

King County Contract No. _____
 Federal Taxpayer ID No. _____
 DUNS No. (if applicable) _____
 CCR No. (if applicable) _____

Department/Division Community and Human Services /

Agency _____

Project Title _____

Contract Amount \$ _____ Fund Code _____

Contract Period From: _____ To _____

KING COUNTY SPECIAL PROJECTS CONTRACT - 2011

THIS CONTRACT is entered into by KING COUNTY (the "County"), and _____ (the "Agency"), whose address is _____.

WHEREAS, the County has been advised that the following are the current funding sources, funding levels, and effective dates:

FUNDING SOURCES	FUNDING LEVELS	EFFECTIVE DATES
COUNTY		-
FEDERAL Federal Catalogue No.		-
STATE		-
TOTAL		-

WHEREAS, the County desires to have certain services performed by the Agency as described in this Contract, and as authorized by Ordinance No. _____ :

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

This form is available in alternate formats upon request for persons with disabilities.

I. EXHIBITS

The Agency shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits, which are incorporated herein by reference:

<u>Certificates of Insurance/Endorsements</u>	Attached hereto as Exhibit I
_____	Attached hereto as Exhibit II
_____	Attached hereto as Exhibit III
_____	Attached hereto as Exhibit IV
_____	Attached hereto as Exhibit V

II. DURATION OF CONTRACT

This Contract shall commence on the _____ day of _____ 2011, and shall terminate on the _____ day of _____, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

III. COMPENSATION AND METHOD OF PAYMENT

The County shall reimburse the Agency for satisfactory completion of the terms and conditions found in this Contract and its attached Exhibits. The method and timing of the County's payment to the Agency is specified in the Exhibits.

IV. INTERNAL CONTROL AND ACCOUNTING SYSTEM

The Agency shall establish and maintain a system of accounting and internal controls which complies with applicable, generally accepted accounting principles, financial and governmental reporting standards as prescribed by the appropriate accounting standards board.

V. AUDITS

A. The Agency shall provide the County with a copy of its applicable IRS Form 990 (Return of Organization Exempt from Tax), IRS Form 1065 (Partnership tax return), or equivalent when requested.

B. The Agency shall comply with the specific requirements for independent financial audits or alternative as follows:

1. An Agency receiving \$500,000 or more in direct or indirect federal funding from all sources during its fiscal year, including other forms of federal financial assistance shall have a single audit or program-specific audit conducted for that year. Such audit shall be done in accordance with the provisions of the Single Audit Act Amendments of 1996 as implemented through the Federal Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations, as revised.
2. An Agency receiving \$300,000 or more from all fund sources during their fiscal year that is not otherwise subject to the requirements of OMB Circular A-133 as outlined above in B.1., shall have a financial statement audit conducted for that year. Such audit shall be performed by an independent

certified public accountant and conducted in accordance with the American Institute of Certified Public Accountants' (AICPA) generally accepted auditing standards.

3. An Agency receiving \$50,000 or more but less than \$300,000 from all fund sources during its fiscal year shall be required to complete a limited scope financial statement/internal control review as defined by the AICPA and according to AICPA standards, provided the Agency meets all of the following criteria:
 - a. The Agency previously provided to the County a financial statement audit that was completed by an independent certified public accountant and conducted in accordance with AICPA generally accepted auditing standards, for that Agency's most recently completed fiscal period;
 - b. That financial statement audit and any associated management letter show no reportable conditions or internal control issues; and
 - c. There has been no turnover in key staff since the beginning of the period for which the audit was completed.

Any limited scope financial statement/internal control review authorized under this subsection shall be conducted in accordance with the AICPA's Statements on Standards for Attestation Engagements and shall be performed by an independent certified public accountant.

If the Agency does not meet the qualifications in VII, B, 3, a through c, then the Agency shall provide a financial statement audit.

4. An Agency receiving less than \$50,000 from all fund sources during its fiscal year shall submit a compilation of financial statements that has been certified as accurate and complete by the Agency's Board of Directors.
 5. The County reserves the right to require an independent financial statement audit at its discretion based on changes in circumstances relating to the financial and programmatic conditions of the Agency.
- C. An Agency which is not subject to OMB Circular A-133 may, in extraordinary circumstances, request a waiver of audit requirements and, with the review and upon approval of the County, substitute for the above requirements other forms of financial reporting or fiscal representation certified by the Agency's Board of Directors.
 - D. The Agency shall provide to the County a copy of the audit report, including any management letter or official correspondence submitted by the auditor, its response and corrective action plan for all findings and reportable conditions contained in its previous audit or any alternative documents required under Section VII. B, 3 and 4 of this Contract. These documents shall be submitted no later than six months subsequent to the end of the Agency's fiscal year.
 - E. If additional federal and/or state audit or review requirements are imposed on the County during the term of this Contract, the Agency agrees this Contract may be amended to require that the Agency comply with any such additional audit

requirements. Even if this Contract is not amended, the Agency agrees to comply with any such additional audit requirements.

