Cedar Hills Regional Landfill Pilot-Scale Micro-Electrolysis

Contract KC001738

Volume 1 of 3

Bidding Requirements and Forms
General Terms and Conditions

October 2026

King County

Department of Natural Resources and Parks
Solid Waste Division

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INVITATION TO BID

Contract Title: Cedar Hills Regional Landfill Pilot-Scale Micro-Electrolysis

Synopsis: The pilot-scale ME project, which targets arsenic in industrial wastewater from the methane processing plant located at CHRLF, is part of the overall leachate and lagoon improvements project at CHRLF. The Work of this contract includes but is not limited to: obtain all permits necessary to perform the Work, furnish and installation of ME reactor and platform foundation slab and stairway foundation slab, including all required anchoring, furnish and installation of pilot-scale ME treatment system equipment, interconnecting piping and valves, and instrumentation, furnish initial bulk chemicals and media, installation of site utility hookups to existing onsite power, including underground and above-grade connection points for the pilot system and associated installations, hydrostatic and leak testing, pre-commissioning, commissioning, inspections, and final system testing.

Bid Due Date/Time: 10/22/2026 / 1:30:59 PM

Bid Opening: Bids will be opened and read as soon as practicable after the Bid Due Date/Time. The Bid Opening will be conducted via Microsoft Teams:

- **Join on your computer or mobile app:**
  Click here to join the meeting
- **Or call in (audio only)**
  +1-425-653-6586, Conference ID 295 491 138#

Request for Information: Submit all inquiries via email to the Contract Specialist and cc the Alternate Contract Specialist. No verbal answers by any County personnel or its agents and consultants will be binding on the County.

Contract Specialist:
Annette Hansford, ahansford@kingcounty.gov, 206-492-6395

Alternate Contract Specialist:
Isaac Johnson, isjohnson@kingcounty.gov, 206-477-6618

Engineer's Estimate: $966,400.00

Work site: Cedar Hills Regional Landfill, 228th Ave SE, Maple Valley, Washington 98038.

Pre-Bid Conference: 10/13/2026, 10:00AM

The Pre-Bid Conference will be conducted via Microsoft Teams. Firms may attend the conference as follows:

- **Join on your computer or mobile app**
  Click here to join the meeting
- **Or call in (audio only)**
  +1-425-653-6586, Conference ID 555 098 404#

Subcontracting Opportunities: Construction Surveying, Stormwater and Sediment/Erosion Control, Earthwork, Concrete and Masonry, Special Construction, Plumbing, Electrical, Pollution and Wastewater Equipment

SCS Utilization Requirements. 5% minimum requirement for King County Certified Small Contractors and Suppliers (SCS).

Apprenticeship Requirements: 2% minimum Apprentice Utilization Requirement.

Document Holders: Document Holders list can be viewed at the following website: https://kingcounty.gov/depts/finance-business-operations/procurement/for-business/solicitation-resources.aspx

Bid Guaranty: Not less than five percent (5%) of the Total Bid Price.

This information is available in alternate formats for individuals with disabilities upon advance request by calling 206-263-9400, TTY Relay: 711.

Note: Bids received after Bid Due Date/Time will not be considered. Bidders accept all risks of late delivery, regardless of fault. King County is not responsible for any costs incurred in response to this Invitation to Bid.

END OF SECTION

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INSTRUCTIONS TO BIDDERS

PART 1 — GENERAL BIDDING CONSIDERATIONS

1.01 EXAMINATION OF CONTRACT DOCUMENTS AND REGULATIONS

A. Each Bidder shall thoroughly examine and be familiar with the Contract Documents including the terms and conditions, specifications, qualification requirements, any other requirements, and if included, drawings or addenda contained within this solicitation package.

B. Each Bidder has an obligation to notify King County (herein after also referred to as "County") Contract Specialist listed in §00 10 00 Invitation to Bid, in writing, via email, and prior to the bid opening, of any ambiguity or inconsistency in or between the Contract Documents or overly stringent qualifications. Failure to notify the Contract Specialist and the Alternate Contract Specialist, via email, prior to the bid opening of any such ambiguity or inconsistency the Bidder discovered or should have discovered shall result in the waiver of any and all rights of the Bidder to claim additional time or compensation, if the County executes the Contract (i.e., the County signs the Agreement, §00 50 00), relating to or arising from the ambiguity or inconsistency.

C. The submittal of a bid shall constitute an acknowledgment upon which the County may rely that the Bidder has obtained, thoroughly examined, and is familiar with the Contract Documents and has reviewed and inspected all applicable federal, state and local statutes, ordinances and regulations relating to the work and all permits which have been applied for and/or issued pertaining to the work.

D. The failure or neglect of a Bidder to obtain, receive, or examine any of the Contract Documents, statutes, ordinances, regulations and permits shall in no way relieve the Bidder from any obligations with respect to its bid or to the Contract. No claim for additional compensation or time will be allowed based upon a lack of knowledge or misunderstanding of any of the Contract Documents, statutes, ordinances, regulations, permit requirements, or other materials referenced or incorporated herein.

1.02 ADDENDA & CLARIFICATION OF CONTRACT DOCUMENTS

A. No oral clarification or interpretations will be made to any Bidder as to the meaning of the Contract Documents. Requests for clarification shall be made in writing via email to the Contract Specialist and cc the Alternate Contract Specialist at least seven (7) days prior to the bid opening date. The County may not respond to requests for clarification that are received outside of this timeframe.

B. Addenda will be posted to the E-Procurement Supplier Portal at: https://kingcounty.gov/procurement/supplierportal and the Solicitation Abstracts page at: https://kingcounty.gov/procurement/solicitations.

C. Clarifications will be transmitted, via the E-Procurement system, to registered suppliers. Clarifications are for information purposes only, do not affect any changes to the Contract Documents, and are not part of the Contract Documents.

D. Bidders shall not rely upon any oral statements or conversations, whether at the pre-bid conference or otherwise, they may have with County employees, agents, or representatives regarding the Contract Documents.

E. In order to participate in a solicitation, all interested firms must register in the E-Procurement Supplier Portal. Registered firms can view solicitation documents at: https://kingcounty.gov/procurement/supplierportal.

F. If there is a need for special arrangements or sign interpreters at any pre-bid conference or bid opening, please call 206-263-9400, TTY Relay: 711, three (3) days in advance.

1.03 INSPECTION OF WORK SITE

A. Bidders shall carefully inspect and compare the work site and Contract Documents to satisfy themselves, by personal examination, physical testing or by such other means as they may prefer, of the location of the work, the actual physical conditions of the site, surface and subsurface conditions, and conditions ordinarily encountered and generally recognized as inherent in the work. Bidders shall obtain written permission from property owner prior to entering the site and prior to conducting physical testing. If, during the course or as a result of such inspection, examination and testing, a Bidder finds facts or conditions which appear to conflict with the letter or spirit of the Contract Documents, or with any other data or material made available to the Bidder relating to the work, the Bidder shall promptly notify the Contract Specialist and cc the Alternate Contract Specialist, via email, for additional information and clarification before submitting a bid.

B. The submittal of a bid shall constitute the Bidder's acknowledgment, based on the Bidder's own knowledge, examination, inspection and testing as well as review of the Contract Documents, that the Bidder has satisfied itself as to the following: (1) the quality, character and quantity of subsurface conditions materials or obstacles to be encountered insofar as this information is reasonably ascertainable from the inspection of the site and Contract Documents; (2) access to the site; (3) environmental factors and mitigation requirements; (4) all other data, matters and conditions requisite to the fulfillment of the work; (5) conditions ordinarily expected to be encountered or generally recognized as inherent in the work; (6) requirements imposed by easements and permits; and, (7) existing and available services and utilities at and in the vicinity of the site of the work and not on any representation or warranty of the County. No claim for additional compensation will be allowed which is based upon a misunderstanding or lack of knowledge, examination, inspection and/or testing of any of the above items by the Bidder.

1.04 WAGES

A. This Contract is subject to Chapters 39.12 and 49.28 RCW, amendments thereto and regulations issued thereunder, relating to prevailing wages, benefits and other requirements. Bidders shall examine and be familiar with such requirements. No claim for additional compensation will be allowed which is based upon a lack of knowledge or a misunderstanding of any such requirements by the Contractor or a failure to include in the Bidder's bid price adequate increases in such wages during the performance of this Contract. Bidders must comply with the current prevailing wage rates which are found in §00 43 43.

1.05 PROGRESS AND COMPLETION

A. Time is of the essence for this Contract. Progress and completion of the work shall comply with all requirements herein, and intermediate and final completion dates as may be set forth in the specifications. The submittal of a bid constitutes the Bidder's acknowledgment that such intermediate and final completion requirements have been taken into account in formulating its bid for this Work.

1.06 PREVENTION OF ENVIRONMENTAL POLLUTION AND PRESERVATION OF PUBLIC NATURAL RESOURCES

A. If a Contract is executed by the County, the Contractor shall fully comply with all such environmental protection laws, ordinances and regulations dealing with prevention of environmental pollution and the preservation of public natural resources that may be applicable to this Project. The cost of such compliance shall be included in the bid prices.

1.07 REQUIREMENT FOR COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

A. A summary of the requirements and instructions is contained in §00 22 00.

1.08 NON-DISCRIMINATION IN CONTRACTING

A. It is the policy of the County to provide equal employment opportunities and an equal opportunity for all businesses to participate in providing goods and services to the County.

B. The County has an affirmative action policy relating to employment (King County Code chapter 12.16), a non-discrimination in contracting policy (King County Code chapter 12.17), and a fair employment policy (King County Code chapter 12.18). A summary of the requirements, instructions, and submittals is contained in §00 22 00. It is each Bidder's obligation to review this information and comply with all requirements when submitting a bid for this Contract.

1.09 RECYCLED PRODUCTS POLICY

A. The Contractor shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract. If the cost of recycled paper is more than fifteen percent higher than the cost of non-recycled paper, the Contractor shall notify the County, who may waive the recycled paper requirement.

B. The Contractor agrees to use both sides of paper sheets for copying and printing, and to use recycled/recyclable products wherever practical.

1.10 “OR EQUAL” REQUESTS

A. Except as provided in sub-paragraph C below, when product, material or equipment is specified by one or more patents, brand names, or catalog numbers proprietary name or name of manufacturer or any combination thereof, it shall be understood that this is for the purpose of defining the performance process, article desired or other salient requirements, and shall be deemed to be followed by the words "or equal," whether or not such words appear. Other products, materials or equipment, of equal or better capacities, quality and function, may be considered by the Project Representative upon the Contractor's request for “or equal” determination.

B. Bidders (no subcontractors, suppliers, or materialmen) may submit written requests for approval of an “or equal” determination during the bidding period. Requests must be submitted, via email to the Contract Specialist and cc the Alternate Contract Specialist, not later than ten (10) days prior to the bid opening. Proposed “or equal” products, materials, or equipment not added to the technical specifications by addenda five (5) days prior to the bid opening are due shall be considered having been rejected as not equal.

C. Under no circumstances will a substitution or a proposed “or equal” product be considered for an item which is identified as no equal, sole source, no substitutions and/or pre-qualified.

D. Bidders must provide sufficient documentation *(information similar to that which is required for a substitution request (CSI form 13.1A))*, to enable the County to review the product documentation and determine if the products, materials, or equipment are “equal”. Bidder shall provide any additional documentation requested by the County in a prompt and timely manner.

1.11 CONFLICT OF INTEREST—FORMER COUNTY EMPLOYEES

A. Organizational Conflict of Interest. An organizational conflict of interest (OCOI) is a real or perceived situation where because of activities, relationships, financial interests, or contracts, a bidder may possess impaired objectivity or an unfair competitive advantage.

1. Bidders may be precluded from proposing or participating in this procurement if they have:
   (a) A direct or indirect pecuniary or property interest, accepted any compensation, gift or thing of value from any other person beneficially interested in this procurement or hired a former King County employee less than 1 year following separation from King County.
   (b) Developed or provided guidance on the instructions, scope of work, or evaluation criteria for the procurement.
   (c) Prepared project-related documents beyond preliminary design, reports, or other similar documents, that were not made available to all bidders.
   (d) Provided previous services that gave the bidder access to or knowledge of confidential or inside information not available to other bidders.
   (e) Performed work or services under a previous/concurrent contract that may be subject to evaluation or assessment under this procurement. This includes work or services performed by others in which the bidder has a financial interest in.
   (f) An active role on another contract (e.g. Project Management or Construction Management services) to evaluate or assess work or services performed under this procurement. This includes work or services performed by others which the bidder has a financial interest in.
2. Prior to submitting bids to the County, each bidder shall conduct a review of its past and current contracts and/or affiliations to identify any potential, real, or perceived OCOI related to this procurement. If following that review, a bidder has identified an OCOI related to this procurement, the bidder must seek a written determination from King County regarding the bidder eligibility to propose. King County's written response will be binding. Bidders shall submit written requests to the Contract Specialist identified in §00 10 00 Invitation to Bid. Subconsultants of bidders may seek similar determinations, but the required information must be submitted to King County through the /bidder.
3. Written requests must include the following information:
   (a) A detailed description of the specific scope of the previous or concurrent work and how it relates to the scope of work to be performed by the bidder for upcoming work;
   (b) The identification of any personnel that will be used for the upcoming work that also were involved in the previous or concurrent work and their respective roles on each;
   (c) A detailed explanation regarding why the bidder believes there is no conflict of interest that would preclude the bidder from performing the scope of work; and
   (d) Any internal measures that the bidder proposes to implement to eliminate any potential or perceived conflict of interest.
4. The County, in its sole discretion, may implement additional steps to avoid or mitigate an OCOI.

5. Discovery of additional information or a change in information over time may necessitate a re-evaluation of the original determination.

B. As a matter of responsibility the Bidder shall identify within the Responsibility Detail Form any employees who, for one (1) year after leaving County employment, were involved in the preparation of its bid. Failure to identify the employees involved may result in rejection of the bid.

C. After Contract Execution, the Contractor is responsible for notifying the Project Representative of any employees who, for one (1) year after leaving County employment, may become involved in the Contract at any time during performance of the Work. Failure to identify the employees may result in termination of the Contract.

D. The requirements of this Section do not replace a former County employee's legal obligation to comply with the King County Code of Ethics, chapter 3.04 KCC regarding post-County employment activities.

1.12 EX PARTE COMMUNICATIONS

A. Bidders are expected to conduct themselves with professional integrity and to refrain from lobbying activities. During the procurement process, commencing with the issuance of the ITB and continuing until the execution of the Contract (or cancellation of the procurement) no employee, member, agent, vendor, advisor, subcontractor or consultant of any bidder shall have ex parte communications, directly or indirectly, regarding this procurement with any representative or elected official of the County involved in this procurement, except for communications permitted by this ITB. Any verified allegation that a Bidder, subcontractor or team member has engaged in such prohibited communications or attempted to unduly influence the solicitation process shall cause the County to disqualify a bidder or a member of a bidder's team from participating in this process, all at the sole discretion of the County.

PART 2 — PREPARATION AND SUBMITTAL OF BIDS

2.01 GENERAL

A. Bids shall be made on the forms in §00 40 00 and include the bid guaranty. The completed forms constituting the bid shall be in a PDF file format and submitted, using the "Create a Response" button only, directly to the E-Procurement solicitation system. File size is limited to 25 megabytes. Bidders may zip the file to reduce file size or split files to meet the size limitations. All bids must be received before the Close Date/Time listed in the E-Procurement solicitation system. Do not submit the remainder of the Contract Documents. Bidders are warned against making alterations of any kind to the Form of Bid or, if applicable, the Bid Guaranty Bond. Bids which contain omissions, erasures or irregularities of any kind may be rejected. Any qualification, addition, limitation or provision attached to or contained in a bid may render the bid non-responsive. No oral, facsimile, telegraphic or telephonic bids or modifications will be considered.

B. All bids shall be signed by the Bidder, or the Bidder's authorized representative. If the bid is made:

1. By an individual, the Bidder's name, signature, and address must be shown;
2. By a partnership or joint venture, it shall contain the names of each partner, the mailing address of the partnership or joint venture and shall be signed in the firm name, followed by the signature of the person signing, indicating that person's position in the partnership or joint venture; or

3. By a corporation, the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person who signs on behalf of the corporation must be shown.

C. The County is not responsible for any cost incurred in response to this Invitation to Bid.

D. Upon request of the County, the Bidder shall provide copies of the articles of incorporation, bylaws, resolutions of board of directors, partnership papers, joint venture agreements, and any other documents evidencing the legal status of the Bidder and the authority of the Bidder's officer or representative who signed the bid on behalf of the Bidder.

2.02 TAXES – RETAIL SALES

A. The Work to be performed under this Contract constitutes a "retail sale" as such term is defined in RCW 82.04.050, and the Contract Price is subject to the State of Washington and local agency retail sales taxes. However, Bidders shall not include such retail sales tax on the Contract Price in their bids. Such retail sales tax will be calculated on the total Contract Price and the County will add retail sales tax (state and local) on each progress payment and final payment to the Contractor for transmittal by the Contractor to the Washington State Department of Revenue or to the applicable local government.

B. Other than state or local retail sales tax on the Contract Price as specified above and except as provided in subparagraph C of this paragraph 2.02, the Bidder shall include in the Bidder's proposed price(s) all applicable taxes which the Contractor will be required to pay for the Work under this Contract. For example, the County will not add sales tax the Contractor pays on the purchase of tools, machinery, equipment or consumables not integrated into the Work. No adjustment will be made in the amount to be paid by the County under this Contract because of any misunderstanding by or lack of knowledge of the Bidder/Contractor as to liability for, or the amount of, any taxes for which the Bidder/Contractor is liable or responsible by or under this Contract or because of any increases in tax rates imposed by any federal, state or local governments.

C. Retail sales/use taxes, if any, payable on equipment, materials and other items provided hereunder to the Contractor by the County shall not be included in the Bidder's proposed prices. If taxes on such items are required to be paid, the County shall make such payment, either through the Contractor or direct to the Washington State Department of Revenue.

2.03 BID GUARANTY

A. The bid shall be accompanied by a PDF file of an original bid guaranty in the amount equal to at least 5% of the Total Bid Price. Upon request by the County, bidder(s) shall provide the original bid guaranty which accompanied their electronic bid. The bid guaranty shall be in one of the following formats and made payable to KING COUNTY: (1) a bid guaranty bond, using either the form provided in §00 43 13 or a form acceptable to the County which contains provisions substantially similar to those in §00 43 13, duly completed by a guaranty company authorized to carry on business in the state of Washington; or (2) a postal money order, a certified check, or cashier's check drawn upon a banking institution with a branch office in the state of Washington. The surety signing the bid guaranty bond shall be registered with the Washington State Insurance Commissioner, and the surety's name shall appear in the current Authorized Insurance Company List in the State of Washington published by the Office of the Insurance Commissioner. Failure to submit the PDF file of the original bid guaranty, or upon request by the County, provide the original bid guaranty, shall render the bid non-responsive and be rejected.

B. The amount payable to the County under the bid guaranty bond, or the certified or cashier's check or postal money order and the amount thereof, as the case may be, shall be forfeited to the County in case of a failure or neglect of the Bidder to furnish, execute and deliver to the County all the forms listed in §00 52 00 within the number of days specified therein, following the issuance of the Intent to Award. Forfeiture of the bid guarantee shall not limit the County's right to recover damages from the Bidder caused by the Bidder's failure to execute the Contract.

C. The County will return bid guarantees of all bidders in accordance with §00 20 00 ¶4.04.

2.04 ACKNOWLEDGMENT OF ADDENDA

A. Each Bidder shall acknowledge all addenda issued during the solicitation in the E-Procurement system.

PART 3 — BID EVALUATION AND REJECTION

3.01 OPENING AND POSTPONEMENT OF OPENING

A. At the time and place set forth in the Invitation to Bid for the opening and reading of bids, each and every bid (except those which may have been properly withdrawn) received prior to the scheduled closing time for receipt of bids will be publicly opened and read aloud by the King County P&P staff, irrespective of any irregularities or informalities in such bid. The time and place set forth in the Invitation to Bid for opening and reading the bids may only be changed by addendum.

B. The County reserves the right to postpone the date and time for opening of bids at any time prior to the opening of bids.

C. The official time stamp clock for bid submittal will be the internal clock displayed within the County's E-Procurement system. Late bids will not be accepted.

D. Immediately following the bid opening, firms who have submitted a bid can access the bid submittal results via the E-Procurement Portal.

E. Following the bid opening, typically within 24-48 hours to allow for all required forms, allowed to be submitted after the bid closing time and date, a message will be transmitted, via the E-Procurement system, to registered suppliers that copies of all bid submittals are available to the public via the County's website at: https://kingcounty.gov/depts/finance-business-operations/procurement/for-business/solicitation-resources.aspx

F. Any document submitted to King County pursuant to this ITB prior to Contract Execution shall be considered a public record under chapter 42.56 RCW (the "Act") and shall be available for public inspection and copying, unless exempt under the Act.

3.02 MODIFICATION AND WITHDRAWAL OF BIDS

A. Bidders are allowed to revise their submitted bid prior to the Close Date/Time. Bidders will not be allowed to revise their bid after the Close Date/Time.

B. Bidders may be allowed to withdraw their bid for justifiable reasons after the Close Date/Time prior to Contract Execution, only as approved by the County.

3.03 BID EXTENSION

A. The County reserves the right to request Bidders to grant an extension of the effective period of the bid. Such grant shall not be unreasonably withheld. If a Bidder pursues a protest and/or request for reconsideration, its bid is deemed extended until the County executes a contract, or until the protest or request for reconsideration is withdrawn by the Bidder.

3.04 BID ERRORS, INFORMALITIES AND IMMATERIAL IRREGULARITIES

A. Prices set forth in the bid will be reviewed by the County for mathematical accuracy.

B. The County, in its sole discretion, reserves the right to waive minor bid errors, informalities, and immaterial irregularities when it is in the County's best interest and does not result in displacement of a low bidder.

C. The County reserves the right to correct arithmetical errors and discrepancies between unit prices(s) and extended amount(s) and/or written words or numbers (collectively referred to herein as a "Discrepancy") under the following circumstances:

1. Existence of the Discrepancy is ascertainable from the face of the bid;
2. The Bidder verifies Discrepancy;
3. The intended bid is ascertainable from the face of the bid; and
4. Correction of the Discrepancy does not result in displacement of a low Bidder.

Where 1. through 4. are met, the unit price will always prevail.

D. Where the bid is readily susceptible of being interpreted as offering either one of two prices shown on the face of the bid, one of which is low and the other is not, the bid must be rejected. If the evidence of the arithmetical error or discrepancy is clear and convincing the Bidder may be permitted to withdraw its bid.

E. In the event a Bidder believes it made an error on its bid, the Bidder shall provide written notice of such claim. The Bidder shall provide to the County supporting evidence for such claim including cost breakdown sheets. The County reserves the right to require the submittal of other bid records or information as the County may deem necessary to evaluate the Bidder's claim of error, or any error as may be identified by the County during its review of the bid.

F. Any review by the County of a bid and/or any review of such a claim of bid error (including supporting evidence) creates no duty or liability on the County to discover any other bid error or mistake, and the sole liability for any bid error or mistake rests with the Bidder or Contractor.

3.05 BID EVALUATION AND RESULTS

A. Following the Bid Close Date and Time, bids will be evaluated by County to determine which bid is the lowest, responsive bid submitted by a bidder.

B. The County will request the information, as specified in §00 45 13 Qualifications Information, to determine the low responsive bidders' responsibility.

C. Bid results will be available to all bidders after the Close Date/Time, at: https://kingcounty.gov/procurement/solicitations

D. Reciprocal Preference for Resident Contractors

1. In accordance with RCW 39.04.380, the County is enforcing a Reciprocal Preference for Resident Contractors. Any public works bid received from a Nonresident Contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that Nonresident Contractor. States that currently provide bidding percentage preferences to resident contractors are: Alaska, Nevada, New Mexico and Wyoming.
2. A "Nonresident Contractor" is a contractor that:

(a) is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

(b) at the time of bidding on a public works project, does not have a physical office located in Washington.

3. The state of residence for a Nonresident Contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

4. All Nonresident Contractors will be evaluated by the County for an out of state percentage bidding preference. If the state of the Nonresident Contractor provides a contractor percentage bidding preference, a Comparable Percentage Disadvantage ("CPD") will be applied, by the County, to the Nonresident Contractor's Total Bid Price during bid evaluation. The CPD is the percentage bidding preference advantage, provided by the Nonresident Contractor's home state.

5. For the purpose of determining the low bidder, the County shall multiply the Nonresident Contractor's Total Bid Price by the CPD. The CPD shall be added to the Nonresident Contractor's Total Bid Price which equates to the Nonresident Contractor's Disadvantage Total Bid. This Nonresident Contractor's Disadvantage Total Bid shall be compared to the other bidder(s) Total Bid Price(s) for the solicitation and the bidder with the lowest total bid shall be the low bidder for this solicitation. *See example below*.

EXAMPLE:

Alaska Nonresident Contractor's Total Bid Price	$100,000
Multiplied by the Alaska CPD	x 0.05
Alaska CPD Total	$ 5,000
Alaska Nonresident Contractor's Total Bid Price	+$100,000
Alaska CPD Total	$ 5,000
Nonresident Contractor's Disadvantage Total Bid	$105,000*

* NOTE: If the Nonresident Contractor's Disadvantage Total Bid is lower than the other bidder(s) Total Bid Price(s), the Alaska Nonresident Contractor will be the low bidder, and if found responsible, will be awarded a contract for the Total Bid Price of $100,000.

If the Nonresident Contractor's Disadvantage Total Bid is higher than the other bidder(s) Total Bid Price(s), the bidder with the lowest Total Bid Price, if found responsible, will be awarded a contract for their Total Bid Price.

3.06 QUALIFICATIONS OF BIDDER

A. In accordance with RCW 39.04.350 the low responsive bidder shall demonstrate, to the satisfaction of the County, that the Bidder and/or its project team are responsible and qualified to perform the Work under this Contract. §00 45 13, Responsibility Detail Forms of the Contract Documents contains the mandatory and, if any supplemental criteria, for Bidder responsibility.

B. The Bidder shall complete and submit the required information electronically, via email to the Contract Specialist identified in §00 10 00, within the time specified in §00 45 13.

C. Project examples, submitted with the Qualifications Information, shall have been substantially completed before the Close Date/Time listed in §00 10 00.

D. In the event a Bidder fails to provide qualification information as required in §00 45 13, or other information requested by the County, the Bidder may be rejected as not responsible.

3.07 BID EVALUATION CONFERENCE

A. Prior to Intent to Award, if requested by the County, the low responsive Bidder shall attend bid evaluation conference(s). The County will hold a bid evaluation conference only if the County deems it is necessary. The Bidder shall bring to the conference any documents or information required by the County as necessary for review.

B. By conducting a bid evaluation conference, the County does not waive its right to make determinations regarding responsiveness and responsibility of the Bidder.

3.08 SINGLE BID RECEIVED

A. If the County receives a single responsive, responsible bid, the County shall have the right, at its sole discretion, to conduct a price or cost analysis on such bid. The Bidder shall promptly provide all cost or pricing data, documentation, and explanation requested by the County to assist in cost and price analysis. By conducting such analysis, the County shall not be obligated to accept the single bid; the County reserves the right to reject such bid or any portion thereof.

B. By way of explanation but not as limitation, the terms "price analysis" and "cost analysis" are generally described as follows: (1) price analysis" means the process of examining and evaluating a bid price without evaluating its separate cost elements and proposed profit; and (2) "cost analysis" means the review and evaluation of the separate cost elements and proposed profit of (a) the Bidder's cost or pricing data, and (b) the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

3.09 CANCELLATION OF ITB OR REJECTION OF BIDS

A. Bidders are advised that the County reserves the right to:

1. Cancel the procurement at any time prior to Contract Execution, or
2. Reject any and all bids for good cause, including, but not limited to:
   (a) any bid which contains any omission, erasure or irregularity;
   (b) any bid which has any qualification, addition, limitation, or provision attached to or contained in the bid;
   (c) any bid in which prices are unbalanced in the opinion of the County;
   (d) any bid accompanied by insufficient or irregular bid guaranty;
   (e) any bid found non-responsive by the County;
   (f) any Bidder found by the County to be not responsible;
   (g) any bid for which a Bidder fails or neglects to complete and submit any qualifications information within the time specified by the County and as may be otherwise required herein.
   (h) any bidder found to be debarred by a local, state, or federal agency.

B. In submitting a bid, a Bidder acknowledges and agrees that it is not entitled to any compensation, costs, or damages relating to bid preparation or resulting from the County's decision to cancel a bid or procurement or refusal to execute a contract.

C. All costs incurred in the preparation of a Bid and participation in this procurement shall be borne by the bidders.

3.10 COLLUSION

A. If the County determines that collusion has occurred among the Bidders, none of the bids of the participants in such collusion will be considered. The County's determination of collusion shall be conclusive.

3.11 PROTEST PROCEDURES

A. The County's process for receiving protests is available at: http://www.kingcounty.gov/depts/finance-business-operations/procurement/for-business/do-business/protest.aspx

PART 4 — AWARD AND EXECUTION OF CONTRACT

4.01 GENERAL

A. Within the number of days stated on the Form of Bid, after the bid Close Date and Time, the County will accept a bid and issue an Intent to Award, reject all bids, or take such other action as may be in its best interest. The County reserves the right to request extensions of the bid acceptance period.

B. Within five (5) days the Bidder is to execute and deliver to the County all the forms listed in §00 52 00 following the issuance of the Intent to Award.

C. If the Bidder experiences circumstances beyond their control that prevents return of the Contract documents within five (5) days after receiving the Intent to Award, the County may grant up to a maximum of five (5) additional days for return of the forms listed in §00 52 00, provided the County deems the circumstances warrant it. Under no circumstances will the Bidder have more than 10 days to return the properly executed Agreement and Performance and Payment Bond.

D. The County will presume that any person signing or modifying the bid prior to its submittal, or signing the contract on behalf of the Bidder is authorized to bind the Bidder.

E. After Contract Execution, the Contractor may download an electronic copy of the executed Contract Documents from the County's E-Procurement system for this contract by logging into the supplier portal:

https://kingcounty.gov/procurement/supplierportal

4.02 PERFORMANCE AND PAYMENT BOND

A. The Bidder to whom the County issues the Intent to Award for this Contract shall furnish a Performance and Payment Bond, in accordance with §00 52 00, only on the form provided in §00 61 00, in the amount of 100% of the Contract Price, including any and all adjustments to the Contract Price, as security for the faithful performance and completion of the work. Such bond must be executed, dated and sealed by a duly licensed surety(ies) which is registered with the Washington State Insurance Commissioner, and the surety's(ies') name shall appear in the current Authorized Insurance Company List in the state of Washington published by the Office of the Insurance Commissioner. The surety should be bound by an attorney-in-fact, preferably a resident of this County, but certainly of the State of Washington. The scope of

the Performance and Payment Bond or the form herein prescribed shall in no way affect or alter the liabilities of the Contractor to the County under the terms of the Contract Documents. The County may require the surety(ies) to appear and qualify themselves upon the bond. If at any time the County determines, in its sole judgment, that the surety(ies) are insufficient, the County may require the Contractor to furnish additional surety in form and arrangement satisfactory to the County and in an amount not exceeding that originally required. Payments will not be made on the Contract until sufficient surety as required is furnished.

B. The person signing the Performance and Payment Bond, as Principal, shall be the Bidder or the Bidder's authorized representative. See §00 20 00 ¶2.01B for the signature requirements.

C. Bidder(s) shall submit a PDF file of the original fully executed Performance and Payment Bond. Upon request by the County, Bidder(s) shall mail the original fully executed Performance and Payment Bond.

4.03 INSURANCE

A. The County has established certain insurance requirements set forth in §00 62 00. The Bidder to whom the County issues the Intent to Award shall file with the County evidences of and certificates of insurance from insurer(s), as well as additional insured endorsements, certifying to the coverage of all insurance required herein. Any Bidder having questions about the insurance requirements should immediately contact the Contract Specialist identified in §00 10 00. The County will not execute the Contract without approved Insurance documents. Failure to provide Insurance Documents will result in the rejection of the Bidder.

4.04 RETURN OF BID GUARANTIES & ESCROW DOCUMENTATION

A. Any original hard copy bid guaranties requested and received will be held until the Contract has been fully executed. Thereafter, all original hard copy bid guarantees requested and received, and all PDF copies of bid guarantees in the form of a bond, postal money order, a certified check, or cashier's check will be returned to the respective Bidders. If the County upholds a Bidder's claim of error, the Bidder's bid guaranty will be returned with the County's final determination on the claim of error. The County will also return Bid Guaranties if all bids are rejected.

