



King County

Finance and Business Operations Division
Procurement and Contracts Services Section
Department of Executive Services
CNK-ES-0340
3rd Floor
401 5th Avenue
SEATTLE, WA 98104

CONTRACTOR:
HENNESSY INDUSTRIES
1601 JP HENNESSY DR
LA VERGNE, TN 37086 United States
Fax: ()

SHIP TO:
KC DOT RENTON FLEET
155 MONROE AVE NE, RSD-TR-0155
RENTON, WA 98056

BILL TO:
KC DES FBOD ACCOUNTS PAYABLE
401 5TH AVE, CNK-ES-0320
SEATTLE, WA 98104

CONTRACT

CONTRACT NO. 5936439 REVISION 0 PAGE 1 of 1

CREATION DATE 26-APR-2017 BUYER PATRICIA REID
DATE OF REVISION BUYER

CONTRACTOR NO	PAYMENT TERMS	FREIGHT TERMS	PAID	FOB DESTINATION	SHIP VIA	CONFIRM TO
692482	NET30DAYS				Seller Chooses	Telephone: (800) 688-6359

DESCRIPTION

Term Supply Agreement

Furnish vehicle lifts and garage associated equipment as requested by King County personnel during the period April 24, 2017 through February 10, 2019, in accordance with Washington State contract #05316 and the responding bid from Hennessy Industries, both incorporated by reference as if fully set forth herein.

Estimated total contract value \$50,000.

Individual standard purchase orders with unique purchase order numbers referencing this contract purchase agreement will be issued by King County to authorize the purchase and payment of goods and services.

All invoices must reference the individual standard purchase order number to avoid delay in payments.

Authorized Signature

**SUPPLEMENTAL TERMS & CONDITIONS to
Washington State Department of Enterprise Services Contract #05316**

This Agreement (“Agreement” or “Contract”) dated as of this April 20, 2017 is between Hennessy, having its principal office and place of business at 1601 Hennessy Drive, Lavergne, TN 37086 (hereinafter called “Contractor”) and King County, Washington, a political subdivision of the state of Washington (hereinafter called “County”). The County is undertaking certain activities related to acquiring Vehicle Lifts and Garage Associated Equipment and the County desires to engage the Contractor to provide work in connection with such undertakings of the County.

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:

I. Contractor shall provide all work described in this Agreement, which consist of the following terms and conditions and attached exhibits, each of which are made a part hereof by this reference:

- Price..... Exhibit A
- Certificate(s) of Insurance and Policy Endorsement..... Exhibit B

II. The terms and conditions of this Agreement shall also include the Vehicle Lifts and Garage Associated Equipment contract signed and dated by Washington State Department of Enterprise Services on 02/10/17, which terms and conditions are incorporated herein by reference, except as expressly amended herein and in any Amendment or Purchase Order that do not contain conflicting provisions. Any and all reference to Washington State Department of Enterprise Services shall also mean King County. The parties agree that the following terms of the are modified solely and take precedence for this Agreement as follows:

1. **RETENTION OF RECORDS, AUDIT ACCESS AND PROOF OF COMPLIANCE WITH CONTRACT**

A. Retention of Records.

The Contractor and its subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access.

The Contractor shall provide access to its facilities, including those of any subcontractors, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

2. **AUDIT EXCEPTION**

The Contractor 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 Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract.

3. PUBLIC RECORDS REQUESTS

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 "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. The County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

4. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

A. Nondiscrimination in Employment.

During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's 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.

B. Equal Employment Opportunity Efforts.

The Contractor will undertake, and require all subcontractors to 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 or age. 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, and to

require subcontractors 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.

Ref: KCC 12.16.020.

C. Equal Benefits to Employees with Domestic Partners.

Pursuant to Ordinance 14823, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, 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. 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 the contract is valued at \$25,000 or more, the Contractor 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 KCC Chapter 12.19), and related administrative rules are incorporated herein by reference. They are also available online at: <http://your.kingcounty.gov/procurement/services/eb.aspx>

D. Nondiscrimination 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 subcontractors and suppliers, the Contractor 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.

E. Compliance with Laws and Regulations.

The Contractor and all subcontractors shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC 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 Contractor and all 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.

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

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by 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 of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section 7.1.H shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16.

The Contractor shall not discriminate against persons with disabilities in providing the Work. In any subcontracts for the programs, activities and services under their Contract, the Contractor shall include the requirement that the subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract, 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.