- F. If the Agency receives a financial audit, including an A-133 audit, due to requirements other than stated herein, such audit shall be provided to the County within the time period identified in Section VII, D, even if not otherwise required under this Section.

VI. EVALUATIONS, RECORDS AND INSPECTIONS

- A. The Agency shall provide right of access to its facilities, including those of any subcontractor, to the County, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this Contract. The County shall give advance notice to the Agency in the case of an audit to be conducted by the County.
- B. The Agency shall maintain accounts and records, including personnel, property, financial, programmatic records, and other such records as may be deemed necessary by the County to ensure proper accounting for all contract funds and compliance with this Contract. If state funding is awarded in conjunction with this project, these records shall be maintained for a period of six years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Revised Code of Washington (RCW) Chapter 40.14, or unless a longer retention period is required by law. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Contract. The records and documents with respect to all matters covered by this Contract shall be subject at all times to inspection, review, or audit by the County during the performance of this Contract.
- C. Agency agrees to cooperate with the County or its agent in the evaluation of Agency's performance under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.56.

VII. CORRECTIVE ACTION

If the County determines that a breach of contract has occurred, that is, the Agency has failed to comply with any terms or conditions of this Contract or the Agency has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure shall apply:

- A. The County shall notify the Agency in writing of the nature of the breach;
- B. The Agency shall respond in writing no later than ten working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than 30 days from the date of the Agency's response, unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;

- C. The County shall notify the Agency in writing of the County's determination as to the sufficiency of the Agency's corrective action plan. The County shall have sole discretion in determining the sufficiency of the Agency's corrective action plan;
- D. In the event that the Agency does not respond within the appropriate time with a corrective action plan, or the Agency's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part pursuant to Section IX;
- E. In addition, the County may withhold any payment owed the Agency or prohibit the Agency from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and
- F. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section IX.

VIII. ASSIGNMENT/SUBCONTRACTING

- A. The Agency shall not assign or subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. Said consent must be sought in writing by the Agency not less than 15 days prior to the date of any proposed assignment or subcontract.
- B. "Subcontract" shall mean any agreement between the Agency and a subcontractor or subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.

IX. TERMINATION

- A. This Contract may be terminated by the County without cause, in whole or in part, prior to the termination date specified in Section II, by providing the Agency 30 days advance written notice of the termination.
- B. The County may terminate this Contract, in whole or in part, upon seven days advance written notice in the event: (1) the Agency materially breaches any duty, obligation, or service required pursuant to this Contract; or (2) the duties, obligations, or services required herein become impossible, illegal, or not feasible.
- C. If County or other expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in this Contract and its attached Exhibits, the County may, upon written notification to the Agency, terminate this Contract in whole or in part. Funding under this Contract beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in the Contract. Should such appropriation not be approved, this Contract shall terminate at the close of the current appropriation year.
- D. The Agency may terminate this Contract upon seven days written notice, should the County commit any material breach of this Contract.
- E. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or law that either party may have in the event that the obligations, terms, and conditions set forth in this Contract are breached by the other party.

X. FUTURE SUPPORT

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted herein except as expressly set forth in this Contract.

XI. HOLD HARMLESS AND INDEMNIFICATION

A. In providing services under this Contract, the Agency is an independent contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Agency shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Agency, its employees, and/or others by reason of this Contract. The Agency shall protect, indemnify, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Agency's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Agency of work, services, materials, or supplies by Agency employees or other suppliers in connection with or support of the performance of this Contract.

B. The Agency further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Contract by the Agency, its officers, employees, agents, and/or representatives. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract or the Termination sections.

C. The Agency shall protect, defend, indemnify and save harmless the County, its officers, officials, employees and agents from any and all costs, claims, judgments and/or awards of damages, arising out of or in any way resulting from the activities associated with this Contract, by the Agency, its employees, representatives, volunteers and/or agents. The Agency agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Agency, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the County incurs any costs including attorneys' fees to enforce the provisions of this article, all such costs and fees shall be recoverable from the Agency.

