

AGREEMENT FOR PROFESSIONAL SERVICES
FOR
WORK ORDER CONSTRUCTION MANAGEMENT SERVICES FOR PARKS DIVISION
CONTRACT NO. KC001640
BETWEEN
KING COUNTY
AND
LEGALNAME

DRAFT

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AGREEMENT FOR PROFESSIONAL SERVICES

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WORK ORDER CONSTRUCTION MANAGEMENT SERVICES FOR PARKS DIVISION

CONTRACT NO. KC001640

SECTION 1. AGREEMENT SUMMARY

AGREEMENT PARTIES	
CONSULTANT Name LegalName ConsultantName	KING COUNTY Department/Division Department of Natural Resources and Parks Parks and Recreation 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	
Period of Performance:	Two years with 2 two-year options to extend
Total Price:	@\$
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:	@%
Aspirational WBE Goal:	@%
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 on a Work Order basis as required by the County in accordance with the terms and conditions contained herein. A description of the services that may 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. **“Amendment”** means an agreed written modification to this Agreement signed by the Consultant and the Department Director or authorized designee.
- D. **“Billing Rate”** means a fully burdened rate inclusive of all costs associated with labor, overhead, and fee as used on a Cost-Plus Fixed Fee Work Order.
- E. **“Certified Firm”** means a business that has been certified by King County BDCC as an SCS firm, or by the Washington State Office of Minority and Women’s Business Enterprise (OMWBE) as a CBE, MBE, MWBE, or Federal SBE.
- F. **“Combination Business Enterprise”** (CBE) means a firm that has been certified by the Washington State Office of Minority and Women's Business Enterprises as an CBE.
- G. **“Consultant”** means ConsultantName, the business entity performing services under this Agreement.
- H. **“Cost Plus Fixed Fee”** (CPFF) means a method for determining compensation to the Consultant that consists of a Fixed Fee Percent and the following reimbursable cost elements: verified Labor Rates, overhead, all Other Direct Costs (lump sum and invoiced), as set forth in Exhibit B, Cost Summary.
- I. **“Direct Labor Costs”** means the total number of hours worked on a Cost-Plus Fixed Fee Work Order by each employee multiplied by the verified Direct Labor Rate for the employee's labor category.
- J. **“Direct Labor Rate”** means the actual hourly wage paid to each consultant or subconsultant employee, exclusive of overhead and profit on Cost Plus Fixed Fee Work Orders.
- K. **“Exhibit B, Cost Summary”** means the list of all approved rates applicable to this Agreement and used to negotiate Cost Plus Fixed Fee Work Orders.
- L. **“Federal Small Business Enterprise”** (SBE) means a firm that has been certified by the Washington State Office of Minority and Women's Business Enterprises as a Federal SBE.
- M. **“Fixed Fee”** means the total fee amount payable for Work performed by the Consultant or subconsultant as applicable and is the product of the Fixed Fee Percent multiplied by the total Direct Labor Costs on Cost Plus Fixed Fee Work Orders.

- N. **“Fixed Fee Percent”** means the negotiated percent allowed for Consultant and subconsultant profit, as applicable and established in this Agreement in Exhibit B, Cost Summary for Cost Plus Fixed Fee Work Orders.
- O. **“Good Faith Efforts”** means efforts to achieve a goal or other requirement 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.
- P. **“Indirect Costs”** means the Consultant’s overhead rate, expressed as a percentage, multiplied by the Direct Labor Rate(s) for every allowable hour invoiced on Cost Plus Fixed Fee Work Orders.
- Q. **“Labor Rate”** means Direct Labor Rate or the actual labor rate component of a Billing Rate, as applicable.
- R. **“Level of Effort”** (LOE) means a comprehensive document that identifies the activities that are necessary to complete the Work at the Work Order Price for a Cost-Plus Fixed Fee Work Order. The LOE is a required element that must be negotiated prior to execution of each Cost-Plus Fixed Fee Work Order.
- S. **“Local Travel”** means travel within the state of Washington.
- T. **“Lump Sum”** is a form of compensation to the Consultant that consists of a total, negotiated fixed price for Work performed under a Work Order inclusive of all cost elements: Labor Rates, overheads, all Other Direct Costs, and Fixed Fee. The Lump Sum shall be negotiated prior to the execution of each individual Work Order. The Lump Sum amount shall remain fixed unless increased or decreased by a Work Order Change.
- U. **“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.
- V. **“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.
- W. **“Other Direct Costs”** (ODC) means costs for goods and services pre-approved by the County that may be incurred by the Consultant to complete the Work. ODCs shall be billed at cost, without markup and shall include the following categories:
1. **Invoiced ODC.** The actual cost incurred and billed by the Consultant as evidenced by such documentation as the County may request.
 2. **Lump Sum ODC.** A total fixed cost to be reimbursed by the County based on pre-approved unit rates for goods and services multiplied by negotiated quantities and shall include:
 - a. Copies and miscellaneous reproduction, which may include, but is not limited to documents copied, printed, or reproduced in any medium in black and white and/or color that is not performed by an independent copy service.
 - b. Delivery services, which include but are not limited to shipping, mailing, and courier services.
 - c. Mileage, parking, and related costs for Local Travel.
- X. **“Project”** refers to the Scope of Work to be performed in each individual Work Order.