B. Escrow Bid Documents, if requested, will be returned to unsuccessful bidders along with bid guaranties. The successful bidder will have Escrow Bid Documents returned in accordance §00 46 00.

4.05 EQUAL BENEFITS

A. In accordance with the County Ordinance 14823, as a condition of award of a contract valued at $25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners during the performance of this Contract. Absent authorization for delayed or alternative compliance as referenced below, failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

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

1. Delayed Compliance: If a Contractor is seeking authorization from the County Procurement and Payables Section to delay implementation of equal benefits due to a Collective Bargaining Agreement, Open Enrollment or internal

Administrative steps, an Equal Benefits Substantial Compliance Authorization Form must be submitted prior to Contract Execution.

2. Alternative Compliance: If a Contractor is seeking authorization from the County Procurement and Payables Section for alternative compliance with the requirements of the equal benefits ordinance, the Contractor must complete and return an Equal Benefits Substantial Compliance Authorization Form to the County prior to Contract Execution.

3. The Substantial Compliance Authorization Form can be found at:

   https://kingcounty.gov/depts/finance-business-operations/procurement/forms.aspx

4.06 RESPONSIBLE CONTRACTOR

A. As a condition of award for contracts valued at $100,000 or more, the Bidder agrees that it shall comply with the criteria in King County Ordinance 19925. King County Procurement & Payables may waive specific criteria, such as community workforce agreements or employee health insurance, if deemed inapplicable based on procurement type or business size. Failure to comply with the criteria specified in the ordinance and to which the Bidder is attesting on this form will constitute a material breach, and the County may terminate the contract, in whole or in part, for default.

END OF SECTION

SECTION 00 22 00

REQUIREMENTS FOR NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND SMALL CONTRACTORS AND SUPPLIERS, AND APPRENTICESHIP

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1.01 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY (EEO)

A. **Nondiscrimination in Employment and Provision of Services.** During performance of this Contract, the Contractor 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 chapter 3.12D, as amended, unless based upon a bona fide occupational qualification. Reference King County Code 12.16.020

B. **Equal Employment Opportunity Efforts.** The Contractor 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 chapter 3.12D, as amended. The Contractor'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 Contractor 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.

C. **Labor Unions and Employment Referral Agencies Commitment.** The Contractor shall take reasonable efforts to ensure that all labor unions or employment referral agencies furnishing workers under this Contract comply with King County Chapter 12.16. The Contractor shall notify the County promptly if a labor union or employment referral agency fails to comply with the nondiscrimination or equal employment opportunity efforts as defined by KCC 12.16. At the County's request, the Contractor shall provide documentation that evidences compliance with KCC 12.16.

D. **Equal Benefits to Employees with Domestic Partners.** See §00 20 00 Instructions to Bidders.

E. **Non-discrimination in Subcontracting Practices**. During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services. In considering offers from and doing business with subconsultants and suppliers, the Contractor shall not discriminate against any person because of one or more of their protected classes as defined in King County Code chapter 3.12D, as amended.

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

G. **Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the Americans with Disabilities Act of 1990 as amended (ADA)**. Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services,

programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King County is obligated to under Title II of the ADA, and Section 504 and shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability.

1. The Contractor 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 KCC 12.16; and
2. The Contractor 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 Contractor shall include the requirement that the subcontractor 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 KCC 12.16, that the subcontractor shall not discriminate against persons with disabilities in providing the work under the Contract and that the subcontractor shall provide that the County is a third party beneficiary to that required provision.

H. **Sanctions for Violations**. Any violation of the requirements of the provisions of this §00 22 00 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 KCC 12.16 that provide for penalties, liquidated damages or other remedies, and may result in ineligibility for County contracts.

I. **Record-keeping Requirements and Site Visits**. The County may, after reasonable notice, visit the Project Site and the Contractor's and subcontractor's offices to review records related to the solicitation, utilization, and payment of subcontractors and suppliers. This provision includes compliance with any other requirements of this Section. The Contractor shall provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for at least 6 years after Final Acceptance of all work under this Contract, and permit access by the County to the following:

1. The Contractor shall maintain the following records for at least 6 years after Final Acceptance:

   Advertisements, solicitations, calls for bids, emails and telephone records seeking subcontractors and suppliers for work on the Project; written quotes, bids, estimates or proposals submitted to the Contractor by businesses seeking to participate on this Contract; records relating to the actual use of and payment to subcontractors and suppliers on this Contract; copies of all subcontracts and supply contracts on the Project; and all other records related to compliance with this Section and compliance with the equal opportunity and all other nondiscrimination requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract Documents
2. If this Contract is supported by federal funding, the Contractor shall also comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Contract Documents.
3. Upon two (2) Days' notice, unless an earlier or later time period is specified-, the County may visit the Project Site and the Contractor's and subcontractor's job site offices and home offices to inspect, audit and copy records maintained under subsections I.1 and 2 to determine compliance with the requirements of this

Section. During business hours and as often as it deems appropriate, the County may conduct in-person, telephonic and video conference interviews of all workers on the Project for the purpose of monitoring compliance with the Contract's workforce requirements, including but not limited to Apprenticeship, Priority Hire, Preferred Entry, Prevailing wage and all goals set out by the County. Worker interviews shall be conducted regularly during work hours, as determined by King County. The Contractor and all subcontractors shall fully cooperate and provide reasonable assistance with all audits and worker interviews conducted under this Section, including providing work space for visiting County personnel, collecting, organizing and providing access to records requested by the County, and facilitating access to workers for interviews.

J. **Assistance with the Requirements of this Section**. Obtain copies of KCC 12.16, 12.17, 12.18 and 12.19 at the following link:
https://aqua.kingcounty.gov/council/clerk/code/15_Title_12.htm

Before contract award, direct questions related to this Section in writing via email to the Contract Specialist and cc the Alternative Contract Specialist identified in §00 10 00. If appropriate, such questions may be treated as requests for interpretation and answered by addenda to the Solicitation Document.

After contract award, address questions related to this §00 22 00 by contacting King County Business Development and Contract Compliance (BDCC) Section at opportunity@kingCounty.gov.

1.02 SMALL CONTRACTORS AND SUPPLIERS UTILIZATION

A. **Policy**. It is King County policy that Small Contractors and Suppliers (SCS) have enhanced opportunities to participate in the performance of public works contracts issued by King County, and that Contractors and Subcontractors use Certified SCS Firms to provide materials, supplies, and services on County public works projects.

B. **Inquiries and Information Regarding King County Certified SCS Firms.** Information on how to apply for SCS certification and a directory of Certified SCS Firms is available at: http://www.kingCounty.gov/bdcc. Submit email inquiries regarding SCS certification to SCSCertification@kingCounty.gov.

C. Certified SCS Firm participation may be as the prime contractor or a subcontractor, manufacturer or supplier. Rules for evaluating participation and utilization of SCSs are defined in this section.

D. **Definitions.** The following definitions shall apply throughout this Section.

1. "Administrator" means the Director of Finance.
2. A "Certified SCS Firm" means a business that has been certified by the King County BDCC Section as a Small Contractor or Supplier (SCS) Firm.
3. A "Small Contractor or Supplier" or "SCS" means that a business and the person or persons who own and control it are in a financial condition, that puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for SCS certification is available online at www.kingCounty.gov/BDCC.
    a. "Supplier" means a business that maintains a stock of material and or equipment for sale or lease to other business entities but does not (1) manufacture the material or equipment, or (2) install, maintain, or use the material and/or equipment at or for the project.

b. “Distributor” means a business engaged in the regular sale or lease of the items specified by the contract and must demonstrate ownership of the items in question and assume all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor.

c. “Manufacturer” means a business that manufactures materials or equipment for sale or lease to other entities to install, maintain, or use at or for the project. A manufacturer is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials, or assembling components, to create a product that meets contract specifications.

4. “Fast-Track SCS Certification” means firms certified by OMWBE with any of the certifications listed below are automatically eligible for SCS certification and can count towards the required level of SCS participation:

   a. Minority-Owned Business Enterprises (MBE), OR
   b. Woman-owned Business Enterprises (WBE), OR
   c. Minority Woman-owned Business Enterprises (MWBE), OR
   d. Combined Business Enterprises (CBE),

A directory of firms certified by the OMWBE is available at: www.omwbe.wa.gov.

1.03 SMALL CONTRACTORS AND SUPPLIERS (SCS) REQUIREMENTS

A. **SCS Utilization Requirement**. In accordance with King County Code 2.97 and King County policy to enhance opportunities for Certified SCS Firms in procurement, for this Contract the Bidder shall ensure that it subcontracts at least:

(5%) of the Total Bid Price to Certified SCS Firms

B. **Responsiveness**. Failure to satisfy the SCS Utilization Requirement shall render a bid non-responsive and the bid will be rejected. A Bidder’s demonstrated commitment to utilize Certified SCS Firms at or greater than the required percentage must be demonstrated at the time of bid opening and cannot be cured after that time and will result in bid rejection.

C. **Compliance with SCS Utilization Requirement**. The Bidder shall provide a Letter of Intent for each Certified SCS Firm the Bidder commits to utilize on this Contract, and for the Bidder, if Bidder is a Certified SCS Firm and intends to self-perform work. The Letter of Intent must include all information identified in items 1, 2 and 3 in the list below.

1. Total bid dollar amount for the work to be performed, or materials supplied by a Certified SCS Firm; **and**,

2. Description of work and/or materials supplied by the Certified SCS Firm; **and**,

3. Signature of the Certified SCS Firm owner or an authorized representative of the Certified SCS Firm. An authorized representative means an officer or employee of the Certified SCS Firm, who has been authorized in writing and in advance of the Bid Submittal Due Date to execute a Letter of Intent on behalf of the Certified SCS Firm.

A bidder's failure to properly complete the Letter of Intent to include all information (items 1, 2 and 3) in the above list cannot be cured after bid opening and will result in bid rejection. The Letter of Intent form is located in §00 40 00. Additional Copies may be made as needed.

D. **Evaluating & Calculating King County Certified SCS Firm Utilization**.

1. **A Certified SCS Firm is the Prime Bidder**. For purposes of calculating compliance with the SCS Utilization Requirement, the County will count only the work performed by a Certified SCS Firm that is a Prime Bidder for the distinct, clearly defined work performed with its own forces.
2. **SCS Subcontractor or Manufacturer.** A Bidder will receive 100% credit towards the SCS Utilization Requirement for work performed by a Certified SCS Firm at all tier levels. Provided that when a non-SCS subcontractor further subcontracts to a lower-tier subcontractor or supplier who is a certified SCS Firm, the County will count only the distinct and clearly defined portion of the work that the Certified SCS Firm is performing with its own forces.

   A Certified SCS Firm may further subcontract a portion of the work, provided that the Certified SCS Firm having the contract is actually performing the majority of the work (at least 51% of the subcontract amount). If a Certified SCS Firm is performing at least 51% of the subcontract amount, 100% of the subcontract amount will be counted. The County will not count the participation of a Certified SCS Firm that subcontracts more than 49% of its work.
3. **SCS Supplier.** A Bidder will receive 60% credit towards the SCS Utilization Requirement for the purchase of materials or supplies from a Certified SCS Firm if the firm is a Supplier of materials or supplies only.
4. The County will not count any participation toward the SCS requirement for a Certified SCS Subcontractor, Supplier or Manufacturer where the Prime Bidder or an owner of the Bidder has any percentage of ownership in the Certified SCS firm.
5. The County will not count any participation toward the SCS requirement for a Certified SCS firm that is intertwined with a non-certified SCS firm. King County will determine whether a Certified SCS firm is intertwined with a non-certified firm for factors which include, but are not limited to, the following:
   a. Shared ownership;
   b. Common directors or partners;
   c. Shared equipment, facilities, resources, or employees;
   d. Beneficial financial arrangements which indicate less than arm's length transactions with a non-certified firm;
   e. Over dependency on a non-certified firm to obtain and perform work;
   f. Such an identity of interest exists between the business seeking certification and a non-certified firm that an affiliation may be presumed; and
   g. The degree to which financial, equipment, leasing, business and other relationships with non-certified firms vary from normal industry practice.

1.04 SUBSTITUTION OF KING COUNTY CERTIFIED SCS FIRMS

A. King County requires that any Certified SCS Firm listed by a Bidder on its Letters of Intent shall be used on the Contract.

B. The Bidder or selected Contractor shall not substitute a Certified SCS Firm without the BDCC's prior written approval (See Section 1.01 J Assistance with the Requirements of this Section). If the Bidder or selected Contractor proposes, at any time after bid opening and before Contract Execution, or at any time after Contract Execution, to substitute a Certified SCS Firm, the Bidder or selected Contractor shall provide the County with five (5) business days' prior written notice and an explanation for the SCS substitution request. Substitution of an identified Certified SCS Firm may only be made by a Bidder or the selected Contractor for the following reasons:

1. Refusal of the listed Certified SCS Firm to sign a contract with the Contractor.
2. Bankruptcy or insolvency of the listed Certified SCS Firm.
3. Inability of the listed Certified SCS Firm to perform the requirements of the proposed Contract.
4. Inability of the Certified SCS Firm to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the Contract.
5. The listed Certified SCS Firm is barred from participating in the Project as a result of a court order or summary judgment.
6. Other unforeseen circumstances as approved by King County.

C. The County will investigate the proposed substitution request and decide in writing to approve or disapprove the proposed substitution. Unless waived by the County in writing for good cause, substitution, if any, shall involve the replacement of a Certified SCS Firm with another Certified SCS Firm, and the Bidder or selected Contractor shall remain in compliance with the SCS Utilization Requirement.

D. For substitutions proposed after bid opening and before Contract execution, the Contract shall not be executed unless the County approves the Bidder's substitution request.

E. The failure of a Contractor to comply with the aforementioned conditions will be considered a material breach of the Contract and subject the Contractor to Liquidated Damages in accordance with 1.06F.

F. The County shall not be responsible or liable for any costs, delays, and/or damages resulting from the County denial or acceptance of the proposed substitution.

1.05 NOT USED

1.06 REQUIREMENTS DURING CONTRACT PERFORMANCE

A. **Compliance**. Contractor's compliance with the SCS Utilization Requirements is an essential part of the Contract and a material condition and requirement of the Contract. King County requires that any Certified SCS Firm listed by a Bidder on its Letter of Intent(s) shall be used on the Contract. The County will evaluate the Contractor's compliance with the SCS Utilization Requirement against the Contract Price after Substantial Completion of the Contract for compliance with the overall utilization of Certified SCS Firms on this Contract.

B. **Change Orders.** If the Contract Price is increased as a result of adding additional work or adding an Alternate Bid Item, the Contractor shall identify the Certified SCS Firms that

will apply to each scope of work, and take all reasonable measures to ensure that Certified SCS Firms are provided an opportunity to compete and participate in the new work.

C. **Evaluating Commercially Useful Function and Counting a Contractor's SCS Utilization.**

1. Only Certified SCS Firms performing a commercially useful function according to custom and practice in the industry shall be counted.
    a. No credit will accrue for a Certified SCS Firm acting merely as a passive conduit of funds to a Non Certified SCS Firm.
    b. A Certified SCS Firm may subcontract a portion of the work provided that the Certified SCS Firm having the contract is actually performing the majority of work (at least 51% of the subcontract amount).
        (1) If a Certified SCS Firm is performing at least 51% of the subcontract amount, 100% of the subcontract amount will be counted.
        (2) No credit shall accrue to a Certified SCS Firm that subcontracts more than 49% of its work.
    c. A Certified SCS Firm that acts as a broker in a transaction shall not count towards the Contractor's SCS Utilization Requirement.
        (1) A broker is a firm that does not, itself, perform, manage, or supervise the work of its contract or subcontract in a manner consistent with the standard and customary business practices for contractors or subcontractors in its line of business.
        (2) A Certified SCS Firm will be considered a broker if it subcontracts more than 49% of its work.
2. **Certified SCS Subcontractor or Manufacturer**. The County will count 100% of the subcontract amount for a Certified SCS Subcontractor or Manufacturer provided the Certified SCS Firm is performing a Commercially Useful Function.
3. **SCS Supplier**. The County will count 60% of the total bid dollar amount for materials supplied by a Certified SCS Firm.
4. The County will not count any participation toward the SCS requirement for a Certified SCS Subcontractor, Supplier or Manufacturer where the Contractor or an owner of the Contractor has any percentage of ownership in the Certified SCS firm.
5. The County will not count any participation toward the SCS requirement for a Certified SCS firm that is intertwined with a non-certified SCS firm. King County will determine whether a certified SCS firm is intertwined with a non-certified firm for factors which include, but are not limited to, the following:
    a. Shared ownership;
    b. Common directors or partners;
    c. Shared equipment, facilities, resources, or employees;
    d. Beneficial financial arrangements which indicate less than arm's length transactions with a non-certified firm;
    e. Over dependency on a non-certified firm to obtain and perform work;

f. Such an identity of interest exists between the business seeking certification and a non-certified firm that an affiliation may be presumed; and

g. The degree to which financial, equipment, leasing, business and other relationships with non-certified firms vary from normal industry practice.

D. **Diversity Compliance Management System (DCMS) Reports**

1. The Contractor shall report monthly on the DCMS website located at https://kingCounty.diversitycompliance.com. Email opportunity@kingCounty.gov for assistance. Such information shall be submitted before the County's processing and payment of any invoice. Reporting requirements include:

a. **Payment Reports for Subcontractors and Suppliers**. The Contractor shall submit Payment Reports for all subcontractors and suppliers using the DCMS.

(1) The Contractor shall submit a Payment Report detailing amounts paid to each subcontractor and supplier monthly. The Contractor shall submit the first Payment Report by the 15th day of the first month in which work commences.

(2) Subsequent monthly Payment Reports for all subcontractors and suppliers must be submitted by the 15th day of every month thereafter. Within the DCMS, the Contractor shall identify “zero” payments to subcontractors or suppliers for any report period in which no work has been performed.

(3) The Contractor shall notify and instruct all subcontractors and suppliers performing Work to date to sign into the DCMS and verify payments received for each reporting period, including the amount owed, and the amount paid less earned retainage, as their interests appeared in the preceding Application for Payment.

(4) Upon completion of all Work and as a condition precedent to final payment, the Contractor shall complete the last Payment Report and identify this document as “final” and submit this document into the DCMS. The final Payment Report must list the name of each subcontractor or supplier used by the Contractor and the dollar amount paid to each. Failure to submit the final Payment Report may result in withholding of payments or the final payment.

b. **Payroll Reports**. Payroll reports for the Contractor, every Subcontractor, and all other individuals for firms required to pay prevailing wages for Work performed must be submitted weekly via the online reporting portal at https://prod-cdn.lcptracker.net/login/login. The Contractor is responsible for electronically approving the payrolls submitted by all Subcontractors. Payroll reports must contain the following information

(1) Name and residence address, including the ZIP code of each worker

(2) Classification of work performed by each worker. The classification must be specific and match the classification categories listed in the applicable wage schedule.

(3) Total number of hours employed each day

(4) Total number of hours employed during the payroll period.

(5) Straight time and overtime hourly rate of wages paid to each worker.

(6) Total or gross amount earned by each worker.

(7) Deductions for medical insurance, FICA, federal withholding tax, and any other deductions taken.

(8) Net amount paid to each worker.

(9) Contractor's or Subcontractor's name and address

c. **Add Subcontractors and Suppliers.**

(1) The Contractor shall add all subcontractors and suppliers used on the Project in the DCMS.

(2) The Contractor shall upload all subcontractor agreements to DCMS at the time the Contractor sets up the subcontract in DCMS.

d. **Apprenticeship Utilization Reports**. The Contractor and each Subcontractor must submit a profile for each worker, including, but not limited to, gender, ethnicity, and worker type status (Apprentice and Journey Level), in LCPtracker within the DCMS.

2. The Contractor must submit other information as requested by King County to verify subcontractors working on the project and compliance with requirements for the use of Certified Firms, and the Apprenticeship and or Priority Hire Utilization Requirements of the Contract. The County may add, delete, or change the information required by the Contractor, as necessary. Failure to submit such reports may result in withholding payments or the final payment.

E. **Failure to comply with the SCS requirements**.

1. The Contractor's compliance with the SCS Utilization Requirements is a material condition of the Contract. The Contractor's percentage of participation by Certified SCS Firms as identified in its bid shall be made a condition of the contract award. The County will evaluate the Contractor's compliance with the SCS Utilization Requirement against the total value for all work performed over the life of the contract.

2. If, during the term of the Contract, the Contractor determines that it will be unable to comply with the SCS Utilization Requirement, the Contractor shall provide Notice to King County requesting a reduction or modification of the SCS Utilization Requirement to the County. The Notice shall include written documentation of all factors that contributed to the Contractor's inability to comply with the SCS Utilization Requirement, including, but not limited to, the following:

a. A summary of the work completed by Certified SCS Firms on the project, and an explanation of any shortfall in work identified in the bid and Contract Documents for performance by Certified SCS Firms.

b. Efforts made to identify additional subcontracting opportunities remaining on the project, or on an ongoing basis, for performance by Certified SCS Firms.

c. Outreach and solicitation of bids or quotes from additional Certified SCS Firms for supplies or work on the project.

d. Project factors that reduced or restricted the ability of Certified SCS Firms to perform their committed work.

3. The Administrator will evaluate the request for a reduction or modification and shall provide a written Notice to the Contractor of its determination. If appropriate, the Administrator shall direct the County to prepare a change order reducing the SCS Utilization Requirement.
4. King County Code chapter 2.97 and the administrative rules implementing the ordinance are hereby incorporated into this Contract by reference. The Contractor's unexcused failure to comply with the requirements of the ordinance and administrative rules. and provisions of subsections 1.02 to 1.07 shall be deemed a breach of the Contract. King County may impose liquidated damages, withhold progress payments, and seek any other remedy allowed by law.
5. Before imposing any liquidated damages or withholding payment, the Administrator shall first provide written Notice of a potential violation to the Contractor. The Contractor shall have an opportunity to submit a written reply within ten (10) days from the date the Administrator's notice of a potential breach is mailed to the Contractor. The Administrator shall notify the Contractor in writing of his or her final determination.

F. **Liquidated Damages**.

1. The County is damaged when an SCS does not actually perform a contract or portion of a contract in compliance with the requirements set forth in ordinance, administrative rules, and the requirements of subsections 1.02 to 1.07. Because the actual monetary amount of such damage is not reasonably calculable, liquidated damages equal to the dollar value of the participation by Certified SCSs lost to the County due to the violation may be imposed as provided in the Contract using the methodology set forth in 2. Below.
2. The following example is for informational purposes only:

Total contract price is $100,000

Percentage of total contract price subject to the SCS requirement: 10%

Dollar amount of total contract price to SCS firms to meet the SCS requirement: $10,000 ($100,000 X 10% = $10,000)

Actual SCS dollar amount reported: $5,000.

Shortfall in SCS Requirement: 5%

Liquidated damages: $5,000.00 ($100,000 X 5% = $5,000)

1.07 WORKFORCE DEVELOPMENT DEFINITIONS

A. **Definitions. The following definitions apply throughout this section.**

"Administrator" means the Director of King County Finance and Business Operations Division.

"Apprentice" means a person who has signed a written apprenticeship agreement with and enrolled in an active state-registered apprenticeship training program approved by the Washington State Apprenticeship and Training Council.

"Apprentice Hiring Goal(s)" means the specific goals established by the County for qualified persons with disabilities, economically disadvantaged youth, minorities, and women to participate as Apprentices on County public work contracts. These goals shall be expressed as an overall annual goal for all projects subject to the apprenticeship requirements.

“Apprenticeship Program” means the County’s plan for administering King County Code 12.16.155-180 and setting forth compliance requirements for apprentice utilization on selected County public work contracts.

“Apprentice Utilization Requirement” means the overall percentage of Labor Hours established for the Contract to be worked by Apprentices. This requirement is expressed as a percentage of the total Labor Hours for the Contract.

“Apprenticeship Utilization Plan” means a plan submitted by the contractor to the County that outlines how the Apprentice Utilization Requirement will be met.

“Best Efforts ” means the most substantial possible efforts that the contractor and its subcontractor can reasonably make to meet the established apprentice requirement, priority hiring requirement, and other hiring goals.

“Disability” means any physical or mental impairment that substantially limits one or more major life activities.

“Economically Disadvantaged Youth” means a person 18-24 years old who lives in Economically Distressed Areas (King County Priority Hire ZIP codes)

“Economically Distressed Area (King County Priority Hire ZIP codes)” means a geographic area within King County, including areas in Pierce and Snohomish counties that are part of the County’s wastewater service area, defined by ZIP code based on poverty levels, unemployment, and educational attainment.

“Journey Level” means that an individual has sufficient skills and knowledge of an occupation to be recognized by any combination of a state registration agency, a federal registration agency or an industry, as being fully qualified to perform the work of the occupation. To be “Journey Level,” practical experience must be equal to or greater than the term of apprenticeship.

“Labor Hours” means the total number of projected hours or actual hours to be worked or that have been worked by workers receiving an hourly wage who are directly employed on the site of the public works project. Labor Hours shall also include hours worked by workers employed by subcontractors on the project. Labor Hours shall not include hours worked by supervisors, professionals, or clerical workers.

“Minority or Minorities” means a person who is a citizen of the United States and who is a member of one or more of the following historically disadvantaged racial groups:

1. Black or African American: Having origins in any of the Black racial groups of Africa;
2. Hispanic: Of Mexican, Puerto Rican, Cuban, or Central or South American culture or origin;
3. Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or
4. American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

“Pre-Apprentice” means a student enrolled in a construction pre-apprenticeship training program that the Washington State Apprenticeship and Training Council recognizes.

“Pre-Apprentice Graduate” means an individual who has completed a pre-apprenticeship training program and is available to enter an apprenticeship training program or has been accepted into an apprenticeship training program, including individuals who are completing the first or second year of apprenticeship training.

"Preferred Entry" means a program that permits Pre-Apprentice Graduates from WSATC-approved pre-apprenticeship programs and Helmets to Hardhats veterans, Preferred Entry into a registered State-approved apprenticeship program, and is eligible for dispatch onto County projects ahead of other applicants.

"Qualified Persons with Disabilities" means a person with a disability that, with reasonable accommodation, can perform the essential functions of the job in question.

1.08 APPRENTICESHIP PROGRAM REQUIREMENTS

A. **Policy and General Requirements**. In accordance with King County Code 12.16.155-180, which is incorporated herein by this reference, King County has established certain Apprentice Utilization Requirements for this Contract.

1. Specifically, the Contractor shall:
    a. Utilize apprenticeship training programs registered with the Washington State Apprenticeship Training Council ("WSATC").
    b. Meet the overall Apprentice Utilization Requirement established for this Contract unless reduced pursuant to King County Code 12.16.160.
    c. Encourage participation by all Subcontractors working on the project, with distribution across trade/craft where feasible, and where approved by the County.
    d. Ensure that Best Efforts are made to meet the specific Apprentice Utilization Requirement.
2. If the Contractor fails to meet the Apprentice Utilization Requirement during the term of the Contract, the Contractor shall work with resources, including the Washington State Department of Labor and Industries Apprenticeship Section and the Seattle/King County Building and Construction Trades Council, to identify additional sources of Apprentices.

    Before Contract Award, questions concerning compliance with these requirements, including utilization goals, bidding and submittal requirements shall be directed in writing via email to the Contract Specialist and cc the Alternate Contract Specialist identified in §00 10 00. If appropriate, such questions may be treated as requests for interpretation and answered by addenda to the Solicitation Document.
3. After Contract Award, contact King County Apprenticeship Coordinator by email at opportunity@kingcounty.gov with inquiries concerning compliance with the apprenticeship requirements in this section.

B. **Apprentice Utilization Requirement**.

1. Pursuant to King County Code 12.16.155-180, King County has established a minimum **Apprentice Utilization Requirement** of **2%** for this Contract. (Apprentices shall work **2%** of the Labor Hours for this Project). The County encourages the Contractor and Subcontractors to utilize Apprentices whenever possible.
2. The Contractor and any Subcontractors may not be required to exceed the Apprentice Utilization Requirements, provided in RCW 39.04.320 unless the apprenticeship utilization requirements established by local law or ordinance are more favorable to apprentices.

3. The Contractor shall include the Apprentice Utilization Requirements of this Section in all subcontracts executed for the Contract, and ensure that all Subcontractors working on the project are notified of the Apprentice Utilization Requirements. The Contractor is responsible for meeting the Apprentice Utilization Requirements of the Contract, including overall compliance with all Subcontractor labor hours worked.
4. The Contractor shall ensure compliance with the apprenticeship training standards for each trade or craft that is utilized, as set forth by the Washington State Apprenticeship and Training Council (WSATC).

C. **Apprentice Hiring Goals.**

1. Based on the degree of evidenced underrepresentation within the trades, and in accordance with the standards set forth in King County Code Section 12.16.160 (C) the County has established the following overall annual individual Apprentice Hiring Goals for qualified persons with disabilities, economically disadvantaged youth, minorities, and women:

a. Qualified Persons with Disabilities	2% of the Apprentice Utilization Goal
b. Economically Disadvantaged Youth	7% of the Apprentice Utilization Goal
c. Minorities	21% of the Apprentice Utilization Goal
d. Women	12% of the Apprentice Utilization Goal

D. **Reporting Requirements**.

1. Apprenticeship Utilization Plan (AUP).
    a. As a matter of responsibility, the Contractor shall submit an Apprenticeship Utilization Plan to the County for review and approval, in accordance with Section 00 22 00 and the Notice of Intent to Award. The AUP must be approved by King County prior to Contract Execution. The AUP submitted by the Contractor shall demonstrate the distribution of Apprentices across the trades and crafts wherever feasible.
        (1) The Plan shall include the following elements:
            (a) An estimate of the total contract Labor Hours by trade and craft to be worked by the Contractor and all subcontractors.
            (b) An estimate of the total Labor Hours in each trade or craft to be worked by Apprentices and the anticipated dates when the work will start.
            (c) A list that contains the names of all proposed subcontractors who will perform work on this Contract, including their status as a registered training agent for a WSATC approved apprenticeship program.
            (d) Specific efforts proposed by the Contractor and all subcontractors to achieve the Apprentice Utilization, including a list of WSATC apprenticeship programs to be contacted.

(e) A rate of participation in each trade and/or craft, and an overall rate of participation that is not less than the Apprentice Utilization Requirement.

(f) When Priority Hire Program requirements apply to the project, the AUP shall also demonstrate the Contractor's commitment to utilize Apprentice and Journey Level Priority Hire Workers and Preferred Entry Apprentices at or greater than the established required percentages for the project.

(g) King County encourages the Contractor to include in the Apprenticeship Utilization Plan an estimate of the projected labor hours that will be performed by qualified persons with disabilities, economically disadvantaged youth, minorities, and women as Apprentices.

(2) King County reserves the right to request revisions to the Contractor's Apprenticeship Utilization Plan and to withhold final approval of the plan until the information contained in the plan meets the requirements of this section.

b. **Changes in the Apprenticeship Utilization Plan or Apprentice Utilization Requirement**. For projects that reach Substantial Completion and are not making satisfactory progress toward the Apprentice Utilization Requirement, the Contractor shall submit for review the Apprenticeship Utilization Reduction Request form, including the applicable documentation as outlined in the form. The County will accept Apprenticeship Utilization Reduction Request forms only for projects that have reached Substantial Completion or 90 percent of the expected labor hours.

(1) To the extent that the request is based upon King County Code Section 12.16.160(B) (1), the request shall include written documentation of the Contractor's Best Efforts and inability to utilize Apprentices registered with WSATC. Documentation provided by the Contractor must clearly demonstrate that the requested number of Apprentices or candidates for apprenticeship is not available to meet the Apprentice utilization percentages.

(2) The Administrator will evaluate the request for a reduction or modification in accordance with the provisions of King County Code Section 12.16.160(B). If appropriate, the administrator shall direct the County to prepare a change order reducing the Apprentice Utilization Requirement. If the Administrator determines that a reduction in the Apprentice Utilization Requirement is not justified, the Administrator shall provide a written Notice of its denial to the Contractor within fifteen (15) days from the date of receipt of the Contractor's written request.

