CLARK COUNTY
STAFF REPORT

DEPARTMENT: Clark County Public Health (CCPH)   CCPH SR2016_98

DATE: September 6, 2016

REQUESTED ACTION:
County Manager approval of Contract HDC.820 between ACF Technologies Inc. and CCPH to implement a customer queuing system in the public health lobby and autohorization for the Public Health Director to sign contract and amendments. Remuneration under this agreement is up to $18,996 and includes the initial software and annual maintenance agreement.

_____ Consent   _____ Hearing   __X__ County Manager

BACKGROUND

CCPH would like to implement a customer queuing system in the customer service lobby. This queing system is used in the Joint Lobby and other county departments to better manage customers and improve service delivery. The system provides notifications when additional resources are needed to address customer demand. In addition, the system tracks data useful to identifying efficiencies and resource allocation.

COUNCIL POLICY IMPLICATIONS
N/A

ADMINISTRATIVE POLICY IMPLICATIONS
N/A

COMMUNITY OUTREACH
N/A

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
		Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	1025, Public Health Fund
Company Name	ACF Technologies, Inc.

DISTRIBUTION:

BUDGET IMPLICATIONS

YES	NO	
X		Action falls within existing budget capacity.
		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
		Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

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DISTRIBUTION:
Board staff will post all staff reports to The Grid. http://www.clark.wa.gov/thegrid/

___

Holly Barnfather
Contract and Procurement Coordinator

Alan Melnick, MD, MPH, CPH
Public Health Director/Health Officer

APPROVED:_____
CLARK COUNTY, WASHINGTON
BOARD OF COUNTY COUNCILORS

DATE: _____

SR#_____

APPROVED:_____
Mark McCauley, County Manager

DATE: _____

BUDGET IMPACT ATTACHMENT

Part I: Narrative Explanation

I. A – Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information

Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
1025, Existing Program Income		$18,996				
Total		$18,996				

II. A – Describe the type of revenue (grant, fees, etc.)

Part III: Estimated Expenditures

III. A – Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
1025/4xx			$18,996				
Total			$18,996				

III. B – Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual		$18,996				
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
Total		$18,996				

Identification of Parties: This Agreement is made between Clark County, Public Health and ACF Technologies, Inc., a North Carolina corporation with its principal offices located at 64 Peachtree Road, Suite 201, Asheville, North Carolina 28803, ("<u>CONTRACTOR</u>" or "<u>ACF</u>").

<u>Support Services Terms</u>

1. **Solution Maintenance Description.** Solution Maintenance is generally described as maintaining software and hardware intended functionality and compatibility within a supported operating and technology environment, in accordance with an ACF solution purchase and under such parameters as described in the purchase contract or subsequent overriding contracts. Subject to the payment of the applicable fees, ACF shall provide Solution Maintenance Services for the Software and (if applicable) Hardware for an initial term of one year, beginning on a mutually agreed "Go Live Date". At the end of the initial term, the Maintenance and Support coverage may be renewed upon agreement from both the customer and ACF Technologies, Inc.

2. **Support Fees.** Customer agrees to pay an annual Support fee as set forth in the Cover Letter herein for the Support Term. Fees for renewal terms will be based on ACF's then-current support fees (18%); provided however that in no event shall the support fee increase by more than 7% per year (unless due to increase in hardware warranty/support costs from the manufacturer). All support fees are paid in advance.

3. **Definitions**
"Software Upgrades" means a major platform version release of the Software licensed under this Agreement, e.g., an update from version 2.3 to Version 3.0 or Version 4.2 to Version 5.x. Major platform upgrades (such as version 2.X to 3.0), optional modules, systems with certain integrated hardware and systems involving non-COTS enhancements will likely require additional ACF labor and training, which may require an onsite visit.

"Service Request" means the Error or question reported to ACF. The priority or severity of the Service Request is defined further below.

"Software Updates" is the distribution, whether public or private, of an initial or new and updated version of ACF Software. Software updates are the distribution, whether public or private, of an updated version of ACF Software. Service Packs refer to minor updates (Example: Version 2.2 to 2.2sp2). ACF will provide Customer with service packs that ACF generally makes available to its other licensees for no additional licensing charge. Customer acknowledges that service packs typically do not require additional labor and training charges.

