



City of Tacoma, WA

ENVIRONMENTAL SERVICES

REQUEST FOR PROPOSAL

ON-CALL FACILITY CONTRACTING SERVICES

SPECIFICATION NO. ES22-0324F



**City of Tacoma
Environmental Services/Science and Engineering Division**

**REQUEST FOR PROPOSAL ES22-0324F
On Call Facility Contracting Services**

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, March 14, 2023

Submittals must be received by the City's Procurement and Payables Division prior to 11:00 a.m. Pacific Time.

For electronic submittals, the City of Tacoma will designate the time of receipt recorded by our email, bids@cityoftacoma.org, as the official time of receipt. This clock will be used as the official time of receipt of all parts of electronic bid submittals.

Submittal Delivery: Sealed submittals will be received as follows:

By Email:

bids@cityoftacoma.org

Maximum file size: 35 MB. Multiple emails may be sent for each submittal.

Bid Opening: Sealed submittals in response to a RFB will be opened Tuesday's at 11AM by a purchasing representative and read aloud during a public bid opening held at the Tacoma Public Utilities Administrative Building North, 3628 S. 35th Street, Tacoma, WA 98409, conference room M-1, located on the main floor. They will also be held virtually Tuesday's at 11AM. Attend [via this link](#) or call 1 (253) 215 8782.

Submittals in response to an RFP, RFQ or RFI will be recorded as received. As soon as possible, after 1:00 PM, on the day of submittal deadline, preliminary results will be posted to www.TacomaPurchasing.org.

Solicitation Documents: An electronic copy of the complete solicitation documents may be viewed and obtained by accessing the City of Tacoma Purchasing website at www.TacomaPurchasing.org.

- [Register for the Bid Holders List](#) to receive notices of addenda, questions and answers and related updates.
- Click here to see a [list of vendors registered for this solicitation](#).

Pre-Proposal Meeting: A pre-proposal meeting will be held on Tuesday, February 28, 2023 at 1 p.m. at Solid Waste Management Recovery & Transfer Center, 3510 South Mullen Street, Tacoma WA 98409.

Project Scope: The City of Tacoma (City), Environmental Services Department is soliciting a Request for Proposal (RFP) from qualified firms to furnish labor, materials, equipment, and oversight to perform maintenance, repair, renovation and other mutually agreed upon work at the City of Tacoma Environmental Services managed facilities on an on-call basis. These facilities include the Solid Waste Recovery and Transfer Center (RTC) plus any off-site Solid Waste facilities including compactor sites and recycling drop off locations; the Central

Wastewater Treatment Plant, North End Wastewater Treatment Plant and the various off-site pump stations associated with our sewage and storm collection systems.

Estimate: \$1,200,000

Paid Sick Leave: The City of Tacoma requires all employers to provide paid sick leave as set forth in Title 18 of the Tacoma Municipal Code. For more information, visit [our Minimum Employment Standards Paid Sick Leave webpage](#).

Americans with Disabilities Act (ADA Information: The City of Tacoma, in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. Specification materials can be made available in an alternate format by emailing Gail Himes at ghimes@cityoftacoma.org, or by calling her collect at 253-591-5785.

Title VI Information:

“The City of Tacoma” in accordance with provisions of Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 U.S.C. sections 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration of award.

Additional Information: Requests for information regarding the specifications may be obtained by contacting Dawn DeJarlais, Senior Buyer by email to ddejarlais@cityoftacoma.org.

Protest Policy: City of Tacoma [protest policy](#), located at www.tacomapurchasing.org, specifies procedures for protests submitted prior to and after submittal deadline.



Meeting sites are accessible to persons with disabilities. Reasonable accommodations for persons with disabilities can be arranged with 48 hours advance notice by calling 253-502-8468.

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SUBMITTAL CHECK LIST

This checklist identifies items to be included with your submittal. Any submittal received without these required items may be deemed non-responsive and not be considered for award. Submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposal page.

The following items make up your submittal package:	
Electronic copy of your complete submittal package	
Price Proposal Form (Appendix A)	
Signature Page (Appendix A)	
Certificate of Compliance with Wage Payment Status (Appendix A)	
State Responsibility and Reciprocal Bid Preference Informaiton (Appendix A)	
Bid Bond (Appendix A)	
Minimum Qualification (Appendix A)	
Equity in Contracting Requirements and Inclusion Plan Template (Appendix A)	
Content to be Submitted Section 12 (12.1 -12.10)	
After award, the following documents will be executed:	
Contract (Appendix C)	
Certificate of Insurance and related endorsements (Appendix C)	
Performance and Payment Bond to the City of Tacoma (Appendix C)	
State Prevailing Wage Rates and General Requirements (Appendix C)	
City of Tacoma – Local Employment and Apprenticeship Training Program (LEAP) Regulations for Public Works Contracts (Appendix C)	

1. BACKGROUND

The City of Tacoma (City), Environmental Services Department is soliciting a Request for Proposal (RFP) from qualified firms to furnish labor, materials, equipment, and oversight to perform maintenance, repair, renovation and other mutually agreed upon work at the City of Tacoma Environmental Services managed facilities on an on-call basis. These facilities include the Solid Waste Recovery and Transfer Center (RTC) plus any off-site Solid Waste facilities including compactor sites and recycling drop off locations; the Central Wastewater Treatment Plant, Northend Wastewater Treatment Plant and the various off-site pump stations associated with our sewage and storm collection systems.

It is Environmental Services intent to award a two (2) year contract resulting from this RFP, with an additional three (3) one-year option to extend the contract period for a total of five (5) years. Environmental Services anticipates utilization of the contract services at a rate of approximately \$400,000 per year, for a cumulative total of \$1,200,000. The rate of use of these services is largely dictated by the amount of unplanned work. Environmental Services may elect to award a contract to multiple companies as a result of this solicitation.

To learn more about the City of Tacoma, visit www.cityoftacoma.org.

Submittals submitted and/or the selected Company (ies) may be used for projects of similar type and scope at the sole discretion of the City for up to one year.

2. MINIMUM REQUIREMENTS

In order to be eligible to submit a proposal in response to this RFP, responding contractors must clearly demonstrate compliance with the following minimum qualifications and sign the form provided in Appendix A:

The Contractor shall be a legal entity and have at least 7 years demonstrated successful experience with the relevant work identified below working with City or County governmental agencies similar in size to the City of Tacoma. It will be the City's sole determination if such experience meets the minimum requirements.

The Contractor shall not have been prohibited from doing business with any governmental entity for any reason for the past 10 years.

The Contractor must not be operating in Chapter 11 or any other financial restraints that would preclude their ability to complete work as outlined in the RFP.

3. SUMMARY OF SCOPE OF SERVICES AND DELIVERABLES

It is the City's intent to select an on-call contractor to maintain, repair and renovate City of Tacoma Environmental Services facilities and equipment.

The work includes hiring craft and professional contracts inclusive of material procurement as may be required for said facility maintenance and repair on an on-call as needed basis. The work, also, as outlined below could include performing preventative and corrective repairs,

installation, testing, calibration of equipment of complex systems. The following list includes the types of work, but the list is not limited to, thus could include other services as authorized but generally in line with facility maintenance and repair.

- Building repair, including structural repair such as siding, gutters, support beams.
- HVAC maintenance and repair, including building climate control software upgrade and support and install, inspect, test, calibrate equipment and components of complex commercial heating, ventilating, and air conditioning systems, including but not limited to, heat pumps and chillers. The work could include replacement, repair or rebuilding of heat pumps, water chillers, condensers, evaporators, and cooling towers.
- Repair or replace heating coils, strip heaters, baseboard heaters, thermostats, direct digital control system, variable frequency drive units, and electrical control circuits;
- Rebuild or replace water pumps, process pumps and compressor motors;
- Troubleshoot and repair of pneumatic and mechanical equipment; associated building temperature and control systems;
- Major or minor repairs to process piping, plumbing and water supply systems, cut, groove, and thread piping and install plumbing;
- Install, rebuild, or replace a variety of electrical devices including branch surface panels, motor starters, contactors, automatic lighting controls, computer signal cables and receptacles. Repair or replace electrical wiring, electrical conduits, breaker panels, control panels, switches, receptables and lighting;
- Inspect, troubleshoot, repair, or replace other building systems and equipment including fire alarm panels, remote monitoring sensors and alarms, interlocked controls, leak detection systems, emergency generators, door controls, lighting systems, etc.
- Provide design and installation of components for conference room connectivity in accordance with City standard design and provide compatible equipment that matches existing.
- Metal component fabrication. The work must be conducted by a State of Washington certified and American Society of Mechanical Engineers (ASME) code certified welding of various mechanical or building structural components.
- Perform a variety of building repair activities including carpentry, painting, floor covering; wall, ceiling, and roof repair; set ceramic and vinyl tiles; refinish furniture; deconstruct and erect modular furniture.
- Inspect and maintain elevators and controls. Major and minor repairs of cable and hydraulic conveyance structures.
- Install, alter, and rekey locks and perform other locksmithing duties as required.
- Perform building maintenance duties utilizing a variety of tools and machines used in the trades.
- Support services, such as material purchasing and equipment rental.
- All associated trades required for general construction, remodeling and building maintenance work, including carpentry, concrete and including hose other trades listed above.
- On-site utility repairs, including storm, sanitary, water and electrical;
- Asphalt removal and replacement;
- Gravel road maintenance;
- Channelization maintenance or new striping;
- Structural welding services;
- Window Repair and Replacement Services
- Door repair services, including roll-up and pedestrian type both automatic and manual;

- Building interior and exterior pressure washing;
- Interior, exterior, tank, and piping coating systems;
- Environmental controls including landfill gas systems and repair of landfill cap;
- Truck scale maintenance, repair, and calibration services;
- Instrumentation monitoring system maintenance. testing and repair;
- Restoration such as landscaping or hydroseeding;
- New and or restoration (concrete spall repair, and crack injection) of cement concrete slabs, walls and other appurtenances.
- Provide other services as mutually agreed upon.

In addition, there may be times when Environmental Services will require temporary other services not covered in the proposal. These types of services must be individually approved by Environmental Services and will work with facility maintenance staff under their supervision.

3.1 WORK PLAN

The primary purpose of this contract is to provide on-call contractor services for the City's facilities operated by Environmental Services Department.

Environmental Services will coordinate all work with the Contractor. The work scope will be outlined but may require development together with the Contractor. The selected contractor(s) will assist in developing project schedules and timelines, as required. Any request provided to the Contractor for required services will be performed based on the proposal unit rates and/or markups as provided herein and proposed with a start date within 5 working days, unless approved in writing by the City's representative. If the work request involves the need for a scope of work requiring crafts or professional services not outlined in the unit rates a proposal with scope and costs must be provided to the City within 15 working days. The City may provide oversight by on-site staff, inspection staff or special inspection services.

It is the intent at the conclusion of this RFP for the City to issue a purchase order and contract for the full amount authorized by the City Council. When work is to proceed under the final contract the following sections outline how work will proceed.

The Contractor will be responsible for actions of its employees or sub-contractors causing any contamination or spills of hazardous materials, including, but not limited to, spill reporting, containment and cleanup. The City will be responsible for actions or directions of its employees. The City of Tacoma Environmental Services Department operates these facilities under an Environmental and Sustainable Management System (ESMS). Refer to Appendix B for the rules and requirements surrounding this system in the performance of the work. For each project the Contractor and/or the subcontractor(s) will be required to fill out the ESMS documentation in Appendix B unless previously completed or is deemed not required by the City.

The following outlines the process that will be used in executed the work assigned. The following general describes the process but can be modified as mutually agreed or as directed by the City.

3.1.1 Project Assignment

As previously stated above, it is the intent at the conclusion of this RFP for the City to issue a purchase order and contract for the full amount authorized by the City Council. When work is to proceed under the final contract the following will be the anticipated events to execute work:

- City representative will put forth an initial work request to the on-call contractor to visit the site to start the process. The site visit shall be conducted within 24 hours or as agreed upon between the City representative and the Contractor.
- The work scope will be developed, agreed upon between the City and the Contractor.
- Once scope of work is defined, Contractor will submit a Scope of Services and Cost of Project (COP) to the City representative for review.
- Upon approval of the COP, a Task Authorization will be issued by the City representative to the Contract Manager with attached exhibits of the scope of work and COP.
- A Task Authorization will be developed by the Contract Manager then signatures obtained from the City's and the Contractor's signature authority.
- Once the Task Authorization is signed, a notice to proceed will be issued to the Contractor to start work.

The form of the Task Authorization is included in Appendix B for reference.

In addition, these requests may stipulate the number of staff to be assigned to the work or they may request the Contractor provide estimates prior to commencing the work, to include the scope of work for the project, meeting with a City representative, and collectively developing the final scope of work, design scheme and/or requirements, schedule, personnel required, equipment needs and cost.

3.1.2 Project Management

The Contractor will generally coordinate their own work, including providing a qualified superintendent or foreman. Schedules, timelines, any on-site prep and priority of work will be coordinated through the assigned City staff leading the project. The proposal shall identify the Contractor's proposed project manager for the contract. The contractor project manager can only be changed for extenuating circumstances or the individual has left the company. Nonetheless, the project manager cannot be modified through the life of the contract without written approval from the City.

In addition, the City will make the final determination as to whether or not it is appropriate for the Contractor to assign a project manager to subcontractor work. When the Contractor does assign a project manager to a subcontractor, the project manager will be billed at a maximum multiplier of 1.10 to the City.