2. **Apprentice Utilization Reports**.

a. **Apprenticeship Utilization Reports**. The Contractor and each Subcontractor must submit a profile for each worker, including, but not limited to, gender, ethnicity, and worker type status (Apprentice or Journey Level), into LCPtracker using the DCMS.

b. The Contractor must submit other information as requested by the County to verify compliance with the Apprenticeship Utilization Requirements of the Contract. The County may add, delete, or change the information required by

the Contractor, as necessary. Failure to submit such reports may result in withholding payments or the final payment.

c. King County may visit at any time the work site(s) to determine the actual employment levels of Apprentices. The Contractor and the subcontractors shall provide every assistance requested by King County during such visits.

3. **Best Efforts**.

a. Become a registered training agent. More information is available on the Benefits of Using Apprentices and the Apprenticeship Program at the Washington State Labor and Industries Apprenticeship website.

b. Contact the appropriate local union to request Apprentices from a WSATC approved apprenticeship program and notify the sponsor that this effort is in regard to the County's Apprenticeship Program.

(1) If Apprentices are available, proceed with the hiring process.

(2) If Apprentices are not available through a WSATC approved program sponsors, contact the appropriate local union to request workers from other recruitment/referral agencies, including, but not limited to the Apprenticeship and Nontraditional Employment for Women (ANEW), Seattle Central College Pre-Apprenticeship Construction Training Program (PACT), Tulalip Tribes TERO Vocational Training Center (TVTC) and YouthBuild and if available, sponsor such candidates for entry into a WSATC approved apprenticeship program. Upon acceptance, proceed with the union hiring hall procedures and provide appropriate documentation to King County. Apprenticeship Preparation - https://www.lni.wa.gov/licensing-permits/apprenticeship/become-apprentice/apprenticeship-preparation.

(3) If sponsorship of the candidate(s) into the WSATC approved apprenticeship program is denied, request documentation of the denial from the WSATC approved apprenticeship program, and forward this documentation to King County.

(4) If Apprentice candidates are not available through recruitment/referral agencies, or local union hiring halls, request documentation of the unavailability from the local union and the recruitment/referral agencies and pursue any other reasonable recruitment methods including, but not limited to advertising in appropriate news and social media platforms. Forward documentation of contacts with recruitment/referral agencies and other efforts to recruit targeted Apprentices to King County.

(5) If Apprentices are not available, document the request and obtain documentation from the WSATC approved apprenticeship program and/or local unions of the fact that such persons are unavailable.

(6) All documentation for Best Efforts must be forwarded to the King County Business Development and Contract Compliance (BDCC) office via email to opportunity@kingcounty.gov, with the next monthly certified payroll report submittal, due by the 15th of each month.

(7) Contractors may receive Best Efforts credit for graduated Apprentice hours for up to one year after graduation or until the project ends, whichever comes first, as long as the graduated Apprentice (Journey Level worker) remains continuously employed with the same Contractor

or subcontractor they worked for at graduation. To determine if the Contract requirements were met with Best Efforts, hours will be subtracted from the journey level total reported hours and added to the apprentice hour total. If the new utilization percentage meets the Contract requirement, the Contractor will be reported as meeting the requirement in good faith.

(8) All Best Efforts documentation must be maintained for submittal with the Apprenticeship Utilization Reduction Request form, at Substantial Completion, if applicable,.

E. **Incentives and Penalties**

1. If the Contractor meets the required apprentice utilization requirement without adjustment based on approved documentation of Best Efforts, a $1000 monetary incentive will be paid. Payment will be made under the Bid item “Apprentice Incentive” with the final payment.

2. Should the Contractor fail to achieve the required Apprentice Utilization Requirement and fail to demonstrate Best Efforts per K.C.C 12.16.155-180 (King County Apprenticeship Program), a penalty will be assessed for each hour that is not achieved. The purpose of King County’s Apprenticeship Program is to provide the region with a well-trained workforce. King County, in general, and its Apprenticeship Program, in particular, are damaged when Apprentice participation and training do not occur at the required levels. The County will assess the Contractor a penalty that is equal to a percentage of the prevailing wage rate, including benefits, for 1st year Apprentice Laborer/Western WA at the time of contract execution, for every shortfall hour of Apprentice participation, as provided in §00 72 00. This will fairly compensate King County for resulting delays in carrying out the purpose of the Apprenticeship Program, the costs of meeting the Apprentice Utilization Requirements through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation. The Apprenticeship penalty will be calculated as described below:

Percent of Requirement met	Penalty per hour of unmet requirement
100%	N/A
90% to 99%	20%
75% to 89%	40%
50% to 74%	60%
1% to 49%	80%
0%	100%

The following example is for informational purposes only:

For this example, assume the labor rate is $44.00

Total labor hours subject to the apprenticeship requirement: 10,000

Total labor hours to meet the apprenticeship requirement: 1,500 (10,000 X 15%)

Actual Apprentice hours reported: 1,000 or 66%

Shortfall in Apprentice hours: 500

Penalties: $13,200 (500 hours X $44.00 x 60%)

3. The County has included an Apprentice Incentive amount of $1,000 in the Form of Bid to become a part of the total bid by the Contractor.

1.09 NOT USED

1.10 RESPECTFUL WORKSITE

A. Respectful Worksite; Contractor Obligation. In addition to the non-discrimination requirements in §00 22 00, the Contractor shall ensure a Respectful Worksite. A "Respectful Worksite" means a Worksite free of behaviors that would reasonably offend, intimidate, embarrass or humiliate others, whether deliberately or unintentionally, or that may impair production, or undermine the integrity of the work conditions, including but not limited to job performance, safety, productivity, or efficiency of workers. Examples are set forth in subsection C. A "Worksite" has the same meaning as "Site" or "Project Site" as defined in §00 72 00. In addition, Worksite means other locations used in conjunction with the Project where the Contractor and its Subcontractors perform Work.

B. Notice. The Contractor shall post at a conspicuous place at the Worksite, written notice of the Contractor's duty to provide a Respectful Worksite and information identifying the name and contact information of the individual responsible for receiving and investigating complaints. King County shall provide to the Contractor materials for display at each Worksite regarding Respectful Worksites.

C. Complaints. The Contractor shall diligently investigate and resolve all complaints of behavior that violates a Respectful Worksite. This includes, but is not limited to, taking reasonable steps within 24 hours to initiate an investigation. In assessing whether a violation of a Respectful Worksite has occurred, the intent of a person's action is not a consideration. Instead, the relevant inquiry is whether a reasonable person should have known that the behavior complained of would cause another person to be offended, intimidated, embarrassed or humiliated. Behaviors that violate a Respectful Worksite include those identified below, but are not limited to:

- Persistent offensive and unwelcoming conduct;
- Verbal references to be offensive stereotypes or racial/gender slurs;
- Jokes, visual or verbal about race, gender, or sexuality;
- Task assignments based on race, gender, or other defining characteristics;
- Offensive language based on race, gender, or oriented towards sexuality;
- Bullying, name-calling, cursing or unnecessary yelling, including from a supervisor, foreman, or other senior person;
- Repeating rumors about individuals on the Worksite that is harmful to the individual's reputation; and
- Physical abuse.

D. Resolution of Complaints. The Contractor shall promptly report to the County for review and comment the findings and conclusions of its investigation, including whether the complaint was sustained and, if so, the remedial actions the Contractor intends to use to resolve the complaint. Send documentation to the King County Business Development and Contract

Compliance office via email to opportunity@kingCounty.gov. Remedial actions may include providing any worker found to have violated a Respectful Worksite with information, instruction, sensitivity, training, or other educational or counseling training, and supervision necessary to ensure the maintenance of a Respectful Worksite on King County projects. The Contractor may permit a worker found to have violated a Respectful Worksite to remain employed at the Worksite, subject to section E.

E. Removal from the Worksite. Any person employed on the Worksite by the Contractor, or any subcontractor at any tier, who, in the opinion of King County, engages in behavior that violates a Respectful Worksite shall, upon written request of King County, be removed by his or her employer from the Worksite. The Contractor shall not again employ this person on the Worksite without the prior approval of King County. The Contractor shall own all expenses of replacing the employee with a suitably qualified person.

F. Subcontracts. The Contractor shall ensure that the provisions in this section are included in all subcontracts at every tier.

END OF SECTION

King County

Name of Bidder

SECTION 00 40 00

FORM OF BID

CEDAR HILLS REGIONAL LANDFILL PILOT-SCALE MICRO-ELECTROLYSIS

Contract No. KC001738

The undersigned, as Bidder, declares that we have examined the Contract Documents and that we will contract with King County on the Agreement form provided herein, at the prices set forth in the Bidding Schedule, and including but not limited to, the terms and conditions in the Contract Documents.

The Bidder agrees that this Form of Bid constitutes our bid. To be responsive, a bid guaranty bond issued by a surety licensed to conduct business in the state of Washington, a cashier's check, certified check or money order payable to King County in the amount of 5% of the Total Bid Price must accompany our bid.

The Bidder agrees that our bid constitutes an offer to King County which shall be binding for 90 days from the date of bid opening. If our bid is accepted, we agree to furnish, execute, and deliver to King County all forms in accordance with Section 00 52 00, following the issuance of the Intent to Award. We further agree, if awarded a contract, to plan and prosecute the work with such diligence that the work and portions thereof shall be completed and ready for use within the period set forth in the Contract Documents.

We further certify, if self-performing the plumbing, electrical, or elevator work that we are currently registered as a plumbing contractor in compliance with chapter 18.106 RCW, as an electrical contractor in compliance with chapter 19.28 RCW, or as an elevator contractor in compliance with chapter 70.87 RCW, as applicable and that we are skilled in the type of work called for in the Contract Documents.

NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY & AFFIRMATIVE ACTION

We affirm that we have read and understand the Contract Documents setting forth the County's non-discrimination policy in contracting and those sections related to providing equal employment opportunities to all persons, including minorities, women and persons with disabilities and corresponding forms.

WAIVER OF INDUSTRIAL INSURANCE IMMUNITY

In accordance with the provisions of the Contract Documents and RCW 4.24.115, we waive any industrial insurance immunity and acknowledge this waiver was the subject of mutual negotiation.

TAXES

Taxes shall be in accordance with §00 20 00.

ABBREVIATIONS

Abbreviations in the Bidding Schedule, if any, shall be defined as follows: "HR" means hour, "DAY" or "DY" means one calendar day, "%" means percentage; "EST." means estimated; "FA" means Force Account, "AL" means allowance; "Qty." means quantity; "Dollar" or "$" means US Dollar, "LS" means lump sum; "EA" means each; "AC" means acre; "CY" means cubic yard, "SY" means square yard, "SF" means square foot, "LF" means lineal feet/foot, "TN" means ton, and "HUND" means hundred, as applicable.

Having carefully examined the Contract Documents, as well as the site of the work, and the availability of materials and labor, the Bidder proposes to perform the work identified in the Contract Documents under the terms and conditions contained herein for the price(s) set forth in the Bidding Schedule.

All bid items shall be stated in United States of America dollars and cents omitting digits more than two places to the right of the decimal point (e.g., $720.74).

A Microsoft Excel version of the Bidding Schedule is available for download in the E-Procurement system for this solicitation.

BID PRICE AND BIDDING SCHEDULE

The Bidder shall provide a lump sum price for each bid item listed on the Bidding Schedule attached to this Form of Bid. The work of each bid item is specified or shown in the Contract Documents and described further in Section 01 29 00 Measurement and Payment.

The Total Bid Price shall be the sum of all lump sum amount(s).

FORMS REQUIRED WITH BID SUBMITTAL

As a matter of Responsiveness, the Bidder shall complete all pages of this Form of Bid, as specified, including the attached Bidding Schedule, and submit in the E-Procurement system prior to bid close date/time, unless the Contract Documents allow a specific form(s) to be submitted at a later time.

Bids shall be rejected for failure to submit the completed bidding schedule for this solicitation or the forms within the required time period.

BID EVALUATION AND CONTRACT AWARD

In accordance with the provisions of these Contract Documents, bids will be evaluated to determine the lowest Total Bid Price offered by a responsive, responsible Bidder. A contract will be awarded, if at all, based on the lowest Total Bid Price proposed by a responsive and responsible bidder.

King County reserves the right to reject any bid, any portion of any bid and/or to reject all bids. King County further reserves the right, but without obligation, to waive informalities and irregularities.

King County

LETTER OF INTENT
Small Contractors and Suppliers (SCS)
(This page shall be submitted for each Certified SCS Firm)
Fully complete and sign this Letter of Intent as provided below.

IMPORTANT INSTRUCTIONS: Complete Tables 1 and 2 in full. If a table is not applicable—such as when the SCS Firm is not functioning as a Supplier—please write "N/A" for Not Applicable. Any blank spaces will be interpreted as "N/A." The Letter of Intent (LOI) must be signed by the Owner or Authorized Representative of the SCS Firm, as defined below. Failure to adhere to these instructions will result in the rejection of the LOI. If the LOI is rejected and the Bidder has not met the SCS Utilization Requirement, the Bid will be deemed non-responsive and will be rejected. Refer to Section 00 22 00; 1.03 SMALL CONTRACTORS AND SUPPLIERS (SCS) REQUIREMENTS, B. Responsiveness.

A. TABLE 1 – SCS PRIME BIDDER AND SCS SUBCONTRACTOR OR MANUFACTURER.

1. **SCS Prime Bidder.** 100% of the Total Bid Dollar Amount for the distinct, clearly defined portion of the work that the SCS Prime Bidder performs with its own forces will be counted towards the SCS Utilization Requirement for this Contract.
2. **SCS Subcontractor or Manufacturer.** 100% of the Total Bid Dollar Amount for subcontractor or manufacturer work will be counted towards the SCS Utilization Requirement for this Contract.

Table 1

Total Bid Dollar Amount for SCS Work:	**$**
Description of Work:	

B. TABLE 2 – SCS SUPPLIER.

1. **SCS Supplier. 60% of the Total Bid Dollar Amount for materials will be counted toward the SCS Utilization Requirement for this Contract.**

Table 2

Total Bid Dollar Amount for SCS Supplied Materials or Supplies:	**$**
Description of Materials or Supplies:	

As the SCS Owner or *authorized representative of the Certified Small Contractor or Supplier (SCS) firm, I declare that I have reviewed the material and facts set forth in this Letter of Intent and the facts and representations are true and complete. I have been contacted by the bidder with regard to this Contract. It is understood that if the bidder is awarded the Contract by King County, the SCS firm identified in this Letter of Intent will enter into an agreement with the bidder to participate in the Contract consistent with this Letter of Intent.

Certified SCS Firm Name: _____ **SCS #:** _____

_____	_____	_____
Signature of Certified SCS Firm Owner or *Authorized Representative	**Print Name**	**Date**

** An "Authorized Representative" refers to an officer or employee of the Certified SCS Firm who has received written authorization in advance of the Bid Submittal Due Date to sign a Letter of Intent on behalf of the SCS Firm.*

King County

FORM OF BID SIGNATURE

CEDAR HILLS REGIONAL LANDFILL PILOT-SCALE MICRO-ELECTROLYSIS
Contract No. KC001738

ACKNOWLEDGEMENT

By submitting this bid through the County's E-procurement system our firm is acknowledging all addenda have been received by us and have been taken into account as a part of our Bid.

Furthermore, we acknowledge that our firm shall submit, within the time stated, all required documents listed in Sections 00 52 00 Forms and Documents fully executed, including a certificate meeting all 00 62 00 Insurance Requirements, or our bid may be rejected.

SIGNED this _____ day of _____ , 20_____

Name of Firm: _____

Address: _____

City: _____ State / Zip: _____

Telephone: _____ Email Address: _____

WA State Contractor's License/Registration Number: _____

Our firm is self-performing the following work per chapter 18.27 RCW, and is currently licensed to perform this work:

Plumbing Per RCW 18.106 Yes ☐ No ☐

Elevator Per RCW 70.87 Yes ☐ No ☐

Electrical Per RCW 19.28 Yes ☐ No ☐

Unique Entity Identifier: **: _____

By: _____ _____
Signature *Print Name*

Title: _____

**As an administrative convenience, please provide your firms Unique Entity Identifier from SAM.gov.*

CONTRACTOR'S CONTACT INFORMATION

As an administrative convenience, please provide the name of Contractor's authorized representative who will serve as a contact person for this project during the bid evaluation process.

Contact Name: _____ Title: _____

Email Address: _____

Telephone: _____

END OF SECTION

00 40 00 FORM OF BID
BIDDING SCHEDULE
Cedar Hills Regional Landfill Pilot-Scale Micro-Electrolysis

Name of Bidder

Bid Item	Item Description	Bid Price
1	Mobilization	
2	General Conditions	
3	Construction Surveying	
4	Earthwork and Concrete and Masonry	
5	Special Construction	
6	Plumbing	
7	Electrical and Communications	
8	Utilities	
9	Pollution and Wastewater Equipment	
10	Apprenticeship Utilization Incentive	$1,000.00
	TOTAL BID PRICE (SUM OF BID ITEMS 1 - 10)	

SECTION 00 43 13

BID GUARANTY BOND

KNOW ALL BY THESE PRESENTS: That we,_____,
as Principal, and _____,
as Surety, are jointly and severally held and firmly bound unto King County, hereinafter called the Obligee, each in the penal sum of five percent (5%) of the Principal's Total Bid Price for the work, this sum not to exceed _____DOLLARS ($_____) (hereinafter referred to as "penal sum") of lawful money of the United States, for the payment whereof unto the Obligee.

WHEREAS, the Principal is herewith submitting its offer for the fulfillment of:

Contract Title: Cedar Hills Regional Landfill Pilot-Scale Micro-Electrolysis

Solicitation Number: KC001738

NOW, THEREFORE, the condition of this obligation is such that if the Principal is awarded the Contract, and if the Principal, within the time specified, fulfills all of the requirements of the Contract Documents which are conditions precedent to the execution of the Agreement, enters into, executes and delivers to the Obligee an agreement on the form provided herein complete with evidences of insurance, and if the Principal, within the time specified, gives to the Obligee the Performance and Payment Bond on the forms provided herein, then this obligation shall be void; otherwise, the Principal and Surety shall pay unto the Obligee the penal sum; provided however, in no event shall the Surety's liability exceed the penal sum.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable under this obligation as Principal, and that nothing of any kind or nature whatsoever that will not discharge the Principal shall operate as a discharge or a release of liability of the Surety.

IT IS HEREBY FURTHER DECLARED AND AGREED that this obligation shall be binding upon and inure to the benefit of the Principal, the Surety and the Obligee and their respective heirs, executors, administrators, successors and assigns.

SIGNED this _____ day of _____, 20_____.

Principal:	_____	Surety:	_____
Signature:	_____	Signature:	_____
Print Name:	_____	Print Name:	_____
Title:	_____	Title:	_____
Address:	_____	Address:	_____
City/ST/Zip:	_____	City/ST/Zip:	_____
Telephone:	_____	Telephone:	_____

Note: A dated power of attorney must be provided which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal and deliver this bid guaranty bond.

SECTION 00 43 43
WAGE RATES

PREVAILING MINIMUM HOURLY WAGE RATES ESTABLISHED BY THE WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES

Specified below are the state prevailing wage determinations from the Washington State Department of Labor and Industries (L&I) that will be utilized for this solicitation.

The Contractor, any subcontractor, or other person doing any work under the Contract shall comply with the requirements of RCW 39.12, and shall pay each employee an amount not less than the Prevailing Rate of Wage, as specified by the Industrial Statistician of the Washington State Department of Labor and Industries (L&I). If employing labor in a class not shown, the Contractor shall request a determination of the correct wage rate for the class and locality from the Industrial Statistician. The Contractor shall provide a copy of these determinations to King County. Before commencement and upon completion of work, the Contractor shall file the forms and pay the filing fees as required by L&I.

In accordance with Section 00 72 00, the Contractor shall indemnify and hold King County harmless from any claims related to the payment or non-payment of such wages by the Contractor.

1. Access the Washington State Labor and Industries (L&I) Website at: https://secure.lni.wa.gov/wagelookup/

   a) The wage rates and corresponding benefit codes for this solicitation shall be those in effect as of: **10/22/2026.**

   b) The Work of this contract shall take place in King County..

      Note: Off-site work shall use the rates for the County where that off-site work is performed.

   c) A copy of the prevailing wage rates for this project are available for review from the King County Procurement & Payables office by contacting the Contract Specialist via email. Any questions regarding the state prevailing wage determinations should be addressed to:

      Industrial Statistician
      Department of Labor and Industries
      Prevailing Wage Office
      PO Box 44540
      Olympia, Washington, 98504-4540
      Phone: 360-902-5335

      https://secure.lni.wa.gov/wagelookup/RatesPublication.aspx

END OF SECTION

SECTION 00 45 13

QUALIFICATION INFORMATION

1.1 RESPONSIBILITY EVALUATION

A. In accordance with RCW 39.04.350, the low responsive Bidder shall demonstrate to the satisfaction of King County that the Bidder or members of the joint venture, are/is responsible and qualified to perform the Work under this Contract.

B. To demonstrate their experience and qualifications, the low responsive Bidder shall provide all information identified below and as specified in the Responsibility Detail Form or as requested by the County.

1.2 SUBMITTAL INFORMATION

A. Upon request from the County, the low responsive Bidder is required to complete and submit the Responsibility Detail Form for this Contract and provide any additional required information within 2 business days. The completed and certified Form, including any additional required information, shall be submitted via email to the Contract Specialist.

B. The County will contact references as identified in the Responsibility Detail Form to help assess the qualifications of the Bidder or members of the joint venture. Bidder shall not submit as references any past or present board members or officers, or family members on the Responsibility Detail Form – Project Example Sheets. Submission of improper references may result in a determination that the Bidder is not responsible. The County reserves the right to contact other references, including King County personnel not listed on the Responsibility Detail Form, to further evaluate the Bidder qualifications for this Contract. Poor reference(s) may be justification to determine a Bidder is not responsible.

C. If the County determines that the Bidder or members of the joint venture do not have the necessary experience, capabilities, past project performance which demonstrate capabilities to perform the Work of the Contract, the County may reject the Bidder as being not responsible.

D. The County may at its sole discretion grant the Bidder additional time to complete the Responsibility Detail Form if circumstances justify such extension.

E. The Bidder shall not submit any additional information not required by the County. Any information submitted by the Bidder, beyond what is requested by the County, will be deleted.

F. **Attestation Requirement:** By completing the Responsibility Detail Form, the Bidder shall certify that the information contained within the Responsibility Attestation, and any additional information requested by the County, is true and complete. The Bidder's failure to disclose the required information or the submittal of false or misleading information may result in the rejection of the Bidder's bid, revocation of award, or contract termination, and/or may impact the Bidder's ability to bid on future projects with King County.

G. If the Bidder is a legally created joint venture, the Bidder shall submit the following information with the Responsibility Detail Form:

1. A copy of the joint venture agreement; and
2. Description of the specific roles and responsibilities each member of the joint venture will have in relation to this Contract.

1.3 RESPONSIBILITY REQUIREMENTS.

A. Mandatory Bidder Responsibility Criteria

1. The County will verify that the Bidder meets the mandatory responsibility requirements as described in RCW 39.04.350(1) for this Contract, identified within the Responsibility Detail Form. The Bidder shall be rejected as not responsible if it fails to meet the specified requirements in the Responsibility Detail Form paragraph 1.1.

B. Contract and Regulatory History.

1. The County will evaluate whether the Bidder's contract and regulatory history demonstrates an acceptable record of past project performance and consistent responsibility. The Bidder is required to identify and may be rejected as not responsible if any of the events listed in the Responsibility Detail Form paragraph 1.2 have occurred within the past 5 years.

C. Criminal History.

1. The County will evaluate whether the Bidder's, criminal history demonstrates a lack of business integrity or business honesty. The Bidder is required to identify and may be rejected as not responsible if any of the events listed in the attached Responsibility Detail Form paragraph 1.3 have occurred for the Bidder within the past 5 years.

D. Accident/Injury Experience.

1. The County will evaluate the Bidder's accident/injury Experience Modification Factor ("EMF") from the Washington State Department of Labor and Industries, or similar organization with jurisdiction in the United States, for the past five (5) years to assess whether the Bidder has an acceptable safety record preventing personal injuries on projects.
2. Bidders that have an EMF over 1.0 shall be required to explain the cause(s) of the designation and what remedial steps were taken to correct the EMF. The Bidder may be rejected as not responsible if the EMF is greater than 1.0 and sufficient remedial steps have not been implemented.
3. The Bidder may be rejected as not responsible if the Bidder's EMF is greater than 1.0 and sufficient remedial steps have not been implemented in accordance with the attached Responsibility Detail Form paragraph 1.4

E. Former County Employees – Conflict of Interest

1. The County will evaluate if the Bidder or its subcontractors have any employees who, for one (1) year after leaving County employment, were involved in the preparation of the bid submitted for this contract.
2. The Bidder is required to identify any individuals and their role in preparing the bid in the attached Responsibility Detail Form paragraph 1.5.

F. Work Performed by Bidder

1. The County will evaluate how, with its own forces, the bidder is to perform work equivalent to at least 25% of the Contract Price.
2. The Bidder is required to identify how, with its own forces, the bidder is to perform work equivalent to at least 25% of the Contract Price in accordance with the attached Responsibility Detail Form paragraph 1.6.

1.4 SUPPLEMENTAL BIDDER RESPONSIBILITY REQUIREMENTS.

A. In accordance with RCW 39.04.350(2), the County has adopted relevant supplemental criteria for determining whether the low responsive bidder has the necessary experience and qualifications to perform the Work on this Contract. The Bidder may be rejected as not responsible if it fails to meet any of the supplemental responsibility requirements specified within the Responsibility Detail Form.

B. For any newly formed or reorganized Bidder, if the Bidder submits Project Example Sheets for work which was performed under a contractor's license different from that submitted on the Form of Bid, the Bidder shall submit, on a separate page, the following information:

1. The full name of the prior firm and prior license number of the entity(ies),
2. The names of the principal members of the Bidder who were part of the prior firm(s) and their role(s); and
3. The reason for the newly formed or reorganized firm.

1.5 ADDITIONAL INFORMATION

A. If the County finds that the Bidder's Responsibility Detail Form is incomplete, the Bidder may be required to provide additional explanation or information as required by the County.

B. If the County determines that the Bidder or members of the joint venture, is/are not qualified, the County may reject the Bidder, meet with the Bidder, request additional information and allow Bidder opportunity to correct the deficiency by (1) providing additional information and/or (2) proposing other project personnel, and/or take other appropriate measures to complete the evaluation.

C. Timeliness of Contract Execution is critical to the success of this Contract; therefore, the County may give the Bidder limited or no opportunity and time to remedy the deficiencies in the submitted Responsibility Detail Form. The County reserves the right, in its sole discretion, to proceed to the next low responsive bidder when a Bidder is deemed not responsible to perform the Work on this Contract.

END OF SECTION

SECTION 00 45 13
RESPONSIBILITY DETAIL FORM – Mandatory Responsibility Criteria

The low responsive Bidder, upon request, shall be required to complete the Responsibility Detail Form as specified in Section 00 45 13. The completed Responsibility Detail Form shall be submitted electronically (pdf) to the Contracts Specialist identified in Section 00 10 00.

Bidder's Company Name: _____

Solicitation Number: **KC001738**

For the below Mandatory Bidder Responsibility Criteria, please check the appropriate box.

1.1 MANDATORY BIDDER RESPONSIBILITY CRITERIA

A. The County will verify that the Bidder meets the following mandatory responsibility criteria as described in RCW 39.04.350(1). The Bidder may be rejected as not responsible if any answer to questions 2 through 4 is "No" or if the appropriate currently active number is not provided for questions 2 through 4. If the answer to questions 2 through 4 is "No" the Bidder is required to attach an explanation and acknowledge that they will be required to provide the requisite information, in 2 through 4 below, prior to Intent to Award. If the Bidder fails to meet the criteria 2 through 4 prior to Intent to Award the Bidder will be rejected as not responsible. The Bidder shall be rejected as not responsible if the answer to question 1 or 5 is "No" or the answer to question 6, 7, or 8 is "Yes".

1. Did the Bidder have a Certificate of Registration in compliance with Chapter 18.27 RCW that was in effect at the time of bid submittal?
   ☐ Yes ☐ No

2. Does the Bidder have a current Washington State Unified Business Identifier number/Washington State Excise Tax Registration number as required in Title 82 RCW?
   ☐ Yes ☐ No If no, attach explanation

   If Yes, include UBI number _____

3. Does the Bidder have Industrial Insurance Coverage for the Bidder's employees working in Washington State as required in Title 51 RCW?
   ☐ Yes ☐ No If no, attach explanation

   If Yes, include Industrial Insurance number _____

4. Does the Bidder have an Employment Security Department number as required in Title 50 RCW?
   ☐ Yes ☐ No If no, attach explanation

   If Yes, include Employment Security number _____

5. Has the bidder received training from the Department of Labor and Industries (L&I), or a provider with a L&I approved curriculum, on the requirements related to public works and prevailing wage under RCW 39.04.350 and 39.12, or is the bidder exempt per RCW 39.04.350 (1)(f)?
   ☐ Yes ☐ No or ☐ Exempt

6. Is the Bidder disqualified for bidding on any public works project under RCW 39.06.010 or 39.12.065(3)?
   ☐ Yes ☐ No

7. At the time of bid submittal, was the bidder subject to a revocation of a minor work permit under RCW 49.12.390(4)?

   ☐ Yes ☐ No

8. For public works projects subject to the apprenticeship utilization requirements of RCW 39.04.320, has the Bidder been found to be out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW within the one year period immediately preceding advertisement of this project?

   ☐ Yes ☐ No

If the answer to question 1 or 5 above is "No" or the answer to question 6, 7, or 8 above is "Yes" **STOP HERE** and notify the Contract Specialist. The Bidder is not responsible for this Project. Otherwise proceed to 1.2.

For remaining criteria below, check or fill out the appropriate box. Based upon the answer provided by the Bidder, the County may request additional information or seek further explanation. For sections 1.2 through 1.4 "Bidder" shall include any past or present contractor licenses held by any principal member of the Bidder's firm or joint venture members.

1.2 CONTRACT AND REGULATORY HISTORY

A. The County will evaluate whether the Bidder's contract and regulatory history demonstrates an acceptable record of past project performance and consistent responsibility. The Bidder shall answer the following questions. The Bidder may be rejected as not responsible if any answer to questions 1 through 10 below is "Yes".

1. Has the Bidder had a contract terminated for cause or default, in the last 5 years?

   ☐Yes ☐No

   *If Yes, explain:*_____

2. Has the Bidder been found to have violated a state or federal prevailing wage law while working on a public works project, or had a civil judgment entered against it for violating a state or federal prevailing wage law, in the last 5 years?

   ☐Yes ☐No

   *If Yes, explain:*_____

3. Has the Bidder failed to comply with commitments to, and contractual requirements for, Disadvantaged Business Enterprise ("DBE") Utilization Requirements or Women/Minority Owned Business Enterprise ("WMBE") Utilization Requirements on any public works project, in the last 5 years?

   ☐Yes ☐No

   *If Yes, explain:*_____

4. Has the Bidder failed to meet mandatory King County Small Contractors and Suppliers ("SCS") Utilization Requirements on any public works project, in the last 5 years?

   ☐Yes ☐No

   *If Yes, explain:*_____

5. Has the Bidder been found to have violated ethical standards set forth in King County contracts (KCC 3.04), in the last 5 years?

   ☐Yes ☐No

   If Yes, explain: _____

6. Has the Bidder been in bankruptcy, reorganization and/or receivership on any public works project, in the last 5 years?

   ☐Yes ☐No

   If Yes, explain: _____

7. Has the Bidder been disqualified by any federal, state or local agency from being awarded and/or participating on any public works project, in the last 5 years?

   ☐Yes ☐No

   If Yes, explain: _____

8. Has the Bidder required a Surety to take over all, or a portion of, a project to cure or respond to an asserted default or material breach of contract on the part of the Bidder on any public works project, in the last 5 years?

   ☐Yes ☐No

   If Yes, explain: _____

9. Has the Bidder been terminated by a government or private entity prior to contract completion within the last 3 years?

   ☐Yes ☐No

   If Yes, explain: _____

10. Has the Bidder failed to meet apprenticeship utilization requirements on any public works project, in the last 5 years?

    ☐Yes ☐No

    If Yes, explain: _____

1.3 CRIMINAL HISTORY

A. The County will evaluate whether the Bidder's criminal history demonstrates a lack of business integrity or business honesty. The Bidder shall answer the following questions. The Bidder may be rejected as not responsible if any answer to questions 1 through 5 below is "Yes".