D. To the extent that an Agency subcontractor fails to satisfy its obligation to defend and indemnify the County as detailed in Section XIV.B. of this Contract, the Agency shall protect, defend, indemnify, and hold harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards or damages arising out of, or in any way resulting from, the negligent act or omissions

of the Agency's subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract.

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

XII. INSURANCE

- A. By the date of execution of this Contract, the Agency shall, for the duration of this Contract, procure, maintain and provide evidence of coverage including the additional insured endorsement, for the applicable insurance required as outlined below.
 - 1. General Liability: Coverage shall be at least as broad as Insurance Services Office form number (CG 00 01) Commercial General Liability, in the amount of at least \$1,000,000 combined single limit per occurrence by bodily injury, and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. King County, its officers, officials, employees and agents shall be included and endorsed as an additional insured for liability arising out of the performance of activities under this Contract (CG 2010 11/85 or its equivalent).
 - 2. Automobile Insurance: In the event the performance of this Contract requires the use of an automobile, automobile liability coverage in compliance with the statutory requirements of the State of Washington is required.
 - 3. Workers' Compensation Coverage: When applicable, evidence of Workers' Compensation coverage in compliance with the statutory requirements of the State of Washington shall be provided.
 - 4. Stop Gap/Employers Liability: Coverage 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. Minimum Limit \$1,000,000.
 - 5. Professional Liability: Errors, and Omissions coverage. In the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors, and Omissions coverage shall be provided by the Agency. "Professional Services", for the purpose of this Contract section, shall mean those services that require a professional standard of care. Minimum Limit: \$1,000,000 per claim and in the aggregate.
- B. Acceptability of Insurers: Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by King County.
- C. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to Agency under this

Contract. Agency shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

- D. Subcontractors: The Agency shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. If the Agency is relying on the insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract then such requirements and documentation shall be subject to all of the requirements stated herein.

XIII. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

- A. Equal Benefits to employees with Domestic Partners.

Pursuant to Ordinance 14823 and as amended by Ordinance 16586, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, as a condition of a competitive award of a contract valued at \$25,000 or more, non-public Contractors agree not to discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners or employees who reside with legally domiciled members of households during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When a competitively awarded contract is valued at \$25,000 or more, the Agency shall complete a Worksheet and Declaration form for County review and acceptance prior to Contract execution. The EB Compliance forms, Ordinance 14823 [which is codified at King County Code (KCC) Chapter 12.19], and related administrative rules are incorporated herein by reference. They are also available online at:

http://www.kingcounty.gov/operations/procurement/Services/Equal_Benefits.aspx .

- B. Nondiscrimination in Employment/Provision of Services

During the performance of this Contract, neither the Agency nor any party subcontracting under the authority of this Contract shall discriminate or tolerate harassment on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression of age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract.

- C. Nondiscrimination in Subcontracting Practices

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

D. Compliance with Laws and Regulations

The Agency 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, King County Code chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Agency 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.

E. Small Contractors and Suppliers and Minority and Women Business Enterprises Opportunities

The County encourages the Agency to utilize small businesses, including Small Contractors and Suppliers (SCS) as defined below, and minority-owned and women-owned business enterprises certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) in County contracts. The County encourages the Agency to use the following voluntary practices to promote open competitive opportunities for small businesses, including SCS firms and minority-owned and women-owned business enterprises.

1. Inquire about King County's Contracting Opportunities Program. King County has established a Contracting Opportunities Program to maximize the participation of SCS firms in the award of County contracts. The Program is open to all SCS firms certified by King County Business Development and Contract Compliance (BDCC). As determined by BDCC and identified in the solicitation documents issued by the County, the Program will apply to specific contracts. However, for those contracts not subject to the Program or for which the Agency elected not to participate in the Program during the solicitation stage, the Agency is still encouraged to inquire voluntarily about available firms. Program materials, including application forms and a directory of certified SCS firms, are available at the following website: <http://www.kingcounty.gov/bdcc>.

The term SCS means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is set at 50 percent of the Federal Small Business Administration small business size standards using the North American Industry Classification System and Owners' Personal Net Worth less than \$750,000;

2. Contact the Washington State Office of Minority and Women's Business Enterprises to obtain a list of certified minority-owned and women-owned business enterprises by visiting their website at <http://www.omwbe.wa.gov/> or by telephone 866-208-1064; and
3. Use the services of available community organizations, local assistance offices, the County and other organizations that provide assistance in the recruitment and placement of small businesses, including SCS firms and minority-owned and women-owned business enterprises.