Tools and equipment owned by the City may be made available for use by the Contractor. This must be agreed upon at the time of the request and at the sole discretion of the City to allow for the use. Equipment or tools not available may be purchased or rented through City contracts or vendors, supplied by the Contractor as provided in the scope of work prepared for the work.

3.1.3 Completion of Work and Inspection

In this task, the Contractor shall complete assigned projects in accordance with the requirements outlined in the scope of work in the signed Task Authorization and in compliance with all applicable federal, state and local codes, regulations and permits, as well as industry codes and standards including best practices. These shall include the latest edition of, but are not limited to:

- Washington State Building and Energy Code and all references
- International Building Code (IBC)
- American Society of Mechanical Engineers (ASME)
- American National Standards Institute (ANSI)
- American Institute of Steel Construction (AISC)
- National Electrical Code and Safety Code (NEC, NESC)
- American Welding Society (AWS)
- Washington Industrial Safety and Health Act (WISHA)/Occupational Safety and Health Act (OSHA)
- Tacoma Municipal Code (TMC), as applicable

When applicable, based on the scope of work, the Contractor shall furnish complete parts lists, service manuals and/or any other information available for continued maintenance of the furnished units and/or systems. The information contained in the documentation must be specific to the work provided and no general manufacturer information is acceptable.

All work shall carry at minimum a one-year warranty or the manufacturer's warranty, whichever is longer.

3.2 GENERAL REQUIREMENTS

The performance of the scope of work must be fully coordinated with identified City assigned staff once scope and work schedule of each task is complete and a Notice to Proceed has been issued for that task.

3.2.1 General Safety Requirements

The Contractor will comply with all applicable laws, ordinances, rules, and regulations of any public authority for safety of persons and property, including requirements of the Washington Industrial Safety and Health Administration per Washington Administrative Code 296-24.

The Contractor shall comply with work site conditions and work rules established by Environmental Services and shall cooperate with City staff in enforcing work site conditions and work rules which directly affect the performance of the services, including but not limited to, start and stop times, smoking regulations, check-in and check-out procedures, work site safety and clearance procedures.

Without limiting the foregoing, the Contractor will use good faith efforts to properly train its employees about proper and safe work methods and work site safety and will provide notice to

the assigned City staff of work safety issues immediately upon becoming aware of said condition.

3.2.2 General Site Area Protection and Cleanup

The Contractor shall, in connection with performance of this Contract, create no hazards to the City employees and guests and shall coordinate and cooperate with all personnel to protect the life and health of all persons working at or visiting the site.

The Contractor is to keep the work area clean, neat and in an orderly condition. Contractor shall be responsible for cleanup of the job site and removal of any rubbish or waste products generated in the course of the work.

The Contractor shall continuously protect with work and the property, including materials, facility and equipment furnished by the City from damage and loss. The Contractor shall maintain all passageways, guard fences, lights, work zone delineation materials and equipment used, and other facilities used by its personal for the protection required by the public authority.

3.2.3 Changes

Environmental Services may, at any time during the performance of the work, in writing or email release a change notice, direct changes in the service which are within the general scope of the Contract, including but not limited to:

- Specifications and drawings;
- Method and manner of performance of the work;
- City furnished equipment, materials, services at the site; or
- Performance period for the work.

Any written order or oral order (including direction, instruction, interpretation, or determination) from the assigned City staff to the Contractor's work that causes any change, shall be treated as a change notice under this Article, provided that the Contractor gives the City assigned staff written notice within three (3) days stating the date, circumstances and source of the order and the Contractor regards the order as a change notice.

If the Contractor agrees to the requested change and intends to request an equitable adjustment in the amount of the agreed upon cost or an extension of the time required for the work the Contractor shall submit a written request for an equitable adjustment within fifteen (15) days of the occurrence of the change in sufficient detail to permit evaluation by the City. Upon mutual agreement between the City and the Contractor as to the extent of the equitable adjustment for the change, the Contract will be modified by written Change Order executed by both parties.

NOTE: only the City's assigned staff or City management staff can authorize scope, equitable adjustment, or schedule changes in the course of the assigned work.

3.2.4 Permits and Fees

The Contractor shall furnish all permits, inspection fees, and fees required in the performance of this contract, including those charged under RCW 39.12.070 by the Department of Labor and Industries.

3.2.5 Uniforms

Following contract award, and prior to the implementation of contracting services, the successful proposer shall work with the City to provide acceptable uniforms that present a professional image and favorable impression. All required Personal Protective Equipment required by the work and the facility operations shall be worn. Clothing must be clean and in good repair. Wearing denim jeans, shorts, t-shirts, cropped clothing, sandals, or other clothing that has any writing or pictures is not allowed.

Any contractor, technician or other employee working for the contractor in the City's facilities will have a City of Tacoma identification badge or visitor badge on their persona during the work.

3.2.6 Equipment

The Contractor is responsible to provide all materials, tools, and equipment necessary to complete any assigned work.

3.3.7 Contract Pricing/Compensation

All worked shall be billed on a unit price basis or as agreed to as part of the final contract. Invoices shall be submitted monthly or at the conclusion of the work, whichever is agreed upon at the start of the work. Unless specified otherwise, all prices shall be fixed through the duration of the contract. The contract amount authorized does not intend to guarantee payment as the City intends to pay for work performed. Invoices can only be submitted by the Contractor. The City will not accept direct billing from any subcontractor for work performed. All invoices shall contain the facility name where worked occurred, scope of work completed, all costs required (include the hours, unit prices, markups, etc.) from the agreed upon cost of proposal, and shall reference the job number used on the Task Authorization.

On an annual basis or as agreed to as part of the contract, all pricing, other than prevailing wage, may be escalated or deescalated to reflect changes, if any, in materials, overhead and profit costs. The Contractor must request this adjustment in pricing, in writing sixty (60) days prior to contract renewal, and the City must approve, in writing, before any pricing is changed, unless the pricing is tied to the direct costs of employees as provided for in union contracts or prevailing wages and uses simple multipliers for indirect and overhead/decrease in Price Proposal section of their proposal.

Billing rates quoted in response to this RFP shall remain in effect for the duration of the contract. Annual adjustments thereafter will be considered only for changes in federal, state, or municipal law, regulation or administrative ruling requiring any change in work hours, wage, or benefit rates, working conditions or other costs to the Contractor in providing services. The Contractor

shall give the City at least thirty (30) days prior written notice of the change in rates and the effective date of the proposed change. In the event the City and Contractor cannot agree on an adjustment, the City may terminate the agreement.

4. CONTRACT TERM

The contract will be for a two-year period with the option to renew the contract three additional one-year terms. The City reserves the right to cancel the contract for any reason, by written notice, as stipulated in the contract.

5. CALENDAR OF EVENTS

This is a tentative schedule only and may be altered at the sole discretion of the City.

Contract may be issued after City Council approval.

The anticipated schedule of events concerning this RFP is as follows:

Publish and issue RFP:	2/15/2023
Pre-Submittal Questions:	2/28/2023
Response to Questions:	3/01/2023
Submittal Due Date:	3/14/2023
Submittal Evaluated:	3/31/2023
Interviews/presentations, on or about:	Week of 4/3/2023
Award Recommendation, on or about:	4/10/2023
City Council Approval on or about:	5/02/2023

6. INQUIRIES

- 6.1** Questions should be submitted to Dawn DeJarlais via email to ddejarlais@cityoftacoma.org. Subject line to read:

ES22-0324F – On-call Facility Contracting Services – *VENDOR NAME*

- 6.2** Questions are due by 3 p.m. on the date included in the Calendar of Events section.
- 6.3** Questions marked confidential will not be answered or included.
- 6.4** The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential.
- 6.5** The answers are not typically considered an addendum.
- 6.6** The City will not be responsible for unsuccessful submittal of questions.

- 6.7** Written answers to questions will be posted in the event approximately one week after the question deadline.

7. PRE-PROPOSAL MEETING

- 7.1** A pre-proposal meeting will be held at 1 p.m. on Tuesday, February 28, 2023 at Solid Waste Management Recovery and Transfer Center, 3510 South Mullen Street, Tacoma WA 98409. In addition, any questions and request for clarifications of the Request for Proposal must be submitted as stated in the [inquiries](#) section.

8. DISCLAIMER

The City is not liable for any costs incurred by the Respondent for the preparation of materials, or a submittal submitted in response to this RFP, for conducting any presentations to the City, or any other activities related to responding to this RFP, or to any subsequent requirements of the contract negotiation process.

9. EVALUATION CRITERIA

A Selection Advisory Committee (SAC) will review and evaluate submittals. After the evaluation, the SAC may conduct interviews of the most qualified Respondents before final selection.

The relative weight of each scoring criteria is indicated in the table below.

Criteria	Max Points
Response Cover Letter	0
Qualifications/Experience of Firm	20
Contracting & Project Staff Qualifications	20
Supplemental Questions	15
Cost Proposal	25
Client References	5
Sustainability	5
Equity in Contracting	10
Credit Card Acceptance	0
Contract Exceptions	0
Total	100

- 9.1** The SAC may select one or more respondent to provide the services required.
- 9.2** The SAC may use references to clarify information in the submittals and interviews, if conducted, which may affect the rating. The City reserves the right to contact references other than those included in the submittal.
- 9.3** A significant deficiency in any one criterion is grounds for rejection of the submittal.

10. INTERVIEWS / ORAL PRESENTATIONS

An invitation to interview may be extended to Respondents based on SAC review of the written submittals. The SAC reserves the right to adjust scoring based on additional information and/or clarifications provided during interviews.

The City reserves all rights to begin contract negotiations without conducting interviews.

Respondents must be available to interview within three business days' notice.

If interviews are conducted, the SAC will schedule the interviews with the contact person provided in the SOQs. Additional interview information will be provided at the time of invitation. At this time, it is anticipated that the main objective of the interview will be for the SAC to meet the project manager and key personnel that will have direct involvement with the project and hear about their relevant experience and expertise. The City does not intend to meet with firm officials unless they are to be directly involved with the project.

Following interviews, submittals will be rescored using the same criteria as in Section 12 below.

11. RESPONSIVENESS

Respondents agree their submittal is valid until a contract(s) has been executed.

All submittals will be reviewed by the City to determine compliance with the requirements and instructions specified in this RFP. The Respondent is specifically notified that failure to comply with any part of this RFP may result in rejection of the submittal as non-responsive. The City reserves the right, in its sole discretion, to waive irregularities deemed immaterial.

The final selection, if any, will be that submittal which, after review of submissions and potential interviews, in the sole judgement of the City, best meets the requirements set forth in this RFP.

12. CONTENT TO BE SUBMITTED – This section represents 100% of the possible scoring criteria.

Proposals should be formatted as 8 ½" x 11". A "page" is defined as one single-side of a document that has written text or graphics. The font should be Times New Roman or Arial with font size no smaller than 11 and the margins shall be 0.75" or greater. Submittals should be limited to a maximum of 20 pages, double-sided, or 40 pages total, excluding any required forms or resumes. All pages that exceed the specified page limit will not be part of the evaluation.

A full and complete response to each of the "CONTENT TO BE SUBMITTED" items is expected in a single location; do not cross reference to another section in your submittal.

Information that is confidential must be clearly marked and provide an index identifying the affected page number(s) and locations(s) of such identified materials. See Section 1 of the Standard Terms and Conditions – Solicitation 1.06 for Public Disclosure: Proprietary or Confidential Information.

Respondents are to provide complete and detailed responses to all items below. Submittals that are incomplete or conditioned in any way that contain alternatives or items not called for in this RFP, or not in conformity with law, may be rejected as being non-responsive. The City will not accept any submittal containing a substantial deviation from the requirements outlined in this RFP.

Submittals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the respondent's/team's abilities to meet the requirement of this RFP. Emphasis will be on completeness of content. The written submittals should be prepared in the sequential order as outlined below.

The City reserves the right to request clarification of any aspect of a firm's submittal or request additional information that might be required to properly evaluate the submittal. A firm's failure to respond to such a request may result in rejection of the firm's submittal. Firms are required to provide responses to any request clarification within two (2) business days.

Requests for clarification or additional information shall be made at the sole discretion of the City. The City's retention of this right shall no way diminish a Proposer's responsibility to submit a submittal that is current, clear, complete and accurate.

12.1 Response Cover Letter – 0 points

1. The cover should identify the company name and contact person with title. Contract person shall be duly authorized officer, employee, or agent of the company.
2. Include address, mailing address, email address, phone number, fax number and any other information that shall allow the City to reach the contact person quickly and directly.

12.2 Qualifications/Experience of Firm – 20 points

1. Provide a brief description of the firm, history of the firm, years in business, management philosophy and mission statement.
2. Describe the general experience and expertise your company has had with similar works, as described in the RFP.
3. Provide information to verify financial and bonding capabilities.
4. Provide a statement that clearly states the ability to accept responsibility for completing the proposed services in view of the firm's current and project workload.
5. Provide the firm's timeline for acceptance of work requests from the City including the committed timeline for returning required quotes (as applicable) and for starting work once a purchase order is released and notice to proceed is given by the City.

12.3 Contracting & Project Staff Qualifications – 20 points

1. Provide a resume of the Project Manager, superintendent, foreman and/or key staff who would be directly involved in the work covered in the RFP.
2. Describe the approach your firm would use in supervising and scheduling these tasks.
3. Provide resumes, applicable licenses, certificates, and credentials for proposed staff, including Low Pressure Boiler Operator's License and EPA Certifications, Type 1 and II.