1. Has the Bidder been convicted of a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract, in the last 5 years?

   ☐Yes ☐No

   If Yes, explain: _____

2. Has the Bidder been convicted under federal or state law of a crime relating to wage payment, embezzlement, theft, forgery, bribery, antitrust, falsification or destruction of records, receiving stolen property, making false claims while working on a project, in the last 5 years?

   ☐Yes ☐No

   If Yes, explain: _____

3. Has the Bidder been convicted of a crime involving willful violation of a federal or state environmental law or regulation while working on a project, in the last 5 years?

   ☐Yes ☐No

   If Yes, explain: _____

4. Has the Bidder been found in violation of the Trafficking Victims Violence Prevention Act of 2000, within the last 3 years?

   ☐Yes ☐No

   If Yes, explain: _____

5. Has the Bidder been found to have violated any anti-discrimination laws or regulations, whether they be local, state or federal, within the last 3 years?

   ☐Yes ☐No

   If Yes, explain: _____

1.4 ACCIDENT/INJURY EXPERIENCE

A. The County will evaluate the Bidder's accident/injury Experience Modification Factor ("EMF") from the Washington State Department of Labor and Industries, or similar organization with jurisdiction in the United States, to assess whether the Bidder has an acceptable safety record preventing personal injuries on projects.

B. List the Bidder's accident/injury EMF for the last five (5) years. An experience factor is calculated annually by the Washington State Department of Labor and Industries.

Year	Effective Year	Experience Factor

If the Bidder has received an EMF of greater than 1.0 for any year, explain the cause(s) of the designation and what remedial steps were taken to correct the EMF. The Bidder may be rejected as not responsible if the Bidder's EMF is greater than 1.0 and sufficient remedial steps have not been implemented.

1.5 FORMER COUNTY EMPLOYEES – CONFLICT OF INTEREST

A. Did the Bidder or its subcontractors have any employees who, for one (1) year after leaving County employment, were involved in the preparation of the bid submitted for this contract?

☐Yes ☐No

If Yes, identify who and their role in bidding this project:

Name(s): _____

Role(s): _____

1.6 COMPLIANCE WITH KING COUNTY ORDINANCE 19925

A. As a condition of award for contracts valued at $100,000 or more, the Bidder agrees that it shall comply with the criteria in King County Ordinance 19925. King County Procurement & Payables may waive specific criteria, such as community workforce agreements or employee health insurance, if deemed inapplicable based on procurement type or business size. Failure to comply with the criteria specified in the ordinance and to which the Bidder is attesting on this form will constitute a material breach, and the County may terminate the contract, in whole or in part, for default. Is the Proposer/Bidder in compliance with Ordinance 19925?

☐Yes ☐No

If No, explain: _____

1.7 WORK PERFORMED BY BIDDER

A. The Bidder shall demonstrate, on the Responsibility Detail Form below, how they shall perform at the Site, and with its own forces, Work equivalent to at least twenty-five percent (25%) of the Contract Price, excluding taxes, insurance and bonding. The Bidder shall demonstrate this by identifying the work using the specification divisions, or sections within a division, it intends to perform with its own forces and the estimated dollar amount and percentage of its overall bid amount this itemized work constitutes.

Division # / Section #	Dollar Amount for Contract Work Performed with Own Forces	Percent of Total Bid Price
	$	%
	$	%
	$	%
	$	%
	$	%
	$	%
	$	%

RESPONSIBILITY DETAIL FORM – Supplemental Criteria

1.8 ACCIDENT PREVENTION PROGRAM

A. The Bidder shall submit with the Responsibility Detail Form, a copy of the Bidder's Accident Prevention Program "APP" that meets the requirements stated in Washington Administrative Code (WAC) 296-155-110, and the applicable portions of WAC 296-24, WAC 296-62, WAC 296-67, WAC 296-155 and WAC 296-800. The County will review the APP. Should the County have concerns about the information contained in the APP, the County may request additional information and/or a submission of a revised APP.

1. Pursuant to the WAC, the APP is to be tailored to the Contractor's type of construction business.
2. Specific types of hazards related to the work under this Project shall be addressed in the site-specific Health and Safety Plan (HASP) which shall be submitted after Notice to Proceed.
3. The following website provides additional information regarding the APP: https://lni.wa.gov/safety-health/preventing-injuries-illnesses/create-a-safety-program/accident-prevention-program

B. Did the Bidder include an Accident Prevention Plan, which meets the criteria above, with this submittal?

☐Yes ☐No

*If No, explain:*_____

1.9 SCHEDULE

A. The Bidder shall submit with the Responsibility Detail Form, a preliminary schedule which demonstrates the Bidder's management and understanding of the Work including work on the Critical Path. The preliminary schedule shall be in sufficient detail to demonstrate how the Bidder plans to comply with the Contract Milestones and the Substantial Completion Date. Include at least the following:

1. Mobilization
2. Notice to Proceed (NTP) , Contract Time starts on the date established in the NTP
3. Completion of Milestones:
    - Milestone 1: Obtain necessary permits
    - Milestone 2: Substantial Completion of all Work within 180 calendar days after NTP
    - Milestone 3: Final Acceptance within 70 calendar days after issuance of the Certificate of Substantial Completion
4. Procurement activities for all major and long-lead equipment, including submittal preparation, submittal review and approval, fabrication, delivery, and receipt on site
5. Constraints:
    - Prescribed work hours: 6:30 AM to 6:00 PM, weekdays only
    - 7-day advance written notice required prior to any activity that could disrupt landfill operations

- 6-week advance written notice required prior to changes in work areas or hours
- Maximum 3 contractor vehicles permitted on site at any time
- Coordination with King County transfer trailer operations

6. Construction of the ME pilot plant foundation slab
7. Installation of site utility hookups to existing onsite power (underground and above-grade)
8. Equipment installation (ME reactor, platform, ancillary systems)
9. Bulk chemical and media procurement and installation
10. Hydrostatic and leak testing
11. Pre-commissioning, commissioning, inspections, and final system testing
12. Site restoration — required prior to Certificate of Substantial Completion
13. Substantial Completion
14. Punch List
15. Final Acceptance

B. Did the Bidder include a Preliminary Schedule, which meets the criteria above, with this submittal?

☐Yes ☐No

*If No, explain:*_____

RESPONSIBILITY DETAIL FORM – Responsibility Attestation

Attestation Requirement: By completing and signing this Responsibility Attestation, the Bidder is certifying that the information contained within the Responsibility Detail Form, and any additional information requested by the County, is true and complete. The Bidder's failure to disclose the required information or the submittal of false or misleading information may result in the rejection of the Bidder's bid, revocation of award, or contract termination, and/or may impact the Bidder's ability to bid on future projects with King County.

In addition; the undersigned Bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signature of Authorized Representative: _____ Date: _____

Location or Place Executed: (City, State): _____

Print Name and Title: _____

Bidder General Information

Bidder's Legal Name: _____

Contact Name and Title: _____

Address: _____

Contact Phone Number: _____

Contact Email: _____

If Joint Venture

Legal Name of Joint Venture: _____

Members of Joint Venture: _____

SECTION 00 50 00

AGREEMENT

THIS AGREEMENT, by and between King County**,** and Contractor, hereinafter called the "Contractor," shall be effective upon the execution of this Agreement by the County.

In consideration of the mutual covenants, agreements, terms and conditions contained in this Agreement and in the Contract Documents which are attached hereto and made part of this Agreement for:

CEDAR HILLS REGIONAL LANDFILL PILOT-SCALE MICRO-ELECTROLYSIS
CONTRACT NUMBER KC001738

1. The Contractor agrees to complete the work, furnish all tools, materials and equipment necessary on the terms and conditions specified in the Contract Documents. The Contractor further agrees to assume and perform all of the covenants and conditions required of the Contractor pursuant to the Contract Documents, for the Contract Price of _____ _____Dollars ($_____), pursuant to the unit prices and mark-up percentages as stated in the Form of Bid.
2. King County agrees to pay the Contractor for fulfillment of the work and performance of the covenants set forth in the Contract Documents in accordance with the Contractor's Form of Bid and the Contract Documents.
3. Except as expressly provided in the Contract Documents, no liability shall attach to the County by reason of entering into this Agreement.
4. King County agrees to pay the Contractor the applicable Washington State Retail Sales Tax in accordance with the terms and conditions set forth in the Contract Documents.
5. King County's Project Representative is _____.
6. The Contractor's Representative is _____.
7. The Contractor shall include Contract Purchase Agreement (CPA) CPA# when submitting Application(s) for Payment.

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	**CONTRACTOR**
By: _____	By: _____
Rebecca Singer, Division Director Solid Waste Division	
For Girmay Zahilay *King County Executive*	Print Name: _____
	Title: _____
Date: _____	Date: _____

END OF SECTION

SECTION 00 52 00

FORMS AND DOCUMENTS

The Bidder shall submit the following forms and documents to the Contract Specialist, unless otherwise noted. Bidders **ARE NOT** required to submit the forms and documents with their bid. Bidder(s) shall be rejected as not responsible for failure to submit the forms and documents in accordance with the directions below.

The forms and documents listed below, which are not provided by the Contract Specialist, may be accessed through the County's website at https://kingcounty.gov/depts/finance-business-operations/procurement/forms.aspx

TO BE SUBMITTED PRIOR TO INTENT TO AWARD

Submit one (1) PDF copy of the following forms and documents within two (2) days after request by King County.

Form/Document
Responsibility Detail Form See Section 00 45 13 *To be provided by Contract Specialist*

TO BE SUBMITTED AFTER INTENT TO AWARD

Submit one (1) PDF copy of the following forms and documents within five (5) days after receipt of Intent to Award. Contracts will not be executed prior to the receipt of the required forms and documents from the selected bidder.

Form/Document
Retained Percentage Option Click here for Form
List of Subcontractors, Subconsultants, Suppliers Click here for Form
Apprenticeship Utilization Plan Click here for Form
Performance and Payment Bond *To be provided by Contract Specialist*
Certificate of Insurance and Additional Insured Endorsement(s) *To be provided by Bidder's Insurance Broker*

END OF SECTION

SECTION 00 61 00

PERFORMANCE AND PAYMENT BOND

_____	_____
Contractor	Bond Number

KNOW ALL BY THESE PRESENTS: That we, _____ as Principal, and, _____ as Surety, a corporation legally doing business in the State of Washington, are held and firmly bound and obligated unto the State of Washington and King County, pursuant to Chapter 39.08 RCW, in the full sum of _____ _____Dollars ($_____) (Contract Price), and including any and all adjustments to the Contract Price, for the faithful performance of the Agreement referenced below, and for the payment of which sum we do bind ourselves, and each of our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, **THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT** the Principal entered into a certain Agreement with **KING COUNTY,** for **Cedar Hills Regional Landfill Pilot-Scale Micro-Electrolysis, Contract KC001738** incorporated herein by this reference and including all Contract Documents. This bond shall cover all approved change orders, amendments and modifications as if they were in the original Agreement. Similarly, this bond shall cover payment to the State of Washington with respect to claims for taxes, increases and penalties imposed under Titles 50, 51, and 82 Revised Code of Washington (RCW).

NOW, THEREFORE, if the Principal shall faithfully perform all terms and conditions of such Agreement and pay all laborers, mechanics and subcontractors and materialmen, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and shall pay the State all taxes, increases and penalties under Titles 50, 51, and 82 RCW, which may be due, then this obligation is void, otherwise to remain in full force and effect until all claims filed in compliance with chapter 39.08, and all State claims under Titles 50, 51, and 82 RCW are resolved.

Provided, however, that the conditions of this obligation shall not apply to any money loaned or advanced to the Principal or to any subcontractor or other person in the performance of any such work.

IT IS FURTHER DECLARED AND AGREED that whenever the Principal shall be, and declared by Owner to be in default under the Agreement, the Owner having performed Owner's obligations thereunder, the Surety, at the request of the Owner, shall promptly remedy the default in a manner acceptable to the Owner.

SIGNED this _____ day of _____, 20_____.

Principal:	_____	Surety:	_____
Signature:	_____	Signature:	_____
Print Name:	_____	Print Name:	_____
Title:	_____	Title:	_____
Address:	_____	Address:	_____
City/ST/Zip:	_____	City/ST/Zip:	_____
Telephone:	_____	Telephone:	_____

Note: A power of attorney must be provided which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal and deliver this Performance and Payment Bond.

END OF SECTION

SECTION 00 62 00

INSURANCE REQUIREMENTS

1.01 CONTRACTOR'S INSURANCE.

A. The Contractor shall maintain, at its sole cost and expense, during the Contract period and for three (3) years thereafter, insurance coverage at least as broad as the limits and coverage outlined in the Contract. By requiring such minimum insurance, the County does not and shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor, or that of any Subcontractor, under this Contract, or in any way limit the County's potential recovery to insurance limits required hereunder. To the contrary, this Contract's insurance requirements may not in any way be construed as limiting any potential liability to County or County's potential recovery from Contractor. The Contractor and its Subcontractor(s) shall assess their own risks and, if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage.

B. Within the time stated in the Intent to Award, the Contractor shall furnish King County Procurement and Payables (P&P) Section with certificates of insurance and endorsements (compiled into one pdf via email) certifying the issuance of all insurance required by this Contract. All evidence of insurance shall be signed by a properly authorized officer, agent, general agent, or qualified representative of the insurer(s), shall certify the name of the insured(s), the type and amount of insurance, the location and operations to which the insurance applies, the inception and expiration dates, contract or RFP number, shall specify the form number of any endorsements issued to satisfy this Contract's insurance requirements, and shall state that the County shall receive notice at least thirty (30) Days prior to any cancellation, lapse, or material change in the policy. Coverage shall be maintained without interruption from the commencement of the Contractor's Work until Final Acceptance, or for such longer time as required by the Contract.

1. **All certificates of insurance and endorsements shall only be filed upon request by King County and within five (5) business days, unless otherwise specified. All insurance certificates and endorsements shall be sent to the Certificate Holder as listed below.**

Certificate Holder:
King County, Solid Waste Division
201 S Jackson St., M/S: KSC-NR-5701
Seattle, WA 98104
Email: Jesse Gonzalez, jesse.gonzalez@kingcounty.gov

C. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements and riders, which may be redacted of any confidential or proprietary information. The Contractor shall deliver such policies to the County within five (5) Days of County's request. Failure to provide such policies of insurance within a time acceptable to the County shall entitle the County to suspend or terminate the Contractor's work hereunder. Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligation hereunder.

D. The County's receipt or acceptance of the Contactor's or any Subcontractor's evidence of insurance at any time without comment or objection, or the County's failure to request certified copies of such insurance, does not waive, alter, modify, or invalidate any of the insurance requirements set forth in this Section or consequently, constitute the County's acceptance of the adequacy of the Contractor's or any Subcontractor's insurance or preclude or

prevent any action by the County against the Contractor for breach of the requirements of this Section.

E. Nothing contained within these insurance requirements shall be deemed to limit the scope, application, and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

F. Each insurance policy shall be written on an "occurrence" basis/form; except insurance for professional liability (errors and omissions), and/or pollution liability, and/or cyber liability (technology errors and omissions). Professional liability (errors and omissions), pollution liability, and cyber liability (technology errors and omissions) required by this Contract is acceptable on a "claims made" basis/form.

G. If coverage is approved and purchased on a "claims made" basis/form, the coverage provided under that insurance policy shall be maintained through: (i) consecutive policy renewals for not less than three (3) years form the date of completion of the Work which is subject of this Contract or, if such renewals are unavailable, (ii) the purchase of a tail/extended reporting period for not less than three (3) years from the date of completion of the Work which is subject of this Contract. All insurance written on a "claims made" basis/form must have its policy inception or retroactive date be no later than the date the Contract is executed.

H. If the scope of Work is modified or significantly expanded, or if the aggregate limits on any of the Contractor's policies are eroded, the County may require the Contractor to obtain additional coverage or reinstate any eroded coverage. If the need for additional coverage is due to the fault of the Contractor or any of its Subcontractors, the Contractor shall be responsible for the cost of such additional coverage or any of its Subcontractors coverage. The Contractor shall provide the County with proof of any additional insurance or reinstated coverage.

I. If the Contractor is required to correct damaged, defective, or incomplete Work after Final Acceptance, it shall obtain at its own expense such insurance coverage as is required by the Contract for the construction period. Such coverage shall be maintained throughout the period in which corrective work is performed.

1.02 WAIVER OF SUBROGATION

A. The Contractor waives all rights against the County, the County's consultants, or any separate contractors, and their agents and employees, for damages caused by fire or other perils to the extent such damage cost is actually paid by property insurance applicable to the Work. The Contractor shall require similar waivers from all Subcontractors. This provision shall be valid and enforceable only to the extent permissible by the applicable property insurance policies.

1.03 MINIMUM SCOPE AND LIMITS OF INSURANCE.

A. The Contractor shall obtain and maintain, at its sole cost and expense, the following types of insurance and minimum insurance limits.

1. **Commercial General Liability**. $5,000,000.00 per occurrence and $5,000,000.00 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01, or its substantive equivalent. Such insurance shall include coverage for, but not limited to, premises liability, ongoing operations, contractual liability, products and completed operations. Limits may be satisfied by a single primary policy limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall

be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including, but not limited to, additional insured status for the County.

(a) A per project aggregate must apply to the General Liability Policy.

(b) Explosion & Collapse, Underground Damage (XCU) coverage shall apply for the same limits as the general liability policy.

2. **Professional Liability Errors and Omissions.** $1,000,000.00 per claim and in the aggregate.

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 that afforded under ISO form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9. Limits may be satisfied by a single primary policy limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including, but not limited to, additional insured status for the County. 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) and MCS 90.

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. **Employers Liability or “Stop Gap”.** Coverage in the amount of $1,000,000 each occurrence and shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy.

6. **Builder's Risk/Installation Floater.** The Contractor shall procure and maintain during the life of the Contract, or until acceptance of the project by King County, whichever is longer, “All Risk” Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake and flood. The policy shall be endorsed to cover the interests, as they may appear, of King County, the Contractor and Subcontractors of all tiers with King County and Subcontractors listed as Named Insureds. In the event of a loss to any or all of the Work and/or materials therein and/or to be provided at any time prior to the final close-out of the Contract and acceptance of the project by King County, the Contractor shall promptly reconstruct, repair, replace, or restore all Work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Contractor or its surety from the obligation of furnishing all the required materials and completing the Work in full compliance with the terms of the Contract.

7. **Pollution Liability.** $2,000,000.00 per occurrence or claim and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed. Coverage shall include non-owned disposal sites.

1.04 DEDUCTIBLES/SELF-INSURED RETENTIONS.

A. Any deductibles and/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 the Contractor's or any Subcontractor's liability to the County, and shall in all instances be the sole responsibility of the Contractor or Subcontractor.

1.05 OTHER INSURANCE PROVISIONS.

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

1. With respect to all liability policies except Professional Liability (errors and omissions), Cyber Liability (Technology Errors and Omissions), and Workers Compensation:

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

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

   (a) Coverage shall be primary insurance as respects the County, its officials, employees, agents, and representatives. Any insurance and/or self-insurance maintained by the County, its officials, employees, agents and representatives shall not contribute with any Contractor's or Subcontractor's insurance or benefit the Contractor, its Subcontractor(s), 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.

1.06 ACCEPTABILITY OF INSURERS.

A. Unless otherwise approved by the County:

1. Insurance is to be placed with insurers with an A.M. Best rating of no less than A:VIII, or, if not rated with A.M. Best, with minimum surpluses the equivalent of Best's surplus size VIII.

2. Professional Liability (Errors and Omissions) insurance may be placed with insurers with an A.M. Best rating of B+; VII.

3. If at any time the foregoing required policies shall fail to meet the above minimum requirements, the Contractor shall, upon notice to that effect from the County,

promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for review.

1.07 SUBCONTRACTORS.

A. The Contractor shall include all Subcontractors as insureds under its policies, or alternatively, the Contractor must require each of its Subcontractors to procure and maintain appropriate and reasonable insurance coverage and minimum insurance limits to cover each of the Subcontractors' liabilities given the scope of work and the services being provided herein. All liability insurance policies (except Professional Liability, Cyber Liability, and Workers Compensation) provided by the Subcontractor(s) must include the County, its officials, agents and employees as additional insured for full coverage and policy limits. The Contractor is obligated to require and verify that all Subcontractors maintain insurance and ensure that the County is included as additional insured. Upon request by the County, and within five (5) business days, the Contractor must provide evidence of Subcontractor insurance coverage, including endorsements.

1.08 JOB SITE SAFETY.

A. The Contractor shall have the "**right to control**" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state, and local safety regulations governing the job site, employees and subcontractors. The Contractor shall be responsible for Subcontractors' compliance with these provisions.

END OF SECTION

SECTION 00 72 00

GENERAL TERMS AND CONDITIONS

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ARTICLE 1: GENERAL PROVISIONS

1.0 DEFINITIONS

A. "**Addendum**" is a written alteration or clarification of the plans or specifications provided to bidders by the County prior to bid time, which becomes part of the Contract Documents when the Contract is executed.

B. "**Application for Payment**" means a written request for payment of Work completed in accordance with the Contract submitted by Contractor to the County.

C. "**Change Order**" means an executed written instrument that alters one or more terms of the Contract. A Change Order may be bilateral (executed by both Parties) or unilateral (executed by the County only).

D. "**Change Proposal**" means a document prepared by the Contractor at the request of the County in response to a Request for Change Proposal initiated by the County, which proposes a change to one or more terms of the Contract. The County initiates all Requests for Change Proposals.

E. "**Claim**" means a written demand by the Contractor seeking relief not granted in the County's response to the Contractor's prior Request for Change Order or in response to a unilateral Change Order.

F. "**Completion/Final Acceptance**" means that the Contractor has completed all the requirements of the Contract and the County has given written notice of acceptance of the Project.

G. The "**Contract**" or "**Contract Documents**" constitute the entire integrated agreement between King County and the Contractor for the performance of the Work. The Contract Documents are the following:

1. Signed King County Agreement between County and Contractor (the "Agreement, Section 00 50 00");
2. Affidavits, Certifications and Bonds as specified in the Contract;
3. General Terms and Conditions (Section 00 72 00);
4. Supplemental Terms and Conditions, including addenda (Section 00 73 00);
5. Drawings and Detail Drawings;
6. General Provisions (Division 1);
7. Technical Specifications, Divisions 2 through 49
8. Change Order(s); and,
9. Invitation to Bid Documents, which include all sections in Division 0, not previously listed, including the Contractor's completed Section 00 45 13 Responsibility Detail Forms, and Responsibility Attestation.

H. "**Contract Execution**" occurs when the County Executive or its designee signs the Contract, which shall occur after the Contractor signs the Contract. Contract Execution will be performed through an electronic signature process.

I. "**Contract Price**" means the total amount payable by the County to the Contractor for performance of the Work in accordance with Section 00 50 00, as may be adjusted by Change Orders.

J. "**Contract Time**" means the number of Days or the specific date set forth in the Contract for the Contractor to achieve Substantial Completion of the Work.

K. "**Contractor**" means the individual or business entity contracting with King County to perform the Contract Work.

L. "**Contractor's Representative**" is the individual designated by the Contractor in the Agreement, Section 00 50 00, responsible for administering the Contract, and who has the authority to bind and obligate the Contractor in the performance of the Work.

M. "**Critical Path**" is the longest, continuous sequence of interrelated activities that begins at the start of the Project (Notice to Proceed) and extends to Substantial Completion of the Project. A delay to an activity on the Critical Path will delay project completion.

N. "**Day**" or "**Days**" means calendar day, unless otherwise specified.

O. "**Differing Site Conditions**" are defined as: **Type I** Subsurface or latent physical conditions at the Site which differ materially from those described or shown in the Contract Documents and not reasonably foreseeable based on the information available to the Contractor at the time of bid or **Type II** Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the construction activities of the character provided for in the Contract and not reasonably foreseeable based on the information available to the Contractor at the time of bid.

P. "**Direction"** is a general term that refers to communications from the County Project Representative to the Contractor about the Work. Direction includes, but is not limited to, Field Directives, directives to accelerate or suspend Work, and response to Requests for Information and Submittals.

Q. "**Field Directive**" is a document, titled Field Directive, issued by the Project Representative, directing the Contractor to proceed promptly with specific Work and shall not, in and of itself, constitute entitlement to an adjustment in Contract Time and/or Contract Price.

R. "**Final Payment**" means the County's payment of the Contractor's final Application for Payment, (See Article 7, *Payment and Completion*).

S. "**Float**" shall be defined as the period of time measured by the number of days each non-critical path activity may be delayed before it and its succeeding activities become part of the Critical Path in the Project Schedule. Contractor and the County may both utilize Float to offset delays to the Project Work.

T. "**Force Majeure**" means an event that is unforeseeable at the time of Contract Execution and that is beyond the reasonable control of the Contractor and County and is limited to:

1. A natural disaster declared by the Governor of Washington or President of the United States, or declared an emergency by the King County Executive including, but not limited to, earthquakes;
2. Acts or omissions of any government entity acting within its governmental capacity;
3. Fire and/or flood for which the Contractor or its Subcontractors is not responsible;

4. Quarantine, epidemic, or pandemic;
5. Strike or defensive lockout; and,
6. Unusually Severe Weather Conditions.

U. **"Hand and Other Small Tools"** means any tool, piece of communication equipment, or piece of equipment with a wholesale value of less than $500.

V. "**Hazardous Material**" means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls (PCBs), or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any and all federal, state, county, or municipal statutes or laws and regulations promulgated thereunder, now or at any time hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U. S. C. §§ 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U. S. C. §§ 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U. S. C. §§ 6901, *et seq.*), the Federal Water Pollution Control Act (33 U. S. C. §§ 1251, *et seq.*), the Clean Air Act (42 U. S. C. §§ 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U. S. C. §§ 2601, *et seq.*), the Occupational Safety and Health Act (29 U. S. C. §§ 651, *et seq.)*, and the Model Toxics Control Act (RCW 70.105), or similar state or local statute or code, as the laws have been amended and supplemented.

W. "**King County**" or "**County**" refers to the county of King, a political subdivision and home rule charter county of the state of Washington.

X. "**Notice**" means a written document issued by one Party of the Contract to the other.

Y. "**Notice To Proceed**" is a written directive issued by the County authorizing the Contractor to perform some or all of the Work.

Z. "**Overhead**" means the Site or Field Office Overhead and Home Office Overhead costs that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the physical Contract construction activities.

1. **"Site or Field Office Overhead"** means those costs that directly support the physical completion of the Work, including but not limited to: salaries and direct payroll costs for superintendents, planners, schedulers, engineers, managers, clerical staff and all vehicles, travel, meal and lodging costs associated with those personnel; field office and utility expenses; expenses associated with all regulatory compliance; Hand and Other Small Tools provided by the Contractor for the use of its forces; all expendable supplies; and all other such items.
2. **"Home Office Overhead"** means that portion of Contractor business costs necessary to operate the business entity that are not specifically related to the Work but are properly allocable to this Contract. Such costs include, but are not limited to, those associated with office and office personnel salaries and related payroll taxes and benefits; costs of office occupancy and maintenance, all supporting services (such as utilities, office equipment, computers, software, and similar items) related to the home office function; business taxes and licenses; leased or owned vehicles (including vehicle allowances); and all such other costs necessary to operate the business entity.

3. **Bonds, Insurance and Taxes**. In addition to the above, whether treated as Site or Field Office Overhead or as Home Office Overhead, costs of any and all bonds, insurance(s), and taxes, other than retail sales tax, associated with this Contract are to be considered as Overhead. All items as those identified above are to be treated as Overhead for this purpose regardless of how the Contractor chooses to account for them in its books of account.

4. **Unallowed Overhead Items**. Under no circumstances shall the County pay the Contractor for direct or allocated costs or charges for officer bonus and profit sharing, project personnel bonuses, charitable contributions, income taxes, or any costs relating to illegal activity.

AA. **"Party"** or **"Parties**" refers to the Contractor and King County.

BB. "**Project**" refers to all activity relative to this Contract including activity of the Contractor, its Subcontractors, and the County.

CC. "**Project Representative**" refers to the individual designated by the County and identified in the Agreement (Section 00 50 00).

DD. "**Project Schedule**" means a document, prepared pursuant to all Contract requirements for the Project Schedule, that indicates the time of performance of all activities necessary for completion of the Contract Work within the Contract Time. The Project Schedule and all required updates will be utilized to monitor progress of the Work.

EE. **"Punch List"** means a list of items to be completed or corrected by the Contractor after Substantial Completion and prior to Completion/Final Acceptance.

FF. "**Request for Change Order**" (or "RCO") means a document, designated as a Request For A Change Order, prepared by the Contractor requesting either (1) a change in Contract Price; (2) a change in Contract Time; (3) a change in Contract Work; (4) a payment of money or damages; and/or, (5) any other relief arising out of, or relating to, this Contract.

GG. "**Request for Change Proposal**" (or "RCP") means a document, designated as a Request For Change Proposal, prepared by King County requesting Contractor's price for the proposed change to the Work. A Request for Change Proposal is not Direction to proceed with the change to the Work.

HH. "**Request for Information**" (or "RFI") is a request from the Contractor to the County seeking an interpretation or a clarification of some requirement of the Contract Documents.

II. **"Retainage"** is a retained percentage of the Contract Price held by King County or equivalent value in the form of a statutory retainage bond posted by the Contractor, which is released after contract and statutory conditions have been met.

JJ. "**Satisfactory Completion**" pertains to additional Work under a Change Order and is further defined in provision 6.3, *Change Orders*.

KK. "**Schedule of Values**" means a document that allocates portions of the total Contract Price, which includes all Overhead and profit, to each of the activities necessary to complete the Contract Work. The Schedule of Values is used as the basis for calculating Progress Payments.

LL. "**Site**" or "**Project Site**" refers to the location at which construction, equipment or services furnished by the Contractor under the Contract will be performed, completed and/or delivered.

MM. "**Subcontractor**" shall mean an individual or business entity having a contract with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Work.

NN. "**Submittals**" Submittals include but are not limited to shop drawings, setting and erection drawings, schedule of values, schedules of materials, product data, samples, certificates and other information prepared for the Work by the Contractor, or a Subcontractor as required in the Technical Specifications ("Submittals").

OO. "**Substantial Completion**" means the date in the progress of the Work when:

1. The County has full and unrestricted use and benefit of the Contract Work for the purpose intended;
2. All the systems and parts of the Contract Work are functional;
3. Utilities are connected and operate normally;
4. Only minor incidental Work or correction or repair remains to complete all Contract requirements; and,
5. The Contractor has provided all occupancy permits and easement releases.

If the Contract specifies, partial Substantial Completion may be granted for a specified phase of the Work or milestone.

PP. **"Substitution Request"** means the Contractor's request to supply a product or process that is different from what is specified in the Contract.

QQ. "**Supplier(s)**" means an individual or business entity that provides materials or manufactured items that are necessary to or incorporated into the Project, but who performs no Work on the Site.

RR. "**Technical Representative**" refers to the individual designated by the Project Representative to perform functions under the Contract including but not limited to contract administration and other functions of a technical nature.

SS. "**Unusually Severe Weather Conditions**" shall be defined and calculated as follows:

1. Daily rainfall equal to, or greater than, 0.50 inches during a month when the monthly rainfall exceeds the normal monthly average by 15 to 100 percent.
2. Daily rainfall equal to, or greater than, 0.20 inches during a month when the monthly rainfall exceeds the normal monthly average by more than 100 percent.
3. Daily rainfall equal to, or greater than, 1.0 inch.
4. Daily maximum temperature equal to, or less than, 20 degrees F during a week when the maximum daily temperature never exceeds 35 degrees F.
5. Daily maximum temperature equal to, or less than, 25 degrees F during a week when the maximum daily temperature never exceeds 30 degrees F.
6. Daily maximum temperature equal to, or less than, 15 degrees F at any time.

7. Daily maximum wind velocity equal to or greater than 50 mph at any time.

Ice, snow and other weather conditions, not described above, may be considered as unusually severe at the sole discretion of the County upon written request by the Contractor. Such written request shall describe in detail the weather conditions, identify the specific impacts resulting from the weather condition, and be submitted to the County within five (5) Days of the onset of the unusually severe weather condition. If the County determines that the identified weather conditions were unusually severe weather, then Contractor may proceed pursuant to provision - 5.3, *Differing Site Conditions.*

To preclude the difficulties of actual measurement, the Parties hereto agree that weather data at the Site of the Work shall be expressly deemed to be the same as that measured at the Seattle-Tacoma International Airport by the Environmental Data and Information Service of the National Oceanic and Atmospheric Administration ("NOAA") of the U. S. Department of Commerce, unless otherwise specified in the Contract Document's technical specifications.