- Y. **“Project Representative”** means the County employee responsible for managing this Agreement in accordance with King County Executive Policies, Agency Project Management Manual, and the terms and conditions herein.
- Z. **“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.
- AA. **“Task Directive”** refers to written documentation issued by the Project Representative that modifies tasks, but not price, within an executed Work Order.
- BB. **“Transfer of Knowledge and Information”** means the labor hours spent reviewing Project documentation, participating in meetings with Project personnel, and participating in site visits to become familiar with the Agreement and Work Order(s).
- CC. **“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.
- DD. **“Work”** means all services to be provided by the Consultant and subconsultants, if any, under this Agreement and any Work Order.
- EE. **“Work Order”** is a document signed by King County and the Consultant prior to commencement of Work that authorizes the Consultant to proceed with the Work defined by the Work Order Scope of Work, Work Order Price, and Work Order Schedule.
- FF. **“Work Order Change”** means a written change to an executed Work Order. Modifications to Scope of Work, Work Order Price, or Work Order Schedule requires a Work Order Change, executed by both parties, prior to commencement of Work.
- GG. **“Work Order Price”** means the total, not to exceed amount payable on an individual Work Order whether compensated on a Lump Sum or Cost-Plus Fixed Fee basis.
- HH. **“Work Order Project Manager”** means the King County employee responsible for the day-to-day management of the Work Order.
- II. **“Work Order Schedule”** means the timeline for completion of a Work Order, including all milestones, activities, and deliverables.

SECTION 3. PERIOD OF PERFORMANCE

- A. Time is a material consideration in the performance of all Work by the Consultant under this Agreement. The Period of Performance is specified in Section 1, Agreement Summary and commences on the Effective Date. This may be extended by Amendment for up to four additional years in two-year increments or until the Total Price is expended, whichever comes first. In no event shall this Agreement be extended beyond 6 years.
- B. A change in the Period of Performance shall in no event change the Total Price of the Agreement.
- C. No Work shall be performed by the Consultant prior to the execution of this Agreement or any Work Order.

SECTION 4. AGREEMENT TOTAL PRICE

- A. The County shall pay the Consultant for Work performed under a Work Order in accordance with the payment schedule authorized in Section 14, Work Order Compensation. The total of all payments for Work Orders executed under this

Agreement shall not exceed the Total Price specified in Section 1, Agreement Summary. **King County does not guarantee any minimum amount of Work or that the value of the Work Orders executed will equal the Total Price.** 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.

- B. The Labor Rates and overhead rates in Exhibit B, Cost Summary remain in effect until the initial adjustment dates specified in Section 1, Agreement Summary.
 - 1. Adjusted Labor Rates and overhead rates remain in effect for a minimum period of at least 365 calendar days.
 - 2. All adjustments to Labor Rates and overhead rates shall be made in accordance with the provisions herein.
 - 3. The County shall not pay any premium associated with overtime on Labor Rates or Billing Rates. Provided however, with the prior written approval of the Project Representative, if a field inspector (FLSA non-exempt employee) bills over forty (40) hours in a week (defined as Sunday through Saturday) on one Work Order:
 - a. The County may pay an additional 50% of the Labor Rate for each hour in excess of 40 hours; and
 - b. The County shall not pay any overhead on this extra labor cost.
- C. King County's current maximum Direct Labor Rate, Billing Rate, and labor escalation rate are specified in Section 1, Agreement Summary. The County establishes the maximum rates annually after June of each year. No Consultant or subconsultant Labor Rate shall exceed the maximum County Labor Rates except in exceptional and rare circumstances when the County, in its sole discretion, agrees to pay a greater rate.
 - 1. King County's current maximum labor escalation rate and Labor Rates are posted online at <https://kingcounty.gov/depts/finance-business-operations/procurement/for-government/CAP/project-control.aspx>.
- D. This Agreement includes maximum allowable rates identified in Exhibit B, Cost Summary, and are comprised of the following elements:
 - 1. Overhead rate;
 - 2. Direct Labor Rate;
 - 3. Billing Rate (inclusive of labor, overhead, and fee);
 - 4. Fixed Fee Percent; and
 - 5. Other Direct Costs.
- E. Rate Adjustments. The Labor Rates and overhead rates in Exhibit B, Cost Summary are subject to annual reasonable adjustments on the dates specified in Section 1, Agreement Summary. Labor escalation shall not exceed the Labor Escalation Rate specified in Section 1, Agreement Summary and shall be made in accordance with the following procedures:
 - 1. Written Notice of Rate Adjustments. Overhead and Labor Rates will be adjusted in accordance with the provisions herein.
 - a. Labor Rates