F. Equal Employment Opportunity Efforts

The Agency shall undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression of age. The Agency'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 Agency agrees to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination.

G. Record-Keeping Requirements and Site Visits

The Agency shall maintain, for at least six years after completion of all work under this Contract, the following:

1. Records of employment, employment advertisements, application forms, and other pertinent data and records related to the Contract for the purpose of monitoring, audit and investigation to determine compliance with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract documents;
2. Records, including written quotes, bids, estimates or proposals submitted to the Agency by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records; and;
3. The County may visit, at any time, the site of the work and the Agency's office to review the foregoing records. The Agency shall provide every assistance requested by the County during such visits. In all other respects, the Agency shall make the foregoing records available to the County for inspection and copying upon request. If this Contract involves federal funds, the Agency shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Contract.

H. Compliance with Section 504 of the Rehabilitation Act of 1973 as amended (Section 504) and the American Disabilities Act of 1990 as amended (ADA)

Pursuant to Title II of the ADA and Section 504 the 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 Agency 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. Failure to comply with this section shall be a material breach of, and grounds for, the immediate termination of this

Contract.

1. The Agency 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 Agency 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, the Agency 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.

I. Sanctions for Violations

Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract for which the Agency may be subject to damages, withholding payment and any other sanctions provided for by the Contract and by applicable law.

XIV. SUBCONTRACTS AND PURCHASES

- A. The Agency shall include the above Sections IV, V, X, and XIII in every subcontract or purchase agreement for services which relate to the subject matter of this Contract.
- B. The Agency agrees to include the following language verbatim in every subcontract, provider agreement, or purchase agreement for services which relate to the subject matter of this Contract:

”Subcontractor shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this Contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph.”

- C. The Agency shall ensure that all subcontractors receiving any federal funds pursuant to this agreement have not been disbarred or suspended from federal contract participation. This may be done by checking the Excluded Parties List System <http://epls.arnet.gov>, which lists all suspended and debarred entities.

XV. CONFLICT OF INTEREST

- A. The Agency agrees to comply with applicable provisions of KCC Chapter 3.04. Failure to comply with such provisions shall be a material breach of this Contract, and may result in termination of this Contract pursuant to Section XI and subject the Agency to the remedies stated therein, or otherwise available to the County at law or in equity.

- B. The Agency agrees, pursuant to KCC 3.04.060, that it will not willfully attempt to secure preferential treatment in its dealings with the County by offering any valuable consideration, thing of value or gift, whether in the form of services, loan, thing or promise, in any form to any County official or employee. The Agency acknowledges that if it is found to have violated the prohibition found in this paragraph, its current contracts with the County shall be cancelled and it shall not be able to bid on any County contract for a period of two years.
- C. The Agency acknowledges that for one year after leaving County employment, a former County employee may not have a financial or beneficial interest in a contract or grant that was planned, authorized, or funded by a County action in which the former County employee participated during County employment. Agency shall identify, at the time of offer, current or former County employees involved in the preparation of proposals or the anticipated performance of work if awarded the Contract. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating this Contract. After Contract award, the Agency is responsible for notifying the County's project manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

XVII. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

XVIII. BOARD OF DIRECTORS

- A. If the Agency is incorporated, it shall have an active, legally constituted board of directors in accordance with RCW Chapters 23B or 24, as applicable.
- B. The following additional requirements shall apply to the agencies that qualify as non-profit organizations under USC, Title 26, Subtitle A, Chapter 1, Subchapter F, Part 1, Section 501(C)(3).
 - 1. The Agency shall have a Board of Directors that shall be comprised of neither employees nor relatives of employees, officers, or directors of the Agency. For the purposes of this Section, a relative is defined as husband, wife, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, grandparent, grandchild, uncle, aunt, domestic partner and child of domestic partner. In addition, the relatives of a domestic partner shall be considered relatives to the same extent such relatives would be included in this Section, as if the employee and domestic partner were married.
 - 2. The Board of Directors shall meet regularly.
 - 3. The Board of Directors shall cause to be adopted a formal conflict of interest policy for Board members that complies with the applicable provisions of the Internal Revenue Code and its 501 (C)(3) status, and addresses issues regarding gifts, financial gain, and improper use of position.

