant shall (a) first discuss the matter with the County and try to reach resolution and (b) provide the County with a copy of the document within five calendar days of producing the document. Any such document shall identify reasonable and realistic solutions.
4. The Consultant shall be knowledgeable and familiar with the County's Construction General Conditions and any County provided Division 0 and technical specifications

(Division 1). Any technical specifications drafted by the Consultant shall be consistent with these Divisions and such technical specifications should not create any ambiguity or conflict with these Divisions.

5. The Consultant shall not assign, sublet, mortgage, pledge as collateral, substitute for obligation, or otherwise encumber any rights, duties or interests accruing from this Agreement, other than accounts receivable, without the prior written consent of the County. Unless otherwise stated in the written consent to the assignment, sublet, mortgage, pledge, or encumbrance, no such consent shall release the Consultant from any obligation under this Agreement.

B. Maintenance of Project Documentation.

1. Document Retention Policy. The Consultant shall establish a Document Retention Policy consistent with Washington state law, King County Code, and the following requirements:
 - a. The Consultant shall comply with the Document Retention Policy.
 - b. The Document Retention Policy shall define Official Project Documentation and require that Official Project Documentation and other appropriate documentation be maintained in the project file.
 - c. Draft reports, specifications and drawings are not considered valid Official Project Documentation as they have been replaced and/or superseded by the final report, specifications, and drawings. The Document Retention Policy should address how draft reports, specifications and drawings are maintained in the project file.
 - d. In addition to printed copy of all project documentation, the Consultant shall create and maintain documents on software format (and version) approved by the County.
 - e. The Consultant shall review its email to determine whether the email is considered Official Project Documentation or other appropriate documentation to be maintained in the project file. Any email not considered Official Project Documentation or appropriate documentation for the project file shall be deleted and not maintained in the project file.
 - f. The County shall review and approve the Document Retention Policy.
 - g. The project file shall be available for review by the County or an authorized representative at any time.
 - h. The Consultant shall maintain all documents for a period of not less than six years after final acceptance of all construction projects related to this Agreement or until resolution of any litigation related to this Agreement or any related construction contract, whichever occurs later.
2. Upon written request by the Project Representative, the Consultant shall provide the County with access to all documents and correspondence, including e-mail communications, memoranda, and all other written materials prepared or used in performance of work on this project.
3. 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).

- a. If the Consultant 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 Consultant 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 Consultant of the request and allow the Consultant ten (10) business days to obtain a court order enjoining release in accordance with [Chapter 42.56.540 RCW](#). If the Consultant 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 Consultant for releasing records, including DESIGNATED MATERIAL, in response to a public records request. The Consultant is advised that pricing extended to the County and overly broad designations of confidentiality, for example, covering information publicly available on the Consultant's website, are not considered to be a DESIGNATED MATERIAL.

C. Duty of Confidentiality.

1. The Consultant acknowledges that unauthorized disclosure of information or documentation concerning this project may cause substantial economic loss or harm to the County. Except as otherwise required by court order or subpoena, the Consultant shall not without prior written authorization by the Project Representative:
 - a. Allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation obtained, discovered, shared, or produced pursuant to this Agreement;
 - b. Allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation which relates to the technical or business activities of the County obtained, discovered, shared, or produced pursuant to this Agreement; and/or
 - c. Disclose to any third party any calculations, notes, reports, drawings, electronic files, including all emails, or any other materials, information, or this Agreement.
2. The Consultant may disclose information and documentation to individuals who have a substantial need to know the specific information in question in connection with the Consultant's exercise of rights or performance of obligations under this Agreement. The Consultant shall inform its subconsultants, employees, and representatives of their obligations under this Agreement and instruct them so as to ensure such obligations are met. If so requested by the Project Representative, the Consultant further agrees to require its subconsultants and individuals performing services pursuant to this Agreement to execute a confidentiality agreement.
3. The Consultant shall not release any information or documentation concerning the work under this Agreement or any part thereof in the form of advertising, marketing activities or publication including news releases or professional articles, without the prior written approval of the Project Representative. All news releases, professional articles, advertising, publicity, or other marketing activities, which describes or discusses the project shall be reviewed and approved by the Project Representative prior to publication, disclosure, and/or distribution. The Consultant may submit for

review and approval a generic project abstract describing the component parts of the project. After receiving written approval of the project abstract from the Project Representative, the Consultant may make minor insignificant changes to the project abstract and use all or parts of the project abstract in proposals.

- D. In the event of any breach or threatened breach by the Consultant or subconsultants of their Duty of Confidentiality and the Maintenance of Project Documentation, the County will have all rights and remedies that are available to it at law or equity.
- E. This section shall survive for six years after the termination or expiration of this Agreement.
- F. Drug and Alcohol Policies.
 - 1. King County is committed to a safe, healthy, drug-free, and alcohol-free work environment on all County property and worksites. Consultant'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 Consultant's employee's appearance, speech, behavior, and odor when making this determination. King County will notify the Consultant of the County employee's observations. The Consultant 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.
- G. ConsultantName shall ensure that the paragraphs in Section 8.A-8.G, Responsibility of the Consultant, are included in each subconsultant's contract for work on the project.
- H. Responsible Contractor. As a condition of award for contracts valued at \$100,000 or more, the Consultant agrees that it shall [comply with the criteria in King County Ordinance 19925](#), to which the Consultant attested on the Responsibility Detail Form. Failure to comply with the criteria specified in the ordinance and to which the Consultant 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 9. INSURANCE

- A. The Consultant shall obtain and maintain at a minimum the limits of insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant, or that of any subconsultant, under this Agreement. The Consultant and its subconsultant(s) shall assess their own risks and, if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage. Any provision in any Consultant or subconsultant insurance policy that restricts scope of coverage or available limits of liability to those specified in a written agreement or contract shall not apply.
- B. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, is acceptable on a "claims made" form.
- C. If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through: (1) policy renewals for not less than three years from the date of completion of the work which is the subject of this Agreement or (2) the purchase of an extended discovery period for not less than three years from the date of

completion of the Work which is the subject of this Agreement if such extended coverage is available. All insurance written on a "claims made" form must have its retroactive date be no later than the Effective Date of the Contract or when the Work begins.