- (1) ConsultantName may submit a written notice requesting changes to Labor Rates for ConsultantName and its subconsultants in accordance with the adjustment dates specified in Section 1, Agreement Summary. Notice shall contain the information required under subsection a) i. through v. and be provided a minimum of thirty (30) calendar days before the adjustment date to allow for County review. Unless the County disagrees in writing with the proposed Labor Rates, the Consultant may start billing at the new Labor Rates thirty (30) days after submittal of the written notice or the applicable adjustment date specified in Section 1, Agreement Summary, whichever is later; provided however, all new Labor Rates shall be effective at the beginning of a billing period. Labor Rate increases shall not be retroactive. Only services performed after the thirty (30) calendar day time period shall be billed at the new Labor Rate.
 - a) Written notice shall contain the following:
 - i. The name of each individual;
 - ii. Job title/position;
 - iii. Current Direct Labor Rate or Billing Rate;
 - iv. Proposed Direct Labor Rate or Billing Rate (Labor Rates must include verifiable documentation); and
 - v. Additional information as requested to assist the County in its evaluation of the proposed Labor Rate change.
 - (2) In the event the current maximum Labor Rates specified in Section 1, Agreement Summary are reduced, Labor Rates previously established shall remain unchanged.
 - (3) The County has the right to reject any proposed Labor Rate increase that the County determines lacks reasonable justification or is not supported by verifiable documentation.
 - (4) Verified Labor Rate changes shall be incorporated by Amendment to Exhibit B, Cost Summary of the Agreement.
 - (5) For each firm (ConsultantName and subconsultants), the cumulative increases in Labor Rates shall not exceed the escalation percentage in effect at the time of the Labor Rate adjustment.
- b. Overhead Rates
 - (1) ConsultantName shall submit a written notice requesting changes to overhead rates for ConsultantName and its subconsultants in accordance with the adjustment date specified in Section 1, Agreement Summary. Notice shall contain the information required under subsection a) i. through iv. and be provided a minimum of thirty (30) calendar days before the adjustment date to allow for County review. Unless the County disagrees in writing with the proposed overhead rates, the Consultant may start billing at the new overhead rates thirty (30) calendar days after submittal of the advance written notice or the applicable adjustment date specified in Section 1, Agreement Summary, whichever is later; provided however, all new overhead rates shall be effective at the beginning of a billing period. Overhead rate increases shall

not be retroactive. Only services performed after the thirty (30) calendar day time period shall be billed at the new overhead rates.

a) Written notice shall include the following:

- i. The name of each individual firm;
- ii. Copy of most current fiscal year overhead review;
- iii. Current financial statements with sufficient information concerning the overhead rate, including but not limited to annual audited overhead rates, any actual federal (FAR) overhead rates; and
- iv. Additional information as requested to validate overhead costs.

b) For annual overhead rate adjustments, the County will review and consider the actual historical overhead costs incurred by the firm with respect to Business & Occupational (B&O) 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 Agreement.

F. Unallowable Costs. The County shall not compensate any costs associated with:

1. The preparation and submission of monthly invoices, including resubmission, changes to or adjustments in the invoices.
2. Preparation of, discussion and/or negotiation of a request for:
 - a. Adjustments in any Labor Rate, overhead rate, or ODC; and
 - b. Travel arrangements.
3. Preparation for and negotiation of individual Work Orders and Work Order Changes, including but not limited to proposal preparation; budget preparation; drafting of Scope of Work; and Level of Effort on Cost Plus Fixed Fee Work Orders.
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 8.C, Use of Documentation and Information.
7. Providing the County or its designee(s) with access to Agreement documentation and/or the Work Order file(s).
8. Compliance with Section 18, Audit and Access to Records.
9. Relocation costs.
10. Meals, except when in travel status.
11. Office supplies, facsimile machines, cell phones, communication equipment, cameras, and other miscellaneous company owned equipment; facsimiles; long distance; computer time charges; computer hardware, software, peripherals; information technology support.
12. Photocopies or printed documents except as identified in the Work Order ODC.
13. Safety equipment and training.

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 all executed Work Orders, 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.
 - 3. Consider 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 all executed Work Orders. The M/WBE subconsultant participation shall be calculated as a percentage of the total value of all executed Work Orders, as amended.
 - 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.

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. Any and all changes to the Agreement shall be made through an Amendment signed by the Department Director or authorized designee and ConsultantName. An Amendment executed by the County and ConsultantName represents full and final agreement.