- G. 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 Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

5. CONFLICTS OF INTEREST AND NON-COMPETITIVE PRACTICES

- A. Conflict of Interest.

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such

conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict.

B. Contingent Fees and Gratuities.

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.

C. Disclosure of Current and Former County Employees.

To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor 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 Contract may result in termination of this Contract.
3. After Contract award, the Contractor 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.

6. INDEPENDENT STATUS OF CONTRACTOR

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

7. INDEMNIFICATION AND HOLD HARMLESS

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the goods and/or Services Provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County and its officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such goods and/or Services: shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability; as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event that the County incurs any judgment, award and/or cost including attorney's fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor. In the event of litigation between the parties to enforce the rights under this section, reasonable attorney fees shall be allowed to the substantially prevailing party.

8. EVIDENCE AND CANCELLATION OF INSURANCE

Prior to execution of the Contract, the Contractor shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County shall receive notice at least forty-

five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.

- A. The Contractor shall, upon demand of the County, deliver to the County all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- B. Failure to Provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

9. INSURANCE REQUIREMENTS

- A. The Contractor shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- B. 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 with this provision shall affect and/or alter the application of any other provision contained with this Contract.
- C. For All Coverages:
 - 1. Each insurance policy shall be written on an "occurrence" form; excepting insurance for professional liability/errors and omissions. Professional liability/errors and omissions when required, may be acceptable on a "claims made" form.
 - 2. If coverage is approved and purchased on a "Claims Made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Contract.
- D. Minimum Scope of Insurance.
Coverage shall be at least as broad as:

1. General Liability: Insurance Services Office form number (CG 00 01 current edition) covering COMMERCIAL GENERAL LIABILITY.
2. Automobile Liability: Insurance Service form number (CA 00 01 current edition) covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the combination of symbols 2, 8 and 9.
3. Professional Liability: Professional Liability, Errors and Omissions coverage.

In the event that services pursuant to this Contract either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be Provided.

4. Workers’ Compensation.

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”:

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.

10. MINIMUM LIMITS OF INSURANCE

The Contractor shall maintain limits no less than, for:

- A. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. Workers’ Compensation: Statutory requirements of the state of residency.
- D. Employers Liability Stop Gap: \$1,000,000.

11. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

A. Other Insurance Provisions.

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies (except Workers Compensation and Professional Liability):
 - a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Use the above exact language on the Endorsement Form. (CG 20 10 current edition or its equivalent).
 - b. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way.
 - c. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

12. ACCEPTABILITY OF INSURERS

Unless otherwise approved by the County:

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.

If at any time one of the foregoing policies shall fail to meet the above stated 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 approval.

13. SUBCONTRACTORS

The Contractor shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. **Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.**

14. WORK SITE SAFETY

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 the subcontractor’s compliance with these provisions.

15. ENDORSEMENTS

Additional Insured Endorsement shall be included with the certificate of insurance, “CG 2010 current edition” or its equivalent is required. **The County requires this Endorsement to complete the Contract.**

16. TERMINATION FOR NON-APPROPRIATION

A. If expected or actual funding is withdrawn, reduced or limited in any way prior to January 31, 2025, 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. In the event of termination under this section the following shall apply:

1. Subject to subsection 2, 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;
2. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs; and
3. The Contractor shall be released from any obligation to provide further Work under the Contract affected by the termination.

B. Notwithstanding subsection A., 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.

17. REQUIREMENTS OF KING COUNTY LIVING WAGE ORDINANCE

In accordance with King County Ordinance 17909, as a condition of award for contracts for services with an initial or amended value of \$100,000 or more, the

Contractor agrees that it shall pay and require all subcontractors to pay a living wage as described in the ordinance, to employees for each hour the employee performs a Measurable Amount of Work on this Contract. "Measurable Amount of Work" shall mean a definitive allocation of an employee's time that can be attributed to work performed on a specific matter, but that is not less than a total of one hour in any one week period.

Violations of this requirement may result in disqualification of the Contractor from bidding on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.

IN WITNESS HEREOF, THE PARTIES HERETO HAVE CAUSED THIS SUPPLEMENT TO VEHICLE LIFTS AND GARAGE ASSOCIATED EQUIPMENT TO BE EXECUTED AND INSTITUTED ON THE DATE FIRST ABOVE WRITTEN.

King County, Washington

By King County For
Name Raymond Dorman / Supervisor
Title [Signature]
Date 5/1/17

By Hennessy Industries
Name Alan Green
Title Sales Manager
Date 4/20/2017