- D. The Consultant shall include all Subconsultants as insureds under its policies, or, alternatively, the Consultant must require each of its Subconsultants to procure and maintain appropriate and reasonable insurance coverage and insurance limits to cover each of the Subconsultant's liabilities given the Scope of Work and the services being provided herein. All liability insurance policies (except Professional Liability, Cyber Liability (Technology Errors and Omissions), and Workers' Compensation) provided by the Subconsultant(s) must include King County, its officers, officials, agents, and employees as additional insured for full coverage and policy limits. Consultant is obligated to require and verify that all Subconsultants maintain insurance and ensure that King County is included as additional insured. Upon request by King County, and within five business days, Consultant must provide evidence of Subconsultant(s) insurance coverage (including endorsements).
- E. Provided the affected insurance policies permit the following waiver, without voiding coverage, Consultant and County waive all rights against each other to subrogation for damages covered by property insurance.
- F. The King County Office of Risk Management reserves the right to review and revise insurance requirements for each additional phase of the project and/or change in scope. The limits of insurance required below are only minimum limits. The County shall have the right to receive coverage up to any insurance limits maintained by the Consultant and/or subconsultant that exceed the minimum limits.
- G. The Consultant shall maintain the following insurance with limits no less than:
 - 1. **General Liability. \$1,000,000** combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a **\$2,000,000** aggregate limit. Coverage shall be at least as broad as Insurance Services Office form number (CG 00 01), or its substantive equivalent covering **COMMERCIAL GENERAL LIABILITY**. Such insurance shall include coverage for, but not limited to, premises liability, ongoing operations, contractual liability, products and completed operations. Such limits may be satisfied with the use of an umbrella or excess liability policy, which is at least as broad as the underlying policy.
 - a. A per project aggregate shall apply to the General Liability policy.
 - b. Explosion, Collapse, and Underground Damage (XCU) coverage shall be included. The Certificate of Insurance shall state that Explosion, Collapse, and Underground Damage (XCU) coverage is included or has not been excluded.
 - 2. **Professional Liability (Errors and Omissions). \$2,000,000** per claim or occurrence and in the aggregate is required.
 - 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 Insurance Services Office form number (CA 00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. If the Work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent), MCS 90, or auto pollution coverage. Such limits may be satisfied with

the use of an umbrella or excess liability policy, which is at least as broad as the underlying policy.

4. **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as 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.
 5. **Employer's 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 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.
 6. **Contractor's Pollution Liability.** Contractor's Pollution Liability coverage in the amount of **\$1,000,000** per occurrence and in the annual aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the physical injury or destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed.
- H. Any deductible or self-insured retention of the policies shall not in any way limit the County's right to coverage under the required insurance, or to Consultant's or any Subconsultant's liability to the County, and shall in all instances be the sole responsibility of the Consultant and any Subconsultant, even if no claim has actually been made or asserted against Consultant or Subconsultant.
- I. The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:
1. **Liability Policies except Professional Liability (Errors and Omissions), Cyber Liability (Technology Errors and Omissions), and Workers Compensation:**
 - a. The County, its officers, officials, employees, and agents are to 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 Consultant in connection with this Agreement. Such additional insured status shall include Products-Completed Operations. **The County requires a copy of the additional insured endorsement(s) to complete the Contract.**
 2. **With respect to all liability policies (except Workers Compensation):**
 - a. Coverage shall be primary insurance as respects the County, its officials, employees, and agents. Any insurance or self-insurance maintained by the County, its officials, employees, or agents shall not contribute with any Consultant's or Subconsultant's insurance or benefit the Consultant or any Subconsultant, or their respective insurers in any way.
 - b. 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.
- J. 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.

- K. If at any time of the foregoing policies shall fail to meet the minimum standards above, the Consultant 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 approval.
- L. The Parties acknowledge that prior to execution of the Agreement, the Consultant submitted to King County Procurement and Payables (P&P) Section certificates of insurance and endorsements from the insurer(s) certifying the coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the King County contract name and contract number, the expiration date, and provides that King County receives notice at least 30 calendar days prior to the effective date of any policy limit or cancellation of required coverages.
- M. After execution of the Agreement, the Consultant shall notify the Project Representative or designee at least 30 calendar days prior to the effective date of any cancellation or reduction in coverage in the policy. The Consultant shall maintain during the entire Agreement period and for three years thereafter, insurance coverage at least as broad as the limits and coverage outlined in this Agreement. **All insurance renewal certificates and endorsements shall be sent to the King County Project Representative or designee annually.** Documentation of coverage shall be provided on each insurance renewal date. The Consultant shall, upon demand of King County, make available to King County all such policies of insurance and the receipts of payment of premiums thereon. Failure to provide such policies of insurance within a time acceptable to King County shall entitle King County to suspend or terminate the Consultant's Work hereunder. Suspension or termination of this Agreement shall not relieve the Consultant from its insurance obligation hereunder.