SECTION 7. REPORTING REQUIREMENTS

- A. Monthly Reports. The Consultant shall submit a monthly report to the Project Representative and separately to the Business Development and Contract Compliance office via email at Opportunity@kingcounty.gov no later than the 15th day of each calendar month during the Period of Performance for this Agreement, unless an alternative date is specified in Exhibit A, Scope of Work. At a minimum the monthly report shall identify the following:
 1. Summary of All Executed Work Orders:
 - a. The number of executed Work Orders;
 - b. Total executed amount of all Work Orders;
 - c. Total amount paid for all Work Orders; and
 - d. Total CBE, MBE, MWBE, WBE, SCS, or Federal SBE utilization percentage achieved to date, if applicable.
 - e. Progress towards the accomplishment of the ESJ Innovation Plan objectives, if applicable.
 2. For each Work Order identify the following:
 - a. Work Order number;
 - b. Date the individual Work Order(s) was executed;
 - c. The original Work Order Price;
 - d. The Notice to Proceed date(s);
 - e. Total CBE, MBE, MWBE, WBE, SCS, or Federal SBE Utilization percentage achieved to date, if applicable;
 - f. A brief description of Work;
 - g. Total amount paid to date against the Work Order;
 - h. The total number and amount of Work Order Changes;
 - i. Revised Work Order Price (including all Work Order Changes);
 - j. Planned completion date;
 - k. Brief narrative including any issues that may result in future changes to Work Order Scope, Schedule, or Price; and
 - l. Actual completion date.

3. Failure to provide timely monthly reports that comply with this provision may result in the withholding of payment or delayed payment.

B. Compliance Management System (DCMS) Reports

1. The Consultant shall report monthly in 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 Work Order Contracts. The Consultant shall submit Payment Reports for each work order electronically using DCMS.
 - (1) The Consultant shall submit a Payment Report for each work order detailing amounts paid to each subconsultant and supplier for the previous month not later than the 15th day of the month.
 - (2) Subsequent Payment Reports for subconsultants and suppliers for each work order issued shall be submitted by the 15th day of every month after the work has commenced. When no Work is performed during a reporting period, the Consultant shall identify "zero" payments within DCMS for subconsultants or suppliers.
 - (3) The Consultant shall notify and instruct all subcontractors and suppliers performing Work to date, to sign into DCMS to verify payments received, including the amount owed, and the amount paid less earned retainage, as their interests appeared in the last preceding Application for Payment.
 - (4) Upon completion of all Work and as a condition precedent to final payment, the Consultant shall complete the last Payment Report for each work order and mark this document as "final" and submit it using DCMS. For each work order, 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 payments or the final payment.
 - b. Add Subconsultants and Suppliers. The Consultant shall add all firms used on the Contract 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 Contract 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 of payments or the final payment.

SECTION 8. RESPONSIBILITY OF THE CONSULTANT

A. Standard of Care.

1. During the performance of Work under this Agreement, the Consultant shall make its best efforts to manage the Agreement such that work and services are provided and performed in a cost-effective and efficient manner. The Consultant shall complete its Work and services for each Work Order within the Work Order Price.

2. 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.
3. 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 its best effort to review materials in an expeditious manner; provided however that the County shall have a minimum of thirty (30) calendar days to review and provide comments on plans, drawings, specifications, reports, or other products.
4. Should the Consultant produce and maintain a document criticizing, challenging, or disagreeing with any decisions by the County concerning design and/or management of this Agreement or an individual Work Order, 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 (5) calendar days of producing the document. Any such document shall identify reasonable and realistic solutions.
5. The Consultant shall become 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 shall not create any ambiguity or conflict with these divisions.
6. 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.

7. In the event of a name change, merger, acquisition, or organizational re-structure, the Consultant shall notify the Project Representative in writing and may be required to provide legal and financial documentation to transfer the Agreement.

B. Maintenance of Project Documentation. The Consultant shall utilize the Department's internet-based project management collaboration system for written communications and document management and exchange between the County and the Consultant, for which the County shall provide the required licenses, access codes, and training at the County's facility, if applicable. Documents posted to the system shall be in accordance with the Portable Document Format (PDF) requirements and Computer-Aided Design (CAD) standards set forth in Exhibit A, Scope of Work.

1. 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. Use of Documentation and Information.

1. 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;
 - c. Disclose to a third party any calculations, notes, reports, drawings, electronic files, including all emails, or any other materials, information, or this Agreement; and/or

- d. 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.
 2. The Consultant may disclose information and documentation to individuals who have a substantial need to know regarding 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 may submit for review and approval a generic project abstract describing the component parts of the Agreement and/or Work Order. 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. 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'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.
- E. ConsultantName shall ensure that the paragraphs in Section 8.A-8.D, Responsibility of the Consultant, are included in each subconsultant's contract for Work on the Agreement and/or Work Order.
- F. 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 Consultant shall maintain the following insurance with limits no less than:
 - 1. **General Liability. \$2,000,000.00** combined single limit per occurrence for bodily injury, personal injury, and property damage, and for those policies with aggregate limits, a **\$4,000,000.00** 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). \$2,000,000.00** per claim or occurrence and in the aggregate is required.
 - 3. **Automobile Liability. \$1,000,000.00** 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 **\$1,000,000.00** 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.
7. **Drone Aviation Liability Coverage.** If this contract involves the use of drones, Consultant must maintain **\$2,000,000** per occurrence and **\$2,000,000** in the aggregate to include in-flight operations, bodily injury, property damage, and personal injury coverage. Coverage shall include invasion of privacy and trespass.
- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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. NOT USED