"Business Days" means Monday through Friday, excluding public and official holidays observed by the ACF location providing Support. The dates below are for year 2016.

New Year's Day	January 1st
Memorial Day	May 30th
Independence Day	July 4th
Labor Day	September 5th
Thanksgiving Day	November 24th
Christmas Day	December 25th

"Business Hours" means the usual working hours of the ACF location providing Support, which is 8:00 A.M. to 8:00 P.M. EST.

"Error" means any defect, including but not limited to a security defect, virus problem or other defect in the Software or Hardware which prevents the Software or Hardware form performing in according with the documentation.

"Hardware" means the hardware components provided by ACF in accordance with the Q-Flow installation.

"Hardware Audit" means submitting serial numbers and pictures (if requested) of all applicable hardware components and confirming these items are in working undamaged condition. This should be submitted to ACF via email to the Customer Care Coordinator for documentation purposes. In the event ACF must conduct an on-site visit, "Customer" incurs applicable travel, lodging and labor fees.

"Patch" means a fix to specific Software deficiencies that occur within the "Customer's" specific environment. A Patch shall be made available only for the current release.

"Product" means the Software and hardware, specifically as purchased from ACF.

"Service Level Support" means, collectively, Support as set forth in Service Level Support section hereof.

"Software" means ACF's software called Q-flow hereto, including any supporting documentation and versions greater than 5.0.

"Unit" means the field replaceable hardware portions of the Product (or parts thereof).

"Service Pack" Example: Q-Flow version 5.8sp2

The software that is covered under this maintenance contract is defined as "Q-Flow software" and does not include upgrades, patches, or repairs to Microsoft products.

4. **Extended Hardware "Limited" Warranty** The Extended "Limited" Warranty provides for the replacement of components that fail due to manufacturing defects in materials and workmanship. Excluded from warranty coverage are acts of nature, such as electrical storms, floods, fire, etc., acts of war and terrorism, criminal acts, customer damage and/or negligence. Your warranty purchase requires that you allow our help desk to perform a minimum amount of troubleshooting/diagnostics to provide indicators of the appropriate actions required to resolve the failure and to identify which actions may be required. For all warranty claims and repairs, ACF will assist Customer in obtaining repairs of equal or compatible replacements from the original manufacturer or vendor. Customer will report all problems relating to the Hardware directly to ACF and will not directly contact the original manufacturer or vendor without ACF's prior written consent. The hardware provided from ACF is non-proprietary, thus the customer has the freedom to make changes as needed to the hardware in terms of upgrading operating systems or making minor repairs without having to contact ACF for permission. Consultation with ACF is strongly recommended when upgrading operating systems to ensure compatibility with existing Q-flow software. Upgrades, patches, or repairs to Microsoft software (i.e., operating systems and database) are the responsibility of the customer and are not covered under this contract. When replacing hardware ACF retains the right to replace items with equal or better components. Please avoid lapsed warranty coverage, as additional re-instatement conditions and fees may apply. All replacement hardware will be express shipped, however ACF will not be held responsible for international shipping delays due to customs processing. International duties and taxes may incur an additional fee.

5. **Service Level Support Description**
The services covered by this agreement include the following:
a) Software updates, defined specifically as the distribution, whether public or private, of an initial or new and updated version of ACF Software. Software updates refer to service pack or point updates (Example: Version 2.0 to 2.2);

b) Correction of any Errors in the Software or Hardware;

c) E-mail and Phone Technical Assistance;

d) Software and Hardware Support Services;

e) Emergency Support Service;
ACF's personnel will provide a level of support service with suitable knowledge of and experience in the technical maintenance of the Products. Where there is a fault or failure of the Products, urgency and emphasis will be in priority of:

- Traffic restoration;
- Performance affirmation; and network restoration or normalization.

6. **Service Request Severity Classifications**
There are four (4) Service Request severity classifications: (a) Critical; (b) High; (c) Medium; and (d) Low. Critical, High and Medium Service Requests pertain to problems in the Product. Low Service Requests pertain to questions about the Product or Services. The four (4) Service Request severity classifications are defined as follows:

Critical: Error causes a majority of the Software to be down and unusable, resulting in total disruption of work or other critical business impact; no workaround is available.
High: Error causes major feature/function failure; operations are severely restricted; workaround is available.
Medium: Error causes minor feature/function failure; minor impact on usage, acceptable workaround deployed.
Low: Minor Error or requested enhancement; general information, documentation error, software modification request.