XIX. EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

- A. The Agency agrees that equipment purchased with Contract funds at a cost of \$5,000 per item or more, when identified in an Exhibit as reimbursable is upon its purchase or receipt the property of the Agency, County, and/or federal, and/or state government, as specified in the Exhibit.
- B. The Agency shall be responsible for all such equipment, including the proper care and maintenance.
- C. The Agency shall ensure that all such equipment shall be returned to the appropriate government agency, whether federal, state or county upon written request of the County.
- D. The Agency shall admit County staff to the Agency's premises for the purpose of marking such property with appropriate government property tags.
- E. The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment purchased with Contract identified funds.

XX. NOTICES

Whenever this Contract requires that notice be provided by one party to another, such notice shall be:

- A. In writing; and
- B. Directed to the chief executive officer of the Agency and the director of the County department specified on page one of this Contract.

Any time within which a party must take some action shall be computed from the date that the notice is received by said party.

XXI. CONTRACT AMENDMENTS

Either party may request changes to this Contract. Proposed changes, which are mutually agreed upon, shall be incorporated by written amendments to this Contract.

XXII. KING COUNTY RECYCLED PRODUCT PROCUREMENT POLICY

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

XXIII. ENTIRE CONTRACT/WAIVER OF DEFAULT

The parties agree that this Contract is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Contract. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

XXIV. SERVICES PROVIDED IN ACCORDANCE WITH LAW AND RULE AND REGULATION

The Agency and any subcontractor(s) agree to abide by the terms of the Revised Code of Washington, rules and regulations promulgated thereunder, and the Department of Social and Health Services (DSHS) and County Agreement on General Terms and Conditions between the DSHS and King County, as amended, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Contract, all of which are incorporated herein by reference.

In the event of a conflict between any of the language contained in any exhibit or any attachment to this Contract, the language in the Contract shall have control over the language contained in the exhibit or the attachment, unless the parties affirmatively agree in writing to the contrary.

XXV. CONFIDENTIALITY

The Agency agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

XXVI. COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA)

Terms used in this section shall have the same meaning as those terms in the Privacy Rule, 45 Code of Federal Regulations (CFR) Parts 160 and 164.

A. Obligations and Activities of the Agency

1. The Agency agrees not to use or disclose protected health information other than as permitted or required by this Contract, HIPAA and the Health Information Technology for Economic and Clinical Health Act (HITECH). The Agency shall use and disclose protected health information only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR § 164.504(e). The Agency is directly responsible for full compliance with the privacy provisions of HIPAA and HITECH that apply to business associates.
2. The Agency agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information that it creates,

receives, maintains, or transmits on behalf of the County as required by 45 CFR, Part 164, Subpart C. The Agency is directly responsible for compliance with the security provisions of HIPAA and HITECH that apply to business associates, including sections 164.308, 164.310, 164.312, and 164.316 of title 45 CFR.

3. Within two (2) business days of the discovery of a breach as defined at 45 CFR § 164.402 the Agency shall notify the County of any breach of unsecured protected health information. The notification shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the Agency to have been, accessed, acquired, or disclosed during such breach; a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; a description of the types of unsecured protected health information that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); any steps individuals should take to protect themselves from potential harm resulting from the breach; a brief description of what the Agency is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; the contact procedures of the Agency for individuals to ask questions or learn additional information, which shall include a toll free number, an e-mail address, Web site, or postal address; and any other information required to be provided to the individual by the County pursuant to 45 CFR § 164.404, as amended. A breach shall be treated as discovered in accordance with the terms of 45 CFR § 164.410. The information shall be updated promptly and provided to the County as requested by the County.
4. The Agency agrees to mitigate, to the extent practicable, any harmful effect that is known to the Agency of a use or disclosure of protected health information by the Agency in violation of the requirements of this Contract or the law.
5. The Agency agrees to report in writing all unauthorized or otherwise improper disclosures of protected health information or security incident to the County within two days of the Agency knowledge of such event.
6. The Agency agrees to ensure that any agent, including a subcontractor, to whom it provides protected health information received from, or created or received by the Agency on behalf of the County, agrees to the same restrictions and conditions that apply through this Contract to the Agency with respect to such information.
7. The Agency agrees to make available protected health information in accordance with 45 CFR § 164.524.
8. The Agency agrees to make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR § 164.526.
9. The Agency agrees to make internal practices, books, and records, including policies and procedures and protected health information, relating

to the use and disclosure of protected health information received from, or created or received by the Agency on behalf of King County, available to the Secretary, in a reasonable time and manner for purposes of the Secretary determining King County's compliance with HIPAA, HITECH or this Contract.