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 is the only authorized County personnel who may sign amendment(s) and authorize changes to the Period of Performance up to the maximum time limit identified in Section 3, Period of Performance.
 - 2. The Project Representative shall be designated in writing. Unless otherwise indicated in writing by the Department Director or its designee, the Project Representative is authorized to:
 - a. Approve and execute Work Orders;
 - b. Approve modifications to Work Order Scope, Work Order Schedule, and Work Order Price;

- c. Execute Work Order Changes;
 - d. Approve all requests for payment;
 - e. Authorize termination or modification of tasks; and
 - f. Issue notices of completion for each Work Order.
3. The Project Representative may assign a Work Order Project Manager for day-to-day management of individual Work Orders.
- a. The Work Order Project Manager may issue written or oral directives that require the Consultant to perform Work consistent with the approved Work Order; provided that this directive does not add scope or increase Work Order Price, except as identified in Section 13.D.2.
 - b. If the Work Order Project Manager gives the Consultant an oral directive, the Consultant shall document the oral directive and provide the Work Order Project Manager with a copy of the documented oral directive within seven (7) calendar days of the directive.
- 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 Work 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 law to perform the Work in a satisfactory and competent manner. All authorized firms including subconsultants and personnel shall be identified in Exhibit B, Cost Summary.
1. Adding Subconsultants. Before any subconsultant not already identified in Exhibit B, Cost Summary can perform any Work under this Agreement, the Consultant shall provide a written request to the Project Representative and the County must provide written authorization of approval prior to the firm commencing Work. Such written authorization shall be followed up with an Amendment to the Agreement. The request shall include the following information:
- a. Subconsultant name;
 - b. Description of the Work to be performed;
 - c. Resumes and documentation outlining the subconsultant's experience, if applicable;
 - d. Direct Labor Rates, overhead rates, Other Direct Costs, Fixed Fee Percent, Billing Rates, and supporting documentation;
 - e. 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; and
 - f. Identify impacts to meeting contractual utilization requirements (Certified Firms) included in this Agreement, if applicable.
2. Adding Personnel to Exhibit B, Cost Summary. ConsultantName shall provide documentation supporting the Labor Rate for the personnel prior to submitting an invoice.

3. Key Personnel Changes. Key Personnel are identified in Exhibit D, Key Personnel. The Consultant shall not remove or reassign the Key Personnel assigned to the Agreement without written consent from the Project Representative.
 - a. Substitution of Key Personnel. The Consultant recognizes and agrees that if a change is made substituting or changing assigned Key Personnel, the Consultant shall be responsible for all costs associated with Transfer of Knowledge and Information. The County will not pay for any time spent for the Transfer of Knowledge and Information.
 - (1) Notice for the substitution of 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) The individual's resume; and
 - d) A plan showing how the Transfer of Knowledge and Information between the departing and incoming individual will occur.
 - (2) The County shall not unreasonably withhold consent to remove Key Personnel.
4. Removal of Personnel or Subconsultant. ConsultantName shall remove from the Agreement any personnel or subconsultant the County considers necessary and in the best interests of the County and so advises ConsultantName in writing.
5. Organizational Conflict of Interest. If the Consultant or subconsultant performs studies and/or pre-design services as part of a Work Order for a project that is later advertised, the Consultant or subconsultant may be prohibited from competing for the advertised project. If the Consultant or subconsultant has concerns regarding preclusion for the advertised project, the Consultant shall notify the Project Representative to resolve.

SECTION 12. WORK ORDERS

A. Work Order Development

1. No Work Order shall exceed \$150,000 unless prior written approval is received from the Director of the division specified in Section 1, Agreement Summary or their designee.
2. Work Order Request. To initiate Work, the County shall issue a Work Order request to ConsultantName. The Work Order request shall include the following elements:
 - a. Scope of Work;
 - b. Preliminary schedule, including milestones;
 - c. Potential deliverables; and
 - d. Compensation type (Cost Plus Fixed Fee or Lump Sum).
3. Work Order Proposal. Upon receipt of a Work Order Request, ConsultantName shall prepare and submit a Work Order proposal to the County. Each Work Order proposal shall include the following elements:
 - a. Scope of Work;
 - b. Work Order Schedule;

