

A RESOLUTION AMENDING THE WASHTENAW COUNTY RESPONSIBLE
CONTRACTOR POLICY

WASHTENAW COUNTY BOARD OF COMMISSIONERS

August 4, 2021

WHEREAS, on July 1, 2020 the Washtenaw County Board of Commissioners adopted the Responsible Contractor Policy with the passage of resolution 20-106; and

WHEREAS, this policy applies to all construction projects greater than \$50,000, and is intended to ensure that “all work is performed by responsible, qualified firms that maintain the capacity, expertise, highly trained personnel, and other qualifications and resources necessary to successfully perform County projects in a safe, timely, reliable, high quality and cost-effective manner”; and

WHEREAS, this policy further specifies the process of application, criteria to be considered in application, and enforcement provisions including but not limited to contract termination for policy violation; and

WHEREAS, Washtenaw County, like many local governments, has been granted significant federal funding through the American Rescue Plan Act; and other federal legislation which could allocate additional funding to the County is still under consideration; and

WHEREAS, the County desires to ensure that these and all funds are used for their intended purpose, and in alignment with County policy; and

WHEREAS, the proposed amendments are designed to strengthen the enforcement provisions available to the County through the provision of specific contract language which would apply to any contractor and contract falling under the scope of the Responsible Contractor Policy; and

WHEREAS, these amendments would define violations of the policy, allow civil legal action when violations occur, allow for individuals to report violations and to be considered “third party beneficiaries”, and to protect reporting individuals from adverse employment actions; and

WHEREAS, this action would grant both the Prosecuting Attorney and Corporation Counsel to pursue these certain civil actions on behalf of the County in response to violations; and

WHEREAS, this matter has been reviewed by the County Administrator’s office, Corporation Counsel, Finance, Human Resources, the Racial Equity Office, and the Ways and Means Committee.

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby approves and adopts the amendments to the Responsible Contractor Policy, as attached hereto and made part hereof.



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I. APPLICATION:

This Policy must govern the provision of a Responsible Contractor Policy as part of the Purchasing and Procurement of Construction Contractors as awarded through the Request for Proposal process for bids \$50,000 and over.

II. INTENT:

Washtenaw County is committed to having responsible and ethical contractors and subcontractors on its construction projects, so that all work is performed by responsible, qualified firms that maintain the capacity, expertise, highly trained personnel, and other qualifications and resources necessary to successfully perform County projects in a safe, timely, reliable, high quality and cost-effective manner. To achieve that goal, the County will require contractors submitting bids on its construction projects to provide information relating to each of the Responsibility Criteria listed below. The purpose of this Policy is to assist the County in awarding contracts on every construction project to the most responsible bidder who provides the best value to the County.

III. DEFINITIONS:

- A. Construction Project: Any contract awarded for the construction, alteration, or repair of any public building or public work of the County of Washtenaw. The labor and material necessary, for the construction, renovation, repair or improvements to real property, except repair in emergency situations, which requires solicited bids so that the work, when complete, must be ready for service for its intended purpose and must require no other work to be a completed system or component.
- B. Responsible Bidder: A bidder for a construction project that has demonstrated an ability to complete the prospective contract in a way that is timely, safe, and benefits the community. The criteria in this Policy are used to determine the relative responsibility of the contractor in relation to other bidders.
- C. Contractor: any person, firm, corporation, partnership, association or any combination thereof, which enters into a Contract with any awarding authority of the County of Washtenaw and includes a recipient of County financial assistance and a public lessee or licensee.
- D. Subcontractor: any person not an employee who enters into a contract with a contractor to assist the contractor in performing a contract, including a contractor or subcontractor of a public lessee or licensee or sublessee or sublicensee, to perform or assist in performing services on the leased or licensed premises. The term subcontractor does not include vendors or suppliers to County purchasing contractors.
- E. Bidder: means any person or entity that applies for any contract whether or not the application process is through an Invitation for Bid, Request for Proposal, Request for Qualifications, or other procurement process.
- F. Bid: means any application submitted by a bidder in response to an Invitation for Bid, Request for Proposal or Request for Qualifications, or other procurement process.