12.4 Supplemental Questions – 15 points

Provide a brief response for each of the following questions:

1. *General*
 - a. Describe the firm's ability to respond to emergencies, high priority, and routine work.
 - b. Please indicate any other capabilities your firm has as a flexible, diverse company that can handle a wide range of contracting and repair services.
2. *Craft Labor & Supervision*
 - a. This contract calls for craft labor to be working in several different locations on projects of varying degrees and complexity. How would you propose supervising crews in these instances?
 - b. If supervisor were on-site and no supervision work is needed, could that person be a tradesperson or work on other company business, thus not charging the City for supervisory work?
3. *Subcontracting and Project Experience*
 - a. Discuss how you select and manage subcontractors. How would you select staff to perform work and meet our requirements?
 - b. Discuss how a process could be established with your firm which would allow the City to procure materials through this contract (typically in emergency time-constrained situations).
 - c. Does your firm have a general agreement which allows your union workers to perform minor work in other trades to complete a job without having to bring in many different trades?
 - d. Discuss your project completion process, including: 1) Final inspection; 2) Closeout process; 3) post-installation support; and 4) Documentation.
4. *Safety & Quality Control*
 - a. Discuss your firm's safety record and program. Discuss what safety gear would be provided by your firm. The City will not be supplying personnel protective equipment for the execution of the work unless a mutual agreement is reached on a case-by-case basis.
 - b. Discuss your quality control program. Copies of a quality control plan may be included in an Appendix to your proposal. The plan will not be counted in the page requirements stipulated in the RFP.

12.5 Cost Proposal – 25 points

1. Complete and provide the Proposal Page, located in the Submittal Form Section of the RFP, in its entirety.
2. The proposing firm with the lowest cost per unit price overall will receive the maximum number of points. The second lowest cost per unit prices will receive 5 points less, the third lowest cost per unit price will receive 10 points less and so on.
3. The following summarizes the information to be provided on the Proposal Page:
 - a. Items 1&2, Base Hourly Rate: at a minimum this rate shall be based on the Washington State Prevailing Wage Rates to include base wage and benefits. No supervision markup shall be allowed for a working supervisor's hours.

- b. Items 1&2, Multiplier: Shall include all costs anticipated by the Contractor to perform the services, these costs include, but are not limited to, workers insurance, federal insurance, bonds, overhead, profit, etc.
- c. Items 1&2, Billing Rate: is calculated by the Base Hourly Rate times the Multiplier. This rate will be used for the total billable rate of service.
- d. Item 3, Material and Equipment Multiplier: this is the multiplier that will be used for materials and equipment provided through the contract, based on actual invoice amounts. The multiplier costs include all costs necessary for materials and equipment for the project, but are not limited to overhead and profit.
- e. Item 4, Subcontracting Multiplier: Is the multiplier that will be used by the Contractor for any subcontracted services, these costs included but are not limited to supervision, bonds, insurance, overhead, profit, etc. and shall be inclusive of other incidental costs necessary for the subcontractor to perform the work.

12.6 Client References – 5 points

Provide three client references in the Pacific Northwest to verify the firm's overall expertise for this type of work. The references must have worked with the firm within the last year. Provide complete information such as name of company, contact person, address, phone number, and email address.

12.7 Sustainability – 5 points

Provide information on your company's commitment to the environment. Include your sustainability statement and current practices. For more information, see our [Respondents Guide](#).

A. Does the Respondent have an organizational sustainability plan and/or policy?

☐ Yes ☐ No

Provide additional information if checked "Yes," including whether it is made publicly available (provide link) and how it is communicated to employees.

B. Does the Respondent have:

- Greenhouse gas emission reduction targets? ☐ Yes ☐ No
- Energy and water conservation targets? ☐ Yes ☐ No
- Waste reduction targets? ☐ Yes ☐ No
- Toxics use reduction targets? ☐ Yes ☐ No
- Pollution reduction targets? ☐ Yes ☐ No
- Measure progress regularly and publicly? ☐ Yes ☐ No

C. How will the Respondent, through service delivery and/or their own operations during the contract period:

- Minimize greenhouse gas emissions?
- Minimize polluted stormwater runoff in Tacoma?
- Minimize waste generation?

- Minimize toxic use and/or generation?
- Minimize air pollution in Tacoma?
- Minimize resource extraction?

D. Demonstrate industry leadership across these areas? Is the Respondent an EnviroStars recognized business? Provide any relevant certifications and/or verified results.

12.8 Equity in Contracting – 10 points

The Equity In Contracting (EIC) Requirements for this contract are:

- MBE: 9%
- WBE: 9%
- SBE: 0%

Given the unknown nature of this contract work to be assigned to the successful proposer(s), the City of Tacoma's Equity in Contracting (EIC) team is requiring an inclusion plan that will allow the proposers to state their plans and practices so they can be held accountable to these EIC requirements if successful. The inclusion plan is the proposer's good faith efforts to demonstrate their commitment to working with small and diverse businesses.

Is your firm, or the firm you are partnering with, certified with Washington State for any of the below categories (select all that apply)? Selecting any item below will award three (3) of the ten (10) allotted points for this category. The remaining 7 points will be a sliding scale based solely on the review of the Equity in Contracting Inclusion Plans by EIC Office at time of review (e.g. highest responsive Inclusion Plan gets full seven points).

- ☐ Combination Business Enterprise (CBE)
- ☐ Disadvantaged Business Enterprise (DBE)
- ☐ Minority Business Enterprise (MBE)
- ☐ Minority/Women Business Enterprise (MWBE)
- ☐ Small Business Enterprise (SBE)
- ☐ Socially and Economically Disadvantaged Business Enterprise (SEDBE)
- ☐ Women Business Enterprise (WBE)

The City of Tacoma's Equity in Contracting (EIC) program offers contracting of services to qualified Minority Business Enterprises (MBE), Women Business Enterprises (WBE) and Small Business Enterprises (SBE) interested in doing the work in the City. The goal of the EIC program is to facilitate a substantial procurement, education, and Equity in Contracting program to promote equitable participation by historically under-utilized businesses in the provisions of service to the City.

The Proposer agrees to solicit and recruit to the maximum extent possible MBE, WBE and SBE for performance of work under this contract. To comply with EIC, the Proposer should include

all qualified firms include all qualified EICs in solicitation lists for subcontracting opportunities and maintain records of their responses. The City of Tacoma has an equal opportunity provision where discrimination is prohibited under Tacoma Municipal Code TMC 1.07.030. Chapter 1.07 of the TMC included in RFP, Appendix A.

The Proposer shall submit an Equity in Contracting Inclusion Plan including proposed actions/strategies to obtain EIC, project EIC bid opportunities and a commitment to good faith EIC efforts. Guidance Inclusion Plan is provided in Appendix A for reference in developing the plan.

12.9 Credit Card Acceptance – 0 points

Provide a statement regarding your ability to meet the City's credit card requirements(below) as well as identifying your reporting capabilities (Level I, II, or III). This information is not a consideration in the evaluation process.

12.10 Contract Exceptions – 0 points

Do you take exceptions to any of the City of Tacoma's Standard Terms and Conditions?

13. ACCEPTANCE / REJECTION OF SUBMITTALS

Respondents are advised that the City reserves the right to cancel award of this Contract at any time before execution of the Contract by both parties if cancellation is deemed to be in the City's best interest. In submitting a Submittal, Respondents agree that the City is not liable for any costs or damages for the cancellation of an award.

The City reserves the right and holds at its discretion the following rights and options:

- To waive any or all informalities
- To award one or more contracts
- To not award a contract
- To issue subsequent solicitation

14. ACCEPTANCE OF SUBMITTAL CONTENTS

The Submittal contents of the successful Respondent will become contractual obligations if a contract ensues.

15. CONTRACT OBLIGATION

The selected Respondent(s) will be expected to execute a contract with the City. As part of the negotiation process, Respondents may propose amendments to the contract, but the City, at its sole option, will decide whether to open discussion on each proposed amendment and determine the final contract to be used. At a minimum, any contract will incorporate the terms and conditions contained herein.

16. GENERAL PROVISIONS

City of Tacoma General Provisions apply located in Appendix B. In addition, the contract will be subject to the requirements of the General Conditions for Washington State Facility Construction and the Supplemental Conditions as Modified by the City of Tacoma located in Appendix B.

17. INSURANCE REQUIREMENTS

Successful proposer will provide proof and maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements document applicable to the services, products, and deliverables provided under the RFP. The City of Tacoma Insurance Requirements document is fully incorporated into the RFP by reference included in Appendix C.

18. PREVAILING WAGE INFORMATION

This project will require prevailing wages under 39.12 RCW, any worker, laborer, or mechanic employed in the performance of any part of the work shall be paid not less than the applicable prevailing rate of wage.

The project site is in Pierce County.

The effective date for prevailing wages on this project will be the submittal deadline with these exceptions:

1. If the project is not awarded within six months of the submittal deadline, the award date is the effective date.
2. If the project is not awarded pursuant to a competitive solicitation, the date the contract is executed is the effective date.
3. Janitorial contracts follow WAC 296-127-023.

Except for janitorial contracts, these rates shall apply for the duration of the contract unless otherwise noted in the solicitation.

Look up prevailing rates of pay, benefits, and overtime codes from this link:
<http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>.

A copy of the applicable prevailing wage rates and Benefit Code Key are also available for viewing at the City of Tacoma Purchasing Division office, located at 3628 S 35th Street, Tacoma, WA.

Contractor shall comply with Washington law regarding prevailing wages. Contractor shall pay and require any contractors and subcontractors to pay prevailing wages in accordance with the provisions of 39.12 RCW, as amended, relating to prevailing wages and fringe benefits. These rules apply to any contractor doing business with the City, including owner/operators.

Work conducted within Tacoma city limits. State of Washington prevailing wages or City of Tacoma minimum wage rates, whichever are higher, must be paid. If City of Tacoma minimum

wage rates are higher than state of Washington prevailing wage rates, City of Tacoma rates must be paid.

A Statement of Intent to Pay Prevailing Wages must be filed with the Washington Department of Labor & Industries upon award of contract. Affidavits of Wages Paid must be filed with the Washington Department of Labor & Industries upon job completion. Payments will not be made by the City until certification of these filings are received.

Additional information regarding these requirements can be obtained by contacting the Department of Labor & Industries, Prevailing Wage at 360-902-5335 or visiting their website at <http://www.lni.wa.gov/TradesLicensing/PrevailingWage/default.asp>.

INTENT & AFFIDAVIT INFORMATION FOR ON CALL CONTRACTS A. One Intent to Pay Prevailing Wages and a corresponding approved Affidavit of Wages Paid (Affidavits) are to be filed for each 12 month (one year) period of the contract performance for the Contractor and all subcontractors of any tier. Intents for the Contractor and all subcontractors shall be filed prior to any payment for work performed following contract execution. Following the first 12 month period, Affidavits must be received prior to final payment for work performed during the first 12 month period. New Intents shall be filed prior to any payment for work performed during the second 12 month period for the Contractor and all subcontractors. Affidavits from the Contractor and all subcontractors must be received from Washington State's Department of Labor and Industries (L&I) per Article 6 of the General Conditions. B. Immediately following the end of all work completed under this Contract, the Contractor, and each Subcontractor of any tier, shall file an approved Affidavit of Wages Paid with the L&I. C. The Contractor shall post in a location readily visible to workers at the Project site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed. D. If a State of Washington prevailing wage rate conflicts with another applicable wage rate (such as Davis-Bacon Act wage rate) for the same labor classification, the higher of the two shall govern. E. Pursuant to RCW 39.12.060, if any dispute arises concerning the appropriate prevailing wage rate for work of a similar nature, and the dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his or her decision shall be final and conclusive and binding on all parties involved in the dispute. F. The Contractor shall defend (at the Contractor's sole costs, with legal counsel approved by the City of Tacoma), indemnify and hold the City harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance"), including but not limited to RCW 51.12.050.

REQUIRED FILINGS

The contractor and all subcontractors covered under [39.12 RCW](#) shall submit to the Department of Labor and Industries (L&I) for work provided under this contract:

1. A Statement of Intent to Pay Prevailing Wages must be filed with and approved by L&I upon award of contract.
2. An Affidavit of Wages Paid must be filed with and approved by L&I upon job completion.

For on-call contracts, retainage can be release annually. Please see the Intent-Affidavit Info for On-Call Contracts above,

19. PAID LEAVE

Effective February 1, 2016, the City of Tacoma requires all employers to provide Paid Leave and Minimum Wage, as set forth in Title 18 of the Tacoma Municipal Code. For more information visit <http://www.cityoftacoma.org/employmentstandards>.

20. BID BOND

The Bid Bond in Appendix A must be executed by the person legally authorized to sign the bid and must be properly signed by representatives of the surety company unless the bid is accompanied by a certified check or cashier's check.

20.1 If a Bid Bond is used, the form furnished by the City must be followed; no variation from the language thereof will be accepted. The amount of the Bid Bond must be not less than five percent (5%) of the total amount bid; and, if shown in dollars and cents, the amount of said Bid Bond must be not less than the required five percent; or in lieu of dollars and cents, the bond may be completed by inserting therein, "five percent of the amount of the accompanying proposal". Bid Bonds will not be returned. Bid Bond should be submitted electronically with bid submittal. Hard copies should be postmarked no later than the submittal date.