- c. If Cost Plus Fixed Fee, cost proposal including Level of Effort documentation;
 - d. If Lump Sum, payment schedule based on deliverables;
 - e. Work Order Price; and
 - f. Percent of participation for Certified Firms (as applicable).
- 4. The County shall review all individual Work Orders issued under this Agreement with an estimated value equal to or greater than \$100,000 to establish a specific required or aspirational level of participation by Certified Firms, as applicable.
- 5. Work Order Execution. Upon completion of negotiations, the Parties shall sign the Work Order.
- B. Notice to Proceed. The Consultant shall not begin Work until the Project Representative issues a notice to proceed on the Work Order or specific tasks thereof. Upon receipt of a notice to proceed, the Consultant shall promptly commence Work.
 - 1. Notice to proceed shall identify the Work Order Project Manager, if applicable.
 - 2. Work Order Schedule. The Consultant shall complete its Work within the Work Order Schedule, including any established milestones, task completion dates, and deliverables set forth in the Work Order.
 - 3. Work Order Personnel. The Consultant shall not remove or reassign the personnel assigned to a Work Order without written consent from the Work Order Project Manager. Removal or reassignment of personnel on a Work Order shall not impact the Work Order Price.
- C. Limitations to Initiating and Executing Work Orders. A Work Order(s) may be executed at any time up until the Period of Performance has expired or the Total Price is reached, whichever occurs first. No Work Order shall be executed after the Period of Performance has expired.
 - 1. Continuation of Work Order. If services to be performed under an executed Work Order continue after expiration of the Period of Performance, this Agreement shall continue to be in full force and effect with respect to that executed Work Order; provided however, no additional Work Orders may be issued or executed.
 - a. Services performed under this provision shall begin prior to the expiration of this Agreement.
 - b. In no event shall continuation of a Work Order extend more than six months after the expiration date of the Agreement.
- D. Work Orders under \$10,000. For urgent or unplanned events, the County may direct the Consultant in writing to perform services for a specified Scope of Work and a Work Order Price. However, no Work Order issued under this provision shall have a Work Order Price greater than \$10,000.

SECTION 13. DIRECTIVES AND WORK ORDER CHANGES

- A. Task Directives. Task Directives may be issued by the Project Representative, at any time, directing the Consultant to adjust tasks within the Scope of Work. The Project Representative may authorize adjustments to a task's scope, schedule, and budget, subject to subsections 1-3 below. Such adjustments shall not constitute a Work Order Change.

1. Prior to the initiation of Work, task adjustments must be authorized in writing by the Project Representative;
 2. The adjustment shall not impact the Work Order scope, Work Order Schedule, or Work Order Price; and
 3. Money is transferred from a task budget where the Work has been completed and into the task budget where Work is to be performed.
- B. If the Consultant considers the Task Directive to be a change to the Scope of Work, Work Order Schedule, or Work Order Price, then prior to performing any Work, the Consultant shall submit to the Project Representative a written request for a Work Order Change. In the event the Consultant performs Work without prior written authorization from the Project Representative, the Consultant may not be compensated.
- C. Unilateral Work Order Directives. The Project Representative, may, at any time, issue a written directive to the Consultant to extend the Work Order completion date.
- D. Work Order Changes. Modifications to Scope of Work, Work Order Schedule, or Work Order Price requires an executed Work Order Change prior to commencement of Work. Project Representative may at any time, by written Work Order Change, make revisions within the general scope of services, Work Order Schedule or Work Order Price specified in a Work Order.
1. Work Order Schedule or Work Order Price shall not be extended because of any unwarranted delays or costs attributable to the Consultant.
 2. The Work Order Schedule may be extended due to unavoidable delay that could not be reasonably anticipated.
 - a. In the event of a delay not attributable to the Consultant the County may, issue a Work Order Change to increase the Work Order Price.
- E. Consultant Notice of Issues that May Impact Work Order Scope, Work Order Schedule, and Work Order Price.
1. The Consultant shall not perform Work that will impact the Scope of Work, Work Order Schedule, Work Order Price, or task budget(s) prior to notifying the Project Representative. If the Consultant performs such Work prior to notification, the Consultant shall not be paid.
 - a. ConsultantName shall notify the Project Representative in writing as soon as possible but not later than seven (7) calendar days of becoming aware of the issue. If appropriate, the parties shall execute a Work Order Change to adjust the Work Order Scope, Work Order Schedule, or Work Order Price, prior to the Work being performed.

SECTION 14. WORK ORDER COMPENSATION

- A. Work Order Compensation. Work Order compensation is either on a Cost-Plus Fixed Fee or Lump Sum basis. In no case shall such payment exceed the agreed to Work Order Price. No payment shall be made for unauthorized Work. In the event the Consultant incurs costs in excess of the Work Order 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.
1. Cost Plus Fixed Fee Compensation. The Consultant will be paid monthly progress payments for satisfactory percent of completion for Work. Progress payments shall

include 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 Work Order Price.

2. Lump Sum Compensation. The Consultant will be paid for satisfactory completion of task deliverables established in the payment schedule and services rendered under each Work Order. Payments shall include all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall such payment exceed the agreed to Work Order Price.
3. Other Direct Costs ("ODC")
 - a. All ODC must be directly attributable to the Work Order Scope of Work, not included in the Consultant's overhead, and each ODC rate and quantity must be determined fair and reasonable by King County.
 - b. Local Travel costs are reasonable mileage reimbursement, short-term car rental, public transportation fare, taxi fare, tolls, or parking fees.
 - c. Travel Status. Travel status is limited to Consultant or subconsultant staff based out of state performing Work in Washington or who reside in Washington and are sent out-of-state, for a limited duration. Travel status for an individual must be authorized by the County in writing. Reimbursement of travel costs, including transportation, lodging, meals, and incidental expenses incurred while in travel status in connection with a Work Order is limited as follows:
 - (1) Local Travel while on travel status shall be by bus, taxi, or compact rental car;
 - (2) Reimbursement for meals inclusive of tips shall not exceed the limits identified in [King County Code 3.24.080](#);
 - (3) 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) 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.
 - d. Reproduction, Copies, and Printing Costs. Reproduction or printing services may be reimbursed on a lump sum or invoiced ODC basis pursuant to the Work Order.