SECTION 10. DESIGN SPECIFICATIONS STANDARDS

- A. Washington State Department of Transportation ("WSDOT") specification provisions shall not be included as a reference within any design or specification deliverable under this Agreement. If the Project Representative provides written direction, the Consultant may copy WSDOT specifications into the technical specifications so long as all internal references to other WSDOT specifications are removed. If a Consultant includes WSDOT specifications that include internal references, the Consultant may not be compensated for specification revisions.

SECTION 11. ADMINISTRATION AND SUPERVISION

- A. COUNTY. Management and general supervision for the Agreement will be the responsibility of the County department specified in Section 1, Agreement Summary.
 - 1. The Department Director or its designee shall be identified in writing at the time of execution of the Agreement. The Department Director and its designee are the only authorized County personnel who may sign amendment(s) and authorize changes to the Total Price, Period of Performance, and Fixed Professional Fee.
 - 2. An employee of the County, hereinafter called the "Project Representative," who shall be designated in writing by the County, shall perform day-to-day management of this Agreement.
 - a. Unless otherwise indicated in writing by the Department Director or its designee, the Project Representative will issue notices to proceed, approve all requests for

payment, authorize termination or modification of tasks, and approve in writing changes to the task budgets outlined in Exhibit B, Cost Summary attached hereto and incorporated by reference, provided the changes do not impact the Total Price, Period of Performance, and the Fixed Professional Fee.

- b. The Project Representative will also be responsible for determining when the Consultant has satisfactorily performed all work and for ensuring that the Consultant complies with all provisions of this Agreement, including non-discrimination and affirmative action requirements.
- B. CONSULTANT. ConsultantName represents that it has, or will obtain, all personnel necessary to perform the services required under this Agreement and that such personnel shall be qualified, experienced, and licensed as may be necessary or required by laws and regulations to perform such services. All services required under this Agreement shall be performed by ConsultantName, its employees, or by subconsultants whose selection has been authorized by the County; provided, that the County's authorization shall not relieve the Consultant from any duties or obligations under this Agreement or at law to perform in a satisfactory and competent manner.
1. Authorized Subconsultants. The Agreement shall identify the subconsultants who are authorized to perform work under this Agreement in Exhibit B, Cost Summary.
 2. Process for Adding or Removing Subconsultants. If during the term of this Agreement, ConsultantName wishes to add or remove a subconsultant, ConsultantName shall provide the Project Representative with a written request identifying the proposed change. The written request shall include the following information:
 - a. Identity of the subconsultant and the work to be performed;
 - b. Resumes and documentation outlining the subconsultant's experience;
 - c. Direct Labor Costs (labor rate or billing rate), Indirect Costs, Other Direct Costs, Fixed Professional Fee, and supporting documentation; and
 - d. If the subconsultant is to perform work of ConsultantName or another subconsultant already identified in Exhibit B, Cost Summary an explanation of why the work is going to be transferred to a new subconsultant.
 3. County Approval of Subconsultants. Before any subconsultant not already identified in the Agreement can perform any work under this Agreement, the County shall provide written authorization. Authorization shall not be unreasonably withheld. Such written authorization shall be followed up with an amendment to the Agreement.
 4. Substitution of Personnel. The Consultant recognizes and agrees that if a change is made substituting or changing assigned personnel, the Consultant shall be responsible for all costs associated with "Transfer of Knowledge and Information". The Transfer of Knowledge and Information shall be defined to include the labor hours spent reviewing project documentation, participating in meetings with project personnel, and participating in site visits to familiarize oneself with the project and project location(s). The County shall not pay for any time spent for the "Transfer of Knowledge and Information".
 - a. The Consultant shall provide sufficient advance notice of any intention to remove or reassign personnel. The Consultant shall not remove or reassign the Key Personnel assigned to this project without written consent from the County.

- (1) Key Personnel. Exhibit D, Key Personnel, is a listing of individuals. Notice for the substitution of individuals and positions identified as Key Personnel shall include the following:
 - (a) An explanation of the reason for the reassignment or removal;
 - (b) The name of the person proposed to replace the individual;
 - (c) Identification of the experience and qualifications of the individual proposed;
 - (d) A plan and schedule showing how the Transfer of Knowledge and Information between the departing and incoming individual will occur; and
 - (e) Proposed allocation of hours associated with the entire Transfer of Knowledge and Information.
- (2) Individuals Other Than Key Personnel. For individuals who are not identified as "Key Personnel" in Exhibit D, ConsultantName does not need to provide advance notice to the Project Representative, provided however, the substituted individual's labor rate was approved in the Agreement, Exhibit B, Cost Summary. If the labor rate was not approved in Exhibit B, Cost Summary then ConsultantName shall provide documentation supporting the labor rate for the substituted personnel prior to submitting an invoice and the labor rate shall not significantly differ from the originally assigned personnel.
- b. The Consultant shall provide a certification with its invoice certifying that the time associated with the "Transfer of Knowledge and Information" is not billed to the County and is not a cost borne by the County.
- c. The County shall not unreasonably withhold consent to remove Key Personnel.
5. County Request Removal Personnel. ConsultantName shall remove from the project any personnel or subconsultant if, after the matter has been thoroughly considered by the County and the Consultant, the County considers such removal necessary and in the best interests of the project and so advises ConsultantName in writing.