20.2 If a certified or cashier's check is provided by the successful Respondent(s), the amount of their check will be refunded after award of the Contract, City's receipt of the signed Contract, and acceptance of the Performance Bond, if applicable. Unsuccessful Respondents providing certified checks will be refunded the amount of their check upon award of the Contract.

20.3 Failure to furnish a Bid deposit of a minimum of 5 percent shall make the bid nonresponsive and shall cause the bid to be rejected by the City.

A deposit of at least 5 percent of the total Bid shall accompany each Bid. This deposit may be cash, certified check, cashier's check, or a proposal bond (Surety bond). Any proposal bond shall be on the Contracting Agency's form and shall be signed by the Bidder and the Surety. A proposal bond shall not be conditioned in any way to modify the minimum 5 percent required. The Surety shall: (1) be registered with the Washington State Insurance Commissioner, and (2) appear on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner.

The failure to furnish a Bid deposit of a minimum of 5 percent shall make the Bid nonresponsive and shall cause the Bid to be rejected by the Contracting Agency.

If submitting your bid electronically, A scanned version of the original bid bond or cashier's check shall accompany your electronic bid submittal. The original bid bond or cashier's check shall be sent to the Contracting Agency and received by the Contracting Agency within 7 calendar days of the bid opening or the bidder may be deemed non-responsive.

Original bid bonds or cashier's check will be delivered to:

City of Tacoma Procurement & Payables Division
Tacoma Public Utilities
3628 South 35th Street
Tacoma, WA 98409

If so stated in the Contract Provisions, cash will not be accepted for a bid deposit.

21. PAYMENT AND PERFORMANCE BOND

A payment and performance bond, including power of attorney, for this project is required in the amount of 100 percent of the Contract total.

1. The City's payment and performance bond forms must be used.
2. The payment and performance bonds must be executed by a surety company licensed to do business in the state of Washington.
3. The cost of a payment and performance bonds must be included in submittal prices. Bonds will not be paid as a separate line item.
4. For a supply-type contract, a certified cashier's check or cash may be substituted for the bonds; however, this cash or check must remain with the City through the guarantee period and any interest on said amount shall accrue to the City.

22. LOCAL EMPLOYMENT & APPRENTICESHIP TRAINING PROGRAM (LEAP)

This contract has LEAP requirements. The LEAP documentation is located in Appendix C.

23. PARTNERSHIPS

The City will allow firms to partner to respond to this RFP. Respondents may team under a Prime Respondent's submittal in order to provide responses to all sections in a single submission; however, each Respondent's participation must be clearly delineated by section. The Prime Respondent will be considered the responding vendor and the responsible party at contract award. All contract negotiations will be conducted only with the Prime Respondent. All contract payments will be made only to the Prime Respondent. Any agreements between the Prime Respondent and other companies will not be a part of the agreement between the City and the Prime Respondent. The City reserves the right to select more than one Prime Respondent.

24. COMMITMENT OF FIRM KEY PERSONNEL

The Respondent agrees that key personnel identified in its submittal or during contract negotiations as committed to this project will, in fact, be the key personnel to perform during the

life of this contract. Should key personnel become unavailable due to extenuating circumstances or no longer employed with the Contractor, the selected Respondent shall provide suitable replacement personnel, subject to the approval of the City. Substantial organizational or personnel changes within the agency are expected to be communicated immediately. Failure to do so could result in cancellation of the Contract. Specific language pertaining to personnel substitution is contained within the sample contract in Appendix C.

25. AWARD

After the Respondent(s) is selected by the SAC and prior to award, all other Respondents will be notified via email by the Purchasing Division.

Once a finalist (or finalists) has been selected by the Selection Advisory Committee, contract negotiations with that finalist will begin, and if a contract is successfully negotiated, it will, if required, be submitted for final approval by the Public Utility Board and/or City Council.

26. ENVIRONMENTALLY PREFERABLE PROCUREMENT

In accordance with the City's Sustainable Procurement Policy, it is the policy of the City of Tacoma to encourage the use of products or services that help to minimize the environmental and human health impacts of City Operations. Respondents are encouraged to incorporate environmentally preferable products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, products, manufacturing, packaging, distribution reuse, operation, maintenance or disposal of the product or service.

The City of Tacoma encourages the use of sustainability practices and desires any awarded contractor(s) to assist in efforts to address such factors when feasible for:

- Reduction of pollutant releases
- Toxicity of materials used
- Waste generation
- Greenhouse gas emissions, including transportation of materials and services
- Recycle content
- Comprehensive energy conservation measures
- Waste management reduction plans
- Potential impact on human health and the environment

27. EQUITY IN CONTRACTING

The City of Tacoma is committed to encouraging firms certified through the [Washington State Office of Minority and Women's Business Enterprise](#) to participate in City contracting opportunities. See the **TMC 1.07 Equity in Contracting Policy** at the City's [Equity in Contracting Program website](#). Refer to Section above for Proposal specific requirements for Equity in Contracting.

28. PROPRIETARY OR CONFIDENTIAL INFORMATION

The Washington State Public Disclosure Act ([RCW 42.56 et seq.](#)) requires public agencies in Washington make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act, or are otherwise privileged. Documents submitted under this RFP shall be considered public records and, with limited exceptions, will be made available for inspection and copying by the public.

Information that is confidential or proprietary must be clearly marked. Further, an index must be provided indicating the affected page number(s) and location(s) of all such identified material. Information not included in said index will not be reviewed for confidentiality or as proprietary before release.

29. ENVIRONMENTAL AND SUSTAINABILITY MANAGEMENT SYSTEM (ESMS)

The Environmental Services Environmental and Sustainability Management System (ESMS) documents practices and procedures required to satisfy the requirements of Internal Standard Organization (ISO) 14001 certification. The selected Contractor(s) will be responsible for the following, including but not limited to:

- Proper training of all employees in accordance with the training requirements necessary to perform the assigned work.
- Proper verification and completion of all forms provided in Appendix B. Forms will be required to be submitted prior to accessing the site.
- Notification to the responsible ESMS on-site representative of planned activities and any updates to those activities should they change in the course of the work.
- Participate in an on-site ESMS and site orientation by the City prior to starting work. Any new assigned Task Authorization with sub-contractors will require the same or similar on-site ESMS training and site orientation.

30. ADDENDUMS

In the event it becomes necessary to revise any part of this RFP, an addendum will be issued through the event in Ariba. Failure to acknowledge addendum(s) on the required Signature Page may result in a submittal being deemed non-responsive by the City.

APPENDIX A

Price Proposal Form

Signature Page

Certificate of Compliance with Wage Payment Status

State Responsibility and Reciprocal Bid Preference Information

Bid Bond

Minimum Qualification Form

Equity in Contracting Inclusion Plan Template - pdf

PROPOSERS NAME _____

**On-call Facility Contracting Services
Specification ES22-0324F**

Proposal Page

Name of the Firm _____
(write in company name)

In compliance with Request for Proposal, the following proposal is submitted: Refer to Part 12, Section 12.5 for additional information

ITEM 1 – General Labor Rates

Furnish contractor labor rates plus billing rate or multiplier for:

Description	Base Hourly Rate	Multiplier	Bill Rate
Structural iron and steelworker	\$ _____		\$ _____
Sheet metal worker	\$ _____		\$ _____
Carpenter: Journey Level	\$ _____		\$ _____
Electrician: Journey Level	\$ _____		\$ _____
Low Voltage Electrician (Controls)	\$ _____		\$ _____
Drywall and ceiling tile installer: Journey Level	\$ _____		\$ _____
Construction equipment operator	\$ _____		\$ _____
Carpet or flooring installer	\$ _____		\$ _____
Boiler Technician: Journey Level	\$ _____		\$ _____
Plumber & Pipefitter: Journey Level	\$ _____		\$ _____
Painter: Journey Level	\$ _____		\$ _____
Laborer: construction	\$ _____		\$ _____
Roofer	\$ _____		\$ _____
HVAC Technician	\$ _____		\$ _____
Heating Equipment Mechanic	\$ _____		\$ _____
Refrigeration & Air Conditioning Mechanic	\$ _____		\$ _____

PROPOSERS NAME _____

Description	Base Hourly Rate	Multiplier	Bill Rate
Insulation Installer	\$ _____		\$ _____
Landscaper	\$ _____		\$ _____
Mason: Journey Level	\$ _____		\$ _____
Millwright	\$ _____		\$ _____
Welder	\$ _____		\$ _____

ITEM 2 – Additional Labor Rates

Furnish contractor additional labor rates plus billing rate or multiplier that would likely charge time to the contract:

Description	Base Hourly Rate	Multiplier	Bill Rate
i.e., any staff not covered by Company overhead	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____
	\$ _____		\$ _____

Item 3 – Materials and Equipment Multiplier:

Furnish material and equipment at cost plus multiplier:

Multiplier:

Item 4 – Subcontracting Multiplier:

Provide subcontracting services at cost plus multiplier:

Multiplier:

SIGNATURE PAGE

CITY OF TACOMA ENVIRONMENTAL SERVICES/SCIENCE AND ENGINEERING DIVISION

All submittals must be in ink or typewritten, executed by a duly authorized officer or representative of the bidding/proposing entity, and received and time stamped as directed in the **Request for Proposal page near the beginning of the specification**. If the bidder/proposer is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.

REQUEST FOR PROPOSAL SPECIFICATION NO. ES22-0324F On-Call Facility Contracting Services

The undersigned bidder/proposer hereby agrees to execute the proposed contract and furnish all materials, labor, tools, equipment and all other facilities and services in accordance with these specifications.

The bidder/proposer agrees, by submitting a bid/proposal under these specifications, that in the event any litigation should arise concerning the submission of bids/proposals or the award of contract under this specification, Request for Bids, Request for Proposals or Request for Qualifications, the venue of such action or litigation shall be in the Superior Court of the State of Washington, in and for the County of Pierce.

Non-Collusion Declaration

The undersigned bidder/proposer hereby certifies under penalty of perjury that this bid/proposal is genuine and not a sham or collusive bid/proposal, or made in the interests or on behalf of any person or entity not herein named; and that said bidder/proposer has not directly or indirectly induced or solicited any contractor or supplier on the above work to put in a sham bid/proposal or any person or entity to refrain from submitting a bid/proposal; and that said bidder/proposer has not, in any manner, sought by collusion to secure to itself an advantage over any other contractor(s) or person(s).

Bidder/Proposer's Registered Name

Signature of Person Authorized to Enter Date
into Contracts for Bidder/Proposer

Address

Printed Name and Title

City, State, Zip

(Area Code) Telephone Number / Fax Number

Authorized Signatory E-Mail Address

State Business License Number
in WA, also known as UBI (Unified Business Identifier) Number

E.I.No. / Federal Social Security Number Used on Quarterly
Federal Tax Return, U.S. Treasury Dept. Form 941

State Contractor's License Number
(See Ch. 18.27, R.C.W.)

E-Mail Address for Communications

Addendum acknowledgement #1_____ #2_____ #3_____ #4_____ #5_____

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.

Specification No. _____

Name of Bidder: _____

State Responsibility and Reciprocal Bid Preference Information

Certificate of registration as a contractor
(Must be in effect at the time of bid submittal):

Number: _____

Effective Date: _____

Expiration Date: _____

Current Washington Unified Business Identifier
(UBI) Number:

Number: _____

Do you have industrial insurance (workers' compensation)
Coverage nor your employees working in Washington?

☐ Yes ☐ No
☐ Not Applicable

Washington Employment Security Department Number

Number: _____

☐ Not Applicable

Washington Department of Revenue state excise tax
Registration number:

Number: _____

☐ Not Applicable

Have you been disqualified from bidding any public
works contracts under RCW 39.06.010 or 39.12.065(3)?

☐ Yes ☐ No
If yes, provide an explanation of your
disqualification on a separate page.

Do you have a physical office located in the state of
Washington?

☐ Yes ☐ No

If incorporated, in what state were you incorporated?

State: _____ ☐ Not Incorporated

If not incorporated, in what state was your business
entity formed?

State: _____

Have you completed the training required by RCW
39.04.350, or are you on the list of exempt businesses
maintained by the Department of Labor and Industries?

☐ Yes ☐ No

Herewith find deposit in the form of a cashier's check in the amount of \$_____ which amount is not less than 5-percent of the total bid.

SIGN HERE_____

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the City of Tacoma, as Obligee, in the penal sum of _____ dollars, for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The condition of this obligation is such that if the Obligee shall make any award to the Principal for

according to the terms of the proposal or bid made by the Principal therefor, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for faithful performance thereof, with Surety or Sureties approved by the Obligee; or if the Principal shall, in case of failure to do so, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS _____ DAY OF _____, 20_____.

PRINCIPAL:

SURETY:

_____, 20_____

Received return of deposit in the sum of \$ _____

PROPOSERS NAME _____

MINIMUM REQUIREMENTS ES22-0324F

Responses must clearly show compliance with the minimum requirements. Those that are not clearly responsive to these minimum requirements will be rejected by the City without further consideration.

- The Contractor shall be a legal entity and have at least 7 years demonstrated successful experience with the relevant work identified below working with City or County governmental agencies similar in size to the City of Tacoma. It will be the City's sole determination if such experience meets the minimum requirements.
- The Contractor shall not have been prohibited from doing business with any governmental entity for any reason for the past 10 years.
- The Contractor must not be operating in Chapter 11 or any other financial restraints that would preclude their ability to complete work as outlined in the RFP.