(a) Once ACF customer support receives a support request, a customer support representative will provide feedback to Customer that the request has been logged and assigned to the appropriate engineer. The exact response will vary depending on the issue and the response time will commence as soon as practicable after the support request is received.

(b) ACF will use diligent efforts to meet the following targets for response and resolution to reported Errors. A response is measured from the time that an Error is reported (by phone for Critical and High Errors) and all supporting detail has been provided. A Resolution is an answer, fix, or a workaround to the support request.   ACF will provide resources on a substantially continuous basis to address Critical or High Errors until resolved.

Type of Error	Response Target	Resolution Target	Nature of Resolution	Shipment Method
Critical	30 minutes	1 business day	workaround is provided, patch is provided, fix incorporated into future release	Overnight Shipping (shipment needs must be determined prior to 2:00 pm Eastern Time for guaranteed next day delivery)
High	30 minutes	2 business days	workaround is provided, product patch is provided, fix incorporated into future release	Overnight (shipment needs must be determined prior to 2:00 pm Eastern Time for guaranteed next day delivery)
Medium	1 business day	10 business days	answer to question(s) provided, workaround is provided, fix incorporated into future release	Ground Shipping
Low	3 business days	Next release	answer to question and/or workaround or fix is provided. Enhancements implemented at ACF's discretion.	Ground Shipping

(c) Replacement hardware, excluding full standing kiosks, will be shipped overnight if necessary for the resolution of Critical and High level issues within the CONUS. While every effort will be made to provide overnight shipping for all Critical or High level issues, only those shipment needs which are determined prior to 2:00 pm Eastern Time are guaranteed next day. Replacement hardware for all Medium and Low level issues will be delivered via ground shipment.

7. Response Time and Service Level Support:

To provide full Solution Maintenance, ACF requests that "Customer" retains Internet Explorer (IE) on the web server as ACF Technologies, Inc.is web based. In the event the "Customer" removes IE, ACF support response can be delayed and/or voided. ACF will route each Service Request to the appropriate ACF technician within thirty minutes of e-mail receipt or registered phone-in call. ACF shall contact "Customer" in order to provide assistance concerning the Service Request, by e-mail or phone. If ACF cannot reach "Customer" by e-mail upon the first attempt, a phone call will be made to "Customer" in order to assist in the resolution of the problem.

New requirements that exceed the current functionality will have to be submitted as a new addition to the software, therefore will need to be quoted and added to the contract.

Before submitting a Service Request, the "Customer" shall gather as much information as possible regarding the problem before sending an e-mail to ACF Help Desk Support Services Office, including:

- Site name, address and telephone number;
- Site contact name;
- Model and serial number (s) of the affected equipment
- Product name, version and release;
- Platform (hardware and operating system) on which the software is running;
- Severity of the problem;
- If submitting a problem, description of the problem (including error numbers, error messages, and the circumstances under which problem occurred, including the events and actions leading up to

the problem), and any additional information that might be available, such as log information, screen captures, data, etc.;
- Brief description of the diagnosis by the "Customer" personnel.

Upon receipt of a Service Request, ACF will proceed as follows:

- Validate the Service Request and priority of the Error;
- Validate information regarding Error provided by the "Customer";
- Provide a Patch or otherwise remedy the alleged Error within time frame as described above in Section 6b of the Maintenance Service Agreement.

8. E-mail and Phone Technical Assistance.

ACF will provide Remote Assistance to the "Customer", by e-mail or telephone access to the ACF Help Desk Support Services Office in order to resolve Service Requests. Standard support hours are Monday to Friday, 8:00 A.M. to 8:00 P.M. Eastern Time for phone or email support. Weekend support hours are provided from 9:00 A.M. to 3:00 P.M. Eastern Time for Critical or High Errors. Weekend support is provided via e-mail with call back response time of 30 minutes if proper contact information is provided. 24 hour call back support provided for Emergency purposes only.

Customer shall perform tasks as requested by ACF to aid in the resolution of problems, and shall implement all reasonable workarounds to problems as directed by ACF. Customer shall facilitate VPN connectivity to allow ACF to remotely access and diagnose problems in the Software. ACF may identify errors arising from non-ACF hardware or software or from unauthorized modifications to hardware or software. In such cases ACF reserves the right to charge Customer for correcting such errors at then current rates for services.

