

May 15, 2014

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Sponsor: von Reichbauer

Proposed No.: 2014-0085

1 **AMENDMENT TO PROPOSED ORDINANCE 2014-0085, VERSION 2**

2 Delete Attachment A, Interlocal Agreement for Provision of Small Contractor and
3 Supplier Certification Services between King County and Seattle Community College
4 District 6, April 24, 2014, and insert Attachment A, Interlocal Agreement for Provision
5 of Small Contractor and Supplier Certification Services between King County and Seattle
6 Community College District 6, May 15, 2014.

7 **EFFECT:** *Incorporates terms agreed to by the parties of the agreement which were*
8 *inadvertently left out of the April 24, 2014 Interlocal Agreement.*

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INTERLOCAL AGREEMENT

FOR PROVISION OF SMALL CONTRACTOR AND SUPPLIER CERTIFICATION SERVICES BETWEEN KING COUNTY AND SEATTLE COMMUNITY COLLEGE DISTRICT 6 MAY 15, 2014

THIS INTERLOCAL AGREEMENT ("Agreement") FOR PROVISION OF SMALL CONTRACTOR AND SUPPLIER CERTIFICATION SERVICES BETWEEN KING COUNTY ("County") AND SEATTLE COMMUNITY COLLEGE DISTRICT 6 is entered on this ___ day of _____, 2014. Collectively, the County and SEATTLE COMMUNITY COLLEGE DISTRICT 6 are referred to as the "Parties."

RECITALS

WHEREAS, the County operates the Contracting Opportunities Program to provide contracting opportunities for small businesses on County contracts; and

WHEREAS, the County and Seattle Community College District 6 and its contractors are encouraged to use certified small businesses as prime contractors, subcontractors and suppliers; and

WHEREAS, it is in the economic interest of the County and Seattle Community College District 6 to encourage competition within the supply chain and to increase the number of small contractors and suppliers in their procurements; and

WHEREAS, the County certifies small businesses as Small Contractor and Supplier (SCS) firms for participation in its Contracting Opportunities Program; and

WHEREAS, Seattle Community College District 6 desire to enter into an Agreement under which the County will provide access to its SCS database and Directory and provide certification services to small businesses doing business with Seattle Community College District 6; and

WHEREAS, the County has previously entered into an agreement with the Port of Seattle and Sound Transit to support the maintenance and operation of the SCS certification program, and Seattle Community College District 6 wishes to share of the costs of administrating the County's SCS certification program along with the other public agencies supporting the SCS certification program; and

WHEREAS, County Executive Order Con 7-12 calls for partnerships with other public agencies to develop common application forms and common certification standards to make it easier for SCS firms to work with public agencies; and

WHEREAS, pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action.

INTERLOCAL AGREEMENT BETWEEN
KING COUNTY AND SEATTLE COMMUNITY COLLEGE DISTRICT 6
CERTIFICATION SMALL CONTRACTOR AND SUPPLIERS, MAY 15, 2014

NOW THEREFORE, the Parties hereby agree:

1. PURPOSE

The purpose of the Agreement is to set forth the terms and conditions under which the County will provide certification services for Small Contractors and Suppliers to Seattle Community College District 6.

2. RESPONSIBILITIES

2.1 COUNTY RESPONSIBILITIES

2.1.1 **SCS CERTIFICATION PROCESS.** The County shall be responsible for the certification process for businesses that have demonstrated an interest in participating or continuing to participate as SCS firms in procurements administered by the County, the Port of Seattle, Sound Transit, Seattle Community College District 6 and other participating agencies. This process includes certification, recertification, and removal and/or decertification of business.

The County will apply the standard procedures in the certification process set forth in Exhibit A attached and incorporated into this Agreement.

2.2 ON-LINE DIRECTORY. The County will host and maintain an Online Directory of Certified SCS Firms ("SCS Directory").

2.2.1 The SCS Directory will include the following search options:

- a. Contract Category – categories shall include construction, architectural & engineering, professional/technical consulting and goods & services.
- b. NAICS Codes - North American Industry Classification System, searchable the code number and/or using keywords at <http://www.census.gov/eos/www/naics/>.
- c. By Construction Specification Institute Code – Usable for Construction related firms.
- d. Business Name / Description –Searchable using name or keywords.

2.2.2 **Excel Download–** The entire SCS Directory shall be available for download.

- 2.2.3 Public Agency Logos – Each party agrees that the application form and webpage for the SCS Directory shall display the logo for the County, the Port of Seattle, Sound Transit, Seattle Community College District 6 and any other public agency participating in the SCS Directory.