Proposers shall include exactly how your firm achieved the minimum requirements. Information shall include name of the agency(s) or firm(s), address, contact person, phone number, description of the contract /scope of work, project location(s), contract value and any other information that can substantiate your firms ability to meet the minimum requirements. Responses should be limited to 1 page (front and back) and need not be voluminous, but should provide sufficient information to allow the City to evaluate your firms ability to meet the minimum requirements.

EIC REQUIREMENT FORM

EQUITY IN CONTRACTING REQUIREMENTS & PROCEDURES:

All bidders must complete and submit with their bid the following solicitation form contained in the bid submittal package:

City of Tacoma – Inclusion Plan

IMPORTANT NOTE:

It is the bidder's responsibility to ensure that the potential certified subcontractor(s) utilized on the project are certified by the State of Washington's Office of Minority and Women Business Enterprises (OMWBE). This may be verified by contacting the EIC Office at 253-591-5075 between 8 AM and 5 PM, Monday through Friday or the [OMWBE](http://www.omwbe.com) Office at (866) 208-1064. Please refer to the City of Tacoma EIC code.

EQUITY IN CONTRACTING REQUIREMENTS

Minority Business
Enterprise Requirement

9%

Women Business
Enterprise Requirement

9%

Small Business Enterprise
Requirement

0%

A list of EIC-eligible companies is available on the following web site addresses:

www.omwbe.diversitycompliance.com*

MATERIAL MISSTATEMENTS CONCERNING COMPLETED ACTIONS BY THE BIDDER IN ANY SWORN STATEMENT OR FAILURE TO MEET COMMITMENTS AS INDICATED ON THE EIC UTILIZATION FORM MAY RENDER THE BIDDER IN DEFAULT OF CITY ORDINANCE 1.07

Date of Record: 2/13/2023

Project Spec#: ES22-0324F

Project Title: On Call Facility Contracting Services

*For the OMWBE list, be sure to look for businesses in Pierce, King, Lewis, Mason, Grays Harbor, Thurston, or any counties adjacent to the county in which the work is performed per 1.07.050(2)(b-c). Contact the EIC Office if you have any questions.



City of Tacoma
Community & Economic Development
Office of Equity in Contracting
747 Market Street, Rm 900
Tacoma WA 98402
253-591-5075

EQUITY IN CONTRACTING (EIC) INCLUSION PLAN

INCLUSION PLAN GUIDE & TEMPLATE

This document includes:

- A guide on how to use inclusion plans as part of proposal requirements to increase equitable contracting opportunities.
- An inclusion plan template form with instructions for the proposer. Proposers shall submit the plan as part of their proposal package when inclusion plans are required.

Inclusion plans

Proposers are required to submit the following inclusion plan template as part of the procurement process. Along with the form, proposers should submit a list of the contractors they intend to work with. The proposer should proactively consider the small and diverse businesses they will subcontract with on the contract work before submitting their proposal. This consideration also allows the City of Tacoma to monitor the proposer's performance by checking if the listed businesses actually received work consistent with the plan. The City of Tacoma will incorporate the proposer's responses into the contract entered into with the successful proposer. This will allow the City of Tacoma to hold the successful proposers accountable in following through with their commitments. Requiring proposers to state their plans and practices allows public agencies to hold proposers accountable to follow through on what they commit to, including the small and diverse businesses they plan to work with.

Failure to submit a plan

Proposers are required to submit an inclusion plan. Failure to submit an inclusion plan or failure to submit a plan that provides actions intended to support diverse participation will result in the proposer considered non-responsive.



City of Tacoma
Community & Economic Development
Office of Equity in Contracting
747 Market Street, Rm 900
Tacoma WA 98402
253-591-5075

EQUITY IN CONTRACTING (EIC) INCLUSION PLAN

INCLUSION PLAN TEMPLATE

Inclusion Plan Criteria	
1. Equity in Contracting (EIC) Requirements for Small, Minority & Women-Owned Business participation	
State Certification Category	EIC Requirements
SBE:	0%
MBE:	9%
WBE:	9%
2. The Firm's "Diverse Business Subcontracting list"	
3. Planned efforts by the firm to meet or exceed the EIC Requirements. To include, but not limited to the following:	
a. General Description, including any applicable policies and procedures,	
b. Mentoring, Training and Capacity Building Programs	
c. Prompt Payment, Retainage and Dispute Resolution	
4. A description of firm's planned efforts at outreach to the small and diverse business community	
5. A description of firm's process for ensuring small businesses have enough time and information to provide your firm with bids	
6. An explanation of how firm ensures small businesses understand the requirements and specifications and are able to learn ways to improve if they are not selected (i.e. pre-bid meetings, debriefing, etc.)	
7. A description of how firm considers small business in the development of proposal package	
8. Who will be the firm's "Diversity Expert"?	
9. A list of projects (5 max.) with diverse business participation in the last five (5) years	
10. Acknowledgement of firm's awareness and commitment to reach out to diverse businesses and helping Washington State meet or exceed the state's diverse businesses utilization goals	
11. Acknowledgement that proposing firm has education and training programs to communicate to your employees your firm's expected employee behaviors and performance relative to implementing the Diverse Business Inclusion Plan	
12. Any additional information the firm would like to include as a part of their plan.	

The City of Tacoma will review the submitted inclusion plan for the genuine efforts involved and the maximum opportunity to contribute toward the City of Tacoma's diversity goals.

Appendix B

Environmental Sustainability Management System (ESMS) for Solid Waste Management Division (NOTE: no specific document available for other Environmental Services facilities but on-site training to be conducted per Section 28 in the Request for Proposal, which forms will be required at the time of training)

Task Authorization Form

General Provisions

General Conditions for Washington State Facility Construction

Supplemental Conditions as Modified by the City of Tacoma

NOTE: the above italicized documents are in order of precedence

ESMS Document – 8.1-5 Contractor Management Environmental Checklist

The following information is required by the Insert Name of Project Manager/Assigned Staff prior to contracted activity or service.

Check yes or no to identify which of the following will be included in the contracted activity or service.

Combustion Sources:

- | | | |
|---|------------------------------|-----------------------------|
| Air heating and supply | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Mobile transportation (<i>i.e. forklift or carts</i>) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Construction activities | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Excavation or grading | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Drilling or blasting | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Rock crushing | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Demolition | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Welding or soldering | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Painting | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Asphalt paving | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Use or storage of chemicals or fuels | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Transfer of bulk materials | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Disposal of chemical wastes | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If yes, please describe waste streams:

Building Maintenance Activities:

- | | | |
|---|------------------------------|-----------------------------|
| Architectural paint removal | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Architectural painting | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Hydroblasting | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Sandblasting | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Surface preparation/treatments (<i>i.e. floors and roof repair</i>) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Purging or repair of distribution lines (<i>i.e. those for fuel, oil or solvents</i>) ... | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Use of chemicals, solvents, corrosives, acids, oils, etc | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Use of herbicides, pesticides, or insecticides ☐ Yes ☐ No

Business or Work Related Activities:

Use or receipt of chemical materials..... ☐ Yes ☐ No

(other than janitorial or cleaning materials)

Generation and disposal of chemical wastes..... ☐ Yes ☐ No

Generation of sealers, adhesives, coatings, or paints..... ☐ Yes ☐ No

Welding, soldering, brazing or similar activities ☐ Yes ☐ No

Use of caustics or acids ☐ Yes ☐ No

Use of combustion gases ☐ Yes ☐ No

If yes, please list the fuels used:

Laboratory installation ☐ Yes ☐ No

Medical waste ☐ Yes ☐ No

Discharge to storm drains ☐ Yes ☐ No

To be completed by the City of Tacoma, Project Manager or assigned staff prior to the contracted work or service.

A review of the above activities determined:

- ☐ No further action is required
- ☐ Contractor/supplier must refer to the project specification book/contract for the assigned operational controls

Signature:

Name, Title

Date

Refer to [8.1-2 Operational Planning and Control Contractor Management Procedure](#) and [8.1-3 Operational Planning and Control Vendor Procedure](#) for information regarding the use, routing

and approval of this form.

Revision History

Change	Date of	Revised By	Summary of Changes
001			
002			

Previous versions or printed copies may be obsolete. Verify current versions using the ESMS website.

Welcome. The City of Tacoma Solid Waste Management Division (SWM) operates an ISO 14001 Environmental and Sustainability Management System (ESMS). An ESMS is a process with procedures that will allow SWM to operate legally, safely, and efficiently while reducing the environmental impacts of our activities. All contractors and vendors are required to comply with the ESMS and Environmental Policy. As part of the ESMS SWM has identified the following Significant Environment Aspects:

- Potential Spills
- Fire Hazards
- Air Emissions

Contractors and vendors must ensure that their activities do not negatively affect the Significant Environmental Aspects.

All contractors and vendors are required to adhere to the following safety rules and requirements:

GENERAL SAFETY RULES

- Restricted Access – Contractors and vendors shall stay within the designated areas.
- Smoking – Smoking is prohibited in building and within 25 feet of windows and doors.
- Eye and Hearing Protection – Eye and hearing protection is required in designated areas.
- Accidents, near misses, and first aid – Contractors, truck drivers and visitors are required to report all accidents, near misses, and first aid incidents to City employees.
- Drugs and Alcohol – Alcoholic beverages and illicit drugs are prohibited on City property.
- Guns – Contractors are prohibited from carrying guns on City property.
- Emergency Procedures – Follow directions announced by City staff. To report a fire or emergency, contact any SWM employee.
- Vehicle Safety – Be aware and cautious of vehicle and pedestrian traffic.

CONTRACTOR REQUIREMENTS

Contractors are expected to understand and comply with all general federal, state, and local safety regulations and specific work practices applicable to the immediate project. These include, but are not limited to:

- Storage, handling and use of flammable liquids and hazardous materials.
- Periodic safety inspections and housekeeping.
- Use of all protection, if applicable.
- Following electrical safety practices and lock out/tag out procedures.
- Proper use of PPE.
- Proper maintenance and use of ladders and other equipment, if applicable.
- Contractors are responsible for removing and proper disposal of any hazardous materials or hazardous wastes utilized or generated while onsite at SWM.

- Contractors must notify the PM immediately of any leaks or spills.
- Requirements outlined in the signed contract or agreement to perform the contracted work.

Agreements acknowledging you have read and understood this information must be signed prior to starting work. It is the responsibility of the contracting company to ensure anyone working for or on their behalf adhere to these requirements Contractor/Vendor Acknowledgement and Agreement.

Contractor/Vendor Acknowledgment and Agreement

Company Name: _____

The undersigned hereby acknowledges receiving the Contractor/Vendor informational materials for the City of Tacoma, Recovery and Transfer Center, Environmental and Sustainability Management System (ESMS). We further acknowledge having the responsibility to provide the training to all personnel who will be working on the property. We further agree to abide by all environmental regulations and policies whenever on the property. Sign-in sheets will be maintained as evidence that the ESMS training has been conducted and will be made available upon request. The Project Manager, primary City staff contact for the contract, or designee will communicate applicable changes to the ESMS to my company. Retraining of affected individuals will be conducted, as needed.

Contractor/Vendor Training Acknowledgment

Primary Company Contact: _____

Title: _____

Phone: _____ Fax: _____

Email: _____

Secondary Company Contact: _____

Title: _____

Phone: _____ Fax: _____

Email: _____

Signature

Date

For questions or additional information, contact the designated City contact as outlined in the contract.



FORMAL TASK AUTHORIZATION

TASK NUMBER 2023-XX

On-Call Facility Contracting Services For Environmental Services

Contractor:

Contractor Contact:

City Project Manager:

The general provisions and clauses of the ON-CALL CONTRACT for on-call facility contracting services shall be in full force and effect for this Task Authorization. The agreed to scope, schedule, and cost for this task is as listed below and as attached and referenced herein.

Task Title:

Task Location:

Maximum Amount Payable for this Task: All work on this project will be invoiced on a time-and-materials basis in accordance with the existing contract. The estimated budget for this task is _____. See Exhibit A, Scope of Services and Cost of Project.

Objective: _____

See Exhibit A, Scope of Services

Description of Schedule, Work & Deliverables: See Exhibit A, Scope of Services

Attachments: See Exhibit A, Scope of Services and Cost of Project.

Contractor Name (Print): _____

Contractor Signature: _____ Date: _____

Division Manager Signature: _____ Date: _____

Authorized Start Date: _____

GENERAL PROVISIONS

(Revised December 15, 2020)

SECTION I - BIDDING REQUIREMENTS

SECTION I REQUIREMENTS ARE BINDING ON ALL RESPONDENTS.

1.01 USE AND COMPLETION OF CITY PROPOSAL SHEETS

A. Respondent's Proposal

Each Respondent must bid exactly as specified on the Proposal sheets. All proposals must remain open for acceptance by the City for a period of at least 60 calendar days from the date of opening of the bids.

B. Alterations of Proposals Not Allowed

Proposals that are incomplete or conditioned in any way contain alternatives or items not called for in the General Provisions and Specifications, or not in conformity with law may be rejected as being nonresponsive. The City cannot legally accept any proposal containing a substantial deviation from these Specifications.

C. Filling Out City Proposal Sheets

All proposals must be completed using the proposal sheets and forms included with this specification, and the prices must be stated in figures either written in ink or typewritten. No proposal having erasures or interlineations will be accepted unless initialed by the Respondent in ink.