Once a diagnosis has been pin-pointed, ACF's technical service representative will coordinate the resolution course with the "Customer's" staff members, which will be informed regularly of the process of an open Service Request via a return telephone call, through email or a faxed printed report.

ACF will use reasonable efforts to correct Errors in the Software when such Errors are reported to ACF, in accordance with the service levels below. ACF does not warrant that all Software Errors will be corrected.

(a) E-mail and Telephone contact. The "Customer" may contact ACF Technologies Help Desk Support Services Office regarding such Service Requests via telephone to the following number: (828) 398-0040; or by e-mail to the following address: support@acftechnologies.com.

(b) Service Request Number. ACF will assign to each Error reported by the "Customer" a number Service Request that will be logged, tracked and stored in ACF system.

(c) Service Request Management. ACF will dedicate continuous attention to Critical and Major Service Requests until service is restored or Service Request is closed. ACF will work to resolve the Service Request and restore service, at which point ACF will close the Service Request.

(d) Service Request Submission. Under this Agreement, there is no limit to the number of Service Requests that the "Customer" may submit for resolution.

9. On-Site Support

If it is determined that an on-site visit is needed in order to make a troubleshooting/diagnostic, it will be quoted additionally. An ACF service department representative will make all the arrangements for arrival of an ACF technician in less than two business days from the receipt of purchase order.

Once on-site, if it is necessary for Hardware to be replaced, hardware will either be direct shipped from ACF, drop-shipped by the manufacturer or purchased locally at ACF's expense.

10. Prices, Term and Payment Terms

"Customer" agrees to pay a fee equal to $ for a coverage period beginning on and expiring on .

All payments shall be made in US dollars, in full in advance of the commencement of the service/coverage. In the event "Customer" has a shared server to support Q-Flow with another "Customer" or location, these two "Customers" will share one Solution Maintenance Support contract. Regardless of different purchase orders or contracts to purchase the Q-Flow solution. Each "Customer's" renewal is contingent upon the other. In the event one "Customer" chooses not to renew and the "Customer" on a shared server wishes to continue coverage the "Customer" continuing coverage will be responsible for paying for the server license maintenance as well as completing a hardware audit. This is determined as complete when a signed Hardware Audit document from ACF is received by the "Customer". All taxes collected by ACF on behalf of the "Customer" will be paid to the proper taxing authorities as required.

ACF will not be obligated to provide any services other than those set forth in this Exhibit A. Unless otherwise agreed, Customer shall pay ACF at then-current rates for Additional Services provided, including, but not limited to: (i) on-site service and related travel expenses; (ii) data conversion, system integration or other consulting services; (iii) service or maintenance of third-party software; (iv) services caused by Customer's fault, misuse, negligence or failure to perform Customer responsibilities, including failure by Customer to maintain adequate data back-ups; (v) services caused by a malfunction of our problem with any product or goods other than those licensed by Customer from ACF; (vi) services caused by the use by Customer or an version of the Software other than the current or immediately prior version; (vii) changes to Customer systems requiring re-mapping of Software and/or Hardware.

11. Term and Termination

Either party may terminate this agreement if the other is in material breach or in default of any obligation hereunder, and such breach or default is not cured, or, if cure is not practical within thirty (30) days, commenced cure, within fifteen (15) days of written notice from the other party. In the case of material breach by ACF, the "Customer" shall receive a pro-rata refund for the unused portion of the services.

Notwithstanding the aforesaid, the "Customer" may terminate this Agreement at any time, without cause and without compromising its liability, by notifying ACF its decision in writing at least sixty (60) days in advance prior to the termination date. There will be NO refunds given for early termination of the maintenance agreement, except as provided above in the foregoing paragraph.

Effective immediately upon termination of this agreement, ACF will cease to provide any maintenance support service to the "Customer".

12. Confidentiality

Each party shall not use the Confidential Information of the other party for any purposes except as necessary to fulfill its obligations under this agreement. Each party shall retain the Confidential Information in strictest confidence and shall not furnish any Confidential Information to any third party without the other party's written consent, except to those of its employees who need to know such information in order to fulfill their obligations under this agreement, provided such employees are under a written contractual restriction covering the Confidential Information that is no less restrictive or protective than the terms of this section.