SECTION 12. SCOPE OF WORK

- A. The County hereby retains the Consultant upon the terms and conditions contained herein to perform certain work and services on the project. The work and services for the project to be performed by the Consultant are set forth in Exhibit A, Scope of Work, attached hereto, and incorporated herein by this reference. The general project schedule is set forth in Exhibit E, Project Schedule attached hereto and incorporated herein by reference.
- B. The County may make available to the Consultant, without cost, copies of as-built plans, drawings, survey notes, studies, soil reports, maintenance and performance records, and other relevant data, and property descriptions of various County facilities related to the project, which are readily available, and on file at the County. These documents are available solely as additional information to the Consultant and do not relieve the Consultant of its duties and obligations under this Agreement nor constitute any representation, warranty, or guarantee by the County as to conditions or other matters related to the project. The Consultant may reasonably rely on the data contained in such documentation; however, the Consultant is responsible to perform a review of the data within 30 calendar days of receipt of the data and notify the County immediately in writing of any perceived defects, inaccuracies, or discrepancies with the data. If, at a

later time, the Consultant discovers any defects with the data, ConsultantName shall immediately inform the County in writing of such defects, inaccuracies, or discrepancy.

- C. It shall be the responsibility of the Consultant to gather and become familiar with all reasonably available site information including existing improvements.

SECTION 13. DELIVERABLES

- A. In the performance of this Agreement, the Consultant shall, to the extent practicable, design and draft specifications that provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement and through standard or proven production techniques, methods, and processes.
- B. Unless the Consultant has provided a written justification for the use of a single source and/or restrictive design or specification and the County provides written concurrence of such use, the Consultant shall not, in the performance of the work under this Agreement:
 - 1. Produce a design or specification which would require the use of structures, machines, products, materials, construction methods, equipment, or processes which the Consultant knows to be available only from a single source; and/or
 - 2. Produce a design or specification which would be restrictive or written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance.
- C. When one or more brand names or trade names of comparable quality or utility are listed the words "or approved equal" shall follow the brand name(s) and the salient characteristics shall be identified.

SECTION 14. COMMENCEMENT

- A. Notice to Proceed. After execution of this Agreement, the County will issue a written notice to proceed on the project or specific tasks thereof. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified work products and shall set forth the date of commencement of the work, a description of the work to be performed, the schedule for the work authorized, and the budgets for such tasks. Upon receipt of a notice to proceed, the Consultant shall promptly commence work. Upon the satisfactory completion of the work, the County will evaluate such work.

SECTION 15. SUBCONTRACTS

- A. Subcontracts.
 - 1. All subconsultants are subject to prior authorization by the County. Each subcontract shall be available for review and the cost summary subject to review by the Project Representative prior to the subconsultant proceeding with the work. The County hereby authorizes the Consultant to subcontract with the subconsultants listed in Exhibit B, Cost Summary.

SECTION 16. NON-DISCRIMINATION REQUIREMENTS

- A. Nondiscrimination and Equal Employment Opportunity (EEO)
 - 1. **Nondiscrimination in Employment.** During performance of this Contract, the Consultant and all parties subcontracting under the authority of this Contract agree that they will not discriminate against any employee or applicant for employment

because of one or more of the employee or applicant's protected classes as defined in King County Code 3.12D, as amended, unless based upon a bona fide occupational qualification. Reference: [King County Code 12.16.020](#).

2. **Equal Employment Opportunity Efforts.** The Consultant and all parties subcontracting under the authority of this Contract agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated without regard to one or more of their protected classes as defined in King County Code 3.12D, as amended. The Consultant's 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 Consultant agrees to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with [King County Code 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.
3. **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 Consultant 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 Consultant to administrative sanctions and remedies for breach. When the contract is valued at \$25,000 or more, by signing the Contract the Consultant is indicating compliance with this requirement or with the terms of an authorization for delayed or alternative compliance.
4. **Nondiscrimination in Subcontracting Practices.** During the term of this Contract, the Consultant 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 subconsultants and suppliers, the Consultant shall not discriminate against any person because of one or more of their protected classes as defined in King County Code 3.12D, as amended.
5. **Compliance with Laws and Regulations.** The Consultant and all parties subcontracting under the authority of this Contract 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. In addition, [King County Code 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 Consultant and its subconsultants 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.
6. **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 Consultants. The Consultant 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 or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability.

- a. The Consultant agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by [King County Code 12.16](#); and
 - b. The Consultant shall not discriminate against persons with disabilities in providing the work under the Contract. In any subcontracts for the programs, activities and services under their Contract or agreement with the County, the Consultant shall include the requirement that the subconsultant provide to persons with disabilities access to programs, activities and services provided under the Contract or agreement, as required by the disability access laws as defined by [King County Code 12.16](#), that the subconsultant shall not discriminate against persons with disabilities in providing the work under the Contract and that the subconsultant shall provide that the County is a third party beneficiary to that required provision.
7. **Sanctions for Violations.** Any violation of the requirements of these provisions shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment, cancellation or suspension, in whole or in part, of the Contract by the County, or invoking the enforcement provisions of [King County Code 12.16](#) that provide for penalties, liquidated damages or other remedies, and may result in ineligibility for County contracts.
8. **Record-keeping Requirements and Site Visits.** The County may visit, after reasonable notice, the Project Site, and Consultant and subconsultant offices to review records related to the solicitation, utilization, and payment to subconsultants and suppliers. This provision includes compliance with any other requirements of this section. The Consultant shall provide all reasonable assistance requested by King County during such visits. The Consultant shall maintain, for at least six years after completion of all work under this Contract, and permit access by the County to the following:
 - a. Records, including but not limited to written quotes, bids, estimates or proposals submitted to the Consultant by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to subconsultants and suppliers on this Contract, including but not limited to data and records related to the Contract for the purpose of monitoring, audit and investigation to determine compliance with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract documents; and
 - b. The Consultant shall make the foregoing records available to King County for inspection and copying upon request. If this Contract involves federal funds, the Consultant shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Contract documents.