IV. GENERAL POLICIES:



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- A. The County must consider, at minimum, each of the Responsibility Criteria listed below in determining and weighing contractor responsibility. The County may require contractors or subcontractors to provide additional information by including it in the bid documents.

- B. The bid documents must require any contractor or subcontractor bidding on the project to submit written responses and other information and documentation regarding the listed Responsibility Criteria and any other criteria specified by the County through the bid documents. The County may request additional information or explanation from any contractor or subcontractor regarding any particular Responsibility Criteria. The bid documents must provide that the County retains the right in its discretion to reject any and all bids. All required contractor financial and privileged information must be kept from public disclosure unless otherwise required by law.

- C. Submitted bids must break out labor costs from material and equipment costs.

- D. For each separate bid package, the County in its discretion will weigh the information provided by the contractor or subcontractor regarding the responsibility criteria, as a whole to determine whether the contractor or subcontractor is a responsible bidder and the relative responsibility of the contractor in relation to other bidders. Except as otherwise required by law, no single criterion will necessarily be determinative in assessing responsibility or relative responsibility.

- E. The Responsibility Criteria to be considered by the County include:
 1. General information about the bidder's company, its principals, and its history, including all former business names, and an explanation of any business name changes.
 2. Qualifications of management and supervisory personnel to be assigned by the bidder.
 3. Information regarding the state and local licenses and license numbers held by the bidder.
 4. A confirmation that all subcontractors, employees and other individuals working on the construction project will maintain current applicable licenses required by law for all licensed occupations and professions.
 5. The ratio of masters or journeypersons to apprentices proposed to be used on the construction project job site, if apprentices are to be used on the project.
 6. Documentation that the bidder participates in a Registered Apprenticeship Program (RAP) that is registered with the United States Department of Labor Office of Apprenticeship or by a State Apprenticeship Agency recognized by the Office of Apprenticeship.
 7. Documentation of master or journeyperson certification or status for masters and journeypersons to be used on the project, and the source of such certification or status.
 8. Documentation of how the bidder assesses the skills and qualifications of any employees who do not have master or journeyperson certification or status or are not participants in a Registered Apprenticeship Program identified in No. 6 above.



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9. Verification that the bidder is in compliance with all applicable state and federal laws and visa requirements regarding the hiring of non-US citizens, and disclosure of any work visas sought or obtained by the bidder, any of the bidder's subcontractors, or any of the bidder's employees or independent contractors, in order to perform any portion of the project.

10. A statement from the bidder as to what percentage of its work force can be drawn significantly from area residents because a goal of the County is to utilize, in its construction activities, local residents as much as is economically feasible while retaining the high quality of construction required for its construction activities, consistent with applicable law. The County will consider in evaluating which bids best serve its interests, the extent to which responsible and qualified bidders are able to achieve this goal.

11. A statement regarding the bidder's staffing capabilities and labor sources including subcontractors and a verification from the bidder that construction workers will not be misclassified as independent contractors in violation of state or federal law.

12. Documentation of an on-going MIOSHA-approved safety-training program for employees to be used on the proposed job site.

13. Evidence of the bidder's worker's compensation Experience Modification Rating ("EMR"). Preference will be given to contractors and subcontractors who exhibit an EMR of 1.0 or less based on a three-year average.

14. A list of projects completed within the past five (5) years of comparable size/complexity, including dates, clients, approximate dollar value, and size.
Documentation from these previous projects including but not limited to all extra costs relating to the bidder's timeliness, performance, quality of work, extension requests, contractual fines and penalties imposed, liens filed, history of claims for extra work and any contract defaults with an explanation of the reason for the default and how the default was resolved.

15. Evidence of experience with construction techniques, trade standards, quality workmanship, project scheduling, cost control, management of projects of comparable size/complexity, and building codes by documenting the bidder's ability and capacity to perform the project. The bidder must identify those portions of the project it reasonably believes will be subcontracted and the names of the subcontractors.

16. Audited financial information current within the past twelve (12) months, such as a balance sheet, statement of operations, and bonding capacity. Evidence that the applicant has financial resources to start up and follow through on the project(s) and to respond to damages in case of default as shown by written verification of bonding capacity equal to or exceeding the amount of the bidder's scope of work on the project. The written verification must be submitted by a licensed surety company rated "B+" (or better) in the current A.M. Best Guide and qualified to do business within the State of Michigan.