1.02 CLARIFICATION OF PROPOSAL FOR RESPONDENT

If a prospective Respondent has any questions concerning any part of the Proposal, he/she may submit a written request for answer of his/her questions. Any interpretation of the Proposal will be made by an Addendum duly issued and mailed or delivered to each prospective Respondent. Such addendum must be acknowledged in the proposal. The City of Tacoma will not be responsible for any other explanation or interpretation of the bid documents.

1.03 RESPONDENT'S BOND OR CERTIFIED CHECK

Each bid for construction must be accompanied either by a certified or cashier's check for 5 percent of the total amount bid, including tax, payable to the City Treasurer, or an approved bid bond, by a surety company authorized to do business in the State of Washington, for 5 percent of the total amount bid. The person legally authorized to sign the bid must sign all bid bonds. The approved bid bond form attached to these Specifications should be used: no substantial variations from the language thereof will be accepted.

If a bid bond is used, the 5 percent may be shown either in dollars and cents, or the bid bond may be filled in as follows, "5 percent of the total amount of the accompanying proposal."

The check of the successful Respondent will be returned after award of the Contract, acceptance of the Payment and Performance Bond and City's receipt of the signed Contract. The checks of all other Respondents will be returned immediately upon the award of the Contract. Bid bonds will not be returned.

1.04 DELIVERY OF PROPOSALS TO THE CITY'S PURCHASING OFFICE

- A.** Proposal packages must be received by the City's Procurement and Payables Division in SAP Ariba (unless another form of delivery is stated), prior to the scheduled time and date stated in the Solicitation.
- B.** Supplier is solely responsible for timely delivery of its Submittal.
- C.** Submittals received after the time stated in the solicitation will not be accepted.
- D.** For purposes of determining whether a Submittal has been timely received in SAP Ariba, the City's Procurement and Payables Division will rely on the submittal clock in SAP Ariba.

1.05 LICENSES/PERMITS

- A.** Suppliers, if applicable, must have a Washington state business license at the time of Submittal and throughout the term of the Contract. Failure to include a Washington state business license may be grounds for rejection of the Submittal or cancellation of contract award. Information regarding Washington state business licenses may be obtained at <http://bls.dor.wa.gov>.
- B.** Upon award, it is the responsibility of the Supplier to register with the City of Tacoma's Tax and License Division, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, 253-591-5252, https://www.cityoftacoma.org/government/city_departments/finance/tax_and_license/. Supplier shall obtain a business license as is required by Tacoma Municipal Code Subtitle 6C.20.
- C.** During the term of the Contract, Supplier, at its expense, shall obtain and keep in force any and all necessary licenses and permits.

1.06 CONTRACTOR'S STATE REGISTRATION NUMBER

Contractors for construction or public works construction are required to be licensed by the state. If the provisions of Chapter 18.27 of the Revised Code of Washington apply to the Respondent, then the Respondent's Washington State Contractor's Registration No. must accompany the bid.

1.07 BID IS NONCOLLUSIVE

The Respondent represents by the submission of the Proposal that the prices in this Bid are neither directly nor indirectly the result of any formal or informal agreement with another Respondent.

1.08 EVALUATION OF BID

A. Price, Experience, Delivery Time and Responsibility

In the evaluation of bids, the Respondent's experience, delivery time, quality of performance or product, conformance to the specifications and responsibility in performing other contracts (including satisfying all safety requirements) may be considered in addition to price. In addition, the bid evaluation factors set forth in City Code Section 1.06.262 may be considered by the City. Respondents who are inexperienced or who fail to properly perform other contracts may have their bids rejected for such cause.

B. Prequalified Electrical Contractor

Certain types of electrical construction require special expertise, experience, and prequalification of the Contractor (or subcontractor) by the City. In such cases, the Respondent must be prequalified or the Respondent must subcontract with a City prequalified electrical contractor for the specialty work.

C. Insertions of Material Conflicting with Specifications

Only material inserted by the Respondent to meet requirements of the Specifications will be considered. Any other material inserted by the Respondent will be disregarded as being nonresponsive and may be grounds for rejection of the Respondent's Proposal.

D. Correction of Ambiguities and Obvious Errors

The City reserves the right to correct obvious errors in the Respondent's proposal. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

1.09 WITHDRAWAL OF BID

A. Prior to Bid Opening

Any Respondent may withdraw his/her Proposal prior to the scheduled bid opening time by delivering a written notice to the City's Procurement and Payables Office. The notice may be submitted in person or by mail; however, it must be received by the City's Procurement and Payables Office prior to the time of bid opening.

B. After Bid Opening

No Respondent will be permitted to withdraw his/her Proposal after the time of bid opening, as set forth in the Call for Bids, and before the actual award of the Contract, unless the award of Contract is delayed more than sixty (60) calendar days after the date set for bid opening. If a delay of more than 60 calendar days does occur, then the Respondent must submit written notice withdrawing his/her Proposal to the Purchasing Manager.

1.10 OPENING OF BIDS

At the time and place set for the opening of bids, all Proposals, unless previously withdrawn, will be publicly opened and read aloud, irrespective of any irregularities or informalities in such Proposal.

1.11 CITY COUNCIL/PUBLIC UTILITY BOARD FINAL DETERMINATION

The City Council or Public Utility Board of the City of Tacoma shall be the final judge as to which is the lowest and best bid in the interest of the City of Tacoma. The City reserves the right to reject any and all bids, waive minor deviations or informalities, and if necessary, call for new bids.

1.12 RESPONDENT'S REFUSAL TO ENTER INTO CONTRACT

Any Respondent who refuses to enter into a Contract after it has been awarded to the Respondent will be in breach of the agreement to enter the Contract and the Respondent's certified or cashier's check or bid bond shall be forfeited.

1.13 TAXES

A. Include In Proposal All Taxes

Respondent shall include in his/her Proposal all applicable local, city, state, and federal taxes. It is the Respondent's obligation to state on his/her Proposal sheet the correct percentage and total applicable Washington State and local sales tax. The total cost to the City including all applicable taxes may be the basis for determining the low Respondent.

B. Federal Excise Tax

The City of Tacoma is exempt from federal excise tax. Where applicable, the City shall furnish a Federal Excise Tax Exemption certificate.

C. City of Tacoma Business and Occupation Tax

Sub-Title 6A of the City of Tacoma Municipal Code (TMC) provides that transactions with the City of Tacoma, may be subject to the City of Tacoma's Business and Occupation Tax. It is the responsibility of the Respondent awarded the Contract to register with the City of Tacoma's Department of Tax and License, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, telephone 253-591-5252. The City's Business and Occupation Tax amount shall not be shown separately but shall be included in the unit and/or lump sum prices bid.

1.14 FIRM PRICES/ESCALATION

Except as specifically allowed by the Special Provisions, only firm prices will be accepted.

1.15 AWARD

A. Construction and/or Labor Contracts

Unless specifically noted in the Special Provisions or Proposal sheets, all construction and/or labor contracts will be awarded to only one Respondent.

B. Supply/Equipment Contracts

The City reserves the right to award an equipment or supply contract for any or all items to one or more Respondents as the interests of the City will be best satisfied.

1.16 INCREASE OR DECREASE IN QUANTITIES

The City of Tacoma reserves the right to increase or decrease the quantities of any items under this Contract and pay according to the unit prices quoted in the Proposal (with no adjustments for anticipated profit).

1.17 EXTENSION OF CONTRACT

Contracts resulting from this specification shall be subject to extension by mutual agreement per the same prices, terms and conditions.

1.18 PAYMENT TERMS

- A. Prices will be considered as net 30 calendar days if no cash discount is shown. Payment discount periods of twenty (20) calendar days or more if offered in the submittal, will be considered in determining the apparent lowest responsible submittal. Discounts will be analyzed in context of their overall cumulative effect. Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of the Contractor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.
- B. ePayable/Credit Card Acceptance. Submittals offering ePayable/Credit card acceptance may be compared against submittals offering a prompt payment discount to evaluate the overall cumulative effect of the discount against the advantage to the City of the ePayable/Credit card acceptance, and may be considered in determining the apparent lowest responsible submittal.

1.19 PAYMENT METHOD – EPAYABLES – CREDIT CARD ACCEPTANCE – EFT/ACH ACCEPTANCE

- A. Payment methods include:
- EPayables (Payment Plus). This is payment made via a virtual, single use VISA card number provided by the City's commercial card provider. Suppliers accepting this option will receive "due immediately" payment terms. Two options for acceptance are available to suppliers. Both are accompanied by an emailed advice containing complete payment details:
 - Straight-through processing (buyer initiated). Immediate, exact payments directly deposited to supplier accounts by the City's provider bank; the supplier does not need to know card account details.
 - Supplier retrieves card account through the secure, on-line portal provided via email notifications sent by the City's commercial card provider.
 - Credit card. Tacoma's VISA procurement card program is supported by standard bank credit suppliers and requires that merchants abide by the VISA merchant operating rules. It provides "due immediately" payment terms.
 - Suppliers must be PCI-DSS compliant (secure credit card data management) and federal FACTA (sensitive card data display) compliant.
 - Suppliers must be set up by their card processing equipment provider (merchant acquirer) as a minimum of a Level II merchant with the ability to pass along tax, shipping and merchant references information.
 - Electronic Funds Transfer (EFT) by Automated Clearing House (ACH). Standard terms are net 30 for this payment method.
 - Check or other cash equivalent. Standard terms are net 30 for this payment method.
- B. The City's preferred method of payment is by ePayables (Payment Plus) followed by credit card (aka procurement card). Suppliers may be required to have the capability of accepting the City's ePayables or credit card methods of payment. **The City of Tacoma will not accept price changes or pay additional fees when ePayables (Payment Plus) or credit card is used.**
- C. The City, in its sole discretion, will determine the method of payment for goods and/or services as part of the Contract.

1.20 COOPERATIVE PURCHASING

The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods and services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties are agreeable.

1.21 PUBLIC DISCLOSURE: PROPRIETARY OR CONFIDENTIAL INFORMATION

- A. Respondent's Submittals, all documents and records comprising any Contract awarded to Respondent, and all other documents and records provided to the City by Respondent are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, City may be required, upon request, to disclose the Contract and documents or records related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies; and Respondent has complied with the requirements to mark records considered confidential or proprietary

as such requirements are stated below, City agrees to provide Respondent 10 days written notice of impending release. Should legal action thereafter be initiated by Respondent to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Respondent, including any damages, attorneys' fees or costs awarded by reason of having opposed disclosure. City shall not be liable for any release where notice was provided and Respondent took no action to oppose the release of information.

B. If Respondent provides City with records or information that Respondent considers confidential or proprietary, Respondent must mark all applicable pages or sections of said record(s) as "Confidential" or "Proprietary." Further, in the case of records or information submitted in response to a Request for Proposals, an index must be provided indicating the affected pages or sections and locations of all such material identified Confidential or Proprietary. Information not included in the required index will not be reviewed for confidentiality or as proprietary before release. If Supplier fails to so mark or index Submittals and related records, then the City, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and Respondent expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said record(s). Submission of materials in response to City's Solicitation shall constitute assent by Respondent to the foregoing procedure and Respondent shall have no claim against the City on account of actions taken pursuant to such procedure.

1.22 FEDERAL AID PROJECTS

The City of Tacoma in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR, part 26, will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

SECTION II - CONTRACT REQUIREMENTS

2.01 CONTRACTOR'S RESPONSIBILITY

A. Contract Documents

The Respondent to whom the Contract is awarded, hereinafter called the Contractor, shall enter into a Contract with the City of Tacoma, , within 10 days after receipt from the City of Tacoma of a properly prepared Contract. In addition, the Contractor will do all things required to promptly perform this Contract pursuant to the terms of this Contract. Certain contracts for supplies, goods or equipment may use the City Purchase Order in place of a formal contract document.

B. Surety Bonds

Except as modified by the Special Provisions, the Respondent to whom the Contract is awarded shall provide a payment and performance bond, including power of attorney, for 100 percent of the amount of his/her bid (including sales taxes), to insure complete performance of the Contract including the guarantee. The bonds must be executed by a surety company licensed to do business in the State of Washington. For a supply-type contract, a cashier's check or cash may be substituted for the bonds; however, this cash or cashier's check must remain with the City through the guarantee period and any interest on said amount shall accrue to the City.

C. Independent Contractor

Contractor is an independent contractor; no personnel furnished by the Contractor shall be deemed under any circumstances to be the agent or servant of the City. Contractor shall be fully responsible for all acts or omissions of Subcontractors and its and their suppliers and of persons employed by them, and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with the Contract. There shall be no contractual relationship between any Subcontractors or supplier and the City arising out of or by virtue of this agreement. No provision of the Contract is intended or is to be construed to be for the benefit of any third party.

2.02 CONFLICTS IN SPECIFICATIONS

Anything mentioned in the Specifications and not shown on the Drawings and anything on the Drawings and not mentioned in the Specifications shall be of like effect and shall be understood to be shown and/or mentioned in both. In case of differences between Drawings and Specifications, the Specifications shall govern. In addition, in the event of any conflict between these General Provisions, the Special Provisions, the Technical Provisions and/or the Proposal pages, the following order of precedence shall control:

1. Proposal pages prevail if they conflict with the General, Special or Technical Provisions.
2. Special Provisions prevail if they conflict with the General Provisions and/or Technical Provisions.
3. Technical Provisions prevail if they are in conflict with the General Provisions.