10. The Agency agrees to make available the information required to provide an accounting of disclosures in accordance with 45 CFR §164.528. Should an individual make a request to the County for an accounting of disclosures of his or her protected health information pursuant to 45 CFR § 164.528, Agency agrees to promptly provide an accounting, as specified under 42 U.S.C. § 17935(c)(1) and 45 CFR §164.528, of disclosures of protected health information that have been made by the Agency acting on behalf of the County. The accounting shall be provided by the Agency to the County or to the individual, as directed by the County.

B. Permitted Uses and Disclosures by Business Associate

The Agency may use or disclose protected health information to perform functions, activities, or services for, or on behalf of, King County as specified in this Contract, provided that such use or disclosure would not violate HIPAA if done by King County or the minimum necessary policies and procedures of King County.

C. Effect of Termination

1. Except as provided in paragraph C.2. of this Section, upon termination of this Contract, for any reason, the Agency shall return or destroy all protected health information received from the County, or created or received by the Agency on behalf of the County. This provision shall apply to protected health information that is in the possession of subcontractors or agents of the Agency. The Agency shall retain no copies of the protected health information.
2. In the event the Agency determines that returning or destroying the protected health information is infeasible, the Agency shall provide to King County notification of the conditions that make return or destruction infeasible. Upon notification that return or destruction of protected health information is infeasible, the Agency shall extend the protections of the Contract to such protected health information and limit further uses and disclosure of such protected health information to those purposes that make the return or destruction infeasible, for so long as the Agency maintains such protected health information.

D. Reimbursement for Costs Incurred Due to Breach

Agency shall reimburse the County, without limitation, for all costs of investigation, dispute resolution, notification of individuals, the media, and the government, and expenses incurred in responding to any audits or other investigation relating to or arising out of a breach of unsecured protected health information by the Agency.

XXVII. PERSONAL INFORMATION – NOTICE OF SECURITY BREACH

- A. If the Agency maintains computerized or other forms of data that includes personal information owned by the County, the Agency shall notify the County of any breach of the security of the data immediately following discovery if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person in accordance with RCW 42.56.590 (2).
- B. The Agency shall provide all information requested by the County including the following in accordance with RCW 42.56.590, KCC 2.14.030, the King County Information Privacy Policy and any other applicable federal, state and local statute:
1. Circumstances associated with the breach;
 2. Actions taken by the Agency to respond to the breach ; and
 3. Steps the Agency shall take to prevent a similar occurrence.
- This information shall be provided in a format requested by the County.
- C. The County may at its sole discretion, require the Agency to contact the appropriate law enforcement agency and to provide the County a copy of the report of the investigation conducted by the law enforcement agency. The Agency shall also provide the County with any information it has regarding the security breach.
- D. The Agency shall conspicuously display King County's Privacy Notice and provide a printed copy upon request.
- E. The Agency shall be responsible for notifying individuals whose personal information may have become available to unauthorized users through a security breach. The Agency shall also be responsible for any cost associated with notifying the affected individuals. This notification must be in accordance with RCW 42.56.590 (7).
- F. If the Agency demonstrates that the cost of providing notice would exceed \$250,000, or that the potentially affected persons exceeds 500,000, or the Agency does not have sufficient contact information, substitute notice shall consist of the following in accordance with RCW 42.56.590 (7), (c).
1. E-mail notice when the agency has an e-mail address for the subject persons;
 2. Conspicuous posting of the notice on the Agency's web site page, if the agency maintains one; and
 3. Notification to major County-wide media.
- G. For purpose of this section, "personal information" means the same as defined in RCW 42.56.590:

1. An individual's first name or first initial and last name in combination with any one of the following data elements, when either the name or the data elements are not encrypted: social security number; driver's license number or Washington identification card number; or
2. Account number or credit or debit card number, in combination with any required security code; access code, or password that would permit access to an individual's financial account.

XXVIII. NO THIRD PARTY BENEFICIARIES

Except for the Parties to whom this Contract is assigned in compliance with the terms of this Contract, there are no third party beneficiaries to this Contract, and this Contract shall not impart any rights enforceable by any person or entity that is not a Party hereto.

KING COUNTY

AGENCY

 FOR
 King County Executive

 Signature

 Date

 Name (Please type or print)

 Date

Approved by DCHS Director

Approved as to Form:

OFFICE OF THE KING COUNTY
 PROSECUTING ATTORNEY
 November 18, 2010