17. A list of all litigation and arbitrations currently pending and within the past five (5) years, including an explanation of each (parties, court/forum, legal claims, damages sought, and resolution).

18. Disclosure of any violations of state, federal or local laws or regulations, including OSHA or MIOSHA violations, state or federal prevailing wage laws, wage and hour laws, worker's compensation or



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unemployment compensation laws, rules or regulations, issued to or against the bidder within the past five years.

19. Disclosure of any debarment by any federal, state or local governmental unit and/or findings of non-responsibility or non-compliance with respect to any public or private construction project performed by the bidder.
20. Proof of insurance, including certificates of insurance, confirming existence and amount of coverage for liability, property damage, workers compensation, and any other insurances required by the proposed contract documents.
21. References from individuals or entities the bidder has worked for within the last five (5) years including information regarding records of performance and job site cooperation.
22. Verification of an existing Fitness for Duty Program (drugs and alcohol) of each employee working on the proposed jobsite.
23. Documentation as to pay rates of employees and whether the bidder provides health insurance, pension or other retirement benefits, paid leave, or other benefits to its employees.
24. Verification that a criminal record check will be conducted for each employee the bidder proposes to use on the construction site.
25. A warranty statement regarding labor, equipment and materials.
26. Evidence of any quality assurance program used by the bidder and the results of any such program on the bidder's previous projects.
27. Evidence of Equal Employment Opportunity Programs for minorities, women, veterans, returning citizens, and small businesses.
28. Assurance that all construction work for this project must proceed economically, efficiently, continuously and without interruption.
29. Assurance that the bidder is an equal opportunity employer and does not discriminate on the basis of race, sex, pregnancy, age, religion, national origin, marital status, sexual orientation or gender identity, height, weight, or disability.
30. If the craft labor that will be employed by the firm for the project has completed the OSHA 10-hour training course for safety or higher safety qualification courses, established by the U.S. Department of Labor Occupational Safety & Health Administration.

V. SUBSTANTIALLY LOW BID REVIEW:

In the event the amount of a bid appears disproportionately low when compared with estimates undertaken by or on behalf of the County and/or compared to other bids submitted, the County reserves the right to inquire further of the bidder to determine whether the bid contains mathematical errors, omissions, and/or erroneous assumptions, and whether the bidder has the capability to perform and complete the contract for the bid amount.



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VI. ENFORCEMENT:

Violations of this Policy may be reported to the Purchasing Department which must investigate such complaint. Whether based upon such complaint or otherwise, if the Purchasing Department has determined that the contractor has violated any provision of this Policy or provided false information to the County, the Purchasing Department must issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. Such notice shall be sent certified mail. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the Purchasing Department may request the awarding authority to declare a material breach of the contract and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the contract as outlined in the termination clause of the contract.

VII. PUBLIC INPUT:

The County will provide an avenue that will allow members of the public to report suspected violations of this Policy to the Purchasing Department. Members of the public may at any time submit a report of suspected violations of this Policy. A reporting mechanism will be accessible to the public on the County's website. If the County receives a complaint through this process, the Purchasing Department will investigate the claim and respond to the complainant within twenty-one calendar days.

VII. SEVERABILITY:

The terms, conditions, and provisions of this Policy are hereby declared to be severable, and, should any portion, part or provision of this Policy be found by a court of competent jurisdiction to be invalid, enforceable or unconstitutional, the County Board of Commissioners hereby declares its intent that the Policy shall have been enacted without regard to the invalid, enforceable or unconstitutional portion, part or provision of this Policy.

VIII. CONTRACTUAL ADDENDUM

This section VIII is incorporated by reference into any contract subject to this Responsible Contractor Policy.