B. **Fixed Fee.** The Fixed Fee for the Consultant and 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 Fee defined later in this section.

1. The Fixed Fee will be paid monthly in proportion to the Work satisfactorily completed on an individual Work Order. The proportion of Work completed shall be determined by earned value of the deliverables satisfactorily completed. The Work Order shall identify the deliverables for payment of the Fixed Fee.

2. Fixed Fee. The Fixed Fee is calculated solely on the Direct Labor Costs. The Consultant acknowledges and agrees that the Fixed Fee does not and shall not include any other markup on Indirect Costs or Other Direct Costs (ODC).
3. The Parties acknowledge and agree that the Fixed Fee is a fixed amount, which cannot be increased because of any differences between the Work Order Price and actual costs of performing the Work.
4. The Consultant acknowledges and agrees that the amount of the Fixed Fee may be adjusted by the County to:
 - a. Reduce the Fixed Fee associated with deletions in the Work Order;
 - b. Increase the Fixed Fee for additional Work added to the Work Order through a Work Order Change.
5. Any portion of the Fixed Fee not previously paid in the monthly payments shall be included in the final payment for the Work Order provided that the Consultant satisfactorily completed the entire Scope of Work subject to the limitations set forth above.

SECTION 15. WORK ORDER INVOICING

- A. Work Order invoices shall be submitted to the Project Representative or designee no later than the Invoice Due Date specified in Section 1, Agreement Summary, unless otherwise specified in the Scope of Work. 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 these provisions may result in denial of payment and/or late payment.
- B. A properly documented invoice for a Cost-Plus Fixed Fee Work Order from the Consultant shall:
 1. Include the Contract Purchase Agreement (CPA) number specified in Section 1, Agreement Summary.
 2. For each individual, detail the Work by task, hours, and contract rates for labor, overhead, and fee.
 3. Include copies of all invoices from authorized subconsultants for which payment is being requested.
 4. Include only those individuals who have been approved to perform Work in writing by the Project Representative.
 5. Include itemized copies of receipts and invoices for invoiced Other Direct Costs.
 6. Include reimbursement amount for Lump Sum Other Direct Costs.
 7. Provide a written representation of the accuracy of the rates billed, task completed, allowability, and percentage of Work completed.
- C. Receipts are not needed for reimbursement of meals if allowed while in travel status.
- D. A properly documented invoice for a Lump Sum Work Order from the Consultant shall:
 1. Include the Contract Purchase Agreement (CPA) number specified in Section 1, Agreement Summary; and

2. For each task, list the completed deliverable in accordance with the payment schedule.
- E. At no time shall the total cumulative amounts paid for all Work Orders exceed the Total Price.
- F. The County will review a timely submitted invoice within fifteen (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 invoice and resubmit within seven (7) business days. Once the County receives a resubmitted and corrected invoice, the County shall have fifteen (15) business days to review and determine if it is properly documented.
- G. The County shall pay a properly documented invoice within twenty (20) business days after the County has determined that it has received a properly documented invoice.
- H. The County is not obligated to review or pay an untimely invoice within the time periods described above.
- I. In accordance with Section 7, Reporting Requirements, the Consultant shall collect, enter, submit, and update the required submittals for itself and its subconsultants. Such information shall be submitted prior to the County processing and paying any progress payment.
- J. Lump Sum ODC will be paid in equal monthly installments for the scheduled duration of the Work Order. The parties may agree on additional Lump Sum ODC if memorialized in a Work Order Change.
- K. Prompt Payment of Subconsultants. Within ten (10) business days of receipt of a progress payment from the County that includes dollars for work performed by subconsultants, ConsultantName shall pay subconsultants for all work satisfactorily completed. If ConsultantName fails or neglects to make payment within ten (10) business days, ConsultantName shall pay to the subconsultant interest computed at one (1) 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.
- L. Final Payment for Each Work Order. Final payment for Work completed by the Consultant for an individual Work Order shall be approved and paid for by the County within sixty (60) business days after the following have been fulfilled for that Work Order:
1. Satisfactory completion of all Work required by Consultant and its subconsultants;
 2. Submittal of a properly documented invoice marked "FINAL" from Consultant; and
 3. Receipt by the County of all deliverables, documents, and tangible items purchased for the County under the Work Order.
 4. Consultant has entered all payments to date into DCMS.
- M. Effect of Final Payment. 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 a Work Order or any part thereof. The Consultant agrees to reimburse the County for any overpayment discovered by the County or its authorized representative.