9. **Assistance with the Requirements of this Section.** Obtain copies of King County Code 12.16, 12.17, 12.18 and 12.19 at the following link:
https://aqua.kingcounty.gov/council/clerk/code/15_Title_12.htm.
- a. Address questions related to these provisions by contacting King County Business Development and Contract Compliance (BDCC) Section via email at opportunity@kingcounty.gov. Please include the contract number in all correspondence.

SECTION 17. PATENTS, COPYRIGHTS AND RIGHTS IN DATA

- A. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the County for public use, unless the County determines it is not in the public interest that it be owned or available.
- B. The Consultant agrees that ownership of any plans, drawings, designs, specifications, computer programs, technical reports, operating manuals, calculations, notes, and other work submitted or which are specified to be delivered under this Agreement or which are developed or produced and paid for under this Agreement, whether or not complete (referred to in this section as "Subject Data") shall be vested in the County or such other local, state or federal agency, if any, as may be provided by separate Contract with the County. The Consultant will not be held responsible for unauthorized reuse by the County of the Subject Data. Any Subject Data which is developed by the Consultant prior to the execution of this Agreement, and not paid for by the County, is not covered by this provision.
- C. All such Subject Data furnished by the Consultant pursuant to this Agreement, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page or in the name block of maps as may be determined by the County. The Consultant shall also place its endorsement on all Subject Data furnished by it. All such identification details shall be subject to approval by the County prior to printing.
- D. All information, materials, data, and documentation furnished or made available to the Consultant by the County or its agents and representatives ("County Information") for purposes of performing services on this project shall remain the property of the County. The Consultant shall obtain no proprietary rights or ownership interests to such County Information. Upon the County's written request, the Consultant shall return or cause to be returned to the County all such County Information remaining in the Consultant's possession at the termination or expiration of the Agreement. The Consultant may keep copies of the County Information provided they maintain the confidentiality of the information and obtain the County's prior written consent.
- E. All calculations, notes, draft documents, reports, drawings, specifications, electronic files, including any and all e-mails, and any other materials, information or documentation developed or prepared in the performance of work for this project ("Consultant Information") shall be owned by and treated as County property. The Consultant shall obtain no proprietary rights or interests to such Consultant Information. All such Consultant Information is for use solely with respect to this project. Use of such Consultant information by anyone on other projects or for additions to this project outside the Scope of Work without the specific written consent of the Project Representative is prohibited. Upon the County's written request, the Consultant shall transfer or cause to be transferred to the County all such Consultant Information at the termination or expiration of this Agreement. With prior written consent of the County, the Consultant

may keep a copy of the Consultant Information provided the Consultant maintains the confidentiality of such information. Any Consultant Information which is developed by the Consultant prior to the execution of this Agreement, and not paid for by the County, is not covered by this provision.

- F. The Consultant may request from the County a revocable non-exclusive license to use Subject Data, County Information and/or Consultant Information for other matters or projects unrelated to the project.
 - 1. No Subject Data, County Information, and/or Consultant Information shall be used by the Consultant or its subconsultants on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the County hereunder is authorized in writing by the Division Director in advance.
 - 2. At the time of the request, the Consultant shall in writing provide to the County all necessary documentation which details the purpose, scope, and timing for Consultant's use of such information.
 - 3. Upon review of the submitted documentation, the County may request additional written materials from the Consultant to assist the County determine whether to grant or deny the Consultant's request for a license.
 - 4. The County's decision regarding Consultant's request shall be final.
- G. The Consultant shall ensure that the foregoing paragraphs are included in each subconsultant's contract for work on the project.

SECTION 18. AUDIT AND ACCESS TO RECORDS

- A. County and its representatives shall have the right to access, review and audit all records of the Consultant and its subconsultants relevant to the performance of this Agreement and all work orders. Records shall be made available to the County, and its representatives, at mutually convenient times and shall be retained for a period of not less than six years after final acceptance of all construction projects related to this Agreement or until resolution of any litigation related to this Agreement or any related construction contract, whichever occurs later. All financial records shall be kept in accordance with generally accepted accounting principles and practices consistently applied. Records include, without limitation, payroll, expenses, accounts, backup for all costs identified in Exhibit B, Cost Summary, materials, reports, drawings, specifications, evidence of compliance with SCS utilization requirements (if applicable), equal opportunity efforts and the nondiscrimination provisions of this Agreement.
- B. ConsultantName shall ensure that the foregoing is included in each subconsultant's contract for work on the project.

SECTION 19. PROHIBITED INTERESTS

- A. No member, officer or employee of the County or its governing body, or of any of its component agencies, during such person's tenure or one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof unless such interest has been disclosed in writing to the County and the County has determined that there are no prohibited conflicts of interest or ethical violations inherent in the circumstances.