3. SHARED RESPONSIBILITIES

The Parties mutually agree to the following provisions:

- 3.1 CERTIFICATION APPLICATION.** Each Party agrees to use the same SCS certification application form and CPA affidavit. The County shall provide Seattle Community College District 6 an application form and CPA affidavit for use and distribution to businesses seeking to obtain certification as a Small Contractor and Supplier. The official logo of each Party will appear on the front page of the certification application and the CPA affidavit.
- 3.2 PROGRAM ADMINISTRATION.** Seattle Community College District 6 and the County may apply different methods, strategies and outreach efforts in administering their respective small business programs separately and apart from this agreement for the County to provide SCS certification services.
- 3.3 SCS DIRECTORY.** The County shall maintain a SCS Directory and make the same certification SCS Directory available for use by Seattle Community College District 6. The SCS Directory is currently located at: <http://www.kingcounty.gov/exec/BusinessDev.aspx>
- 3.4 INFORMATION SHARING.** The Parties agree to share copies of any documents that may affect the certification status of a certified SCS Firm.
- 4. ELIGIBILITY AND DIRECTORY STANDARDS.** The Parties agree to the following eligibility and directory standards:
- 4.1 FINANCIAL CONDITIONS.** The relevant financial condition for eligibility shall be based on: (1) A threshold for standard business classifications set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS); (2) Each owner's personal net worth less than \$1.32 million and; (3) The business owners' agreement to participate in a minimum of fifteen (15) hours of business development training within twelve months of certification approval.

5. **CERTIFICATION.** The Parties agree to the following SCS certification process:
 - 5.1 **REFERRALS.** Seattle Community College District 6 will refer the small businesses on its business rosters to the County to apply for certification under the County's SCS certification program.
 - 5.2 **LENGTH OF CERTIFICATION.** The length of initial certification shall not exceed five (5) years.
 - 5.3. **CERTIFICATION REVIEWS.** The County shall complete all certification reviews within thirty (30) days from the date of receipt of a fully executed and completed certification application and all required supporting documentation for each applicant business.
6. **RECORDKEEPING.** The County shall keep all records pertaining to active certification files as required by the County's applicable retention schedules and the County shall be responsible for these retention costs. Where there is a disagreement about the determination of the County regarding the acceptance or denial of a firm for SCS certification based upon the certification standards outlined in this Agreement, the County will provide a copy of its written determination to Seattle Community College District 6 and the applicant firm upon request.
7. **REVIEW AGENCY.** The County will perform the certification review for all applicant firms to include initial certification, recertification and decertification. Seattle Community College District 6 will assist the County in defending appeals, challenges, and investigations of third party allegations concerning SCS firms.
8. **LEGAL COUNSEL.** Each party shall obtain separate legal counsel to address certification matters, as needed. The County shall defend against any challenges to its certification of SCS firms.
9. **ADMINISTRATION.** The following individuals are designated as representatives of the respective Parties. The representatives shall be responsible for administering this Agreement and for coordinating and monitoring performance under it. In the event such representatives are changed, the party making the change shall notify the other party.

The King County Designated representative shall be the Director of the Finance Business and Operations Division of the Department of Executive Services or his/her designee or successor.

The Seattle Community College District 6 Designated Representative shall be the Purchasing Director.

10. **DURATION AND RENEWAL OF AGREEMENT.** This Agreement shall be effective on January 1, 2014. Any renewals of this Agreement shall be upon the mutual written agreement of the Parties.

11. **COMPENSATION**

11.1 **SEATTLE COMMUNITY COLLEGE DISTRICT 6
COMPENSATION TO COUNTY.** Seattle Community College District 6 shall compensate the County for its certification services as follows:

11.1.1 Seattle Community College District 6 shall pay a proportionate share of the fixed amount of the County's costs for annual maintenance and operation of the SCS database and Directory. (As of December 2013, there are three agencies providing funding for the SCS database and Directory (King County, Port of Seattle, and Sound Transit), and Seattle Community College District 6 fixed annual maintenance and operation fee is one fourth of the County's annual maintenance and operation costs.) If the County enters into a contract with additional parties for maintenance and operation of the SCS database and Directory, the County shall further apportion the total annual maintenance and operation costs equally and proportionately among all participating agencies, including the County and Seattle Community College District 6.