Precipitation (such as rain, hail or snow), low temperature, windstorms, ice, and other conditions which could reasonably have been anticipated from the National Weather Service historical records for the general locality of the Work shall not be construed as unusually severe weather.

For the purposes of this provision, a "month" shall mean a calendar month and a "week" shall mean a calendar week of Sunday through Saturday.

TT. "**Work**" or "**Contract Work**" is a general term that refers to all the construction and other activities required by the Contract Documents and includes all labor, materials, equipment, supplies, and all activities necessary to fulfill all of the Contractor's obligations under the Contract.

1.1 INTENT AND INTERPRETATION OF THE DOCUMENTS

A. The Contract Documents constitute the entire and integrated agreement between the Parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral.

B. The Contract Documents shall not be construed to create a contractual relationship between any parties other than the County and the Contractor. No contract between the County and a third party shall be construed to create any duty on the part of the County or such third party to the Contractor. The Contractor is not an intended or incidental beneficiary of any promises made in the County's contract with a third party, if any.

C. The Contract Documents are intended to be complementary. What is required by one part of the Contract shall be as binding as if required by all. Should any conflict or inconsistency be found in the Contract Documents, the County shall resolve any such conflict or inconsistency in accordance with provision 1.2, *Order of Precedence*.

D. Where the words "similar" or "typical" (or their equivalents) are used in the Contract, they shall mean nearly corresponding or having a likeness. Such words shall not be construed to mean that all parts of the Work referred to are identical or substantially identical, or that such elements of the Work are connected identically or substantially identically to the rest of the Work. The Contractor has the responsibility to determine all details of the Work in relation to their location and connection to other parts of the Work. Words importing the singular number may also be applied to the plural of

persons and things; words importing the plural may be applied to the singular; and words importing the male gender are to be extended to females also.

E. The organization of the specifications into divisions, sections, and articles and the organization of the drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2 ORDER OF PRECEDENCE

A. Any conflict or inconsistency between the terms or conditions of the Contract Documents shall be resolved by the following descending order of precedence (with 1 taking precedence over 2, 2 over 3, and so forth):

1. Change Order(s)
2. Signed Agreement (Section 00 50 00)
3. Supplemental Terms and Conditions (Section 00 73 00)
4. General Terms and Conditions (Section 00 72 00)
5. General Provisions (Division 1)
6. Technical Specifications, Divisions 2 through 49
7. Detail drawings
8. Drawings
9. All other sections in Division 0 not specifically identified herein
10. Affidavits, Certifications and bonds (Section 00 52 00; Section 00 61 00)

B. In the event there exists a conflict, inconsistency, or ambiguity within the terms and conditions of one of the Contract Document categories set forth above, that is not resolved by application of provision 1.2.A, the more stringent or costly requirement shall be deemed to have been intended and to have been included in the original Contract Price.

1.3 CLARIFICATION OF DRAWINGS AND DETAIL DRAWINGS

A. Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn out parts shall apply also to other similar portions of the Work. Where ornament or other detail is indicated in one instance only, such detail shall be continued throughout the courses or parts in which it occurs and shall apply to all other similar parts of the Work, unless otherwise indicated.

B. With regard to drawings the following shall apply:

1. Written dimensions shall be followed; drawings may not be to scale.
2. Figure dimensions on drawings shall govern over scale dimensions; and detail drawings shall govern over general drawings.

ARTICLE 2: COUNTY

2.0 AUTHORITY

A. Unless the County, in writing, indicates otherwise, the authority to (1) commit to or bind the County to any Change Orders or change in Contract Work, Contract Price

and/or Contract Time; or (2) sign the Contract or Change Orders rests solely in the King County Executive or its designee.

B. The County shall identify the Project Representative in the Agreement, Section 00 50 00 of the Contract.

   1. If the Project Representative has the authority to sign Change Orders and/or bind the County to changes in Contract Work, Contract Price, or Contract Time, upon request, the Project Representative shall provide the Contractor with a written notice of delegation of authority.

   2. In the event the Project Representative is no longer assigned to the Contract, the County shall notify the Contractor in writing of the change providing the name of the new Project Representative and effective date of the change.

C. The Project Representative shall have the authority to administer the Contract. Administration of the Contract by the Project Representative includes but is not limited to:

   1. Receiving all correspondence and information from the Contractor;

   2. Issuing Field Directives;

   3. Issuing Requests for Change Proposal;

   4. Responding to Requests For Information;

   5. Reviewing the Schedule of Values, Project Schedules, Submittals, testing and inspection reports, Substitution Requests, and other documentation submitted by the Contractor;

   6. Negotiating Change Proposals and Change Orders;

   7. Recommending Change Orders for approval by the King County Executive or its designee;

   8. Issuing decisions with respect to Requests for Change Orders and Claims;

   9. Processing payment requests submitted by the Contractor, and recommending payment;

   10. Monitoring the quality of the work, rejecting noncompliant work, and recommending acceptance of the Work;

   11. Transmitting executed Change Orders, amendments, and other Contract correspondence to the Contractor, and

   12. Performing all other contract administrative functions.

D. The Project Representative may designate a Technical Representative(s) to perform contract administrative functions under the Contract, including but not limited to such as review and/or inspection and acceptance of supplies, services, the Work, and other functions of a technical or administrative nature.

   1. The Project Representative will provide a written Notice of its designation to the Contractor. The designation Notice will set forth the authority of the Technical Representative(s) under the Contract. The Project Representative shall not grant the Technical Representative greater authority than the Project Representative.

   2. The Project Representative may provide Notice adding to or modifying these designations, as necessary.

2.1 INFORMATION SUPPLIED BY COUNTY

A. Unless otherwise specifically provided in the Contract, surveys and site information provided by the County are intended to describe the general physical characteristics of the Site. The County does not represent that this information is complete or sufficient for the Contractor's performance of the Work.

B. All drawings, models, and specifications furnished by the County are solely for use on this Contract and are not to be used by the Contractor on any other Work or project.

2.2 WORK BY COUNTY OR SEPARATE CONTRACTORS

The County reserves the right to perform Work not included in the Contract or to let other contracts in connection with this Project.

ARTICLE 3: CONTRACTOR

3.0 CONTRACTOR REPRESENTATIONS

The Contractor makes the following representations to the County:

A. Before submission of its bid, the Contractor has:

1. Carefully reviewed the Contract Documents, and visited and examined the Site;
2. Become familiar with the general and local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of Contract Work;
3. Become familiar with, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents;
4. Examined the Site surface and reasonably ascertainable subsurface conditions and other matters that may be encountered at the Site or affect performance of the Contract Work or the cost or difficulty thereof;
5. Become familiar with and satisfied itself as to the conditions involving transportation, disposal, handling, and storage of materials; and
6. Become familiar with and satisfied itself as to the availability of labor, water, electric power, and roads; and the uncertainties of traffic, weather, river stages, tides, or similar physical conditions at the Site. Any failure of the Contractor to take the action described in this provision or elsewhere in the Contract Documents will not relieve the Contractor from its responsibility for properly estimating the difficulty and cost of the Work, or for successfully performing the Work without additional expense to the County.

B. The Contract Price is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work as represented by the Contract, site visit, and the general conditions (including but not limited to weather, site, soil) known or reasonably anticipated for the Site.

C. The Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform the Contractor's obligations required by the Contract.

D. The Contractor is able to furnish plant, tools, material, supplies, equipment, and labor required to complete the Work and perform the obligations required by the Contract and has sufficient experience and competence to do so.

E. The Contractor shall perform at the Site, and with its own forces, Work equivalent to at least twenty-five percent (25%) of the Contract Price.

F. The Contractor shall make a good faith effort to cooperate with the County and with all other contractors assigned to perform Work on or near the Project.

3.1 GENERAL DUTIES

A. The Contractor shall give sufficient supervision to the Work, using its best skill and attention. The Contractor is hereby given notice that the County will be relying on the accuracy, competence and completeness of the Contractor's Work. The Contractor shall supervise and be solely responsible for the proper performance of the Work in accordance with the Contract, including the construction means, methods, techniques, sequences, procedures, and for coordination of all portions of the Work.

B. Unless specified elsewhere in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery, utilities, transportation, and other facilities and services (including federal and state tax, industrial insurance, social security liability and all other applicable taxes) necessary for the proper execution and completion of the Work. Each Statement of Intent to pay prevailing wages must be approved by the industrial statistician of the Department of Labor and Industries before it is submitted to the Project Representative.

C. The Contractor shall also provide sufficient staffing and supervision to process administrative functions, including but not limited to, Submittals, Requests for Information, Project Schedule updates, responses to Requests for Change Proposal, Change Orders, payment requests, close out documentation, and to perform all other requirements of the Contract and all Work.

D. The Contractor shall lay out its Work from baselines and benchmarks indicated in the Contract and shall be responsible for the accuracy of all field measurements used in the lay out.

E. If professional services requiring licenses in the State of Washington, such as engineering, architecture or other services are required per the technical specifications and/or drawings, it is the Contractor's duty to ensure that those professionals engaged on its behalf are licensed in the State of Washington.

3.2 DUTY TO INSPECT CONTRACT DOCUMENTS

A. The Contractor shall carefully study and compare all Contract Documents and check the conditions, dimensions, and instructions as stated therein.

B. The Contractor shall immediately notify in writing the County of any:

1. Error, inconsistency, or omission in the Contract Documents that Contractor discovers or that a contractor through the exercise of reasonable diligence should have discovered; or

2. Requirement in the Contract Documents that conflicts with any local, state, and federal laws, regulations and/or permits, licenses, and easement conditions that the Contractor discovers or that a contractor through the exercise of reasonable diligence should have discovered.

C. The Contractor should not proceed with the Work in question until the Contractor receives written direction from the Project Representative.

D. If the Contractor proceeds with the Work in question without written direction from the Project Representative, the Contractor shall be responsible for any costs or damages associated with:

1. Fines or penalties;

2. Demolition, tear out, removal, cleanup, remediation, or fixing the Work in question; and

3. Delay, disruption, and loss of productivity.

E. The Contractor's failure to timely discover and immediately report, to the County, such reasonably ascertainable errors, inconsistencies, or omissions and conflicts in regulatory requirements, permits, license or easements shall preclude the Contractor's recovery of costs and time resulting from the Contractor's failure to timely discover and/or immediately notify the County of such errors, inconsistencies, or omissions.

3.3 COMMUNICATIONS

A. Communication with the Contractor shall be through the Contractor's Representative.

B. The Contractor's Representative shall submit all correspondence, questions, and/or documentation to the Project Representative.

3.4 CONTRACTOR'S SUPERVISION AND EMPLOYEES

A. Contractor has an obligation to provide qualified and competent people to administer the Contract and perform the Work.

B. During performance of the Work the Contractor shall have supervisory personnel on the Site and available to administer, manage, and coordinate the Work. The County shall not be responsible for the acts or omissions of the supervisory personnel or their assistants.

C. The Contractor shall at all times enforce good order among all persons furnishing labor or materials on the Site and shall only employ workers skilled in the Work assigned. If requested by the Project Representative, Contractor shall provide the Project Representative with copies of licenses, registrations, and certifications.

D. The County shall have the right to require the Contractor to remove personnel from the Site that do not have the appropriate qualifications and experience to meet or uphold the requirements of the Contract.

E. The County shall also have the right to order the Contractor to replace personnel for any act or omission in violation of King County Code 12.17 Discrimination in Contracting or which creates an unprofessional work environment. During performance of this Contract, the Contractor and all parties subcontracting or supplying materials or manufactured items under the authority of this Contract agree that each of them will not discriminate on the Site because of a person's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except as to minimum age, unless based upon a bona fide occupational qualification.

F. The Contractor and all parties subcontracting under the authority of this Contract shall comply fully with all applicable federal, state and local laws, ordinances,

executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. In addition, KCC 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. Any violation of the requirements of the provisions of Section 00 22 00 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 KCC 12.16 that provide for penalties, liquidated damages or other remedies, and may result in ineligibility for County contracts.

G. Failure by the County to require removal of any Contractor personnel shall not be deemed an admission that any such personnel are satisfactory, nor shall such failure relieve the Contractor from any contractual responsibility.

3.5 SUBCONTRACTORS AND SUPPLIERS

A. **This Contract is between King County and the Contractor.**

1. The Contractor's subcontracting shall create no contract between King County and the Subcontractor and Suppliers. Subcontractors and Suppliers are not intended or incidental third party beneficiaries to the Contract. The Subcontractors and Suppliers shall have no rights against King County by reason of a subcontract with the Contractor.

2. The Contractor will be responsible for performing all Work as required by the Contract. The Contract has not been written with the intent of, and King County shall not be a party to, defining the division of Work between the Contractor and its Subcontractors and Suppliers.

3. The Contractor shall be responsible for all Work and material furnished, and no subcontract shall release the Contractor of its obligations or liability under this Contract and the Performance and Payment Bond.

B. **Selection of Subcontractors and Suppliers**

1. Subcontractors and Suppliers shall be properly licensed, registered or certified, as applicable, in accordance with provision 3.27, *Subcontractor Responsibility* and capable to perform the assigned Work.

2. If requested by the County, the Contractor shall provide documentation that the proposed Subcontractors and Suppliers are experienced and equipped to do the Work.

3. The Contractor shall require each Subcontractor and Supplier to comply with all provisions of this Contract. At the request of Subcontractors or Suppliers, Contractor shall make available for copying all Contract Documents.

C. **Responsibility for Work of Subcontractors and Suppliers**

The Contractor shall be responsible for the acts and omissions of Subcontractors and Suppliers. The Contractor shall also be responsible for the suitability of any materials, components, equipment or supplies furnished by a Subcontractor and/or Supplier irrespective of whether such were designated or approved by the County.

3.6 PROJECT TEAM MEMBERS AND SUBCONTRACTORS

A. The Contractor acknowledges that the qualifications, experience, and skill of the project team members, including Contractor's Project Manager, identified in this Contract as the Contractor's Representative, and its Subcontractors, if identified in Section 00 45 13, were important factors in determining the responsibility of the Contractor and issuance of the Intent to Award, and continue to be important factors for successful and timely completion of the Project.

B. **No reassignment or substitution of Project Team Members.** Project team members and Subcontractors, if identified in Section 00 45 13, including the Contractor's Representative shall be permanently assigned to the Project or the relevant subcontract scope of Contract Work; and the Contractor agrees that such project team members shall not be removed from the proposed scope of Work on the Project without written, prior approval from the County pursuant to the provisions below:

   1. Provide the County with a written request, fifteen (15) Days' in advance of the proposed removal and substitution of any project team members.
   2. Written requests for removal and substitution of a project team member shall identify:
      a. Name of the project team member(s);
      b. An explanation for removal and substitution;
      c. Name of the person(s) proposed to replace the project team member(s); and
      d. Such person(s) must meet the applicable experience and qualifications specified in Section 00 45 13, if applicable. Provide the experience and qualifications of the individual(s) by completing the applicable forms, if required in Section 00 45 13 Responsibility Detail Form.
   3. If the Contractor removes and substitutes a Section 00 45 13 approved project team member without prior written approval, the Contractor agrees to pay the County Liquidated Damages as specified in Division 1 Liquidated Damages, if applicable, and not as a penalty, to compensate the County for inefficiencies associated with such substitution, including but not limited to administrative burdens and transfer of knowledge efforts. Such Liquidated Damages shall be imposed until the Contractor has obtained written approval of the substitution from the County. This Liquidated Damages provision does not apply to inefficiencies unrelated to the project team member substitution. Contractor agrees that the sum established as Liquidated Damages is fair and reasonable and that the payment represents a reasonable estimate of fair compensation for the inefficiencies that may be reasonably anticipated from the removal and substitution of project team member identified in Section 00 45 13.

C. **No removal and substitution of Section 00 45 13 Subcontractors**. Subcontractors, if identified in Section 00 45 13, were the basis of the County's Intent to Award and shall be contracted to perform the entire scope of Contract Work on the Project for which the Subcontractor was identified and the Contractor agrees that such Section 00 45 13 Subcontractors shall not be removed and substituted from the proposed scope of Work on the Project without written, prior approval from the County pursuant to the provision below.

   1. Contractor agrees that it shall not remove or substitute Section 00 45 13 Subcontractors without prior written approval from the County. When requesting

replacement or substitution of a Section 00 45 13 Subcontractor, the Contractor must:

a. Provide the County with a written request, fifteen (15) Days' in advance, of the proposed removal and substitution of the Section 00 45 13 Subcontractor.

2. A written request to remove or substitute a Section 00 45 13 Subcontractor shall:

   a. Name the Section 00 45 13 Subcontractor;

   b. Provide an explanation of removal or substitution;

   c. Name the subcontractor proposed to replace the Section 00 45 13 Subcontractor; and

   d. Provide the experience and qualifications of the subcontractor by completing the applicable Responsibility Detail Form, Section 00 45 13. Such subcontractor must meet the applicable experience and qualifications specified in Section 00 45 13.

3. If the Contractor removes and substitutes a Section 00 45 13 approved Subcontractor without prior written approval, the Contractor agrees to pay the County Liquidated Damages as specified in Division 1 Liquidated Damages, if applicable, and not as a penalty, to compensate the County for inefficiencies associated with such substitution, including but not limited to administrative burdens and learning curve. Such Liquidated Damages shall be imposed until the Contractor has obtained written approval of the substitution from the County. This Liquidated Damages provision does not apply to inefficiencies unrelated to the 00 45 13 Subcontractor substitution. Contractor agrees that the sum established as Liquidated Damages is fair and reasonable and that the payment represents a reasonable estimate of fair compensation for the inefficiencies that may be reasonably anticipated from the removal and substitution of Subcontractor identified in Section 00 45 13.

3.7 CONTRACTOR'S DUTY TO COORDINATE WITH OTHER WORK ON THE SITE

A. The Contractor shall coordinate its Work with the County and other County contractors and, at the County's request, participate in meetings for the purpose of coordinating the Contractor's construction schedule with those of other contractors at no additional cost to the County. To the extent a direct conflict exists with regard to access to the Site, if the contractors cannot work out a resolution that has no impact on Contract Price, Contract Time, and any milestones in the Contract Documents, the Project Representative shall issue written Direction to resolve the conflict.

B. The Contractor shall not cut, excavate, alter, impair, or otherwise engage in Work activity that inhibits the Work of any other contractors without the prior written consent of the County.

C. If any part of the Contractor's Work depends, for proper execution or results, upon the prior Work of the County or any other contractor, the Contractor shall, before performing the affected Work, inspect the field conditions and shall immediately, and before the conditions are disturbed, give written Notice to the County of any apparent discrepancies or defects in the prior Work that renders it unsuitable for the reception of Contractor's Work. Contractor's failure to so inspect and to give such immediate Notice shall constitute acceptance of the prior Work as fit for reception of its Work, except as to defects not then reasonably discovered.

3.8 MATERIALS AND EQUIPMENT FURNISHED BY COUNTY

A. Unless otherwise specifically provided in the Contract Documents, for materials and equipment furnished by the County, the Project Representative will identify the location at which the Contractor will be responsible for taking possession. The Contractor shall promptly unload, transport, store and/or protect such material and equipment from damage.

   1. Upon the County's notice it has furnished the material or equipment, the Contractor shall, within seven (7) Days, inspect such County-furnished material and equipment at the designated location and provide immediate written Notice of rejection of said material and equipment if it is defective or does not meet the requirements of the Contract.

   2. The Contractor shall identify the causes for its rejection, including but not limited to the specific defect or nonconformance with the Contract. Failure to provide such written rejection shall result in a presumption that the Contractor accepts the County-furnished material and equipment, except as to defects not then reasonably discoverable.

   3. After receipt by the Contractor at the designated location all risk of loss and damage to such materials and equipment shall be borne by the Contractor.

B. If the Contract requires that the Contractor install materials or equipment provided by the County, in the absence of a reasonably apparent defect, such materials and equipment shall be considered compliant with the Contract Documents.

   1. If the Contractor discovers defects, not reasonably apparent in the County-furnished material or equipment, the Contractor shall immediately notify the County in writing.

   2. After such discovery, the Contractor shall not proceed with Work involving such County materials and equipment unless otherwise authorized in writing by the County.

   3. Contractor's failure to provide immediate written Notice of any defects in material or equipment shall constitute acceptance of such materials and equipment as fit for incorporation into the Work.

   4. Contractor shall be responsible for any damages or delays resulting from Contractor's failure to provide timely written Notice or Contractor's improper incorporation of such defective materials or equipment into the Work.

3.9 SCHEDULE OF WORKING HOURS

A. Unless otherwise specified in the Contract, the Contractor shall submit a schedule of working hours, including overtime and shift work, to the County for acceptance. This schedule shall comply with RCW 49.28 and all other Contract requirements.

B. The schedule of working hours accepted by the County shall be the only schedule used by the Contractor during performance of Work in the Contract, except as provided in provision 3.9.C.

C. The Contractor shall provide 48 hours advance written Notice of any intent to Work outside of regular working hours as defined in the Contract Documents. Any Work performed outside regular working hours shall be performed without additional expense to the County, except as otherwise provided in the Contract Documents.

3.10 RECORD DOCUMENTS

A. The Contractor shall keep a copy of the Contract Documents on the Site at all times.

B. The Contractor shall keep at the Site an accurate, readable, and orderly set of drawings and specifications, updated as the job progresses to show all approved changes, substitutions, options, alternates, and all actual deviations from the original Contract Documents. This set of drawings and specifications shall be the Record Documents.

   1. The Record Documents shall be maintained in hard copy and at the County's option, in electronic format meeting the County's requirements as specified in the Contract technical specifications.

   2. In addition to all approved changes, options, alternates, and all actual deviations from the original Contract Documents, the Record Documents shall be marked as follows:

      a. Record all materials used where options, alternates and/or Change Orders were indicated, specified and/or authorized;

      b. Record accurate measurements referenced to two permanent structures to show the exact location and changes in direction of all underground services and utilities, as well as their approximate depth below finished grade;

      c. Update the Record Documents with information about each item of capital equipment or other fixed asset installed, including type of equipment, make, model, serial number, and acquisition cost;

      d. Update the Record Documents identifying each item of capital equipment or other fixed asset removed from the Project, including type of equipment or fixed asset, make, model, serial number and description of location from which it was removed; and

      e. Record all other requirements as specified in the Technical Specifications.

C. The Record Documents shall be kept up-to-date and be available for review by the County at all times, including but not limited to at each job progress meeting. Failure to have the Record Documents set up-to-date shall be sufficient reason for the County to withhold payment in accordance with provision 7.2, *Payment Withheld*, until all such information is recorded.

D. Record Documents may be used to assist the County to verify the appropriate progress payment.

3.11 COST RECORDS

A. The Contractor, Subcontractors, and Suppliers shall maintain Project cost records by cost codes and shall contemporaneously segregate such costs into the activities shown on the Contract Schedule of Values, and record all costs directly associated with each Work activity at the time incurred. The Contractor, Subcontractors, and Suppliers shall maintain a monthly summary of all costs and shall make all underlying cost records and monthly summaries of costs available for review, inspection, and copying by the County upon request.

B. Any Work performed for which the Contractor intends to seek an adjustment in Contract Price or Contract Time or damages, directly or indirectly resulting from any event, occurrence, condition or Direction, shall be recorded on the same day the Work is performed and kept separate so as to distinguish it from Contract Work. The

Contractor, and any Subcontractors or Suppliers, whose costs the Contractor intends to request, shall:

1. Record all costs claimed to result from any such event, occurrence, condition, or Direction including, but not limited to, delay and impact costs, acceleration costs, loss of productivity or efficiency, and increased or extended Overhead at the time incurred;
2. Record all such costs at the time incurred in a manner that:
    a. Segregates such costs into Work activities;
    b. Separates such costs from the costs of Contract Work; and
    c. Fairly and reasonably allocates such costs to the event, occurrence, condition, or Direction.

C. In addition to the requirements set forth in Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*, the Contractor shall be entitled to extra compensation for an event, occurrence, condition or Direction and/or the recovery of damages only to the extent that the Project cost records are kept in full compliance with all Contract requirements, including the requirement to segregate costs at the time incurred in accordance with this provision 3.11, *Cost Records*, and if and to the extent the cost allocations support entitlement to such compensation.

3.12 MAINTENANCE AND INSPECTION OF DOCUMENTS

A. All Contractor, Subcontractor, and Supplier documents relating to the Contract shall be open to inspection, audit, and/or copying by the County or its designee:
    1. During the Contract Time; and
    2. For a period of not less than six (6) years after the date of Final Acceptance of the Contract (“Preservation Period”); or if any Claim, audit or litigation arising out of, in connection with, or related to this Contract is initiated, all documents shall be retained until such Claim, audit or litigation involving the documents is resolved or completed, whichever occurs later.

B. The Contractor shall also guarantee that all Subcontractor and Supplier documents shall be retained and open to similar inspection, audit and/or copying during the Contract Time and also the Preservation Period. The Contractor, Subcontractor, and Supplier shall use its best efforts to cooperate with the inspection, auditing, and/or copying.

C. Inspection, audit, and/or copying of all documents described herein, may be performed by the County or its designee at any time with not less than seven (7) Days’ Notice. Provided however, if an audit or inspection is to be commenced more than thirty (30) Days after the Final Acceptance date of the Contract, the Contractor will be given ten (10) Days’ Notice of the time when the audit or inspection is to begin.

D. The Contractor, Subcontractors, and Suppliers shall provide adequate facilities, acceptable to the County, for inspection, auditing, and/or copying during normal business hours.

E. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it shall immediately notify the County and preserve such documents, at its expense, as directed by the County.

F. The Contractor, Subcontractor, and Supplier shall be subject to audit at any time with respect to this Contract. Failure to maintain and retain sufficient records in full compliance with all Contract requirements and to allow the County to verify all costs or damages or failure to permit the County access to the books and records shall constitute a waiver of the rights of the Contractor to Claim or be compensated for any damages, additional time or money under this Contract.

G. At a minimum, the following documents, including the machine readable electronic versions, shall be available for inspection, audits, and/or copying:

1. Daily time sheets and all daily reports, supervisor's reports, and inspection reports;
2. Collective bargaining agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. All tax forms, including payroll taxes;
7. Material invoices and requisitions;
8. Material cost distribution worksheet;
9. Equipment records (list of Contractor's, Subcontractors', and Suppliers' equipment, rates, etc.);
10. Contracts, purchase orders, and agreements between the Contractor and each Subcontractor and Supplier;
11. Subcontractors' and Suppliers' payment certificates;
12. Correspondence, including email, among Contractor, Subcontractors, Suppliers and their consultants;
13. All meeting notes by and between Contractor, Subcontractors, Suppliers and/or any third parties related to the Project;
14. Canceled checks (payroll and vendors);
15. Job cost reports, including monthly totals;
16. Job payroll ledger;
17. Certified payrolls;
18. General ledger;
19. Cash disbursements journal;
20. Escrow bid documents, take off sheets, and calculations used to prepare the bid and/or quotes;
21. All cost and schedule records related to a request for an adjustment in Contract Price, Contract Time or damages, including but not limited to, take off sheets, calculations, quotes, other financial data to support Change Proposals, Requests for Change Order and Claims;
22. Financial statements for all years during the Contract Time. In addition, the County may require, if it deems appropriate, additional financial statements for

three (3) years preceding execution of the Contract and six (6) years following Final Acceptance of the Contract;

23. Depreciation records on all Contractor's, Subcontractor's, and Supplier's equipment, whether these records are maintained by the Contractor, Subcontractors, and Suppliers involved, its accountant, or others;
24. All source documents, if a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment;
25. All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;
26. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, Suppliers, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
27. Worksheets, software, and all other documents used (a) by the Contractor to prepare its bid and schedule(s) and/or (b) to prepare quotes and bids to the Contractor;
28. All schedule documents, including electronic versions, planned resource codes, or schedules and summaries, including but not limited to those that support with specificity any Contractor request for a change in the Contract Time in any Request for Change Order;
29. All Submittals; and,
30. All other documents, including email, related to the Project, Claims, or Change Orders.

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

3.13 MAINTENANCE AND SITE CLEANUP

A. The Contractor shall at all times keep the Site, access points, and public rights-of-way free from accumulation of dirt, mud, waste materials or rubbish caused by the Contractor or Subcontractors. At the completion of the Contract Work, the Contractor shall remove and lawfully dispose of all its dirt, mud, waste materials, rubbish, tools, scaffolding and surplus or partly used materials from the Site and shall leave the Site broom clean unless some stricter standard is specified in the Contract.

B. The Contractor shall obey all applicable laws and regulations relating to the storage, use, and disposal of Hazardous Materials. The Contractor shall promptly notify the County of all Contractor or Subcontractor caused spills or releases of Hazardous Materials, and pay the cost to promptly clean up all such spills or releases and any associated fines or penalties. The Contractor shall maintain documentation of the clean-up and disposal all Contractor or Subcontractor caused spills or releases of Hazardous Materials.

C. In case of a dispute over clean-up, the County may, after written Notice to the Contractor, sweep surfaces or remove the dirt, mud, waste materials, rubbish, or Hazardous Materials and charge all reasonable costs of such Work to the Contractor. The County may charge the Contractor or deduct such costs from payments otherwise due the Contractor pending a resolution of the dispute or exercise its rights under the Performance and Payment Bond. In the event there are insufficient funds remaining, excluding retention, the Contractor shall pay the County for the costs associated with maintenance and site cleaning.

3.14 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

A. Contractor shall protect from damage all existing structures, curbs, gutters, sidewalks, equipment, utilities, trees, vegetation and all other improvements, at or near the Site, not shown in the Contract Documents to be removed or modified. Contractor shall repair, at no cost to the County, any such damage resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, the County may have the necessary Work performed and deduct or charge the cost to Contractor or exercise its rights under the Performance and Payment Bond. In the event there are insufficient funds remaining, excluding retention, the Contractor shall pay the County for the costs associated with protection of such property and repairing the damages.

3.15 PERMITS, EASEMENTS, LAWS AND REGULATIONS

A. Except those permits, variances, easements, and licenses specified in the Contract as having been previously obtained by the County, all permits, variances, easements, and licenses necessary for the execution of the Work shall be secured and paid for by the Contractor. The Contractor shall identify and apply for such permits, variances, easements, and licenses at the earliest possible time so as to avoid any delay to the Contract Work. No actions taken by the County to aid the Contractor in securing any permits, variances, easements, and licenses shall relieve the Contractor of its obligations to secure any such permits, variances, easements, and licenses.

B. The Contractor shall maintain all stamped permit sets of Record Documents at the Site during construction, in good condition and as required by local ordinances.

C. The Contractor shall perform all Work in full compliance with local, state and federal laws, ordinances, resolutions and regulations, and with all permit, variance, easement, and license conditions pertaining to the conduct of the Work. The Contractor shall provide written Notice to the Project Representative of the dates of commencement and completion of Work on each easement or license provided by King County. If the Contractor fails to diligently prosecute and complete the Work in accordance with each such easement or license or if King County becomes obligated to pay additional amounts for the use of such easement or license, the Contractor shall be charged such additional costs which shall be set off against any amounts owning to the Contractor or entitle the County to a reimbursement from the Contractor. Upon completion of use of each right of way, easement or license the Contractor shall provide the Project Representative with a written release signed by the landowner, or authorized agent therefor, stating that the landowner has no claims whatsoever against King County on account of the Contractor's use of such right of way. Such release shall be on the form set forth in the Specifications or as provided by King County upon request.

D. The Contractor shall defend, indemnify, and hold the County harmless from any assessment of fines, penalties, or damages arising from violations of the same by the Contractor or Subcontractors. The Contractor shall pay and provide proof of payment for any assessments of fines, penalties or damages. The Contractor shall cooperate with all governmental entities regarding inspection of the Work and compliance with such requirements.

E. Taxes. The Contractor is required to pay all applicable taxes other than state or local sales tax on the Contract Price. No adjustment will be made in the amount to be paid by the County under the Contract because of any change in law or regulations covering any applicable taxes, or because of any misunderstanding by the Contractor as to its liability for or the amount of any taxes.