A. VIOLATIONS

1. Any person who commits any of the following acts shall be liable to the County for 1.5 times the raw monetary loss which the County sustains because of the act of that person.¹ A person who commits any of the following acts shall also be liable to the County for the costs of any civil action brought to recover these damages, and shall be liable to the County for additional liquidated damages of \$5,500 (for claims submitted that are under \$25,000) or \$11,000 (for claims submitted that are at or over \$25,000), for each false or fraudulent claim for which the person:
 - a. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
 - b. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

¹ By way of example only: if the total amount of raw monetary loss sustained by the County as a result of the submission of a false or fraudulent claim is \$10,000, the amount to which the County will be entitled will be \$15,000.



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- c. Has possession, custody, or control of property or money used, or to be used, by the County and knowingly delivers, or causes to be delivered, less than all of that money or property;
 - d. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the County and, intending to defraud the County, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - e. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the County who lawfully may not sell or pledge property;
 - f. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the County, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the County;
 - g. Conspires to commit a violation of paragraph (1), (2), (3), (4), (5), or (6) of this subsection;
 - h. Is a beneficiary of an inadvertent submission of a false or fraudulent claim to the County, subsequently discovers the falsity of the claim, and fails to disclose the false or fraudulent claim to the County; or
 - i. Is the beneficiary of an inadvertent payment or overpayment by the County of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the County.
2. Liability pursuant to this section shall be joint and several for any act committed by 2 or more persons.
3. A “false or fraudulent claim” includes a claim submitted by a vendor, its employee, or its agent when any of the following circumstances were true:
- a. The vendor is subject to Washtenaw County’s Responsible Contractor Policy, and the vendor failed to abide by the representations that vendor made in response to the Responsible Contractor criteria at the Request for Proposal (RFP) stage;
 - b. The vendor failed to abide by Washtenaw County’s Living Wage Ordinance; or
 - c. The vendor failed to comply with any other federal, state, or local law, rule, or regulation to which it was subject.

Each claim submitted for work performed during which any of the preceding circumstances were true shall constitute a separate “false or fraudulent claim.”



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4. The parties agree that the damages provided for in this Section shall constitute liquidated damages, are not penalties and are in addition to all other rights of the County, including the right to call a default. The parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate, (ii) the amounts specified in such subsections bear a reasonable relationship to, and are not disproportionate to, the probable loss and costs associated with enforcement likely to be to be incurred by the County, (iii) one of the reasons for parties reaching an agreement as to such amounts is the uncertainty and cost of litigation regarding the actual damages sustained by the County and associated costs of enforcement, (iv) the liquidated damages provided in this Section are meant, in part, to provide a cost-effective mechanism for the County to become aware of any violations via incentives provided to third-party beneficiaries, and (v) the parties to this Agreement are sophisticated business parties and have been represented by sophisticated and able legal counsel and negotiated this Agreement at arm's length.

B. THIRD-PARTY BENEFICIARIES

1. The County, through its Corporation Counsel or its Prosecuting Attorney, may bring a civil action against a person who violates the terms of Subsection A of the Contractual Addendum provided in Section VIII of the Responsible Contractor Policy (hereinafter "Subsection A"). Such civil actions will be commenced in the appropriate district or circuit court in Washtenaw County.
2. Any person with knowledge of a violation of Subsection A is a third-party beneficiary of this Agreement, provided that all of the following are true:
 - a. The person reports the violation of Subsection A to the County, pursuant to the process outlined in subsection (B)(3) of Section VIII of the Responsible Contractor Policy (hereinafter "Subsection (B)(3)");
 - b. The violation of the Agreement which the person reported is not substantially the same as allegations or transactions that were publicly disclosed:
 - i. In a criminal, civil, or administrative hearing;
 - ii. In a report, hearing, audit, or investigation by any County, State, federal, or local agency;
 - iii. By the news media, including but not limited to newspapers, television or radio stories, podcasts, Internet bloggers; or
 - iv. In a public forum, including but not limited to open governmental meetings, or posts that are generally accessible to the public on social media platforms such as Facebook.
 - c. As a result of the person's report of the violation of Subsection A pursuant to the process outlined in Subsection (B)(3), the County recovered money as a result of either a filed action or a settlement.
3. A person who has knowledge of a violation of Subsection A, as outlined in Subsection (B)(2) of Section VIII of the Responsible Contractor Policy (hereinafter "Subsection (B)(2)"), may become a third-party beneficiary only if the violation is reported to the Agreement under the following procedure:



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- a. The person provides the County’s Corporation Counsel and Prosecuting Attorney with a written legal complaint commencing a civil action, to be filed in Washtenaw County’s 22nd Circuit Court or the appropriate district court on Washtenaw County, which outlines the nature of the violation of this Agreement and the legal basis for complaint. The written legal complaint shall be provided to the Corporation Counsel and the Prosecuting Attorney via both certified mail and email. Corporation Counsel’s copy of the complaint shall be mailed to Washtenaw County, Office of Corporation Counsel 220 N. Main Street, P.O. Box 8645 Ann Arbor, Michigan 48107, and emailed to billardm@washtenaw.org. The Prosecuting Attorney’s copy of the complaint shall be mailed to Washtenaw County Prosecuting Attorney: ATTN: Economic Crimes Division, 200 N. Main Street, Ann Arbor, MI, 48104, and emailed to prosecutor@washtenaw.org.
 - b. Within 180 days after receiving a such complaint alleging violations of Subsection A, the County, through its Corporation Counsel or Prosecuting Attorney, shall do either of the following:
 - i. File a civil action in the 22nd Circuit Court or the appropriate district court alleging a violation of this Agreement; or
 - ii. Decline to file a civil action in the 22nd Circuit Court or the appropriate district court alleging a violation of this Agreement. If neither the Corporation Counsel nor the Prosecuting Attorney files a complaint alleging violations of Subsection A within 180 days after receiving the complaint, the County shall have been deemed to have declined to file a civil action.
4. If the County declines to file a civil action pursuant to subsection (B)(3)(b) of Section VIII of the Responsible Contractor Policy (hereinafter “Subsection (B)(3)(b)”), a third-party beneficiary may commence a civil action in the 22nd Circuit Court or the appropriate district court alleging violations of this Agreement that were reported to the County by that third-party beneficiary pursuant to the procedure outlined in Subsection (B)(3). Any such civil action must seek to recover damages both for the third-party beneficiary and the full amount of damages that could be recovered by the County.
- a. When a third-party beneficiary files a civil action pursuant to this section, no person other than the County may intervene or bring a related action based on the facts underlying the pending action. Upon the filing of a civil action pursuant to this section by a third-party beneficiary, any other person who has reported a violation of Subsection A based on the facts underlying the pending shall cease to be a third-party beneficiary of this Agreement.
 - b. If a third-party beneficiary files a civil action pursuant to this subsection, the third-party beneficiary shall have the same right to conduct the action as the County would have if it had chosen to proceed pursuant to its option under Subsection (B)(3)(b). If the County so requests, the County shall be served with copies of all pleadings filed in the action.
 - c. If a third-party beneficiary files a civil action pursuant to this subsection, it shall be without prejudice to the right of the County to intervene in that civil action at a later date.
5. No person may bring an action pursuant to subsection (B)(4) of Section VIII of the Responsible Contractor Policy (hereinafter “Subsection (B)(4)”) if:



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- a. the action is based on evidence or information known to the County at the time the violation of this Agreement was reported to the County; or
 - b. the action is based upon allegations or transactions which are the subject of a civil suit or an administrative monetary penalty proceeding in which the County is already a party.
6. A person who is a third-party beneficiary of this Agreement shall be a third-party beneficiary only to the following extent:
- a. If the County, after becoming aware of a violation of Subsection A of this Agreement because a third-party beneficiary reported that violation pursuant to Subsection (B)(3), files a civil action through either its Corporation Counsel or its Prosecuting Attorney, and recovers through either that filed action or a settlement, the third-party beneficiary shall be entitled to 20% of the total proceeds recovered by the County, after all costs and fees.² Provided, however:
 - i. If more than one person reported a violation of Subsection A pursuant to Subsection (B)(3), and the County recovers for that violation following a civil action filed by either its Corporation Counsel or its Prosecuting Attorney, the first person to have reported that violation pursuant to Subsection (B)(3) shall be the only person entitled to 20% of the total proceeds recovered by the County. The determination as to who was the first person to have reported the violation shall be in the sole discretion of the County.
 - ii. Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the third-party beneficiary, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a report, hearing, audit, or investigation conducted by a County agency, from the news media, or from social media, the court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the third-party beneficiary in advancing the case to litigation.
 - b. If the County, after becoming aware of a violation of Subsection A because a third-party beneficiary reported that violation pursuant to Subsection (B)(3), declines to file a civil action through either its Corporation Counsel or its Prosecuting Attorney, and the County recovers through either that filed action or a settlement, the third-party beneficiary that filed the civil action leading to the recovery shall be entitled to one-third of the total proceeds recovered by the County.³
 - i. Any payment to a third-party beneficiary shall be made from the proceeds of the judgement or the settlement of the claim. Any third-party beneficiary receiving a payment under this Agreement shall also be entitled to an award of reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs.