SECTION 20. CONTINGENT FEES, GRATUITIES & CONFLICTS OF INTEREST

A. Consistent with the [King County Code 3.04.030](#), the Consultant agrees as follows:

1. The Consultant warrants and covenants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the County shall have the right to terminate this Agreement and/or in its discretion to deduct from the Total Price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
2. The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees or representatives to any official member or employee of the County in an attempt to secure a Contract or favorable treatment in awarding, amending, or making any determination related to the performance of this Agreement.
3. The Consultant warrants and covenants it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the performance of the work and services required to be performed under this Agreement and that it shall not employ any person or agent having any such interest. In the event that the Consultant or its agents, employees or representatives hereafter acquire such a conflict of interest, the Consultant shall immediately disclose such interest to the County and take action immediately to eliminate the conflict or to withdraw from the Agreement as the County may require.
4. If the County has reason to believe that the covenants set forth in subparagraphs A, B or C of this section have been breached, the County shall so notify the Consultant in writing. The Consultant shall respond to said notice within 10 calendar days of receipt with a detailed written explanation or answer to any facts, allegations or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by the Department's Director which shall be conducted within 15 calendar days of the receipt by the Director of the request unless the County and the Consultant concur on a later date. If, after consideration of the Consultant's response and any hearing, the Director determines that the covenants have been breached, the Director shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.
5. The Consultant agrees not to accept employment or compensation from any person, firm, corporation, business, or political entity, or third party where such employment or compensation is either:
 - a. A conflict of interest; or
 - b. Likely to lead to a conflict of interest between the County's interests and the interests of such person, firm, corporation, or third party.

B. 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 valued at \$50,000 or more, the Consultant agrees that, unless otherwise specified, any information required to be disclosed below shall cover the period 24 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 Consultant;
2. No County employee or any member of the county employee's immediate family has a financial interest in the Consultant as identified below:
 - a. Ownership of over five percent of the stock or other form of interest in the Consultant; and
 - b. Receipt of any compensation, gift, or thing of value from the Consultant;
3. No officer or director of the Consultant 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 Consultant to administrative sanctions and remedies for breach.
5. Any other information known to the Consultant about any interest or relationship whatsoever between any County employee, including any member of their immediate family, and the Consultant, other than what is designated above.
6. Alternative Compliance. If a Consultant is seeking authorization from King County for alternative compliance with the requirements of the King County Consultant Disclosure, the Consultant 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>
7. All contracts between the Consultant and the County in the five years immediately preceding the presently contemplated contract, including the amount of money paid by the County to the Consultant, is maintained by Procurement & Payables.

SECTION 21. LEGAL RELATIONS

- A. The Consultant shall comply, and shall ensure its subconsultants comply, with all the terms of this Agreement and all federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.
- B. In the performance of this Agreement, the Consultant shall be acting in its individual or corporate capacities and not as an agent, employee, partner, joint venture, or associate of the County. The Parties intend that an independent contractor relationship shall be created by this Agreement. The Consultant shall be responsible for all federal and state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the and its employees. The Consultant 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](#).
- C. The Consultant shall indemnify and hold harmless King County, its officers, officials, agents and employees from and against any and all suits, claims, actions, losses, costs, expenses (including reasonable attorney's fees), penalties, settlements and damages of whatsoever kind or nature arising out of, in connection with, or incident to a breach of contractual obligation(s) under this Agreement and/or the negligent act or omission, strict liability, or willful misconduct by or on behalf of the Consultant, except to the extent caused by the negligence, strict liability, or willful misconduct of the County. For purposes of this Agreement, a breach of contractual obligation(s) shall mean a failure, without legal excuse, to perform any promise which forms the whole or part of the

Agreement. The Consultant's indemnity obligation as described herein includes an obligation to (a) satisfy any judgment or other final decision of a court or other tribunal; (b) pay any reasonable settlement negotiated by the County with respect to claims that are within the scope of the indemnity obligation; and (c) pay all claims against the County by an employee or former employee of the Consultant or its subconsultants, and for this purpose, by mutual negotiation, the Consultant expressly waives, as respects the County only, all immunity and limitation on liability 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.

- D. The Consultant further agrees to defend all claims against King County and its officers, agents, and employees which, if proven, could result in the liability of King County, its officers, agents, or employees for loss or damage caused by a breach of contractual obligation(s) under this Agreement, and/or the negligent act or omission, by or on behalf of the Consultant; provided, however, the Consultant's duty to defend shall not apply to allegations of loss or damage to the extent caused by the negligence, strict liability, or willful misconduct of King County. The Consultant's obligation to defend shall include timely payment of all reasonable attorney fees, costs and expenses incurred in the defense of such claims. For purposes of this Agreement, a breach of contractual obligation(s) shall mean a failure, without legal excuse, to perform any promise which forms the whole or part of the Agreement.
- E. Consultant warrants that any design, process, or product, which the Consultant provides or recommends for use for this project hereunder, shall not infringe on or violate any patent, copyright or other intellectual property right held by others. To the fullest extent permitted by law, the Consultant shall defend, indemnify and save harmless King County, its officers agents and employees from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, experts, witnesses, and other consultants) by whomsoever brought or alleged, for such infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes, or products of a particular manufacturer expressly required by the County in writing. Provided however, Consultant shall not be required to defend, indemnify, or hold the County harmless if the Consultant incorporates third party commercially available standard products into its design and a third-party manufacturer alleges that commercially available standard product violates a patent. If the Consultant has reason to believe the use of a required design, product or process is an infringement of a patent, copyright, or other intellectual property right, the Consultant shall be responsible for such loss unless such information is promptly given to the County.
- F. In the event of litigation between the parties to enforce the rights under this section, reasonable attorney fees and expenses shall be allowed to the prevailing party.
- G. The Consultant shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to lost profits and lost business opportunities.
- H. The County's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- I. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment, or termination of this Agreement.