3.16 PATENTS AND ROYALTIES

A. The Contractor shall pay all costs or fees relating to royalties or claims for any patented invention, article, process or method that the Contractor or its Subcontractors or Suppliers may use upon or in any manner connected with the Work under this Contract or with the use of completed Work by the County. The Contractor and its sureties shall protect and hold King County, and its officers, agents and employees, harmless against any and all demands made for such fees or claims brought or made by or on behalf of the holder of any invention or patent. Before final payment is made on this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

3.17 CONTRACTOR'S CERTIFICATION

A. **Conflict of Interest**

Consistent with the King County Code of Ethics, Chapter 3.04, the Contractor certifies (and shall require each Subcontractor to certify) that it has no direct or indirect financial or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the Work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives acquires such a conflict of interest, the Contractor shall immediately disclose such interest to King County and take action

immediately to eliminate the conflict or to withdraw from this Contract, as King County may require.

B. **Gifts and Gratuities**

The Contractor, by entering into this Contract with the County to perform or provide work, services or materials, has thereby certified:

That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives, to any official member or employee of King County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending thereof, or the making of any determination with respect to the performance of this Contract. The Contractor certifies that it has not made any contributions to any person or entity as a condition of doing business with the County and it has disclosed to the County all attempts by any person to solicit such payments.

C. **Penalties**

Contractors are advised that violations of the above provision may constitute a violation of King County Code 3.04.06, which authorizes criminal liability and civil penalties, including the cancellation of current contracts and disqualification from bidding for a two (2) year period.

3.18 DEVIATION FROM CONTRACT

A. The Contractor shall not make an alteration, variation, addition, deviation, or omission from the requirements of the Contract without the written consent of the Project Representative.

B. The County shall have the right to treat any alteration, variation, addition, deviation, or omission from the requirements of the Contract as a contract breach if prior written consent is not obtained from the Project Representative, which may be justification for the County to withhold payment, stop work, or terminate the Contract for default.

C. Alteration, variation, addition, deviation or omission from the Contract without prior written consent shall not be excused by any alleged defect or error in the Contract Documents.

D. Contractor shall be solely and completely responsible for any damages or loss that may occur arising from or related to any alteration, variation, addition, deviation or omission from the requirements of the Contract, if prior written consent is not obtained from the Project Representative.

E. Unless the County acknowledges any such alteration, variation, addition, deviation or omission in a Change Order, any such alteration, variation, addition, deviation or omission by the Contractor shall not result in any extra compensation or extension of time.

3.19 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS

A. **Operating Area**

Contractor shall confine all operations, including storage of materials on the Site, to County-approved areas.

B. **Temporary Buildings and Utilities**

Unless otherwise specified, temporary buildings (including storage sheds, shops, and offices) and utilities may be erected by Contractor on the Site only with the written consent of the County and without expense to the County. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by the Contractor at its expense upon completion of the Work.

C. **Use of Roadways**

The Contractor shall use only established roadways or temporary roadways authorized by the County. When materials are transported during prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.

D. **Disposal/Removal of Materials**

The Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal of all such materials and components. The Contractor shall provide the County with a copy of all manifests and receipts evidencing proper disposal when required by the County or applicable law.

E. **Protection and Care of Contractor's Materials and Equipment**

The Contractor shall be responsible for the proper care and protection of all materials and equipment delivered to the Site. Materials and equipment may be stored on the Site at the Contractor's own risk and with prior written approval from the County. When the Contractor uses any portion of the Site as a shop, the Contractor shall be responsible for any repairs, patching, or cleaning arising from such use and for obtaining any necessary permits to establish such shop or temporary storage facilities.

3.20 CONTRACTOR'S OVERALL RESPONSIBILITY FOR PROTECTION OF WORK, PROPERTY, AND PERSONS

A. The Contractor shall be responsible for conditions of the Site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Site and perform the Work in a manner which meets all statutory and common law requirements or other specific contractual requirements for the provision of a safe place to work and which adequately protects the safety of all persons and property on or near the Site. This obligation shall apply continuously and shall not be limited to normal working hours. The County's inspection of the Work or presence at the Site does not and shall not be construed to include review of the adequacy of the Contractor's safety measures in, on or near the Site of the Work.

B. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including adequate safety training, in connection with the Work. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

C. King County is committed to a safe, healthy, drug-free, and alcohol-free work environment on all County property and worksites. Employees of Contractor, Subcontractors, Suppliers, or third parties authorized or allowed on the Site by the Contractor are prohibited from reporting to, or performing Work on, County property or worksites with the odor of alcohol present on their person. If a County employee or any personnel of the above entities observes a person on Site consuming alcohol,

marijuana or any controlled substance and/or appearing to be under the influence of or impaired by alcohol, marijuana or any controlled substance, they must immediately notify the Project Representative. Any person observing such behavior will use specific, contemporaneous and articulable observations about the person's appearance, speech, behavior, and odor when notifying the Project Representative. The Project Representative will notify the Contractor of the observations. The Contractor shall instruct the employee that they are prohibited from continuing to perform Work and will safely remove the employee from the County property or worksite.

D. Unless otherwise required in the Contract Documents the Contractor shall protect and be responsible for any damage or loss to the Work or to the materials and equipment associated with the Work until the date of Substantial Completion. The Contractor remains responsible for any damage or loss caused directly or indirectly by the acts or omissions of the Contractor, Subcontractors, Suppliers, or third parties authorized or allowed on the Site by the Contractor until Final Acceptance.

E. The Contractor shall also be solely and completely responsible for damages arising from the Work that affect property adjacent to the Site.

F. The Contractor shall repair or replace without cost to the County any damage or loss that may occur, except damages or loss caused solely by the acts or omissions of the County.

G. The Contractor shall erect and maintain adequate signs, fencing, barricades, lights or security measures and persons to protect the Work until the Project Representative authorizes in writing the removal of signs, fencing, barricades, lights or security measures.

H. If the Contractor encounters materials at the Site reasonably believed by the Contractor to be Hazardous Material including, but not limited to, asbestos, lead, or PCB, Contractor shall immediately stop Work in the area affected and give Notice of the condition to the County. Work in the affected area shall not be resumed without written direction by the County.

I. The Contractor shall maintain in a reasonable number of conspicuous and accessible places at the Site all materials necessary for giving first aid to the injured. The Contractor shall establish, publish and make known to all employees procedures for initiating 911 emergency response and ensuring immediate removal to a hospital or a doctor's care for person(s) who may have been injured on the Site. Employees shall not be permitted to Work on the Site before the Contractor has: (1) provided all materials necessary for giving first aid at the Site; and, (2) established and made known procedures for removal of injured person(s) to a hospital or doctor's care. The Contractor shall ensure at all times that at least one of its employees on Site has adequate training in first aid.

J. In order to protect the lives and health of persons performing Work under this Contract, the Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply, without limitation, to all excavation, tunneling, trenching and ditching operations. In case of conflict between any such

requirements, the more stringent regulation or requirement shall apply. There is no acceptable deviation from these safety requirements, regardless of practice in the construction industry. Any violation of OSHA, WISHA or other safety requirements applicable to the Work may, at the sole discretion of King County, be considered a material breach of this Contract.

3.21 SAFETY PROGRAM

A. The Contractor shall prepare and provide to the County a written site specific "Safety Program" demonstrating the methods by which all applicable safety requirements of this Contract will be met. The Contractor shall ensure its Subcontractors and Suppliers have a written "Safety Program" or formally adopt the Contractor's site specific "Safety Program." The Contractor shall designate a Safety Officer who shall be responsible for proper implementation of the "Safety Program." The Contractor shall submit a copy of its "Safety Program" and the Subcontractor's "Safety Program" to the County within fourteen (14) Days after the Contractor signs the Contract. The County's review of such programs shall not be deemed to constitute approval or acceptance thereof and shall not relieve or diminish the Contractor's sole responsibility for Site safety.

B. The Contractor shall conduct a weekly safety meeting with all Subcontractors and others on the Site performing Work hereunder to discuss general and specific safety matters. The Contractor shall provide upon request, notice of each meeting to the County. At the County's request the Contractor shall provide the County with a record of each meeting, including a sheet on which each attendee signed in and a list of the matters discussed.

3.22 STORAGE OF CONTRACTOR'S PROPERTY

A. The Contractor's tools and equipment and building materials to be incorporated into the Project may be stored on the Site at Contractor's sole risk, and all such storage shall be subject to the requirements of the Contract. Any repairs, patching or cleaning of the Site that may be necessary to restore the Site to its previous condition due to storage of the Contractor's materials, tools or equipment, or other aspects of the Contractor's Work, shall be the responsibility of the Contractor.

3.23 ARCHAEOLOGICAL AND HISTORICAL PRESERVATION

A. The Contractor shall comply fully with the requirements set forth in Chapter 27.53 RCW, now and as hereinafter amended, entitled Archaeological Sites and Resources. The Contractor shall immediately notify the Project Representative if any artifacts, skeletal remains or other archaeological resources (as defined under RCW 27.53.040 now and as hereinafter amended) are unearthed during excavation or otherwise discovered on the Site of the Work. If directed by the Project Representative, the Contractor shall immediately suspend any construction activity, which, in the opinion of the Project Representative, would be in violation of Chapter 27.53 RCW. The suspension of Work shall remain in effect until permission to proceed has been obtained by the Project Representative from the State Historic Preservation Officer or private landowner, as applicable.

3.24 WATER POLLUTION CONTROL REQUIREMENTS

A. The Contractor shall comply with and be liable for all penalties, damages and violations under Chapter 90.48 RCW, now and as hereinafter amended, in the performance of the Work. By submitting a bid for and entering into this Contract, the Contractor has thereby assured King County that the Contractor has knowledge of, understands, and will comply with the provisions and requirements of Chapter 90.48

RCW, including any regulations issued pursuant thereto. The Contractor shall also perform the Work in compliance with water pollution control requirements as may be set forth in this Contract and as may be a part of any permit or other authorization issued or obtained for this Contract.

3.25 RIGHTS OF WAY

A. All rights of way or street use permits to be provided by King County for use by the Contractor for the Work shall be set forth in the Specifications and may be shown on the Drawings. The Contractor's construction activities shall be confined within the identified rights of way, unless the Contractor makes arrangements for use of additional public and/or private property and complies with the requirements of this provision. The Contractor shall comply with all requirements set forth in such rights of way documents and in the Contract applicable to the performance of Work hereunder. The Contractor shall provide written Notice to the Project Representative of the dates of commencement and completion of Work on each right of way provided by King County. If the Contractor fails to diligently prosecute and complete the Work on each such right of way and, as a result of such failure, King County becomes obligated to pay additional amounts for the use of such right of way, the Contractor shall be charged such additional costs which shall be set off against any amounts owning to the Contractor or entitle the County to a reimbursement from the Contractor. Upon completion of use of each right of way, the Contractor shall provide the Project Representative with a written release signed by the landowner, or authorized agent therefor, stating that the landowner has no claims whatsoever against King County on account of the Contractor's use of such right of way. Such release shall be on the form set forth in the Specifications or as provided by King County upon request.

B. If the Contractor makes arrangements for use of such additional public and/or private property, the Contractor, prior to using such property, shall provide the Project Representative with written permission of the landowner, or duly authorized agent of such landowner, for such use. Upon completion of use of such property, the Contractor shall provide the Project Representative with a written release signed by such landowner or authorized agent therefor stating that the owner has no claims whatsoever against King County on account of the Contractor's use of such property. Such release shall be on the form set forth in the Specifications or as provided by King County upon request.

C. The Contractor shall save King County harmless from all suits and legal proceedings of every kind and description that might result from use of or damage to rights of way and public and/or private property by the Contractor. The Contractor shall comply with all laws, rules, regulations, ordinances, resolutions or directives relating to its use of public rights of way, streets or highways; and its use of same shall not disturb the rights and property of adjacent landowners.

3.26 ENVIRONMENTAL MITIGATION PLAN

A. If required elsewhere in the Contract Documents, the Contractor shall prepare and submit to the Project Representative a plan by which the Contractor and its Subcontractors and Suppliers shall ensure all environmental mitigation requirements shall be complied with during performance of the Work under this Contract. The plan shall specifically address each such requirement. Failure to submit a complete environmental mitigation plan may result in suspension of Work; delays, if any, resulting therefrom shall be considered caused by the acts of the Contractor, and any time delays or additional costs resulting therefrom shall be borne by the

Contractor. Preparation of such a plan and compliance with all environmental mitigation requirements shall be deemed incidental to the Work under this Contract and all costs therefor shall be included in the Contract Price.

3.27 SUBCONTRACTOR RESPONSIBILITY

A. Contractor shall verify that each of its first tier subcontractors meets the following responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract execution;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable, have:
    a. Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
    b. A Washington Employment Security Department number, as required in Title 50 RCW;
    c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
    d. An electrical contractor license in compliance with Chapter 19.28 RCW;
    e. A plumbing contractor license in compliance with Chapter 18.106 RCW; and
    f. An elevator contractor license in compliance with Chapter 70.87 RCW.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3). The Contractor shall require its first tier Subcontractors to verify the responsibility criteria for lower tier Subcontractors it hires and to require those Subcontractors to verify the responsibility criteria for lower tier Subcontractors.
5. For public works projects subject to the apprenticeship utilization requirements of RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved Work processes as outlined in their standards of apprenticeship under RCW 49.04 for the one-year period immediately preceding the first date of advertising for the project.
6. Public Works and Prevailing Wage Training/Exemption. Subcontractors shall have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The subcontractors must designate a person or persons to be trained on these requirements. The training must be provided by the Department of Labor and Industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Subcontractors that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The Department of Labor and Industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website.

Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption.

http://lni.wa.gov/TradesLicensing/PrevWage/Contractors/Training.asp

7. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW 49.46, 49.48, or 49.52.

B. The Contractor shall require its first tier Subcontractors to provide the scope and amount of insurance coverage and evidence of such coverage, including any requirements to list and/or name King County or Contractor, or others as additional insured, in accordance with the requirements of the Contract, and shall require those Subcontractors to verify required insurance coverage for lower tier Subcontractors.

ARTICLE 4: ADMINISTRATION OF THE CONTRACT

4.0 TIME OF ESSENCE

A. All time requirements set forth in the Contract Documents are of the essence.

4.1 WORK PROGRESS

A. The Contractor shall:

1. Prosecute the Work diligently with adequate forces;
2. Plan, coordinate, and layout the Work in advance so as to avoid delay;
3. Achieve all Milestones and Substantial Completion, in accordance with the requirements of the Contract; and
4. Complete all Contract close out requirements in accordance with the Contract within the time period for Completion/Final Acceptance established by the County in the Notice of Substantial Completion.

4.2 SCHEDULE OF VALUES

A. Unless otherwise specified, within seven (7) Days after the date of Notice to Proceed, the Contractor shall submit to the County a detailed Schedule of Values that identifies the various activities of the Contract Work and their values and quantities, including the Overhead and profit for each activity. The Contractor warrants that the values identified in its Schedule of Values accurately reflect the value of each Work activity. The Schedule of Values shall be used as a basis for calculating all payments. Payment for Contract Work shall be made only for, and in accordance with, those activities identified in the Schedule of Values.

B. The Contractor shall not be entitled to, nor shall the County be required to make, payment for any Contract Work until the Schedule of Values has been accepted by the County. Such acceptance shall not be unreasonably withheld.

C. The County shall review and accept the Schedule of Values or provide the Contractor with a written explanation of why the Schedule of Values is not acceptable. The County shall use reasonable efforts to review the Schedule of Values within fifteen (15) Days of the County's receipt of the Contractor's submittal of its Schedule of Values. The County's acceptance of the Schedule of Values shall not

relieve the Contractor from its sole responsibility for the accuracy of the Schedule of Values and its compliance with all Contract requirements. The Contractor shall revise the Schedule of Values as necessary to accurately reflect Change Orders.

D. Each Application for Payment shall include a current status of the Schedule of Values. No Application for Payment will be considered until the current status of the Schedule of Values has been submitted and accepted.

E. The activities, which the Contractor identifies within its Schedule of Values, shall be specifically referenced within, and conform and be consistent with, the activities set forth within the Project Schedule.

4.3 PROJECT SCHEDULE

A. Unless otherwise specified, within seven (7) Days after the date of Notice to Proceed, the Contractor shall submit to the County a Project Schedule. The Project Schedule shall show the sequence in which the Contractor proposes to perform the Work, indicate the Critical Path, identify the dates on which the Contractor proposes to start and finish the scheduled activities of the Contract Work, indicate Substantial Completion within the Contract Time, indicate a date for Completion/Final Acceptance, and meet all the requirements as may be set forth more particularly in the Technical Specifications on Project Schedule. Any schedule having an early completion date (less than the Contract Time) shall show the time between the early completion date and the Contract Time/Date as Float.

B. The Project Schedule shall be prepared in the schedule format specified in the Technical Specifications and provided in electronic form and hard copy.

C. Within fifteen (15) Days of the County's receipt of the Contractor's submittal of its Project Schedule or unless stated elsewhere in the Contract, the County shall review the Project Schedule and provide the Contractor with written comments. The County will review the Project Schedule only to determine whether the Project Schedule meets the requirements in the Technical Specifications on Project Schedule. To the extent the Project Schedule does not meet such Technical Specifications, the Contractor shall revise the Project Schedule to make it compliant.

D. By reviewing the Project Schedule and providing written comments, the County is not approving or adopting the Contractor's plan, schedule, means, methods, techniques, sequences, or procedures required to perform the Work. Review and comment by the County of the Project Schedule shall not relieve the Contractor from the sole responsibility for the accuracy of a Project Schedule, and its compliance with all Contract requirements, and its responsibility to meet all required Contract completion dates. Failure by the County to indicate items on the Project Schedule that do not conform with the Contract requirements shall not alter or waive the Contract requirements or relieve the Contractor from complying with all Contract requirements.

E. The Contractor shall not be entitled to, nor shall the County be required to make payment for any Contract Work until the Project Schedule complies with all Contract requirements.

F. The Contractor shall schedule the Contract Work so that the Contract Work is completed within the Contract Time. Float in the Project Schedule shall be defined as the period of time measured by the number of days each non-critical path activity may be delayed before it and its succeeding activities become part of the Critical

Path. Contractor and the County may both utilize Float to offset delays to the Project Work.

G. The Contractor shall regularly enter the actual progress of the Work on the Project Schedule and any changes to the Contract Time approved by the County by Change Order. Updated Project Schedules shall reflect actual progress and shall be provided to the County with each Application for Payment. Applications for Payments will not be processed by the County unless submitted in the format required by the Contract and the Contractor shall not be paid until the Contractor complies with these requirements.

H. If, in the opinion of the County, the Contractor falls behind in its progress of the Work due to acts or omissions of the Contractor, Subcontractors or Suppliers, the Contractor, upon Direction from the County, shall take all necessary steps to improve its progress and bring its progress back in-line with the baseline Project Schedule as amended by Change Orders, if any, without additional cost to the County. In this circumstance the Contractor shall, as necessary, increase the number of shifts, overtime operations, and/or days of work, both on and off the Site; and must submit a supplementary schedule or schedules to demonstrate how an acceptable rate of progress will be regained. If the Contractor disagrees with the County's Direction, it must submit a Request for Change Order in accordance with Article 5, *Changes to the Contract.* Failure of the Contractor to comply with the requirements under these provisions shall be grounds for a determination by the County that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the County may pursue any right it has under the law or the Contract, including but not limited to termination for default.

4.4 SUBMITTALS

A. The Contractor shall perform no portion of the Work requiring Submittals until the Submittals have been reviewed and returned by the County with one of the following annotations: (1) no exceptions taken or (2) note markings.

B. Prior to furnishing any Submittal to the County, the Contractor shall: (1) coordinate all Submittals for all Contract Work by other trades and review for correlation with field measurements and (2) review and approve in writing all Contractor and Subcontractor Submittals for accuracy, completeness, and compliance with the Contract. Where required by law or by the Contract, Submittals shall be stamped by an appropriate licensed professional. Submittals lacking required stamps or evidence of Contractor review and approval will be returned without review by the County for resubmission. Submittals shall be sequentially numbered.

C. Submittals required to be stamped by an appropriate licensed professional by law or by the Contract, shall include proof of Professional Liability insurance as specified in Section 00 62 00 prior to Work being performed. The Contractor shall include this Professional Liability insurance on the Submittals schedule required in this Article 4, *Administration of the Contract.* If the Contract requires a Master Submittal List, the Professional Liability insurance shall be listed with the Policy Limits and insureds identified, and all contractually-required dates, such as when the Work will be performed and the date the insurance is effective.

D. The Contractor shall not perform Work that alters, varies, adds, deviates, or omits Work without prior specific written acceptance by the County. If the Contractor proposes a deviation or substitution, the Contractor shall identify and state reasons

for any alteration, variation, addition, deviation, or omission from the Contract. The Contractor warrants that any alteration, variation, addition, deviation, or omission shall meet or exceed all requirements of the Contract, and it assumes all risk therefor.

E. The Contractor shall provide Submittals with reasonable promptness and in such sequence as to facilitate the timely completion of the Contract. The Contractor shall prepare and keep current, for review by the County, a Submittals schedule, which is coordinated with the Contractor's Project Schedule and allows the County reasonable time for review.

F. The County shall review the Contractor's Submittals and respond in writing with reasonable promptness so as not to unreasonably delay the progress of the Work. Unless otherwise agreed, no delay to the Contractor's Work shall be attributable to the failure by the County to respond to a Submittal until fifteen (15) Days after the Submittal is received by the County, and then only if failure by the County to respond is unreasonable and affects the Contract completion date.

G. If the Contractor is required to resubmit a Submittal, any revisions on resubmittals shall be specifically identified in writing and the resubmitted Submittal shall be sequentially alpha denoted and revisions noted in numerical order. The cost of the review of the initial Submittal and the first revised submittal shall be borne by the County. The costs of all additional revised Submittals shall be charged to the Contractor. The cost of review shall include, without limitation, administrative, design, and engineering activities directly related to review of Submittals. The County may deduct these costs from any amounts due the Contractor.

H. The County shall review Submittals only for conformance with the design of the Work and compliance with the Contract. Review of the Submittals is not conducted to verify the accuracy of dimensions, quantities, or calculations, the performance of materials, systems, or equipment, or construction means, methods, techniques, sequences, or procedures, all of which remain the Contractor's responsibility. Failure by the County to take exception to a Submittal, or note any errors or omissions in a Submittal, shall not relieve the Contractor from any duty, including its responsibility for errors or omissions in Submittals, its duty to make Submittals and duty to perform the Work according to the requirements of the Contract. The County's review of a Submittal shall not alter or waive the requirements of the Contract unless the County has issued prior written acceptance of such change or alteration of the Contract requirements.

I. The Contractor's failure to identify any error, deviation, or omission; and the County's subsequent notation of (1) "no exception taken" or (2) "note markings" on the Submittal shall not relieve the Contractor from complying with the Contract requirements.

4.5 REQUESTS FOR INFORMATION

A. If the Contractor determines that some portion of the drawings, specifications or other Contract Documents require clarification or interpretation by the County because of an apparent error, inconsistency, omission, or lack of clarity in the Contract, the Contractor shall promptly submit a Request For Information ("RFI") and, unless otherwise directed, shall not proceed with the affected Work until the County has responded to the RFI. The Contractor shall plan its Work in an efficient manner so as to allow for timely responses to RFIs.

B. RFIs shall only be submitted by the Contractor on a RFI form provided by the County or in a form acceptable to the County. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed by the County. In the RFI the Contractor shall set forth its own interpretation or understanding of the requirement along with reasons why it reached such an understanding.

C. The County will review RFIs to determine whether they meet the requirements identified above in provision 4.5 B to qualify as an RFI. If the County determines that the document is not an RFI it will be returned to the Contractor unreviewed as to content. When appropriate the Contractor may resubmit the RFI on the proper form, with all required information and in the proper manner.

D. The County shall respond in writing with reasonable promptness to Contractor's RFI.

1. At the request of the Project Representative, the Contractor shall prioritize its RFIs, identify a date by which the Contractor prefers the RFI be answered, and reasons for such priority.

2. If the Contractor submits a RFI on an activity less than fifteen (15) Days prior to the commencement of that activity, the Contractor shall not be entitled to any time extension or adjustment in Contract Price due to the time it takes the County to respond to the RFI provided that the County responds within fifteen (15) Days. No delay to the Contractor's Work or damages to the Contractor shall be attributable to the failure by the County to respond to the RFI until fifteen (15) Days after the County's receipt of the RFI, and then only if the failure by the County to respond is unreasonable and affects the Contract completion date or Work on the Critical Path.

E. The County's response to an RFI shall not be considered a change to the Contract requirements. To the extent the Contractor believes that the County's response to the RFI constitutes changed Work impacting Contract Price or Contract Time, the Contractor shall submit a Contractor's Request for Change Order to the County in accordance with Article 5, *Changes to the Contract*.

4.6 TESTS, INSPECTIONS, AND ACCESS TO THE WORK

A. The Contractor shall document and maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract. The Contractor shall maintain all documentation related to testing and inspection and make such documentation available to the County at its request. Contractor shall be responsible for inspection and quality assurance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the County, or with the appropriate public authority. If any governmental, regulatory, or permitting authority requires any portion of the Work to be inspected, tested, or approved, the Contractor shall make all arrangements for and cooperate with such inspections, tests, and approvals so as not to delay completion of the Contract Work. The Contractor shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the County at least three (3) Days (excluding weekends and County holidays) Notice of: (1) when the Work is ready to be tested and inspected and (2) when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to the County upon request.

B. The Contractor shall cooperate with the County in the performance of any tests and inspections of the Work. The Contractor has the duty to coordinate all tests and inspections in a manner that does not negatively impact Contractor's compliance with the Contract.

C. If any Work required to be inspected, tested, or approved is physically covered without such inspection, testing or approval being obtained, it must, if requested by the County, be uncovered for observation, and such uncovering shall be at Contractor's expense.

D. Upon request by the County, any Work not otherwise required to be inspected or tested shall be uncovered by the Contractor. If the Work is found to comply with the Contract or if any non-compliance was not caused by the Contractor, Subcontractor, or Supplier, the County will (1) pay the costs of testing and inspection; (2) pay the costs associated with the uncovering and recovering of the Work; and, (3) adjust the Contract Time to the extent the inspection and repair impacted the Project Schedule and delayed completion of the Work on the Critical Path. If any non-compliance is caused by the Contractor, Subcontractor, or Supplier, the Contractor shall bear such costs as well as all costs of correction and the Contractor shall not be entitled to an adjustment in Contract Time.

E. The County may, at any reasonable time and at its own cost, conduct inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract. The County shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract. The County inspections and tests are for the sole benefit of the County and do not:

    1. Constitute or imply acceptance;

    2. Relieve Contractor of responsibility for providing adequate quality control measures;

    3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;

    4. Relieve Contractor of its responsibility to comply with the requirements of the Contract; or,

    5. Impair the County's right to reject defective or nonconforming items or to avail itself of any other remedy to which it may be entitled.

F. Neither observations by an inspector retained by the County, the presence or absence of such inspector on the Site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract. Inspectors are not authorized to change any term or condition of the Contract.

G. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by the County. The County may charge Contractor any additional cost of inspection or testing when Work is not ready for inspection or testing at the time stated by Contractor, or when prior rejection makes re-inspection or retest necessary. The County shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

4.7 CORRECTION OF WORK OR DAMAGED PROPERTY

A. The County shall have the right to reject Work as defective or non-conforming by giving Notice to the Contractor that material, equipment or workmanship provided or incorporated into the Work does not meet the Contract requirements or fails to perform satisfactorily.

1. The County, at its option, shall require the Contractor, within a designated time period as set forth by the County, to either:

    a. Promptly repair, replace or correct all Work not performed in accordance with the Contract at no cost to the County; or

    b. Provide a suitable corrective action plan at no cost to the County.

2. Once the corrective action plan is reviewed and returned by the County with the annotation “no exception taken” or “note markings” by the County, the Contractor shall implement the corrective action plan.

3. Reviewing and providing comments on the corrective action plan is not an acknowledgement by the County that such plan is adequate to remedy the defective or non-conforming Work.

4. If the corrective action plan does not remedy the defective or non-conforming Work, the Contractor shall remain responsible for remedying of the defective or non-conforming Work to the County’s satisfaction.

5. The Contractor shall also be responsible for all repairs to any property and Work damaged by the Contractor.

6. Under no circumstances shall the Contractor be entitled to additional time or money for the correction of defective or non-conforming Work or for the repair of damaged property. The County shall not be responsible for any costs to prepare corrective action plans, correct Work or repair damaged property.

7. If the Contractor disagrees with the County’s Notice of defective or non-conforming Work, or disagrees with the County’s Direction (i) to repair, replace, or correct the Work, or (ii) to provide a corrective action plan, the Contractor must submit a Request for Change Order in accordance with Article 5, *Changes to the Contract*.

B. If the Contractor does not repair, replace or correct and/or remove defective or non-conforming Work or repair damaged property as required by the County, the County or County’s designee may repair, replace or correct and/or remove it and deduct the cost of such effort from any payment due the Contractor.

1. Under this provision, the County reserves the right to make use of the Contractor’s plant and equipment for this repair, replacement, correction or removed Work. If the remaining payments due the Contractor are not sufficient to cover the County’s cost of remedying the defective or non-conforming Work, the Contractor shall pay the difference to the County.

C. The County may elect to retain defective or non-conforming Work if the County determines that removal of such Work is impractical or will create conditions that are dangerous or undesirable.

1. Just and reasonable value for such defective or non-conforming Work will be determined by the County and appropriate deductions will be made in the payments due or to become due to the Contractor.
2. The County's exercise of the rights under this provision shall be without prejudice to any other remedy the County may have, and shall not constitute a termination of the Contract.

D. The Contractor shall be liable for all damages and costs incurred by the County caused by the Contractor's or its Subcontractors' and Suppliers' defective or non-conforming Work or workmanship, including but not limited to all special, incidental, or consequential damages incurred by the County. The Contractor agrees to indemnify and hold the County harmless from any personal injury or property damage caused by the Contractor's or its Subcontractors' defective or non-conforming Work or workmanship.

4.8 SUBSTITUTION OF PRODUCTS & PROCESSES

A. Substitutions requested by the Contractor will be subject to the County's prior written acceptance and at the County's sole discretion.

B. A request for substitution must specifically identify:
1. Material, equipment, and labor costs included in the Contractor's bid associated with the original item to be substituted;
2. All costs for material, equipment, labor associated with the proposed substitution, including any impact costs;
3. Proposed change to the Contract Price and/or Contract Time; and,
4. Compatibility with, or modification to, other systems, parts, equipment or components of the Project and Contract Work.

C. Contractor shall provide all documentation supporting its request for substitution as requested by the County.

D. All costs of any redesign or modification to other systems, parts, equipment or components of the Project or Contract Work, which result from the substitution, shall be borne by the Contractor.

E. When the County accepts a substitution proposed by the Contractor, the Contractor shall guarantee the substituted article or materials to be equal to, or better than, those originally specified and shall be compatible with all other systems, parts, equipment or components of the Project and Contract Work. The County has the right to order that an unaccepted, substituted article be removed and replaced without additional cost to the County.

F. The County has a right to a deductive Change Order if the substituted product or process is less costly than the contractually required product or process.

G. If the County does not accept the substitution requested by the Contractor, the Contractor shall proceed, without delay or cost to the County, with the Contract Work as originally specified.

ARTICLE 5: CHANGES TO THE CONTRACT

5.0 GENERAL

A. All changes to the Contract must be made in writing and signed by the King County Executive or its designees in the form of a bilateral Change Order or unilateral Change Order as set forth in Article 6, *Time and Price Adjustments*. No oral statement by any person shall change or modify the Contract. All changes to the Contract shall be made in accordance with the provisions of this Article.

B. All Change Order Work shall be performed in accordance with the original Contract requirements unless modified in writing by the County.

C. No Direction provided by the County shall, in and of itself, entitle the Contractor to an adjustment in Contract Price or Contract Time.

D. The Contractor shall not be entitled to any change in the Contract Price, Contract Time or any other relief based on conditions or events, including but not limited to those that were:

1. Foreseeable at the time the Contractor submitted its bid;

2. Caused by the acts of the Contractor, Subcontractor and/or Supplier, including but not limited to the choice of means, methods, techniques, sequences, or procedures for the Work, failure to provide labor, materials or equipment in a timely manner, failure to follow the Contract Documents, or failure to take reasonable steps to mitigate delays, disruptions, or conditions encountered.

E. The Contract requirements for time and price impacts related to Change Orders are set forth in Article 6, *Time and Price Adjustments*.