- N. No payment, whether monthly or final, to the Consultant for any 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.
- O. Should the County determine that any Direct Labor Rates, Billing Rates, ODC or overhead rates charged to the County exceed the rates paid by the Consultant, the County shall be entitled to a refund of the difference between the actual rate paid and the rate paid by the County.

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.** The Consultant 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. **Living Wages.** In accordance with King County Ordinance 19762, contracts for services with an initial or amended value of \$100,000 or more, the Consultant agrees that it shall pay and require all subconsultants to pay a living wage as described in the ordinance, to employees for each hour the employee performs a measurable amount of Work ("Measurable Work") on this Contract.

- a. "Measurable Work" means a definitive allocation of an employee's time that can be attributed to Work performed on a specific matter, but that is not less than a total of one hour in any one-week period.
 - b. The requirements of the ordinance, including payment schedules, are detailed at: <https://kingcounty.gov/depts/finance-business-operations/procurement/about-us/Living-Wage.aspx>. Violations of this requirement may result in disqualification of the Consultant from proposing on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.
5. **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.
6. **Compliance with Laws and Regulations.** The Consultant and all subconsultants 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.
7. **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.

8. **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.
9. **Assistance with the Requirements of this Section.** Refer to 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 this section by contacting King County Business Development and Contract Compliance (BDCC) Section 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 emails, 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 Agreement and/or Work Order.

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 (6) 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, 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 Agreement and/or Work Order.

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 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 or B of this section have been breached, the County shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten (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 fifteen (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 twenty four months before and including the date of filing the sworn statement.
 1. No County employee or any member of the County employee's immediate family holds an office or directorship in the 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 Consultant 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 fifteen percent (15%) 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 thirty (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 Work Order Construction Management Services for Parks Division, 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. Executed Work Order;
 5. Exhibit D, Key Personnel;
 6. Exhibit C, Insurance;
 7. Consultant's Proposal; and
 8. 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 Work Order 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 (3) 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 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 or an individual Work Order, 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 or Work Order 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 fee 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 Work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price and/or Work Order Price. 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 thirty (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 Work Order 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 Work Order 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 or Work Order 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 thirty (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 or Work Order, 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. Termination of Cost-Plus Fixed Fee (CPFF) Work Orders. If the County terminates a CPFF Work Order 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 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 Work Order 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 thirty (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 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 Work Order where the County has reimbursed the Consultant for such costs;
 - 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 ninety (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 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 of Lump Sum Work Orders. If the County terminates a Lump Sum Work Order for convenience, the County shall pay the Consultant only for the following items, provided however, payment shall not exceed the Work Order Price:
- a. A reasonable amount for services satisfactorily performed to the date of termination;
 - b. Costs associated with uncompleted Work or services performed and approved up to the date of termination, provided that no payment will exceed the amount that would have been paid had the Work or services been completed; and
 - c. Actual and Reasonable termination settlement costs the Consultant reasonably 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 actual reasonable accounting and clerical costs related to preparing Termination Settlement Proposal.
 - d. Within ninety (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:
 - (1) Request for costs associated with Work or services satisfactorily performed;
 - (2) Actual and reasonable costs associated with uncompleted Work or services performed and approved up to the date of termination;
 - (3) Reasonable termination settlement costs for terminating subconsultant contracts;
 - (4) Actual reasonable costs related to accounting and clerical time spent preparing the Termination Settlement Proposal;
 - (5) Documentation supporting the costs identified in the Termination Settlement Proposal; and
 - (6) 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.

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

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: _____

Doug Hodson, Deputy Division Director
Parks and Recreation Division

*For Girmay Zahilay, King County
Executive*

Date: _____

By: _____

Print
Name: _____

Title: _____

Date: _____

EXHIBIT A - SCOPE OF WORK

DRAFT

EXHIBIT B - COST SUMMARY

1. Approved Overhead and Fixed Fee Rates (each firm)
2. Approved Labor Rates (each firm)
3. Approved Other Direct Costs (ODC) Rates

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	Invoiced
Courier	Per Service	\$28.00	Invoiced
Parking	Per Hour	\$20.00	Invoiced
Ferry (vehicle/driver)	Per Trip	\$39.40	Invoiced
Ferry (passenger)	Per Trip	\$12.50	Invoiced
Toll fees	Per Trip	\$6.90	Invoiced
Rideshare	Per Trip	\$80.00	Invoiced
Car Rental	Per Day	\$96.00	Invoiced
8.5 x 11 B/W Copy	Per Copy	\$0.10	Invoiced
8.5 x 11 Color Copy	Per Copy	\$0.69	Invoiced
11 x 17 B/W Copy	Per Copy	\$0.20	Invoiced
11 x 17 Color Copy	Per Copy	\$1.76	Invoiced

EXHIBIT C - INSURANCE

DRAFT

EXHIBIT D - KEY PERSONNEL

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

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