SECTION 22. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY

- A. The Consultant shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement and shall ensure that, whenever possible, the cover page of each document printed on recycled papers bears an imprint identifying it as recycled paper. The Consultant shall use both sides of paper sheets for copying and printing. If the cost of recycled paper is more than 15 percent higher than the cost of non-recycled paper, the Consultant shall notify the Project Representative, who may waive the recycled paper requirement.
- B. The Consultant shall use recycled/recyclable products wherever practical in the fulfillment of this Agreement.

SECTION 23. DISPUTES AND REMEDIES

- A. **Choice of Law.** This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the Effective Date.
- B. **Department Director or Director's Designee Review.** All claims, counterclaims, disputes, and other matters in question between the County and the Consultant arising out of or relating to this Agreement or the breach of it shall be referred to the Department's Director or a designee for determination, together with all facts, data, contentions and so forth which relate thereto. The Director or a designee shall make a determination within 30 calendar days of such referral.
- C. **Alternate Dispute Resolution.** Should the claim, counterclaims, or disputes not be resolved, prior to initiating litigation and subsequent to the Department Director's decision, the parties shall attempt to resolve the matter through some mutually agreeable form of alternate dispute resolution (ADR).
- D. **Exhaustion of Administrative Remedies.** Referral to and determination by, the Department Director or a designee and ADR shall be a condition precedent to the commencement of a civil action to adjudicate such dispute.
- E. **Jurisdiction & Venue.** Subject to these provisions herein, the Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement and the laws of the state of Washington shall apply.

SECTION 24. NOTICE

- A. Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth in Section 1, Agreement Summary (Notice).
 - 1. If delivered by email, the Notice shall be effective as of the date and time received by the receiving party.
 - 2. If the project provides for an electronic document sharing system, Notice shall be deemed received upon the electronic date stamp provided by the project document sharing system.
 - 3. If delivered using a method that collects a signature or stamp from the receiving party (such as hand delivery or registered mail), the Notice shall be deemed received on the date of the signature or stamp; or
 - 4. If delivered by first class U.S. Mail, the Notice shall be deemed received on the third day after sending (not counting days on which no mail is delivered).

SECTION 25. ENTIRETY, AMENDMENT AND EXECUTION OF AGREEMENT

- A. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire agreement between the Parties.
- B. The contract documents included in the Agreement are identified below and incorporated by reference. Any inconsistency or conflict between the contract documents shall be resolved by giving precedence in the following descending order of importance:
 - 1. Agreement for Professional Services for Architectural, Engineering, and Related Services for North King County Access Base, as modified by the latest amendment;
 - 2. Exhibit A, Scope of Work, as modified by the latest amendment;
 - 3. Exhibit B, Cost Summary, as modified by the latest amendment;
 - 4. Exhibit E, Project Schedule, as modified by the latest amendment;
 - 5. Exhibit D, Key Personnel;
 - 6. Exhibit C, Insurance;
 - 7. Exhibit F, Budget Crosswalk;
 - 8. Consultant's Proposal; and
 - 9. Request for Proposals, as amended.

SECTION 26. THIRD PARTY RIGHTS

- A. There is no privity of contract between the County and any subconsultants of ConsultantName. Nothing in this Agreement is intended to and/or shall be construed to give any rights or benefits to any subconsultant, individual, company, and/or firm other than County and ConsultantName.

SECTION 27. TERMINATION OF AGREEMENT

- A. Cure Notice.
 - 1. If the County determines that a breach of contract has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:
 - a. The County will provide the Consultant with a Cure notice; thereby notifying the Consultant in writing of the nature of the breach;
 - b. Unless a longer period is provided by the County, The Consultant shall respond in writing within three business days of its receipt of such notification, which response shall include a corrective action plan indicating the steps to be taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the contract into compliance within the number of calendar days specified by the County;
 - c. The County will notify the Consultant in writing of the County's determination as to the sufficiency of the Consultant's corrective action plan. The determination of sufficiency of the Consultant's corrective action plan shall be at the sole discretion of the County;

- d. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, or the Consultant's corrective action plan is determined by the County to be insufficient, the County may commence termination of this contract in whole or in part;
- e. The County may withhold any payment owed the Consultant and/or instruct the Consultant to refrain from incurring additional costs until the County is satisfied that corrective action has been taken or completed;
- f. No increase in Total Price, Period of Performance, or Fixed Professional Fee shall result from this provision; and
- g. Nothing herein shall be deemed to affect or waive any other rights of the County.

B. Termination for Default.

- 1. The County may terminate this Agreement, in whole or in part, in writing if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the County; provided that the Consultant has been given an opportunity to cure.
- 2. If the County terminates all or part of this contract for default, the County shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the County incurs because of the Consultant's default. In such event, the County shall consider the actual costs incurred by the Consultant in performing the project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the County at the date of termination, the cost to the County of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the County of the project work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the County from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
- 3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated; and
 - c. No later than 30 calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation and other project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the project where the County has paid the Consultant for such items.

4. Upon termination, the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.
5. If, after termination for default, it is determined that the Consultant had not defaulted, the termination shall be deemed to have been effected for the convenience of the County. In such event, the equitable adjustment shall be determined as set forth below in the Termination for Convenience provision.