5.1 COUNTY REQUEST FOR CHANGE PROPOSAL

A. County's Request for Change Proposal. The County may request a written Change Proposal from the Contractor for a change in the Contract Work.

B. Contractor's Proposal. A Change Proposal is the Contractor's offer to perform the requested Work and the pricing. The Change Proposal will be deemed to include all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, stand-by, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any Work either covered or affected by the change in the Work, or related in any way, whether direct or indirect, to the events giving rise to the change. All such items are waived unless submitted with the Contractor's Change Proposal and fully supported by verifiable Project documents and shown on the Project Schedule and updates.

C. Contractor shall submit its written Change Proposal within the time specified in the County's Request for Change Proposal.

D. County's Acceptance of Contractor Proposal.

1. If the County accepts the Change Proposal as submitted by the Contractor or as negotiated by the Parties, the County shall notify the Contractor in writing of its acceptance of the Proposal and direct that the change in the Work be performed.

2. Contractor shall not perform the Work identified in the Change Proposal until receipt of written authorization from the Project Representative.

3. Both Parties shall acknowledge acceptance of the terms of a negotiated Change Proposal in writing.

4. Once the County and Contractor have agreed on the terms of a negotiated Change Proposal, the negotiated Change Proposal shall be deemed to include full and complete compensation and shall be the final settlement for all (1) time; (2) direct, indirect, and overhead costs; (3) profit; and (4) costs or damages associated with delay, stand-by, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of Work related to any Work either covered or affected by the Change Proposal, or related to the events giving rise to the Request for Change Proposal.

E. Execution of a Bilateral Change Order. After acceptance of the Change Proposal or acceptance of the negotiated Change Proposal, the County shall direct the Contractor to perform the Work in accordance with the agreed upon terms; thereafter, the Parties shall execute a bilateral Change Order in accordance with the terms of the Change Proposal or negotiated Change Proposal.

F. Execution of Unilateral Change Order. If the County does not accept the Change Proposal or the Parties cannot agree upon the appropriate price or terms for the Change Proposal, the County may issue a unilateral Change Order.

G. Issuance of Change Order. Any bilateral Change or unilateral Change Order shall be issued in accordance with provision 6.3.C. *Issuance of Change Order*.

5.2 CONTRACTOR'S REQUEST FOR CHANGE ORDER

A. To the extent the Contractor believes it is entitled to any adjustment in the Contract Price or Contract Time or other relief for any reason, including but not limited to, the circumstances listed below the Contractor shall submit a Request for Change Order to the County as described in provision 5.2.C:

1. Written Field Directive;
2. Response to a Request for Information;
3. Comments on a Submittal;
4. Differing Site Condition;
5. Acceleration or constructive acceleration;
6. Suspension of the Work;
7. Delay, inconvenience, disruption of schedule, loss of efficiency or productivity;
8. County caused stand-by;
9. Force Majeure;
10. Conflicts, ambiguities, inconsistencies, and/or problems arising from the Contract Documents;
11. Contractor's disagreement with the County's written statement that the Contractor has fallen behind in progress of the Work and/or Direction to improve progress to bring it into conformance with the Project Schedule, pursuant to provision 4.3 H;
12. Contractor's disagreement with County's Notice of defective or non-conforming Work;
13. Contractor's disagreement with any withholding, nullifying, backcharge, or deduction from any payment by the County;

14. Any other directive or Direction, written or oral, from the County; and

15. Any other reason for which the Contractor believes it is entitled to additional money, time, or other relief, including impacts of any of the above on the Contractor's Subcontractors and Suppliers.

B. Notice of intent to submit a Request for Change Order

1. The Contractor shall provide the Project Representative with written Notice that the Contractor intends to submit a Request for Change Order no later than seven (7) Days, after the occurrence of any event or discovery of conditions or Direction that the Contractor alleges to have an impact on Contract Time, Price or that requires other relief, except as specified below for Differing Site Conditions.

2. The Contractor shall include the following information in the Notice of intent to Request a Change Order:

   a. The date and description of the event or condition that Contractor believes justifies a Change Order.

   b. Reasonable order of magnitude estimate of the requested change to the Contract Price, if any;

   c. Reasonable order of magnitude estimate of the requested change to the Contract Time, if any; and

   d. Contractual provisions and substantive basis to support the Request.

C. Request for Change Order.

1. The Contractor shall provide, in writing, a detailed Request for Change Order to the Project Representative no later than fifteen (15) Days (within fifteen (15) Days after the Notice of intent, given seven (7) Days after the occurrence) after the occurrence of any event or Direction or discovery of conditions that the Contractor alleges to have an impact on Contract Time and/or Price.

2. The Contractor may request an extension of time for filing its Request for Change Order within ten (10) Days after the occurrence of any event or Direction or discovery of conditions. The Contractor shall state the reasons for the request and identify a date certain when the Contractor shall provide all documentation required in its Request for Change Order.

3. The Request for a Change Order shall include:

   a. A substantive explanation of why Contractor is entitled to a change in the Contract Price or Contract Time due to the event or condition that is the subject of the Request.

   b. All documentation supporting the Request for a Change Order, including but not limited to all cost records, schedule analysis, and the documents identified in provision 3.12, *Maintenance and Inspection of Documents*, that are in any way relevant to the Contractor's Request for Change Order.

   c. Either a specific dollar amount covering all requested costs, calculated in accordance with Article 6, *Time and Price Adjustments,* or if costs are ongoing, a specific description of cost records that are being maintained according to the requirements of provision 3.11, *Cost Records* above, to track the costs to be requested; or

d. Either a specific request for time extension (number of days), calculated in accordance with Article 6, *Time and Price Adjustments* or, if a delay is ongoing, a specific description of how the event or condition has caused a delay to Work on the Critical Path and steps the Contractor has taken to minimize such delay.

D. County's Response to Contractor's Request for Change Order.

1. The County will make a written determination with respect to the Contractor's Request For Change Order within fifteen (15) Days of receipt of said Request, unless one of the following occurs:

a. The County requests additional information and specifies a time period for receipt of the information. The Contractor must comply with the County's request for additional information, within the specified time period; or

b. The County informs the Contractor that additional time is needed to review the Contractor's Request for Change Order and identifies a date certain when the County's determination will be issued.

2. If the County requests additional information, the County will make a written determination within fifteen (15) Days of receipt of Contractor's additional information.

3. If the County does not make a determination within the applicable time period, as set forth in this section, the Contractor should know that the Request For Change Order is deemed denied.

E. Approval of Request for Change Order and Execution of Change Order.

If the County determines that a Change Order is necessary, the Parties may negotiate acceptable terms and conditions and execute a bilateral Change Order or the County may issue a unilateral Change Order. In the event the County enters into negotiations over the terms and conditions related to a Request for Change Order, these negotiations shall not be construed as a waiver by the County of any of its legal or contractual rights.

F. Contractor Procedure upon Denial or Deemed Denial of a Request for Change Order.

If the Contractor disagrees with the written denial or a deemed denial, the Contractor's sole remedy shall be to file a fully documented Claim within fifteen (15) Days in accordance with Article 9, *Claims and Litigation*.

G. Contractor's Obligation to Continue to Work.

Pending resolution of the Contractor's Request for a Change Order, the Contractor shall maintain its progress with the Work. The Contractor shall continue to perform all Work including that Work associated with the pending Request for Change Order.

H. Waiver.

Failure to submit a timely Notice of intent to Request a Change Order or to submit a timely Request for Change Order according to the provisions set forth herein shall constitute a waiver of the Contractor's right to receive any additional time, money, damages or any other relief as a result of any alleged event, occurrence, Direction, or condition.

5.3 DIFFERING SITE CONDITIONS

A. Immediate Written Notice to the County.

If the Contractor encounters a Differing Site Condition, as defined in provision 1.0, *Definitions*, the Contractor shall immediately, and before the conditions are disturbed, give to the County Notice of Differing Site Condition. At a minimum the Notice must include the following:

1. A physical description of the Differing Site Condition; and
2. A description of the impact of the Differing Site Condition on the Work activity.

B. County's Investigation and Response to Notice of the Differing Site Condition.

The County shall investigate the alleged Differing Site Conditions and respond to the Notice of Differing Site Condition. The Contractor shall not disturb the Site at the location of the alleged Differing Site Condition until the Project Representative has observed the condition and directs the Contractor to resume the Work at the location of the alleged Differing Site Condition.

C. Contractor's Obligation to Continue to Work.

The Contractor shall continue with performance of all other Work and must take reasonable steps to mitigate delay to the Work due to the alleged Differing Site Condition.

D. Request for Change Order on a Differing Site Condition.

If the Contractor believes the Differing Site Condition causes a change in the Contract, the Contractor shall, unless otherwise agreed upon in writing by the Project Representative, provide a Request for Change Order to the Project Representative within twenty (20) Days of the date the Contractor encountered the Differing Site Condition that includes all elements required for such a request set forth in provision 5.2, *Contractor's Request for Change Order*, in addition to:

1. A detailed physical description of the Differing Site Condition;
2. Substantive and technical basis and documentation supporting the existence of the Differing Site Condition and its alleged impacts; and
3. Identification of the Contract Specification or Drawing that the Contractor asserts is different from the condition encountered.

E. County's Response to Differing Site Condition Request for Change Order.

The County will respond to Differing Site Condition Request for Change Order in accordance with the Request for Change Order procedures set forth in provision 5.2, *Contractor's Request for Change Order.*

F. Waiver.

1. If the Contractor's actions disturb the Site such that the County or County's designee cannot adequately and fully investigate the alleged differing site condition, the Contractor waives its right to receive any additional time, money damages, or any other relief as a result of the Differing Site Condition.
2. Failure by the Contractor to provide both (a) immediate Notice and (b) a Request for Change Order, as specified herein, shall constitute a waiver of the Contractor's right to receive any additional time, money, damages, or other relief as a result of the Differing Site Condition.

3. The Contractor shall be responsible for any and all costs or damages incurred by the County resulting from the Contractor's failure to provide the required Notice and Request for Change Order.

5.4 ACCELERATION

A. Acceleration Directive.

1. The County reserves the right to direct the Contractor to accelerate Contract Work. In the event that the County directs acceleration, such directive will be in writing and specifically designated as "Acceleration Directive."

2. The Contractor shall keep cost and other Project documents as required in Article 3, *Contractor* related to the Acceleration Directive separately from normal Project costs and documents and shall provide written documentation of acceleration to the County on a daily basis. Failure to comply with the foregoing shall constitute a waiver of the Contractor's right to receive any additional time, money, damages, or any other relief as a result of the Acceleration Directive.

B. Constructive Acceleration.

1. In the event that the Contractor believes that some action or inaction on the part of the County would require acceleration, the Contractor shall immediately notify the County in writing that the Contractor considers the actions necessitate acceleration. This written notification shall detail the circumstances of the acceleration.

2. The Contractor shall not accelerate the Work until the Project Representative responds in writing issuing an Acceleration Directive or denying the constructive acceleration.

3. The Contractor shall keep cost and other Project documents related to the constructive acceleration separately from normal Project costs and documents and shall provide written documentation of acceleration to the County on a daily basis. Failure to comply with the foregoing shall constitute a waiver of the Contractor's right to receive any additional time, money, damages, or any other relief on its assertion of constructive acceleration.

C. To the extent the Contractor believes an Acceleration Directive or constructive acceleration constitutes a change in the Work impacting Contract Price and/or Contract Time, the Contractor shall submit a Request for a Change Order pursuant to provision 5.2, *Contractor's Request for Change Order*.

D. Methods to Calculate Adjustment to Contract Price for Acceleration.

1. Labor costs recoverable will be overtime or shift premium costs.

2. Equipment costs recoverable will be only the rental cost of additional equipment or Contractor-owned additional equipment mobilized to the Site to accomplish the accelerated Work effort.

3. Actual damages resulting from inefficiencies or loss of productivity may be recoverable to the extent the Contractor provides verifiable cost records and contemporaneous project documentation.

E. The Contractor shall not be entitled to any change in the Contract Price, Contract Time or any other relief based on acceleration required for the Contractor to maintain the Project Schedule or necessitated by the acts of the Contractor, Subcontractor or

its Suppliers. Such acts include but are not limited to the choice of means, methods, techniques, sequences, or procedures for the Work, failure to provide labor, materials or equipment in a timely manner, failure to follow the Contract Documents, or failure to take reasonable steps to mitigate delays, disruptions, or conditions encountered.

5.5 SUSPENSION OF WORK

A. County Issues Directive Suspending Work

1. The County may order the Contractor, in writing, to suspend all or any part of the Work of this Contract for the period of time that the County determines appropriate for the convenience of the County. The Contractor shall not suspend the Work unless it has received written Direction from the County specifically authorizing the suspension of Work.

2. The Contractor shall immediately comply with all requirements in the written Direction and take all reasonable steps to minimize costs attributable to such suspension of Work. Within a period up to sixty (60) Days after the suspension Direction is received by the Contractor, or within any extension of that period which the County requires, the County shall either:

   a. Cancel the written Direction suspending the Work; or

   b. Terminate the Work for either default or convenience.

3. If a written Direction suspending the Work is canceled or the period of the suspension or any extension thereof expires, the Contractor shall resume Work as required by the County.

4. No adjustments to Contract Price and/or Contract Time shall be allowed unless the Contractor can demonstrate that the period of suspension caused by the County impacted Work on the Critical Path. If the performance of Work on the Critical Path is suspended by the written Direction of the County, the Contractor may be entitled to an adjustment in the Contract Time, or Contract Price, or both, for increases in the time or cost of performance directly attributable to the suspension, provided that the Contractor sufficiently documents all costs and time impacts attributable to the suspension, in accordance with provision 3.11, *Cost Records*.

B. Constructive Suspension of Work

1. In the event that the Contractor believes that some action or omission on the part of the County constitutes constructive suspension of Work, the Contractor shall immediately give Notice to the County in writing that the Contractor considers the actions or omission a constructive suspension of Work. The Notice shall detail the circumstances of the constructive suspension of Work.

2. No adjustment in the Contract Time or Contract Price shall be made under this provision for any suspension to the extent that Contractor's performance would have been suspended, delayed, or interrupted as a result of actions, omissions, fault or negligence caused, in whole or in part, by the Contractor or any of its Subcontractors or Suppliers.

3. No adjustment to Contract Price or Contract Time shall be allowed unless the Contractor can demonstrate that the constructive suspension impacted the Work on the Critical Path.

C. If the Contractor believes it is entitled to any additional money or time as a result of the County-directed suspension of Work or a constructive suspension, Contractor shall submit a Request for Change Order to the County as more fully described in provision 5.2, *Contractor's Request for Change Order*. The Contractor shall keep cost and other project records related to the constructive suspension separately from normal project costs in accordance with provision 3.11, *Cost Records*. Failure to comply with these requirements shall constitute a waiver of Contractor rights to any adjustment in Contract Time, Contract Price, damages, or any other relief from suspension or constructive suspension of the Work. On both a County-directed suspension and a constructive suspension, the Contractor is compensated for Overhead, including unabsorbed home office overhead, on the Request for Change Order through the Overhead and Profit markups described in provision 6.2, *Method to Calculate Adjustments to Contract Price*.

D. On a County-directed suspension or constructive suspension, the Contractor may be entitled to additional compensation for actual Site or Field Office Overhead and unabsorbed Home Office Overhead properly allocable to this Contract for the period of suspension, if in the Request for Change Order the Contractor demonstrates, through verifiable project records, that all the conditions below exist and that there are no direct costs related to the suspension on which to apply the Article 6, *Time and Price Adjustments* markups:

1. The Work was suspended solely by actions for which the County is entirely responsible;
2. The Contractor's ability to obtain payment pursuant to the Schedule of Values has been or will be substantially adversely impacted as a direct and sole result of such suspension;
3. The suspension impacted the Work on the Critical Path;
4. The County required the Contractor to remain on standby during the suspension period;
5. The Contractor was unable to re-sequence or reorganize the Work in order to continue working and maintain the Contractor's ability to obtain payment pursuant to the Schedule of Values;
6. The Contractor was ready, capable, and willing to perform Contract Work during the suspension; and
7. The Contractor was unable to take on other Work as a direct result of the suspension and the only reason the Contractor was unable to take on other Work was because of the suspension.

5.6 FORCE MAJEURE

A. If the Contractor believes it is entitled to any additional time as a result of Force Majeure, Contractor shall submit a Request For Change Order to the County as more fully described in provision 5.2, *Contractor's Request for Change Order*.

B. Contractor shall not be entitled to a change in Contract Price resulting from an act of Force Majeure.

C. Contractor is not entitled to an adjustment in Contract Time if the act of Force Majeure did not impact progress of the Work on the Critical Path.

D. When a Contractor experiences concurrent delay caused by either the County or Contractor and an act of Force Majeure, the Contractor shall only be entitled to a change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.

ARTICLE 6: TIME AND PRICE ADJUSTMENTS

6.0 CHANGE IN THE CONTRACT TIME

A. The Contract Time shall only be changed by a Change Order.

B. Contractor shall include any request for a change in the Contract Time in each Notice of intent to submit a Request for Change Order, Request for Change Order, Change Proposal, and Claim as specified in Article 9, *Claims and Litigation*.

C. No change in the Contract Time shall be allowed to the extent the time of performance is changed due to the fault, act, or omission of Contractor or anyone for whose acts or omissions the Contractor is responsible.

D. Contractor is not entitled to a change in Contract Time unless the progress of the Work on the Critical Path is delayed and completion of the Contract Work within Contract Time is delayed.

E. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

F. When a Contractor experiences concurrent delays which impact the Critical Path and are caused by (1) the County and the Contractor; (2) the County and an act of Force Majeure; or (3) the Contractor and an act of Force Majeure, the Contractor shall only be entitled to a change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.

G. A Request for Change Order that includes a request for an adjustment in the Contract Time shall:

1. Be in writing and delivered to the County within the appropriate time period specified in Article 5, *Changes to the Contract*.

2. Include a clear explanation of how the event, occurrence, condition or Direction specifically impacted the Critical Path and the amount of the adjustment in Contract Time requested for each such event, occurrence, condition and/or Direction.

3. Be limited to the change in the Critical Path attributable to the event or condition that is the subject of the request for adjustment. No extension of time or compensation for damages resulting from delay will be granted unless the delay affects the timely completion of all Work under the Contract or timely completion of a portion of the Work for which time of completion is specific, such as a Contract Interim Milestone.

4. Contractor shall be responsible for showing clearly on the Project Schedule, including all updates, that the event or condition:

   a. Had a specific impact on the Critical Path, which will prevent the Contractor from completing the Project within the current Contract completion date and was the sole cause of such impact; and

b. Could not have been avoided by resequencing of the Work or other reasonable alternatives.

H. Any request for an adjustment to the Contract Time is deemed to include all time associated with delay, stand-by, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of Work related to any Work either covered or affected by the change in the Work, or related in any way, whether direct or indirect, to the events giving rise to the change. All such items are waived unless submitted with the Request for Change Order and fully supported by verifiable Project documents and shown on the Project Schedule and updates. If there is entitlement to any costs for such Time adjustment, full, final and complete compensation will be calculated in accordance with this Article.

I. Failure to provide timely written notice and documentation as required by this and any other sections of the Contract to support any request for extension of Contract Time shall constitute a waiver of the Contractor's right to an adjustment in Contract Time.

6.1 CHANGE IN THE CONTRACT PRICE

A. The Contract Price shall only be changed by a Change Order.

B. Contractor shall only request a change in the Contract Price in its:

1. Change Proposal in response to County's Request for Change Proposal;
2. Notice of intent to submit a Request for Change Order;
3. Request for A Change Order; and
4. Claim, provided the related Request for Change Order or Change Proposal included a request to adjust the Contract Price.

C. No change in the Contract Price shall be allowed when:

1. Contractor's changed cost of performance is due to the fault, acts, or omissions of Contractor, or anyone for whose acts or omissions Contractor is responsible;
2. The change is concurrently caused by Contractor and County; or
3. The change is caused by an act of Force Majeure.

D. The County shall not be responsible for, and the Contractor shall not be entitled to any compensation for unallowable costs. The following are unallowable costs:

1. Interest or attorney's fees of any type other than those mandated by Washington state statute;
2. Claim preparation or filing costs;
3. The cost of preparing or reviewing Change Proposals or Requests for Change Orders;
4. Lost profits, lost income or earnings;
5. Costs for idle equipment when such equipment is not at the Site, has not been employed in the Work, or is not scheduled to be used at the Site;
6. Lost earnings or interest on unpaid retainage;
7. Claims consulting costs;

8. Expert fees and costs;
9. The costs of corporate officers or staff visiting the Site or participating in meetings with the County;
10. Any compensation due to the fluctuation of foreign currency conversions or exchange rates;
11. Loss of other business; and/or
12. Any other special, consequential, indirect or incidental damages incurred by the Contractor, Subcontractor, or Suppliers.

E. A Request for Change Order that includes a request for an adjustment in Contract Price shall:
1. Be in writing and delivered to the County within the applicable time period specified in Article 5, *Changes to the Contract*.
2. Identify the following information:
a. The event, occurrence, condition or Direction that caused the Contractor to submit its request for an adjustment in the Contract Price;
b. The nature of the impacts to Contractor and its Subcontractors, if any; and
c. The amount of the adjustment in Contract Price requested.
3. Any requests by Contractor for an adjustment in the Contract Price and in the Contract Time that arise out of the same event or conditions shall be submitted together.

F. Any request for an adjustment to the Contract Price is deemed to include all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, stand-by, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any Work either covered or affected by the change in the Work, or related in any way, whether direct or indirect, to the events giving rise to the change. All such items are waived unless submitted with the Request for Change Order and fully supported by verifiable Project documents and cost records.

6.2 METHOD TO CALCULATE ADJUSTMENTS TO CONTRACT PRICE

A. One of the following methods shall be used to calculate adjustments to the Contract Price that result from or relate to a Change Proposal, Request for Change Order, and/or Claim.
1. Unit Price Method;
2. Firm Fixed Price Method (also known as Lump Sum); or
3. Time and Materials Method

B. Determination of the method to be used to calculate adjustments in the Contract Price shall be at the sole discretion of the County.

C. The “total cost method” or “modified total cost method”, which compares actual costs to a bid estimate, is not an allowable method for calculating increases to the Contract Price.

D. **Unit Price Method**

1. Whenever the County authorizes Contractor to perform Work on a Unit Price basis, the County's authorization shall clearly state the:
    a. Scope of Work to be performed;
    b. Applicable Unit Price; and
    c. Not to exceed amount of reimbursement as established by the County.
2. The applicable unit price shall include reimbursement for all direct and indirect costs of the Work, including Overhead and profit.
3. If the unit price will be applied to materials incorporated in or removed from the Work, the Contractor shall be paid under this method only for the actual quantities and such quantities must be supported by field measurement statements verified by the County.

E. **Firm Fixed Price Method**

1. The Contractor and County may mutually agree on a fixed amount as the total compensation for the performance of changed work.
2. The Contractor shall provide a detailed cost breakdown supporting the Contractor's requested adjustment to Contract Price and any other financial documentation requested by the Project Representative.
3. Any adjustments to the Contract Price using the Firm Fixed Price Method shall include, when appropriate all reasonable costs for labor, equipment, material, Overhead and profit. Such Overhead and profit shall be calculated in accordance with provision 6.2 *Method to Calculate Adjustments to Contract Price, F. Time and Materials, 4.e. Overhead and Profit Markup*.
4. Whenever the County authorizes Contractor to perform changed Work on a Firm Fixed Price Method, the County's authorization shall clearly state:
    a. Scope of Work to be performed; and
    b. The total agreed price for performing such work.

F. **Time and Materials Method**

1. Whenever the County authorizes the Contractor to perform Work on a Time and Material basis, County's authorization shall clearly state:
    a. Scope of Work to be performed; and
    b. A not to exceed amount of reimbursement as established by the County.
2. Contractor shall:
    a. Cooperate with the County and assist in monitoring the Work being performed;
    b. Substantiate the labor hours, materials and equipment charged to Work under the time and materials method by detailed time cards or logs completed on a daily basis before the close of business each working day;
    c. Present the time card and/or log at the close of business each day to the Project Representative or County Inspector so that the County may review and initial each time card/log;
    d. Perform all Work in accordance with this provision as efficiently as possible;

e. Not exceed any cost limit(s) without the County's prior written approval; and

f. Maintain all records of the Work, including all records of the relevant Subcontractors and Suppliers, and make such records available for inspection as required in Article 3 provisions 3.10 *Record Documents*, 3.11 *Cost Records*, and 3.12 *Maintenance and Inspection of Documents*.

3. Contractor shall submit costs and any additional information requested by the County to support Contractor's requested price adjustment.

4. The Contractor shall only be entitled to be paid for reasonable costs actually incurred by the Contractor. The Contractor has a duty to control costs. If the County determines that the Contractor's costs are excessive or unreasonable, the County, at its discretion, shall determine the reasonable amount for payment. Any adjustments to the Contract Price using the Time and Materials method shall be based on the following categories:

   a. **Labor**. For all labor, including supervision by the foreperson but excluding superintendents, the Contractor shall be reimbursed for labor costs provided herein. The labor cost of an event or condition shall be calculated as the sum of the following:

      i. **Labor Rate**. The Labor Rate is the actual reasonable wage paid to the individual plus the actual reasonable costs incurred by the Contractor to cover costs associated with Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), industrial insurance, fringe benefits, and benefits paid on behalf of labor by the Contractor. The applicable Labor Rates shall be multiplied by the number of hours reasonably expended in each labor classification, because of the event or condition, to arrive at a total cost of labor.

      ii. **Travel Allowance and/or Subsistence**. The labor calculation shall include the actual costs of travel and/or subsistence paid to the Contractor's employees engaged in the Work when said payments are required by a labor agreement.

   b. **Materials**. The cost of materials resulting from an event or condition shall be calculated in one or more of the following methods, at the County's election:

      i. **Invoice Cost**. The Contractor may be paid the actual invoice cost of materials including actual freight and express charges and applicable taxes less all available discounts, rebates, and back-charges, notwithstanding the fact that they may not have been taken by the Contractor. This method shall be considered only to the extent the Contractor's invoice costs are reasonable and the Contractor provides copies of vendor invoices, freight and express bills, and other evidence of cost accounting and payment satisfactory to the County. As to materials furnished from the Contractor's stocks for which an invoice is not available, the Contractor shall furnish an affidavit certifying its actual cost of such materials and such other information as the County may reasonably require;

      ii. **Wholesale Price**. The Contractor may be paid the lowest current wholesale price for which the materials are available in the quantities

required, including customary costs of delivery and all applicable taxes less all available discounts, rebates, and back-charges; or,

iii. **County Furnished Material**. The County reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no Claim for any costs, Overhead or profit on such materials.

c. **Equipment**. The additional cost, if any, of machine-power tools and equipment usage shall be calculated in accordance with the following rules:

i. **Equipment Rates**. The Contractor's own charge rates may be used if verified and approved by the County and based on the Contractor's actual ownership and operating cost experience. Rental rates contained in published rate guides may be used if their cost formulas and rate factors are identifiable, reflect the Contractor's historical acquisition costs, utilization, and useful life, and do not include replacement cost, escalation contingency reserves, general and administrative expense, or profit. Rates shall be based on the Contractor's actual allowable costs incurred or the rates established according to the *Rental Rate Blue Book for Construction Equipment*, (published by EquipmentWatch), whichever is less. The *Rental Rate Blue Book* established equipment rate shall be the monthly rental rate for the equipment plus the monthly rental rate for required attachments, divided by 176, multiplied by the appropriate regional adjustment factor, plus the hourly operating cost. The established equipment rate shall apply for actual equipment usage up to eight hours per day. For all hours in excess of eight hours per day or 176 hours per month, the established equipment rate shall be the monthly rental rate plus the monthly rental rate for required attachments, divided by 352, multiplied by the regional adjustment factor, plus the hourly operating cost.

ii. **Transportation**. If the necessary equipment is not already at the Site and it is not anticipated that it would be required for the performance of other Work under the terms of the Contract, the calculation shall include a reasonable amount for the costs of the necessary transportation of such equipment.

iii. **Standby**. The Contractor shall be entitled to standby equipment costs only if (a) the equipment is ready, able, and available to do the Work; (b) Contractor is required to have equipment standby because of an event or condition solely caused by the County and (c) the Contractor can demonstrate that it could have and intended to use the equipment on other projects/jobs. If entitled to standby costs, the Contractor shall be compensated at 50% of the monthly rental rate for the equipment, divided by 176, and multiplied by the appropriate regional adjustment factor, as identified in the *Rental Rate Blue Book for Construction Equipment*, (published by EquipmentWatch). Standby shall not be paid during periods of Contractor-caused delay, concurrent delay, Force Majeure, during any seasonal shutdown, routine maintenance, down-time or broken equipment, late delivery of equipment or supplies, or other anticipated occurrence specified in the Contract Documents. No payment shall be made for standby on any piece of equipment, which has been used on the Project in any 24 hour period. Standby costs shall not be paid for

weekends, holidays, and any time the equipment was not intended to be used on the Project as demonstrated by the Project Schedule.

d. **Subcontractor and Supplier**. Direct costs associated with Subcontractors and Suppliers shall exclude Overhead and profit markups and shall be calculated and itemized in the same manner as prescribed herein for Contractor. Contractor shall provide detailed breakdown of Subcontractor and Supplier invoices.

e. **Overhead and Profit Markup**.

i. On a change to the Contract Price or any other claim for money by the Contractor, the County will pay Overhead and profit in accordance with this provision, which are agreed to cover all Overhead and profit, regardless of how the Contractor chooses to account for various costs in its books of account. Direct costs shall include Labor, Materials, Equipment, Subcontractor and Supplier costs (as defined in provision 6.2, *Method to Calculate Adjustments to Contract Price*). Overhead and profit markups shall not be paid on freight, delivery charges, express charges, or sales tax.

ii. Overhead and profit markup shall be paid by a markup on direct costs, except as addressed in provision 5.5. D, and shall not exceed the following:

a) If the Contractor is self-performing work: 18% combined Overhead and profit markup on the Contractor's direct costs; or

b) If a Subcontractor or Supplier is performing work: 18% for combined Overhead and profit markup on the Subcontractor's and Supplier's direct cost for performing the Work and 7% combined Overhead and profit as Contractor markup on the direct costs of the Subcontractors and Suppliers.

c) If the value of material and equipment is greater than 50% of the total value of the change, the Overhead and profit markup shall be 10% for material and equipment.

iii. In no event shall the total combined Overhead and profit markup for the Contractor and all Subcontractors and Suppliers of any tier exceed 25% of the direct cost to perform the Change Order work.

G. **Deductive Changes to the Contract Price**

1. A deductive change to the Contract Price will be determined by the Project Representative based on the costs of labor, material, equipment, Overhead saved and profit unearned by the Contractor, as a result of the change. These costs shall be calculated, following as closely as possible the provisions of Article 6, *Time and Price Adjustments*.

2. The Project Representative may also reference the following in making the determination:

a. The Contractor's Project Schedule of Values or its cost-loaded Project Schedule; and

b. Costs set forth in the documents used by the Contractor to develop its bid, including the Escrow Bid Documents, if required.

3. Where the County has elected not to correct incomplete or defective Work, a deductive adjustment in the Contract Price shall take into account:

    a. The decreased value to the County resulting from the incomplete or defective Work; and

    b. The additional future costs that the County may incur by reason of the incomplete or defective Work.

6.3 CHANGE ORDERS

A. Bilateral Change Orders

1. If the County and Contractor reach agreement on the terms and conditions of any change in the Work, including any adjustment in the Contract Price and Contract Time, such agreement shall be incorporated into a bilateral Change Order and signed by both Parties.

2. An adjustment to either Contract Time or Contract Price calculated in accordance with the provisions of this Article shall be full, complete and final settlement or compensation of all changes, claims, damages and costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, stand-by inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any Work either covered or affected by the change in the Work, or related to the events giving rise to the change.

B. Unilateral Change Order

1. County's Right to Issue Unilateral Change Order.

    a. The County may unilaterally issue a Change Order in response to a Request for Change order or Change Proposal in its sole discretion without invalidating the Contract and without notice to the sureties, making changes within the general scope of this Contract.

    b. If any such unilateral Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Contract Work, the County may make an adjustment in the Contract Price, Contract Time, or both, in accordance with Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*.

    c. The County's issuance of a unilateral Change Order shall not be construed as a waiver of any rights afforded to the County, including its right to reject a Request for Change Order due to untimeliness or the Contractor's failure to fully comply with the Contract requirements.

        i. **Contractor Disagreement with Unilateral Change Order**. If the Contractor disagrees with the adjustment to the Contract Price and/or Time as indicated in the unilateral Change Order, the Contractor's only remedy shall be to file a fully documented Claim in accordance with Article 9, *Claims and Litigation*.

        ii. **Contractor's Obligation to Continue to Work**. The Contractor is required to continue with performance of all Work, including Work associated with the Unilateral Change Order.