11.1.2 Seattle Community College District 6 shall also pay an equal share of the fixed certification fee (below), but only up to \$1,500 per year, for each SCS certification application that is received by the County for which the County completes a certification review. The County will charge a fixed administrative fee regardless of whether an applicant for certification or recertification is approved or denied. If the County enters into contracts with additional parties to support the SCS database and Directory, the fixed certification fee will be apportioned equally among all the participating agencies including the County and Seattle Community College District 6.

The current fixed certification fee is twenty three dollars (\$23.00) and will be charged by the County for processing each application. This fee will be divided among all the participating agencies.

11.1.3. The parties to this Agreement may agree in writing to utilize a different fee methodology for calculation of the payment

referenced in subsection 11.1.2 above upon mutual written consent by each party.

11.2 INVOICES. The County shall invoice Seattle Community College District 6 as follows:

11.2.1 Annually for the County's annual maintenance and operations costs as described in Section 11.1.1 of this Agreement.

11.2.2 Annually for the recovery cost of the certification fees up to a as described in Section 11.1.2 of this Agreement.

11.3 PAYMENT TO THE COUNTY. Seattle Community College District 6 shall pay the amount invoiced and due within thirty (30) days after receipt of an invoice that shall include the following information items:

11.3.1 The firm name of all applicants for which a certification review was conducted during the invoice period, regardless of the whether certification was approved or denied;

11.3.2 An equal and proportionate share of the fixed fee applied to the total number of certification reviews completed during the invoice period, provided however Seattle Community District 6's share of this cost shall not exceed \$1,500 annually;

11.3.3 The determination (approval or denial) for each applicant for which the County conducted a certification review during the invoice period;

11.3.4 The certification number for all applicants approved for certification during the invoice period; and,

11.3.5 The total amount of payment requested by the County and the totals of both the annual maintenance and operation costs and annual certification fees.

12. PERFORMANCE OF AGREEMENT

12.1 COMPLIANCE WITH ALL LAWS. Each party shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to confidentiality, disabilities and non-discrimination.

12.2 MAINTENANCE AND AUDIT OF RECORDS. Each party shall maintain books, records, documents, and other materials relevant to its

performance under the Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other materials for the applicable retention period under federal and Washington law.

- 12.3 TREATMENT OF ASSETS AND PROPERTY.** No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.
- 12.4 IMPROPER INFLUENCE.** Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been, or will be, offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 12.5 CONFLICT OF INTEREST.** The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

13. INDEMNIFICATION

To the extent permitted by law, each party shall protect, defend, indemnify and save harmless the other party, and its/their officers, officials, employees and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property to the extent resulting from, the indemnifying party's negligent acts or omissions in their performance of this Agreement. The indemnifying party shall not be required to indemnify, defend, or save harmless the indemnified party for costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property to the extent resulting from the negligence of the indemnified party. In the event of any claims, demands, actions and lawsuits, the indemnifying party upon prompt notice from the indemnified party, shall assume all costs of defense thereof, including legal fees incurred by the indemnified party, and of all resulting judgments that may be obtained against the indemnified party. This indemnification shall survive the termination of this Agreement.

14. DISPUTES

14.1 DISPUTE RESOLUTION PROCESS. The Designated Representatives of the Parties shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include: (1) a description of the issue to be resolved; (2) a description of the difference between the Parties on the issue; and (3) a summary of steps taken by Designated Representative to resolve the issue. The Designated Representatives shall meet within three (3) business days of receiving the written notice and attempt to resolve the dispute. In the event the Designated Representatives cannot resolve the dispute, Seattle Community College District 6 Chancellor or his/her designee and the County Executive or his/her designee shall meet within seven (7) business days of receiving notice from a Designated Representative and engage in good faith negotiations to resolve the dispute.

The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted; provided that this requirement shall not apply if the applicable statute of limitations will run during the time that may be required to exhaust the procedural steps set forth above.

14.2 GOVERNING LAW. This Agreement shall be governed exclusively by the laws of the State of Washington.

14.3 ATTORNEY FEES. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, each party shall pay its own attorney's fees incurred in that action, arbitration or proceeding.