C. Termination for Lack of Appropriation.

1. If expected or actual funding for this Agreement is withdrawn, reduced, or limited in any way prior to the Completion Date specified in Section 1, Agreement Summary, the County may, upon written notice to the Consultant, terminate this Agreement in whole or in part for lack of appropriation.
2. In the event of termination under this section, the following shall apply:
 - a. Subject to subsection C.2.b, the County shall only be liable for payment in accordance with the terms of this Agreement for work and services satisfactorily 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;
 - c. The Consultant shall be released from any obligation to provide further work and services under this Agreement affected by the termination;
 - d. Promptly discontinue all work and services affected (unless the notice directs otherwise);
 - e. Terminate all subcontracts to the extent they relate to the work and services terminated; and
 - f. No later than 30 calendar days after termination, promptly deliver or otherwise make available to the County all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the project where the County has paid the Consultant for such items.
3. Notwithstanding subsection A.1, funding of this Agreement beyond the current biennium is conditional upon appropriation by the County Council of sufficient funds to support the work and services described in this Agreement. Otherwise, this Agreement shall terminate on December 31 of the current biennium.
4. Upon termination, the County may take over the work and services and prosecute the same to completion by agreement.

D. Termination for Convenience.

1. The County may terminate this Agreement, in whole or in part, for the convenience of the County. The County shall terminate by delivery to the Consultant a Notice of Termination specifying the extent of the termination and the effective date.
2. If the County terminates this Agreement for convenience, the County shall pay the Consultant only for the following items:

- a. An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement and Exhibit B, Cost Summary for services satisfactorily performed to the date of termination;
 - b. The Fixed Professional Fee associated with work satisfactorily performed;
 - c. Reasonable invoiced Other Direct Costs actually incurred before the termination;
 - d. Proportion of the Lump Sum Other Direct Costs earned; and
 - e. Reasonable termination settlement costs ConsultantName actually incurs relating to commitments which had become firm before the termination unless the County determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant in preparing Termination Settlement Proposal.
 - f. Under no circumstances shall payments made under this provision exceed the Total Price.
3. Upon receipt of a termination notice the Consultant shall at no additional cost to the County:
- a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated;
 - c. No later than 30 calendar days after receipt of termination, promptly deliver or otherwise make available to the County all data, drawings, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the project where the County has reimbursed the Consultant for such costs; and
 - d. Take any action necessary, or that the County may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the County has or may acquire an interest.
4. Within 90 calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the County a Termination Settlement Proposal. The Termination Settlement Proposal shall include:
- a. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination;
 - b. Actual and reasonable Other Direct Costs incurred before the termination;
 - c. Fixed Professional Fee associated only with work satisfactorily completed;
 - d. Reasonable termination settlement costs for terminating subconsultant contracts;
 - e. Actual reasonable costs related to accounting and clerical time spent preparing the Termination Settlement Proposal;
 - f. Documentation supporting the costs identified in the Termination Settlement Proposal; and
 - g. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and

supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the County is liable.

5. Termination settlement costs and proposals are subject to audit verification by the County.
6. Upon termination, the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.

DRAFT

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.

KING COUNTY

CONSULTANT

LegalName

By: _____

Mike Chargualaf, Acting Director
Capital Division
Metro Transit Department

*For Girmay Zahilay, King County
Executive*

Date: _____

By: _____

Print
Name: _____

Title: _____

Date: _____

EXHIBIT A - SCOPE OF WORK

DRAFT

EXHIBIT B - COST SUMMARY

1. Level of Effort (LOE) Detail
2. Invoiced Other Direct Cost (ODC) Detail
3. Lump Sum ODC Calculation
4. Escalation Input
5. Cost Summary by Firm
6. Cost Summary by Task
7. Cost Summary by Subtask
8. Approved Overhead and Profit Rates (each firm)
9. Approved Labor Rates (each firm)
10. Approved Other Direct Cost Rates (each firm)

DRAFT

Approved Other Direct Cost Rates

The following rates apply to all approved firms.

ODC Item	Unit of Cost	Max Unit Price	Invoiced or Lump Sum
Mileage	Per Mile	\$0.725	Lump Sum
Courier	Per Service	\$28.00	Lump Sum
Parking	Per Hour	\$20.00	Invoiced or Lump Sum
Ferry (vehicle/driver)	Per Trip	\$39.40	Invoiced or Lump Sum
Ferry (passenger)	Per Trip	\$12.50	Invoiced or Lump Sum
Toll fees	Per Trip	\$6.90	Invoiced or Lump Sum
Rideshare	Per Trip	\$80.00	Invoiced or Lump Sum
Car Rental	Per Day	\$96.00	Invoiced or Lump Sum
8.5 x 11 B/W Copy	Per Copy	\$0.10	Invoiced or Lump Sum
8.5 x 11 Color Copy	Per Copy	\$0.69	Invoiced or Lump Sum
11 x 17 B/W Copy	Per Copy	\$0.20	Invoiced or Lump Sum
11 x 17 Color Copy	Per Copy	\$1.76	Invoiced or Lump Sum

EXHIBIT C - INSURANCE

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EXHIBIT D - KEY PERSONNEL

Title	Name	Firm Name
@Project Manager	@Name	@FirmName
@Position Title		

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EXHIBIT E - PROJECT SCHEDULE

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Exhibit @ - Budget Crosswalk
ProjectTitle
0 Hidden Tasks/0 Hidden Revisions.

Exhibit F