² By way of example, if the total amount recovered by the County is \$15,000, the County shall be entitled to \$12,000 (80%) and the third-party beneficiary shall be entitled to \$3,000 (20%).

³ By way of example, if the total amount recovered by the County is \$15,000, the County shall be entitled to \$10,000 (two-thirds of the proceeds) and the third-party beneficiary shall be entitled to \$5,000 (one-third of the proceeds).



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- ii. All such expenses, fees, and costs to which a third-party beneficiary is entitled shall be awarded against the defendant, not the County.
7. Whether or not the County proceeds with the action, if the court finds that the action was brought by a third-party beneficiary who planned and initiated the violation of this Agreement upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the third-party beneficiary would otherwise receive, taking into account the role of the third-party beneficiary in advancing the case to litigation and any relevant circumstances pertaining to the violation.
 8. If the third-party beneficiary is convicted of criminal conduct arising from his or her role in a violation of this agreement, the third-party beneficiary shall be dismissed from any civil action to which the third-party beneficiary is a party, and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the County to continue the action, represented by either its Corporation Counsel or its Prosecuting Attorney.
 9. As a condition of its agreement with the County, any contractor who is subject to the Washtenaw County Responsible Contractor Policy agrees not to take any adverse employment action against any person for reporting a violation of Section A pursuant to Subsection (B)(3). Such contractors expressly acknowledge that, pursuant to **RESOLUTION TO BE ADOPTED BY COUNTY**, violations of Section A constitute violations of a “rule promulgated pursuant to law of . . . a political subdivision of this state” under the Michigan Whistleblowers’ Protection Act, MCL 15.361 et. seq., and expressly waives, in future administrative or court proceedings, any claim or argument that the Whistleblowers’ Protection Act does not apply to a person who reported a violation of Section A. Such contractors further expressly agree that any claim or lawsuit, under the Michigan Whistleblowers’ Protection Act, arising from a reported violation of Section A, must be filed no more than three years after the date of the employment action that is the subject of the claim or lawsuit, and expressly waive any statute of limitations to the contrary.
 10. Nothing in this section shall prohibit the County from electing to pursue a violation of any agreement through any alternate remedy available to the County, including arbitration, mediation, or an administrative proceeding. If an alternate remedy is pursued in another proceeding, a third-party beneficiary shall have the same rights to recovery as outlined in to subsection (B)(6) of Section VIII of the Responsible Contractor Policy (hereinafter “Subsection (B)(6)”).
 11. The remedies provided for in this section and Section A are not exclusive, and the remedies provided for shall be in addition to any other remedies provided for in any other law or available pursuant to common law.
 12. Whether or not the County proceeds with an action, upon a showing by the County that certain actions of discovery by a third-party beneficiary plaintiff would interfere with the investigation or prosecution of a criminal or civil matter by the County or a criminal matter in the County arising out of the same facts, the court may stay such discovery.
 13. If any provision of Section VIII of the Responsible Contractor Policy is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative. The remainder of Section VIII of the Responsible Contractor Policy, including the provisions of Section VIII of the Responsible Contractor Policy not held illegal or unenforceable, shall remain operative and binding on all parties.



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14. Nothing in the Responsible Contractor Policy shall be construed to give a third-party beneficiary, a contractor, or any other person any cause of action against the County, its agents, its officials, or its employees. Nor shall anything in the Responsible Contractor Policy shall be construed to alter any governmental, quasi-governmental, or other forms of immunity that attaches to the County, its agents, is officials, or its employees.