In case of discrepancy of figures between Drawings, Specifications or both, the matter shall immediately be submitted to the Engineer for determination. Failure to submit the discrepancy issue to the Engineer shall result in the Contractor's actions being at his/her own risk and expense. The Engineer shall furnish from time to time such detailed drawings and other information as he/she may consider necessary.

2.03 INSPECTION

A. Of the Work

All materials furnished and work done shall be subject to inspection.

The Inspector administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of this Contract. All material or work approved and later found to be defective shall be replaced without cost to the City of Tacoma.

B. Inspector's Authority

The inspector shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the Director or Superintendent, whose decision shall be final. The word "Director" means the Director of the City of Tacoma General Government department that is administering the contract. The word "Superintendent" means the Superintendent of the City of Tacoma, Department of Public Utilities Division that is administering the contract.

The Contract shall be carried out under the general control of the representative of the particular City Department or Division administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City of Tacoma. The Contractor shall comply with all orders and instructions given by the representative of the particular Department or Division administering the Contract in accordance with the terms of the Contract.

Provided, that for the purposes of construction contracts, such control shall only apply (a) to the extent necessary to ensure compliance with the provisions of this contract, and (b) to the extent necessary to fulfill any nondelegable duty of the City for the benefit of third parties not engaged in promoting the activity of this contract.

Nothing herein contained, however, shall be taken to relieve the Contractor of his/her obligations or responsibilities under the Contract.

2.04 FEDERAL, STATE AND MUNICIPAL REGULATIONS

All federal, state, municipal and/or local regulations shall be satisfied in the performance of all portions of this Contract. The Contractor shall be solely responsible for all violations of the law from any cause in connection with work performed under this Contract.

2.05 INDEMNIFICATION

A. Indemnification

Contractor acknowledges that pursuant to the terms of this agreement, Contractor is solely and totally responsible for the safety of all persons and property in the performance of this Contract. To the greatest extent allowed by law, Contractor assumes the risk of all damages, loss, cost, penalties and expense and agrees to indemnify, defend and hold harmless the City of Tacoma, from and against any and all liability which may accrue to or be sustained by the City of Tacoma on account of any claim, suit or legal action made or brought against the City of Tacoma for the death of or injury to persons (including Contractor's or subcontractor's employees) or damage to property involving Contractor, or subcontractor(s) and their employees or agents, arising out of and in connection with or incident to the performance of the Contract including if the City is found to have a nondelegable duty to see that work is performed with requisite care, except for injuries or damages caused by the sole negligence of the City. In this regard, Contractor recognizes that Contractor is waiving immunity under industrial Insurance Law, Title 51 RCW. This indemnification extends to the officials, officers and employees of the City and also includes attorney's fees and the cost of establishing the right to indemnification hereunder in favor of the City of Tacoma. In addition, within the context of competitive bidding laws, it is agreed that this indemnification has been mutually negotiated. Provided however, this provision is intended to be applicable to the parties to this agreement and it shall not be interpreted to allow a Contractor's employee to have a claim or cause of action against Contractor.

B. Limitation of Liability for Primarily Supply-Type Contracts

In all contracts where the total cost of the supply of materials and/or equipment constitute at least 70 percent of the total contract price (as determined by the City), the City agrees that it will not hold the contractor, supplier or manufacturer liable for consequential damages for that part of the contract related to the manufacture and/or design of the equipment, materials or supplies.

2.06 CONTRACTOR'S INSURANCE

A. During the course and performance of a Contract, Contractor will provide proof and maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services, products, and deliverables provided under the Contract. The City of Tacoma Insurance Requirements document, if issued, is fully incorporated into the Contract by reference.

B. Failure by City to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

2.07 ASSIGNMENT AND SUBLETTING OF CONTRACT

C. Assignment

The Contract shall not be assigned except with the consent of the Superintendent or his/her designee.

Requests for assignment of this contract must be in writing with the written consent of the surety, and the request must show the proposed person or organization to which the contract is assigned is capable, experienced and equipped to perform such work. The proposed substitute person or organization may be required to submit to the City information as to his/her experience, financial ability and give statements covering tools, equipment, organization, plans and methods to fulfill any portion of the Contract prior to approval of assignment.

D. Subletting

The Contract shall not be sublet except with the written consent of the Superintendent or his/her designee. In the event that a prequalified electrical contractor is necessary to perform certain portions of the work, such work may be subcontracted with a City prequalified electrical contractor for the type of work involved.

Requests for subletting of this Contract must be in writing with the written consent of the Surety, and the request must show the proposed person or organization to which the Contract is sublet is capable, experienced and equipped to perform such work. The proposed substitute person or organization may be required to submit to the City information as to his experience, financial ability and give statements covering tools, equipment, organization, plans and methods to fulfill any portion of the Contract prior to approval of subletting.

The written consent approving the subletting of the Contract shall not be construed to relieve the Contractor of his/her responsibility for the fulfillment of the Contract. The Subcontractor shall be considered to be the agent of the Contractor and the Contractor agrees to be responsible for all the materials, work and indebtedness incurred by the agent.

A subcontractor shall not sublet any portion of a subcontract for work with the City without the written consent of the City.

2.08 DELAY

E. Extension of Time

With the written approval of the Superintendent or his/her designee, the Contractor may be granted additional time for completion of the work required under this Contract, if, in the Superintendent's opinion the additional time requested arises from unavoidable delay.

F. Unavoidable Delay

Unavoidable delays in the prosecution of the work shall include only delays from causes beyond the control of the Contractor and which he/she could not have avoided by the exercise of due care, prudence, foresight and diligence. Delay caused by persons other than the Contractor, Subcontractors or their employees will be considered unavoidable delays insofar as they necessarily interfere with the Contractor's completion of the work, and such delays are not part of this Contract.

Unavoidable delay will not include delays caused by weather conditions, surveys, measurements, inspections and submitting plans to the Engineer of the particular Division involved in administering this Contract.

2.09 GUARANTEE

A. Guarantee for Construction, Labor or Services Contract

Neither the final certificate of payment or any provision in the Contract Documents, nor partial or entire occupancy of the premises by the City, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The City will give notice of observed defects with reasonable promptness.

If it has been discovered, before payment is required under the terms of the Contract, that there is a failure to comply with any of the terms and provisions of this Contract, the City has the right and may withhold payment.

In case of a failure of any part of the work, materials, labor and equipment furnished by the Contract or to fully meet all of the requirements of the Contract, the Contractor shall make such changes as may be necessary to fully meet all of the specifications and requirements of this Contract. Such changes shall be made at the Contractor's sole cost and expense without delay and with the least practicable inconvenience to the City of Tacoma. Rejected material and equipment shall be removed from the City's property by and at the expense of the Contractor.

B. Guarantee for Supply Contracts

Unless a longer period is specified, the supplier and/or manufacturer of the supplies, materials and/or equipment furnished pursuant to this Contract agrees to correct any defect or failure of the supplies, materials and/or equipment which occurs within one year from the date of: (1) test energization if electrical or mechanical equipment; (2) commencement of use if supplies or materials, provided, however, said guarantee period shall not extend beyond eighteen months after date of receipt by the City. All of the costs (including shipping, dismantling and reinstallation) of repairs and/or corrections of defective or failed equipment, supplies and/or material is the responsibility of the supplier and/or manufacturer.

When the supplier is not the manufacturer of the item of equipment, supplier agrees to be responsible for this guarantee and supplier is not relieved by a manufacturer's guarantee.

C. Guarantee Period Extension

The Contract guarantee period shall be suspended from the time a significant defect is first documented by the City until the work or equipment is repaired or replaced by Contractor and accepted by the City. In addition, in the event less than ninety (90) days remain on the guarantee period (after recalculating), the guarantee period shall be extended to allow for at least ninety (90) days from the date the work or equipment is repaired or replaced and accepted by the City.

2.10 DEDUCTIONS FOR UNCORRECTED WORK

If the City of Tacoma deems it expedient to correct work not done in accordance with the terms of this Contract, an equitable deduction from the Contract price shall be made.

2.11 CITY OF TACOMA'S RIGHT TO TERMINATE CONTRACT

A. Termination for Convenience

1. Supplies. The City may terminate a Contract for supplies at any time upon prior written notice to Contractor. Upon the effective date of termination specified in such notice, and payment by the City, all conforming supplies, materials, or equipment previously furnished hereunder shall become its property.
2. Services. The City may terminate a Contract for services at any time, with or without cause, by giving 10-business day's written notice to Supplier. In the event of termination, all finished and unfinished work prepared by Supplier pursuant to the Contract shall be provided to the City. In the event City terminates the Contract due to the City's own reasons and without cause due to Supplier's actions or omissions, the City shall pay Supplier the amount due for actual work and services necessarily performed under the Contract up to the effective date of termination, not to exceed the total compensation set forth in the Contract.

B. Termination for Cause

1. The City may terminate a Contract for either services or supplies in the event of any material breach of any of the terms and conditions of the Contract if the Contractor's breach continues in effect after written notice of breach and 30 days to cure such breach and fails to cure such breach
2. Bankruptcy. If the Contractor should be adjudged as bankrupt, or makes a general assignment for the benefit of creditors, or a receiver should be appointed on account of his/her insolvency, or if he/she or any of his/her subcontractors should violate any of the provisions of the Contract, or if the work is not being properly and diligently performed, the City of Tacoma may serve written notice upon the Contractor and Surety, executing the Payment and Performance Bond, of its intention to terminate the Contract; such notice will contain the reasons for termination of the Contract, and unless within 10 days after the serving of such notice, such violation shall cease and an arrangement satisfactory to the City of Tacoma for correction thereof shall be made, the Contract shall, upon the expiration of said 10 days, cease and terminate and all rights of the Contractor hereunder shall be forfeited. In the event the Contract is terminated for cause, Contractor shall not be entitled to any lost profits resulting therefrom.
3. Notice. In the event of any such termination for cause, the City of Tacoma shall immediately send (by regular mail or other method) written notice thereof to the Surety and the Contractor. Upon such termination the Surety shall have the right to take over and perform the Contract, provided however, the Surety must provide written notice to the City of its intent to complete the work within 15 calendar days of its receipt of the original written notice (from the City) of the intent to terminate. Upon termination and if the Surety does not perform the work, the City of Tacoma may take over the work and prosecute the same to completion by any method it may deem advisable, for the account of and at the expense of the Contractor, and the Contractor and the Surety shall be liable to the City of Tacoma for all cost occasioned to the City of Tacoma thereby. The City of Tacoma may without liability for doing so, take possession of and utilize in completing the work, such materials, equipment, plant and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

2.12 LIENS

In the event that there are any liens on file against the City of Tacoma, the City of Tacoma shall be entitled to withhold final or progress payments to the extent deemed necessary by the City of Tacoma to properly protect the outstanding lien claimants until proper releases have been filed with the City Clerk.

2.13 LEGAL DISPUTES

A. General

Washington law shall govern the interpretation of the Contract. The state or federal courts located in Pierce County Washington shall be the sole venue of any mediation, arbitration, or litigation arising out of the Contract.

Respondents providing submittals from outside the legal jurisdiction of the United States of America will be subject to Tacoma's City Attorney's Office (CAO) opinion as to the viability of possible litigation pursuant to a contract resulting from this Specification. If it is the opinion of the CAO that any possible litigation would be beyond reasonable cost and/or enforcement, the submittal may be excluded from evaluation.

B. Attorney Fees

For contracts up to \$250,000, which become the subject of litigation or arbitration, the substantially prevailing party may be entitled to reasonable attorney fees, as provided in RCW 39.04.240. Provided, however, the attorney fee hourly rate for the City of Tacoma's assistant city attorneys is agreed to be \$150 per hour or the same as the hourly rate for Contractor's legal counsel, whichever is greater.

2.14 DELIVERY

Prices must be quoted F.O.B. destination, freight prepaid and allowed with risk of loss during transit remaining with Contractor/Supplier (unless otherwise stated in these Specifications) to the designated address set forth in these Specifications.

Deliveries shall be between 9:00 a.m. and 3:30 p.m.; Monday through Friday only (except legal holidays of the City of Tacoma).

Legal holidays of the City of Tacoma are:

New Year's Day	January 1
Martin Luther King's Birthday	3rd Monday in January
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday of November
Day after Thanksgiving	4th Friday of November
Christmas Day	December 25

When any of these holidays occur on Saturday or Sunday, the preceding Friday or the following Monday, respectively, is a legal holiday for the City of Tacoma.

2.15 PACKING SLIPS AND INVOICES

A. Packing slips and shipping notices shall be sent to the specific City Division or Department receiving the item(s) at the address stated in City's Solicitation or as otherwise stated in the Contract and include complete description of items, contents of items if crated or cased, quantity, shipping point, carrier, bill of lading number and City of Tacoma purchase order.

B. Each invoice shall show City of Tacoma purchase order number, release number if applicable, quantity, unit of measure, item description, unit price and extended price for each line if applicable, services and deliverables provided if applicable. Line totals shall be summed to give a grand total to which sales tax shall be added, if applicable.

1. For transactions conducted in SAP Ariba, invoices shall be submitted through Ariba.
2. For invoices paid by ACH or by check, unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to accountspayable@cityoftacoma.org.

3. For invoices paid by credit card, invoices shall also display the last name of the cardholder and last four digits (only) of the card number (e.g., Jones/6311). Unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to (do not combine different POs into one invoice or charge) to pcardadmin@cityoftacoma.org.