Each party agrees to use proprietary information only for the purposes of this Agreement or as otherwise expressly permitted by the other party. Notwithstanding the foregoing, each party's confidentiality obligations hereunder shall not apply to information which: (i) is already known to the other party; (ii) becomes publicly available without fault of the other party; (iii) is rightfully obtained by the other party from a third party without restriction as to disclosure; (iv) is shown by written record to be developed independently by either party without use of the other party's proprietary information; (v) is shown by written record to have been known or available to either party without restriction as to disclosure at the time of either party's receipt of such information; or (vi) is required to be disclosed by law.

The Confidential Information shall remain the sole property of the disclosing party. No license is granted by either party under any intellectual property rights or other proprietary rights by the disclosure of any information hereunder. The Confidential Information is provided "as is" with no warranty as to completeness or accuracy.

Each party acknowledges and agrees that a breach of any of its obligations hereunder will result in irreparable injury to the other party for which there will be no adequate remedy at law, and the other party shall be entitled to appropriate equitable relief in the event of any breach, threatened breach, or intended breach of this agreement by the other party. Such remedies shall be in addition to all other remedies available at law or in equity.

At all times, both during and after the term of this Agreement, each party shall: (a) hold Confidential Information of the other party in confidence; (b) not use, transfer, publish, disclose or report the other party's Confidential Information directly or indirectly, except such disclosure to its employees or authorized third parties as may be necessary in the ordinary course of performing under this Agreement; and (c) not use the other party's Confidential Information in order to further its own interests or the interests of any entity other than the providing party.

13. Assignment

The "Customer" may not transfer this Agreement in whole or in part to any other entity or organization without full written consent from ACF Technologies, Inc.

14. Notices

All notices or other communications required or permitted to be given hereunder shall be in writing, shall be deemed duly given upon actual receipt and shall be delivered by registered or certified mail, or by a generally recognized overnight courier service, or by facsimile or other generally accepted means of electronic transmission and addressed as follow:

ACF Technologies, Inc.
64 Peachtree Road
Suite 201
Asheville NC 28803
Ph: 828-398-0040
Fax: 855-515-5351

15. Force Majeure

Neither party shall be liable for any act, omission or failure to fulfill its obligations under this agreement if such act, omission or failure arises from any cause reasonably beyond its control, without its fault or negligence, and which could not reasonably have been remedied, such as, but not limited to, acts of God, reasons of fire and floods. The party unable to fulfill its obligations shall immediately notify in writing the other party of the reasons for its failure to fulfill its obligations and the effect of such failure and shall use its best efforts to reduce and overcome within a reasonable time, the effect of the Force Majeure event which affect the performance of its obligations.

16. Waiver

The waiver or failure of either party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder.

17. Enforceability

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, or shall be changed following a decision by a competent court, the parties shall endeavor to amend the provision so affected so as to make them valid and enforceable whilst reflecting as closely as possible the commercial purpose and intent of said provision.

It is agreed that this invalidity or unenforceability of such provision shall not affect the other provisions of this agreement.

18. Headings

The headings contained in this agreement and the exhibits attached hereto are intended for convenience or reference only and shall not control or affect the meaning or construction of any provisions of this agreement.

19. Representations

The persons signing this Agreement on behalf of each party hereby warrant and represent that they are authorized to execute this Agreement and agree to be fully responsible personally for breach of this warranty and representations.
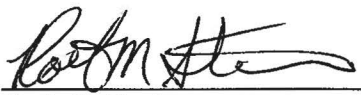
APPROVAL FOR AGREEMENT AS DESCRIBED IN:
- COVER LETTER
- EXHIBIT A

Approved:
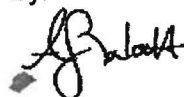
CLARK COUNTY MANAGER

FOR ~~Mark McCauley~~

Mark McCauley

Date: 9/19/16

APPROVED AS TO FORM ONLY
ANTHONY F. GOLIK
Prosecuting Attorney

Jane E Vetto

Jane Vetto,
Senior Deputy Civil Prosecutor

ACF TECHNOLOGIES, INC.
(CONTRACTOR)

By:

Printed Name: AJ Wooten

Printed Title: Business Development

Date: Tuesday, February 23, 2016