C. Issuance of Change Order

1. The issuance and execution of a bilateral or unilateral Change Order by the County shall not relieve the Contractor of its obligations to comply with the requirements of Article 7, *Payment and Completion*.

   a. **Bilateral Change Order.** Upon agreement with the Contractor, no later than thirty (30) Days from the Satisfactory Completion of any additional Work not in dispute, the County shall provide to the Contractor a Change Order in accordance with the agreed upon terms and conditions for such Change Order, including any adjustment in the Contract Price and Contract Time.

   b. **Unilateral Change Order**. If agreement is not reached in response to a Request for Change Order or Change Proposal then no later than thirty (30) Days after the Satisfactory Completion of any additional Work not in dispute, the County shall execute a unilateral Change Order, including any adjustment in the Contract Price and Contract Time.

   c. **Determination of Satisfactory Completion of Additional Work**. "Satisfactory Completion" means that the Project Representative shall have confirmed in writing that all tasks, of the unilateral or bilateral Change Order, have been completed, to the satisfaction of the County, including submittal by the Contractor of all required time and cost documentation. Satisfactory Completion does not mean Substantial Completion.

ARTICLE 7: PAYMENT AND COMPLETION

7.0 APPLICATIONS FOR PAYMENT

A. On the first business day of each month, unless otherwise designated in writing by the County, the Contractor shall submit to the County an Application for Payment. Each application shall be on a form acceptable to the County and designated as an "Application for Payment." Each Application for Payment shall include, at a minimum, all of the following:

1. Current status Schedule of Values;
2. Project Schedule and the most current updates;
3. A written statement that prevailing wages have been paid during that pay period in accordance with Contractor's and Subcontractors' previously submitted Intents to Pay Prevailing Wage on file with King County;
4. The Contract Purchase Agreement (CPA) number shall be placed on each Application for Payment submitted by the Contractor to the County;
5. Verification that the Contractor has updated Payment and Labor Hours in accordance with Section 00 22 00, in the County's Diversity Compliance Management System for the monthly utilization for itself, all Subcontractors, and Suppliers including dollars paid, dollars received and labor hours to verify that the Contractor has satisfied the reporting requirements for the period that the Application for Payment is requested; and
6. Verification that the Contractor has updated Amounts Paid to Subcontractors and Suppliers in accordance with Section 00 22 00, in the County's Diversity Compliance Management System, for the pay period for itself and all subcontractors and suppliers identifying the amount owed, the amount paid, and

the amount retained on subcontracts and supplier purchase orders signed by all Subcontractors performing Work to date, stating that each of them has been paid, less earned retainage, as their interests appeared in the last preceding Application For Payment.

B. The Contractor is not entitled to payment for any Work under the Application for Payment, unless it includes all documentation required by the Contract, which includes submission of a statement that Prevailing Wages have been paid by the Contractor and all Subcontractors, and electronic verification of Washington State Labor and Industries and Section 00 22 00 Diversity Compliance Management System reporting requirements. The County reserves the right to withhold payment pursuant to this Article under provision 7.2, *Payment Withheld*, if it is subsequently determined that all required documentation was not provided by the Contractor.

C. The Application for Payment shall correlate the amount requested with the Schedule of Values and with the state of completion of the Work. In addition to Work performed by the Contractor, applications may include (1) the invoiced cost of major materials or equipment (major material or equipment to be identified on the Schedule of Values) suitably stored on the Site, and (2) with the County's consent, up to 75% of the invoiced cost of major materials or equipment suitably stored off the Site if the County's interest in those major materials or equipment is protected through insurance and the Contractor provides documentation of such insurance.

7.1 PROGRESS PAYMENTS

A. The County shall review the Application for Payment and pay in accordance with RCW 39.76, as amended. The County will provide Notice to the Contractor of any cause to withhold payment within eight (8) working days. The County may withhold portions or all of the Application for Payment for unsatisfactory performance or failure to comply with Contract requirements, including regulatory requirements that pertain to the Contract Work, any back-charges, off-sets, credits, change orders, or deductions that the Contractor's Application for Payment fails to recognize. The County shall have the right to revise the Contractor's Application for Payment and proceed pursuant to the revised Application and the 8-Day notice of withholding.

B. The Contractor shall ensure that Subcontractors and Suppliers are promptly paid as required by RCW 39.04.250, as may be amended.

7.2 PAYMENT WITHHELD

A. In addition to moneys retained pursuant to RCW 60.28 and without waiver of any other available remedies, the County has the right to withhold, nullify, or back-charge, in whole or in part, any payment or payments due or that have been paid to the Contractor as may be necessary to protect the County from loss or damage for reasons, including but not limited to the following:

1. Failure of the Contractor to submit a Contract-compliant Project Schedule;
2. Cost or liability that may occur to the County as the result of the Contractor's or Subcontractor's acts, omissions, fault, or negligence;
3. Deduction in Contract Work;
4. Failure of Contractor to repair damaged materials, equipment, property, or Work;
5. Failure of the Contractor to provide Submittals;
6. Failure to keep Record Documents up to date;

7. Failure to comply with the Diversity Compliance Management System reporting requirements in accordance with Section 00 22 00.
8. Failure to obtain, renew and maintain applicable licenses, permits, insurance, and bonds;
9. Failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
10. Failure of the Contractor to disclose all material facts or accurate information upon which the County relied when issuing a Bilateral or Unilateral Change Order;
11. Failure to provide Statement of Intent to Pay Prevailing Wage, Statements of Prevailing Wages Paid with pay applications or Affidavits of Wages Paid; and
12. Failure to comply with the Contract safety requirements.

B. The County has the right to withhold or back-charge, in whole or in part, any payment due or nullify previous payments that have been paid to the Contractor without waiver of any other available remedies. The withholding, nullification, or back-charge of any payment(s) by the County shall in no way relieve the Contractor of any of its obligations under this Contract.

C. If the Contractor disagrees with any withholding, nullifying, back charge, or deduction in any payment by the County, the Contractor shall comply with provision 5.2, *Contractor's Request for Change Order*. The Contractor's failure to comply with provision 5.2, *Contractor's Request for Change Order* shall constitute a waiver by the Contractor of any right to dispute any such withholding, nullifying, back charge, or deduction.

7.3 TITLE TO WORK AND MATERIALS

A. Title to all Work and materials covered by an accepted and paid Application for Payment shall pass to the County at the time of such payment, free and clear of all liens, claims, security interest, and encumbrances. Passage of title shall not, however, (1) relieve Contractor from any of its duties and responsibilities for the Work or materials; (2) waive any rights of the County to insist on full compliance by Contractor with the Contract requirements; or (3) constitute Substantial Completion, partial Substantial Completion or acceptance of the Work or materials.

7.4 SUBSTANTIAL COMPLETION PROCEDURE

A. **Substantial Completion, Partial or Milestone Substantial Completion**. The County may grant Substantial Completion, partial Substantial Completion for specific sub-systems, or milestone Substantial Completion for portions of the Work specified as Interim Milestones, following the process outlined below.

1. When the Contractor considers that all Work, or Work associated with any sub-system or Contract milestone is substantially complete, the Contractor shall submit a written request to the County for acknowledgment of Substantial Completion.

2. The County shall promptly inspect the Work and, if the County does not agree that the Work, sub-system or milestone is substantially complete, the County will notify the Contractor of the items to be completed or corrected to achieve Substantial Completion.

3. The County reserves the right to add to, modify, or change the items to be completed for Substantial Completion as circumstances dictate.

4. Failure by the County to include any items does not alter the responsibility of the Contractor to complete or correct the Work in accordance with the Contract.

5. When the County determines that the items necessary to achieve Substantial Completion, Partial Substantial Completion or milestone Substantial Completion have been completed or corrected by the Contractor, the County shall make a determination that the Work, sub-system or Milestone is Substantially Complete. The County will issue the Notice of Substantial Completion, which shall establish the date of Substantial Completion.

B. **Punch List After Notice of Substantial Completion**. The Notice of Substantial Completion to the Contractor shall identify Punch List items to be completed or corrected by the Contractor prior to Completion/Final Acceptance and will include the date by which the Punch List items are to be completed.

7.5 PUNCH LIST AND FINAL INSPECTION

A. When the Contractor considers that all Punch List items and Contract Work are ready for final inspection, the Contractor shall give written Notice to the County.

B. The County shall promptly perform a final inspection of the Work and shall inform the Contractor of incomplete Punch List Work.

C. The Contractor shall complete or correct the items identified in the Punch List within the time period for Final Acceptance as established in the Notice of Substantial Completion.

7.6 APPLICATION FOR FINAL PAYMENT

A. Prior to the submittal of the Application for Final Payment the Contractor shall have completed or corrected the items identified in the Punch List and all other requirements of the Contract.

B. Prior to the submittal of the Application for Final Payment the Contractor shall complete final data entry and document upload into the Diversity Compliance Management System in accordance with Section 00 22 00.

C. In addition to any other requirement identified in the Contract Documents, the Application for Final Payment shall include the following documents:

1. Washington State Labor and Industries approved Affidavit of Wages Paid for Contractor and all Subcontractors in accordance with state law;

2. Contractor’s release of claims against the County, except for any pending Request for Change Order or Claims properly submitted in accordance with the Contract; and,

3. Right of way, easement and property releases.

4. Copies of the warranties and guarantees required by the Contract Documents;

5. Permit approvals and Certificates of Occupancy;

6. Operation and maintenance manuals;
7. Record Documents; and
8. Stamped permit set of documents and any other documents called for elsewhere in the Contract.

7.7 COMPLETION/FINAL ACCEPTANCE

A. Completion/Final Acceptance shall be achieved when all the obligations of the Contract have been successfully performed by the Contractor in accordance with the Contract and accepted by the County.

B. Neither Completion/Final Acceptance, nor Final Payment, shall release Contractor or its sureties from any obligations under this Contract, the retainage bond, or the performance and payment bonds, or constitute a waiver of any claims by the County arising from or related to Contractor's performance or failure to perform the Work and all Contractual obligations in accordance with the Contract, including but not limited to:

1. Unsettled liens, security interests or encumbrances;
2. Damaged, non-conforming, or defective Work discovered by the County;
3. Terms of any warranties or guarantees required by the Contract; and
4. Payments made in error.

C. Except for any Requests for Change Order and Claims properly submitted in accordance with the Contract, acceptance of Payment on the Final Application for Payment by the Contractor shall, on behalf of itself and its Subcontractors and Suppliers, forever and unconditionally release and fully discharge, the County, its officers, agents, and employees, from any and all disputes, claims, demands, asserted rights, or causes of actions including, but not limited to, those for damages, fines, interest, taxes, attorney fees, costs, liabilities, or obligations, known or unknown, directly or indirectly arising out of or related to the Contract and/or Project.

7.8 PRIOR OCCUPATION

A. County shall have the right to occupy such part or parts of the Project in or upon which the Work is being done, as it may see fit, and such occupation shall not be construed as acceptance by the County of the Work or constitute Substantial Completion or Completion/Final Acceptance of the Work.

7.9 RETAINAGE

A. Concerning the rights and responsibilities of Contractor and County with regard to retainage, chapter 60.28 RCW and as it may be amended, is made a part of the Contract by reference as though fully set forth herein.

B. Pursuant to RCW 60.28.011, claims or "liens" by Subcontractors and Suppliers against the retained fund or the retainage bond must be in writing and submitted to the Project Representative at the address given for notices in this Contract. The Project Representative will maintain a copy of all claims or "liens" against the retainage in the Contract document files.

7.10 WARRANTY AND GUARANTY

A. In addition to any special warranties provided elsewhere in the Contract, Contractor warrants that all Work conforms to the requirements of the Contract and is free from

any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors and Suppliers.

B. The warranty period shall be for the longer period of: one year from the date of Substantial Completion of the entire Project or the duration of any special extended warranty offered by a Subcontractor or Supplier.

C. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract, Contractor shall:

1. Obtain all warranties that would be given in normal commercial practice from the Supplier and/or manufacturer;

2. Prior to Completion/Final Acceptance, require all warranties be executed, in writing, for the benefit of the County; and

3. Enforce all warranties for the benefit of the County including any warranty of a Subcontractor manufacturer, or Supplier.

D. If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written Notice from the County to do so. In the event the County determines that Contractor corrective action is not satisfactory and/or timely performed, then the County has the right to remedy the problem. All damages incurred by the County and all costs for the County's remedy may be withheld or shall be reimbursed by the Contractor.

E. The warranty provided in this provision shall be in addition to any other rights or remedies provided elsewhere in the Contract or by applicable law.

ARTICLE 8: TERMINATION

8.0 COUNTY'S RIGHT TO TERMINATE CONTRACT

A. **Termination for Default**

1. County may terminate the Work, or any part of it, for cause upon the occurrence of any one or more of the following events, each of which shall be considered a default:

a. Contractor prosecutes the Work or fails to prosecute the Work or any portion thereof so that Substantial Completion of the Work will not be achieved within the Contract Time;

b. Following Substantial Completion, Contractor prosecutes or fails to prosecute the Work or any portion thereof so that Completion/Final Acceptance of the Work will not be achieved within the specified times;

c. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;

d. Contractor fails to repair, replace or correct Work not in conformance with the Contract;

e. Contractor fails to supply skilled workers or proper materials or equipment;

f. Contractor fails to make prompt payment to its employees or Subcontractors;

g. Contractor disregards or fails to comply with laws, ordinances, rules, regulations, permits, easements or orders of any public authority having jurisdiction;

h. Contractor fails to comply with Contract safety requirements; or,

i. Contractor is otherwise in material breach of any provision of the Contract.

2. Any such termination is without prejudice to any other right or remedy of the County.

3. If one of the aforementioned events has occurred, and the County at its option intends to terminate the Contract in whole or in part for default, the County will provide the Contractor with written Notice of its intent to terminate the Contractor for default, specifying in the Notice the ground(s) for such termination. In the Notice, the County, at its option, shall require the Contractor to either: i) promptly correct the deficiencies noted; or ii) provide the County with a corrective action plan as to how such deficiencies will be remedied or cured and indicate the timeframe for completion of the corrective action plan. However, if after receipt of the proposed remedy, the County has a reasonable basis for concluding that the Contractor has (a) failed or is unwilling to repair, replace or correct the deficiencies within the Contract Time, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, the County shall thereafter have the right to terminate this Contract for default. While sending a Notice of intent to terminate is a necessary condition for the County's right to terminate the Contract, in whole or in part, for a default, it is not a necessary condition as to the County's right to seek damages for Contractor's default or other breach of contract.

4. Upon termination, the County may at its option:

   a. Take possession of the Site and possession of or use of all materials, temporary buildings, utilities, equipment, tools, and construction equipment and machinery owned by Contractor for the purpose of completing the Work; and/or,

   b. Finish the Work by whatever other reasonable method it deems expedient; or

   c. Call upon the surety to perform its obligations under the performance and payment bonds.

5. If the County terminates the Contractor for default, the Contractor and its sureties shall be liable for all damages and costs that result or arise from Contractor's breach or default, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; (2) any other costs or damages incurred by the County in completing and/or correcting the Work; and (3) any other special, incidental or consequential damages incurred by the County.

6. In the event of termination for default the County shall pay the Contractor only for Work successfully completed and accepted by the County prior to the date of termination. The County shall not be responsible for any other Contractor costs, expenses, or damages including any consequential, special, or incidental damages or lost profits associated with this Contract. In no event shall the County reimburse the Contractor for any costs directly or indirectly related to the cause of the termination for default.

7. If, after termination for default, it is determined that the Contractor was not in default, the rights and obligations of the Parties will be the same as if the termination had been issued for the convenience of the County.

8. The rights and remedies of the County in this provision are in addition to any other rights and remedies provided by law or under this Contract.

B. **Termination for Convenience**

1. Upon written Notice the County may terminate the Work, or any part of it, without prejudice to any right or remedy of the County, for the convenience of the County.
2. If the County terminates the Work or any portion thereof for convenience, Contractor may make a request for a final payment which may include:
    a. An amount in accordance with the terms of this Contract for Work performed prior to the effective date of termination and not previously paid for by the County;
    b. Actually incurred reasonable costs directly caused by the termination for convenience, such as, restocking fees, penalties for early termination of equipment leases, and 'termination of subcontracts', at commercially reasonable rates for such expenditures / a [rate not to exceed 5%] of what the Contractor has been actually paid prior to the date of termination.
3. The Contractor shall not be entitled to any other costs or damages, whatsoever. The total sum payable upon termination shall not exceed the Contract Price reduced by prior payments. Contractor shall be required to make its request for adjustment in accordance with Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*.
4. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the County shall not reimburse Contractor any profit for the Work completed and shall reduce the Change Order issued upon termination to reflect the indicated loss.

C. **Termination for Nonappropriation**

1. Funding of this Contract beyond the current biennium is conditional upon the appropriation by the County Council of sufficient funds to support the Work described in this Contract. Otherwise, the Contract shall terminate on December 31 of the current biennium.
2. If expected or actual funding is withdrawn, reduced or limited in any way prior to Completion/Final Acceptance of the Project, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part for lack of appropriation. Such termination shall be in addition to the County's rights to terminate for convenience or default.
3. In the event of termination under this section the following shall apply:
    a. Subject to subsection b. (below), the County will be liable only for payment in accordance with the terms of this Contract for Work performed prior to the effective date of termination; and
    b. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs.

D. **Contractor's Obligations During Termination**

1. Unless the County directs otherwise, after receipt of a written Notice of termination for default, convenience, or non-appropriation Contractor shall promptly:
    a. Stop performing Work on the date, and as specified, in the Notice of termination;
    b. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work not terminated;
    c. Cancel all orders and subcontracts, upon terms acceptable to the County, to the extent that they relate to the performance of Work terminated;
    d. Assign, as specifically requested by the County, all of the rights, title, and interest of Contractor in all orders and subcontracts;
    e. Take such action as may be necessary or as directed by the County to preserve and protect the Work, Site, and any other property related to this Project in the possession of Contractor in which the County has an interest;
    f. Continue performance of Work only to the extent not terminated; and
    g. Take any other steps required by the County with respect to this Project.

E. **Contractor's Obligations for Default Without Termination**

1. Even if the County does not terminate the Contractor for default, the Contractor and its sureties shall be liable for all damages and costs which result or arise from Contractor's default, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; (2) any other costs or damages incurred by the County in completing and/or correcting the Work; and (3) any other special, incidental or consequential damages incurred by the County.

8.1 COUNTY'S RIGHT TO STOP THE WORK FOR CAUSE

A. If Contractor fails or refuses to perform its obligations in accordance with the Contract, the County may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.

B. Contractor shall not be entitled to any adjustment in the Contract Time and/or Contract Price for any increased cost or time of performance attributable to Contractor's failure or refusal to perform its obligations under the Contract.

ARTICLE 9: CLAIMS AND LITIGATION

9.0 CONTRACTOR CLAIMS

A. **Condition Precedent to Filing a Claim**.

1. The following actions are a condition precedent to filing a Claim:
    a. A Request for Change Order is denied or deemed denied by the County; or
    b. A Unilateral Change Order is issued by the County.
2. If the Contractor disagrees with the denial or deemed denial of a Request for a Change Order or issuance of a Unilateral Change Order, the Contractor's sole

remedy shall be to file a fully documented Claim in accordance with the provisions of this Article 9.

B. **Timeframe for Filing a Claim**.

1. Unless otherwise agreed to in writing by the Project Representative, a fully documented Claim shall be received by the Project Representative within fifteen (15) Days after:

   a. Denial or deemed denial of a Request for Change Order; or

   b. Contractor's receipt of an executed unilateral Change Order.

2. At least seven (7) Days prior to the time to file a Claim, the Contractor may request an extension of time for filing its Claim. The Contractor shall state the reasons for the request. The Contractor shall provide a fully documented Claim pursuant to the extension specified by the Project Representative.

3. Failure to comply with the time requirements set for filing a Claim shall constitute acceptance by the Contractor, on behalf of itself and its Subcontractors and Suppliers, of the unilateral Change Order and/or the County's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Change Order and/or unilateral Change Order.

C. **Contractor's Obligation to Continue to Work.** Pending final decision on a Claim, the Contractor shall proceed diligently with the performance of the Work associated with the Claim and all other Contract Work and maintain the progress of the Work within the Contract Time.

D. **Information required in a Fully Documented Claim**. Every Claim must be submitted by the Contractor, in writing and clearly designated by the Contractor as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:

1. A detailed factual statement of the Claim providing the locations and activities or elements of Contract Work impacted by the claimed event or condition, explaining entitlement to a change in Contract Time or Price;

2. The date on which facts arose that gave rise to the Claim;

3. The name of each person employed or associated with the Contractor, Subcontractor, Supplier, and/or the County with knowledge about the event or condition which gave rise to the Claim;

4. Copies of all related documents and a written description of the substance of any oral communications that concern or relate to the Claim;

5. The specific provisions of the Contract Documents on which the Claim is based;

6. If an adjustment in the Contract Price is sought, the exact amount sought, calculated in accordance with the Contract and accompanied by (a) all records supporting the Claim including those records identified in provision, 3.11 *Cost Records*;

7. If an adjustment in the Contract Time is sought, it shall be based on the Project Schedule and updated Project Schedules as required by provision 4.3, *Project Schedule* and in accordance with provision 6.0, *Change in the Contract Time*; and shall include:

a. the specific number of Days requested;

b. the specific reason an adjustment in the Contract Time should be granted; and

c. an analysis of the Project Schedule and all of its applicable updates as required by the Contract Documents, or if none is specified, an analysis of the Project Schedule and its updates, for the purpose of demonstrating the basis for the requested adjustment in Contract Time.

8. A statement certifying that:

a. the Contractor has exercised reasonable diligence in investigating the Claim, and after its investigation, it has determined that the Claim is made in good faith;

b. the supporting cost and pricing data are true and accurate;

c. the Claim is fully supported by the accompanying data; and

d. the amount requested accurately reflects the adjustment in the Contract Price or Contract Time to which the Contractor believes it is entitled; and

e. that includes the following:

I declare under penalty of perjury, under the laws of the State of Washington that the following claim is true and correct,

_____
(Signature of Contractor's Representative)

Dated: _____ at _____, Washington.
(City)

E. The Contractor shall not be allowed to change the alleged basis for a Claim or to increase the amount of money, time or other relief requested after the applicable time period for bringing a Claim, except if the change is based upon data or information that a reasonable and diligent investigation could not have uncovered prior to making the Claim.

F. Contractor's Duty to Cooperate. The Contractor shall cooperate with the County or its designee in the evaluation of its Claim and provide all information and documentation requested by the County or its designee.

G. The County's Evaluation of the Claim.

1. To assist the County in the review of the Contractor's Claim, the County or its designee may visit the Site, request additional information and/or documentation in order to fully evaluate the issues raised in the Claim and/or audit the Claim.

2. After the Contractor has submitted a fully documented Claim that complies with this provision, the County shall respond, in writing, to the Contractor within thirty (30) Days from the date the fully documented Claim is received with either:

a. a decision regarding the Claim; or

b. a Notice extending for another thirty (30) Days the County's time to respond to the Claim.

3. The Claim shall be deemed denied:

a. absent a thirty (30) Day extension, upon the thirty-first (31st) Day following receipt of the Claim by the County.

b. If the County has extended its response due date by fifteen (15) Days, the Claim shall be deemed denied upon the seventy-sixth (76th) Day following receipt of the Claim by the County.

4. The County will identify the Appeal Officer for each Claim within fifteen (15) Days of the County's receipt of a Claim.

5. The County has the right to deny a Claim even if the reason for denying the Claim is different from the County's stated reason(s) for denying a Request for Change Order or from its stated reason, if any, for issuing a unilateral Change Order.

H. Appeal Process of a Denial or Deemed Denial of the Claim.

1. Contractor shall notify the County of its disagreement with the denial or deemed denial of the Contractor's Claim and file a fully documented Appeal to the Appeal Officer within twenty-one (21) Days after the deemed denial or receipt of the denial.

2. Failure to timely notify the County and file a fully documented Appeal constitutes acceptance of the denial or deemed denial of the Claim, and the Contractor waives any right to any adjustment in Contract Price and/or Contract Time with respect to the Claim.

3. A fully documented Appeal shall contain the following information:

a. All documentation and information previously provided to the County in support of the Contractor's Claim including but not limited to the documentation identified in provision 9.0, *Contractor Claims*, paragraph D;

b. A copy of the County's denial of the Claim;

c. A detailed explanation why the Contractor believes the County's decision is incorrect and why the Claim should be granted; and

d. Any technical data or additional documentation supporting the Contractor's position.

4. At the discretion of the Appeal Officer, the Appeal Officer may request additional information or a meeting with the Contractor.

5. After the Contractor has submitted a fully documented Appeal that complies with this provision, the Appeal Officer shall respond, in writing, to the Contractor within sixty (60) Days from the date the Appeal is received. Absent a written response by the Appeal Officer, the Appeal shall be deemed denied upon the sixty-first (61st) Day following receipt of the Appeal by the Appeal Officer.

6. Contractor shall notify the County of its disagreement with the denial or deemed denial of the Contractor's Appeal within twenty-one (21) Days after the deemed denial or receipt of the denial. Failure to notify the County constitutes acceptance of the denial or deemed denial and waiver of the Contractor's right to any adjustment in Contract Price and/or Contract Time with respect to the Appeal.

9.1 CONTRACTOR'S BURDEN OF PROOF ON CLAIM

A. The Contractor shall have the burden of proof to demonstrate entitlement and damages.

B. If the Contractor, on behalf of itself or its Subcontractors and Suppliers seeks an adjustment in the Contract Price or Contract Time not supported by Project cost records meeting the requirements of provision 3.11, *Cost Records*, the Claim is waived.

C. Compliance with the record keeping requirements set forth in this Contract is a condition precedent to recovery of any costs, damages, or Claim related to or arising from performance of the Contract Work. If the County determines that the Contractor has failed materially to comply with the record-keeping requirement set forth in provision 3.11, *Cost Records*, no adjustment shall be made to the Contract Price and/or Contract Time with respect to that Claim.

D. No Claim submitted to Alternate Dispute Resolution (ADR) or pursued by the Contractor in litigation shall seek damages or a total number of days of delay greater than those set forth in the Contractor's Claim, except for accrual of any interest owing under applicable law. No Claim submitted to ADR or pursued by the Contractor in litigation shall seek specific days or dates of claimed delay different from those days or dates set forth in the Contractor's Claim.

9.2 LITIGATION

A. As mandatory conditions precedent to the initiation of litigation by the Contractor against the County, Contractor shall:

1. Comply with all Claim requirement provisions set forth in this Contract;

2. Complete all Work required for, and request the County issue a Notice of Substantial Completion of the Work and have received a Notice of achievement of Substantial Completion;

3. Request initiation of an Alternate Dispute Resolution (ADR) process agreeable to both Parties no later than ninety (90) Days after the Contractor submits its final Application for Payment, or, if the dispute arises out of an event that occurs after the final Application for Payment, within ninety (90) Days after such event; and

4. Participate in an effort to complete the ADR process within ninety (90) Days after Contractor requests initiation of the ADR process.

B. Any litigation brought against the County shall be filed and served on the County within three hundred sixty five (365) Days after Contractor submits its final Application for Payment, or if the dispute arises out of an event that occurs after the final Application for Payment, within three hundred sixty five (365) Days after such event. The requirement that the Parties participate in ADR does not waive the requirements of this subparagraph.

C. Failure to comply with these mandatory conditions precedent shall constitute a waiver of the Contractor's right to pursue judicial relief for any Claim arising from Work performed under this Contract.

ARTICLE 10: MISCELLANEOUS

10.0 CONTRACTOR'S PERFORMANCE AND PAYMENT BOND

A. The Contractor shall execute and deliver to the County a Performance and Payment Bond, as required in Section 00 61 00, for 100% of the Contract Price, with an approved surety company and in compliance with Chapter 39.08 RCW.

B. Contractor shall notify surety of any changes in the Work. The Contractor shall be responsible for additional bond security to protect the County and persons supplying labor or materials required by the Contract if the Contract Price increases beyond the bond amount.

10.1 INDEMNIFICATION/HOLD HARMLESS

A. The Contractor shall protect , defend, indemnify and hold harmless the County, its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever arising out of or in any way resulting from the Contractor's, its officers, employees, agents, or subcontractors of all tiers acts or omissions or performance or failure to perform this Contract to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.

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

1. The duty to promptly accept tender of defense and provide defense to the County at the Contractor's own expense.

2. The duty to defend and indemnify the County from any claims, demands, or suits brought by, or on behalf of, Contractor's employees and agents. To the extent necessary to carry out this obligation, Contractor hereby specifically waives its immunity under Washington's Industrial Insurance Act, RCW Title 51. The Parties acknowledge that this provision was mutually negotiated.

3. To the maximum extent permitted by law, the Contractor shall defend, indemnify and hold harmless the County from, and be liable for, all damages and injury, which shall be caused to owners of property on, or in the vicinity of, the Work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such injury or damage is caused by negligence of the Contractor or caused by the inherent nature of the Work specified.

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

D. Any amount withheld from the Contractor may be held until the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim.

E. In the event the County incurs any costs, expenses, or fees including attorneys' fees, to enforce the provisions of this subsection, all such costs, expenses, and fees shall be recoverable from the Contractor.

10.2 COMPENSATION, WAGES, BENEFITS AND TAXES

A. The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold the County, its officers, officials, agents, and employees harmless against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

10.3 ASSIGNMENTS

A. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of the County.

10.4 NONWAIVER OF BREACH

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

10.5 NOTICE TO THE COUNTY OF LABOR DISPUTES

A. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract, Contractor shall immediately give Notice, including all relevant information, to the County.

B. Contractor agrees to insert a provision in its subcontracts and to require the insertion of the provision in subcontracts and supply contracts of all tiers, that in the event timely performance of any such contract is delayed or threatened by any actual or potential labor dispute, all Subcontractors or lower-tiered Subcontractors or suppliers shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

10.6 LIQUIDATED DAMAGES AGAINST CONTRACTOR

A. Timely performance and completion of the Work is essential to the County and the time limits stated in the Contract are of the essence. The County will incur serious and substantial damages if the time deadlines specified in the Contract are not met.

B. The liquidated damage amounts, if set forth elsewhere in the Contract Documents, may be assessed for Contractor's failure to achieve milestones, Substantial Completion and Completion/Final Acceptance or other deadlines within the Contract specified time frames. These Liquidated Damages are not a penalty, but will be assessed against the Contractor for failure to achieve these Contract requirements. These Liquidated Damage amounts are fixed and agreed upon by and between the Contractor and the County because of the impracticability and difficulty of fixing and ascertaining the actual damages the County would sustain in such events. These amounts may be deducted from payments to the Contractor and retained by the County.

C. Assessment of Liquidated Damages shall not release the Contractor from its obligations and duties pursuant to the Contract Work.

D. If the Contractor is in default under Article 8, *Termination*, whether or not the County elects to terminate for cause, the County may impose actual damages for delay and all other losses, as allowed by law. The County will not be entitled to recover both actual damages and Liquidated Damages for the same delay.

10.7 HEADINGS

A. The headings used in the Contract are for convenience only and shall not be considered a part of or affect the construction or interpretation of any contractual provision therein.

10.8 CHOICE OF LAW

A. This Contract shall be governed by, and construed and enforced in accordance with the laws of the State of Washington.

10.9 SEVERABILITY

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

10.10 NOTICE

A. Notices to King County shall be directed to the Project Representative identified in Section 00 50 00, Agreement.

B. Notices to the Contractor shall be directed to the Contractor's Representative identified in Section 00 50 00, Agreement.

C. Either Party may change its address for receipt of Notices by sending a Notice to the other Party.

D. Notices directed pursuant to this provision shall be deemed received as follows:

1. If delivered by email, the Notice shall be effective as of the date and time received by the receiving Party.
2. If the Contract provides for an electronic document sharing system, Notice shall be deemed received upon the electronic date stamp provided by the Contract 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).

END OF SECTION

SECTION 00 90 00
ADDENDA

Enclosed in this Section are any addenda issued to the Bidding Documents.

END OF SECTION