15. TERMINATION. Any party may terminate this Agreement without cause upon thirty (30) calendar days by written notice either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address. If this Agreement is terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

16. GENERAL PROVISIONS

- 16.1 **NO AGENCY.** No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other Party.
- 16.2 **NO EMPLOYEE RELATIONSHIP.** In performing work and services hereunder, the County and its employees, agents, consultants and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of Seattle Community College District 6 in any manner whatsoever. No employee of any Party shall hold him/herself out as, or claim to be an officer or employee of the other Party by reason of this Agreement and shall not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents, and representatives, including consultants, and shall hold the other Party harmless therefrom.
- 16.3 **NOTICES.** All notices or requests required or permitted under this Agreement shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by email and shall be deemed received three (3) business days following the date when mailed or on the date when delivered or emailed. All notices or requests shall be sent to the King County and Seattle Community College District 6 addresses as follows:

To King County:

King County
Attn: Ken Guy, Director Finance and Business Operations Division
CNK-ES-0350
401 Fifth Avenue, Third Floor
Seattle, WA 98104-1818
Phone: 206-263-9254
Email: ken.guy@kingcounty.gov

To Seattle Community College District 6:

Seattle Community College District 6
Attn: Minoo Damanpour, Purchasing Director
1500 Harvard Ave
Seattle, WA 98122
Phone: 206-934-4132
Email: minoo.damanpour@seattlecolleges.edu

- 16.4 NO THIRD PARTY RIGHTS.** It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto, and nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.
- 16.5 CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended, or waived only by written agreement signed by the Parties and adopted in accordance with each Party's legislative procedures. Changes herein which are technical in nature, consistent with the intent of the Agreement and fall within the scope of their respective authorities may be approved on behalf of the County by the County Executive and on behalf of Seattle Community College District 6 by its Chancellor. Any waiver of a term or condition of the Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver of breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 16.6 ASSIGNMENT.** Neither Party may assign its rights or delegate its duties under this Agreement, whether by assignment, further, subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of the Agreement.
- 16.7 SEVERABILITY.** In the event any term or condition of the Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.
- 16.8 ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date signed below.

SEATTLE COMMUNITY COLLEGE DISTRICT 6

Jill Wakefield,
Chancellor

Date

KING COUNTY

Dow Constantine,
King County Executive

Date

EXHIBIT A

SCS Certification Process

For purposes of this Agreement, the County will follow the Small Contractor and Supplier (SCS) review and certification procedures set out below. The Parties may mutually agree to amend or update these procedures from time to time.

(1) Notification and application receipt

- i. Upon receipt of an application for SCS certification, the County shall send an email notification receipt to the contact person identified in the certification application to inform him/her of the date the application was received by the County. The notification shall be sent within two (2) business days after the County's receipt of the application.
- ii. All applicants for certification must complete and submit an application and the required supporting documentation necessary to conduct the certification review. The County shall process complete applications in the order received.
- iii. All applicants shall be required to prepare and submit the certification application in electronic or typewritten hard copy formats. The County will not accept handwritten applications.

(2) Certification review period

- i. For all complete applications, the County will complete the certification review within thirty (30) business days from the application receipt date unless otherwise provided herein. The County may extend this period once, per application, for no more than an additional fifteen (15) days, upon written notice to Seattle Community College District 6 explaining the specific reasons for the extension.
- ii. For applicants using the CPA Affidavit method, the County will complete the certification review within ten (10) business days from the application receipt date unless otherwise provided herein.
- iii. For all certification reviews estimated to exceed the standard thirty (30)-business day review period, the County will notify the applicant within two (2) days from the County's receipt of the complete application package, to inform the applicant of the estimated time to complete the review. The County shall notify the applicant by email.

(3) Applicant Missing Information

- i. For all incomplete application packages, the County will identify any deficiencies and send a request via email to the applicant contact person that includes a request to submit the information requested within thirty (30) calendar days.
- ii. Upon receipt of missing items from the applicant, the County will notify the applicant via email with an estimated review completion date that shall not exceed the standard thirty (30) business days.
- iii. Failure of the applicant to submit the missing information requested within thirty (30) calendar days from the notification date by the County will result in removal of the application from certification review.
- iv. If an applicant has sought certification previously as an SCS from the County and failed to comply with a request from the County to submit information, the applicant must complete and submit a new application to initiate the review process. The County shall process complete applications in the order received unless otherwise provided in this Agreement.

(4) Requests to Expedite the Certification Review Process

- i. The County may grant a request to expedite the certification review process if:
 - a) Seattle Community College District 6 or a contractor submits a written request to expedite the application; or
 - b) The Parties to this agreement determine and agree that expediting the review process is the only action to ensure SCS firms an opportunity to participate in the contracting activity or procurement processes administered by the requesting public entity.
- ii. All requests to expedite the certification review process must be made in writing and received by the County certification reviewers ten (10) business days prior to a bid opening or proposal due date.
- iii. The County may deny requests to expedite the certification review process if any of the following conditions exists:
 - a) The County receives the request less than ten (10) business days prior to the identified bid opening or proposal due date.

The County will make the final decision on whether or not a request to expedite certification review will be granted.