2.16 APPROVED EQUALS

A. Unless an item is indicated as "No substitute", special brands, when named, are intended to describe the standard of quality, performance or use desired. Equal items will be considered by the City, provided that the respondent specifies the brand and model, and provides all descriptive literature, independent test results, product samples, local servicing and parts availability to enable the City to evaluate the proposed "equal".

B. The decision of the City as to what items are equal shall be final and conclusive. If the City elects to purchase a brand represented by the respondent to be an "equal", the City's acceptance of the item is conditioned on the City's inspection and testing after receipt. If, in the sole judgment of the City, the item is determined not to be an equal, the item shall be returned at the respondent's expense.

C. When a brand name or level of quality is not stated by the respondent, it is understood the offer is exactly as specified. If more than one brand name is specified, respondents must clearly indicate the brand and model/part number being bid.

2.17 ENTIRE AGREEMENT

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

2.18 CODE OF ETHICS

The City's Code of Ethics, Chapter 1.46, Tacoma Municipal Code, provides ethical standards for City personnel and prohibits certain unethical conduct by others including respondents and contractors. Violation of the City's Code of Ethics will be grounds for termination of this contract.

2.19 FEDERAL FINANCIAL ASSISTANCE

If federal funds, including FEMA financial assistance to the City of Tacoma, will be used to fund, pay or reimburse all or a portion of the Contract, Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives and the following clauses will be incorporated into the Contract:

A. EQUAL EMPLOYMENT OPPORTUNITY During the performance of this Contract, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

1. 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 apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other

employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (B)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (B)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

3. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B)(2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (B)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (B)(1) through (4) of this section.

C. CLEAN AIR ACT

1. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

D. FEDERAL WATER POLLUTION CONTROL ACT

1. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. Contractor agrees to report each violation to the City, understands, and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. DEBARMENT AND SUSPENSION

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

F. BYRD ANTI-LOBBYING AMENDMENT

1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification with City. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the City.
2. If applicable, Contractor must sign and submit to the City the following certification:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap.38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

G. PROCUREMENT OF RECOVERED MATERIALS

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

[Section III is for contracts that involve construction and/or labor, and are not applicable to contracts solely for material/supply purchases.]

GENERAL PROVISIONS

SECTION III - CONSTRUCTION AND/OR LABOR CONTRACTS

SECTION III REQUIREMENTS APPLY ONLY TO CONSTRUCTION AND/OR LABOR CONTRACTS AND ARE IN ADDITION TO APPLICABLE REQUIREMENTS CONTAINED IN SECTION II CONTRACT REQUIREMENTS.

3.01 RESPONDENT'S DUTY TO EXAMINE

The Respondent agrees to be responsible for examining the site(s) and to have compared them with the Specifications and Contract Drawings, and to be satisfied as to the facilities and difficulties attending the execution of the proposed Contract (such as uncertainty of weather, floods, nature and condition of materials to be handled and all other conditions, obstacles and contingencies) before the delivery of his/her Proposal. No allowance will be subsequently made by the City on behalf of the Respondent by reason of any error or neglect on Respondent's part, for such uncertainties as aforesaid.

3.02 PERMITS

Except when modified by the Special Provisions, the Contractor shall procure and pay for all permits and licenses necessary for the completion of this Contract including those permits required by the City of Tacoma. The City will obtain county or state road crossing permits if required. In the event a necessary permit is not obtained, the Contractor will not be permitted to work on items subject to said permit and any delays caused thereby will not be subject to extra compensation or extensions.

3.03 NOTIFICATION OF OTHER GOVERNMENTAL AGENCIES AND UTILITIES WHEN UNDERGROUND WORK IS INVOLVED

The Contractor shall notify all other affected governmental agencies and utilities whenever underground work is done under the terms of this Contract. The Contractor is required to obtain permission of the appropriate public and private utilities and governmental agencies before performing underground work pursuant to the terms of this Contract. The Contractor is required to call "one call" at 1-800-424-5555 for all work involving excavation or digging more than 12 inches beneath ground or road surface.

The City may have indicated on the plans and specifications the existence of certain underground facilities that are known to the City department responsible for this Contract. It is the Contractor's responsibility to fully comply with the Underground Utility Locate Law, Chapter 19.122 RCW. If the site conditions are "changed or differing" as defined by RCW 19.122.040(l), the Contractor may pursue the party responsible for not properly marking or identifying the underground facility. The Contractor agrees not to file any claim or legal action against the City (department responsible for this Contract) for said "changed or differing" conditions unless said City department is solely responsible for the delay or damages that the Contractor may have incurred.

3.04 TRENCH EXCAVATION BID ITEM

In the event that "trench excavation" in excess of four feet requires a safety system pursuant to Washington State law and safety shoring, sloping, sheeting, or bracing is used, a separate bid item should be set forth in the Proposal for this work. If a separate bid item is not set forth in the Proposal pages, said installed safety system shall be paid at \$3.00 per lineal foot of trench, which unit price includes both sides of the trench.

3.05 SAFETY

A. General

The Contractor shall, at all times, exercise adequate precautions for the safety of all persons, including its employees and the employees of a Subcontractor, in the performance of this Contract and shall comply with all applicable provisions of federal, state, county and municipal safety laws and regulations. It is the Contractor's responsibility to furnish safety equipment or to contractually require Subcontractors to furnish adequate safety equipment relevant to their responsibilities.

The Contractor shall obtain the necessary line clearance from the inspector before performing any work in, above, below or across energized Light Division circuits.

The Inspector and/or Engineer may advise the Contractor and the Safety Officer of any safety violations. It is the Contractor's responsibility to make the necessary corrections. Failure to correct safety violations is a breach of this Contract and, as such, shall be grounds for an order from the Safety Officer, Inspector or Engineer to cease further work and remove from the job site until the condition is corrected. Time and wages lost due to such safety shutdowns shall not relieve the Contractor of any provisions of Section 3.14 of this Specification and shall be at the sole cost of the Contractor. The purpose of this authority to stop work is to enforce the contract and not to assume control except to the extent necessary to ensure compliance with the provisions of this contract.

Any of the above actions by employees of the City of Tacoma shall in no way relieve the Contractor of his/her responsibility to provide for the safety of all persons, including his/her employees.

B. Work Hazard Analysis Report

The Contractor will be required to complete a work hazard analysis report. This report shall outline how the Contractor proposes to satisfy all safety laws and regulations involved in performing the work. This report shall be completed and submitted to the City Safety Officer before the pre-construction conference. A copy of the report shall be maintained at the work site (accessible to the supervisor).

3.06 PROTECTION OF WORKERS AND PROPERTY

The Contractor shall erect and maintain good and sufficient guards, barricades and signals at all unsafe places at or near the work and shall, in all cases, maintain safe passageways at all road crossings, and crosswalks, and shall do all other things necessary to prevent accident or loss of any kind.

The Contractor shall protect from damage all utilities, improvements, and all other property that is likely to become displaced or damaged by the execution of the work under this Contract.

The Contractor is responsible for all roads and property damaged by his/her operations as shall be determined by the Engineer administering this Contract. The Contractor shall be responsible for repairing all damage to roads caused by his/her operations to the satisfaction of the particular governmental body having jurisdiction over the road.

3.07 CONTRACTOR - SUPERVISION AND CHARACTER OF EMPLOYEES

A. Superintendent to Supervise Contractor's Employees

The Contractor shall keep on his/her work, during its progress, a competent superintendent and any necessary assistants, all of whom must be satisfactory to the City of Tacoma. The Contractor's superintendent shall not be changed except with the consent of the City of Tacoma, unless the Contractor's superintendent proves to be unsatisfactory to the Contractor and ceases to be in his/her employ. The Contractor's superintendent shall represent the Contractor in his/her absence and all directions given to him/her shall be binding as if given to the Contractor directly. The Contractor shall give efficient supervision to the work, using his/her best skill and attention.

B. Character of Contractor's Employees

The Contractor shall employ only competent, skillful, faithful and orderly persons to do the work, and whenever the Engineer administering the Contract shall notify the Contractor in writing that any person on the work is, in his or her opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory, the Contractor shall forthwith discharge such persons from the work and shall not again employ him or her on this Contract.

3.08 CONTRACTOR'S COMPLIANCE WITH THE LAW

A. Hours of Labor

The Contractor and Subcontractors shall be bound by the provisions of RCW Chapter 49.28 (as amended) relating to hours of labor. Except as set forth in the Special Provisions, eight (8) hours in any calendar day shall constitute a day's work on a job performed under this Contract.

In the event that the work is not performed in accordance with this provision and in accordance with the laws of the State of Washington, then this Contract may be terminated by the City of Tacoma for the reason that the same is not performed in accordance with the public policy of the State of Washington as defined in said statutes.

B. Prevailing Wages

If federal, state, local, or any applicable law requires Supplier to pay prevailing wages in connection with a Contract, and Supplier is so notified by the City, then Supplier shall pay applicable prevailing wages.

If applicable, a Schedule of Prevailing Wage Rates and/or the current prevailing wage determination made by the Secretary of Labor for the locality or localities where the Contract will be performed is attached and made of part of the Contract by this reference. If prevailing wages do apply to the Contract, Supplier and its subcontractors shall:

1. Be bound by and perform all transactions regarding the Contract relating to prevailing wages and the usual fringe benefits in compliance with the provisions of Chapter 39.12 RCW, as amended, the Washington State Prevailing Wage Act and/or the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable, including the federal requirement to pay wages not less than once a week,
2. Ensure that no worker, laborer or mechanic employed in the performance of any part of the Contract shall be paid less than the prevailing rate of wage specified on that Schedule and/or specified in a wage determination made by the Secretary of Labor (unless specifically preempted by federal law, the higher of the Washington state prevailing wage or federal Davis-Bacon rate of wage must be paid)and Additionally, in compliance with applicable federal law, contractors are required to pay wages not less than once a week.
3. Immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington and/or the federal Department of Labor, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages and/or other or additional documentation required by applicable federal law, must be submitted by Contractor and its subcontractors to the City, in the manner requested by the City, prior to any payment by the City hereunder, and an Affidavit of Wages Paid and/or other or additional documentation required by federal law must be received or verified by the City prior to final Contract payment. In the event any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the State of Washington, Department of Labor and industries whose decision shall be final, conclusive and binding on all parties involved in the dispute.

3.09 COPELAND ANTI-KICKBACK ACT

For contracts subject to Davis Bacon Act the following clauses will be incorporated into the Contract:

A. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

B. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

3.10 CHANGES

A. In Plans or Quantities

The City of Tacoma, without invalidating this Contract, or any part of this Contract, may order extra work or make reasonable changes by altering, adding to or deducting from the materials, work and labor and the Contract sum will be adjusted accordingly. All such work and labor shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. When work or bid items are deducted, reduced or eliminated, it is agreed that no payment will be made to Contractor for anticipated profit.

B. Extra Work

Any claim or order for extra materials, work and labor made necessary by alterations or additions to the plans or by other reasons for which no price is provided in this Contract, shall not be valid unless the Contractor and Engineer administering the Contract have agreed upon a price prior to commencing extra work, and the agreement has been signed by the Contractor and approved by the Superintendent or his/her designee, and approved by the payment and performance bond surety.

C. Extra Work - No Agreed Price

If it is impracticable to fix an increase in price definitely in advance, the order may fix a maximum price which shall not under any circumstances, be exceeded, and subject to such limitation, such alteration, modification, or extra shall be paid for at the actual necessary cost as determined by the City of Tacoma, which cost (including an allowance for profit) shall be determined as the sum of the following items (1) to (7) inclusive:

- (1) Labor, computed at regular wage scale, including premium on compensation insurance and charge for social security taxes, and other taxes, pertaining to labor; no charge for premium pay shall be allowed unless authorized by the Engineer administering the Contract;
- (2) The proportionate cost of premiums on comprehensive general liability and other insurance applicable to the extra work involved and required under this Contract;
- (3) Material, including sales taxes pertaining to materials;
- (4) Plant and equipment rental, to be agreed upon in writing before the work is begun; no charge for the cost of repairs to plant or equipment will be allowed;
- (5) Superintendence, general expense and profit computed at 20 percent of the total of paragraphs (1) to (4) inclusive;
- (6) The proportionate cost of premiums on bonds required by this Contract, computed by 1 1/2 percent of the total of paragraphs (1) to (5) inclusive.
- (7) The City of Tacoma reserves the right to furnish such materials as it may deem expedient, and no allowance will be made for profit thereon.

Whenever any extra work is in progress, for which the definite price has not been agreed on in advance, the Contractor shall each day, report to the Engineer the amount and cost of the labor and material used, and any other expense incurred in such extra work on the preceding day, and no claim for compensation for such extra work will be allowed unless such report shall have been made.

The above-described methods of determining the payment for work and materials shall not apply to the performance of any work or the furnishing of any material, which, in the judgment of the Engineer administering the Contract, may properly be classified under items for which prices are established in the Contract.

D. Claims for Extra Work

If the Contractor claims that any instructions by drawings or otherwise, involve extra cost under this Contract, he/she shall give the City of Tacoma written notice thereof within 30 days after receipt of such instruction, and in any event before proceeding to execute the work, except in an emergency endangering life or property, and the procedures governing the same shall be as provided for immediately above in this paragraph. The method in these paragraphs is the only method available to the Contractor for payment of claims for extra work performed under the terms of this Contract.

3.11 CLEANING UP

The Contractor shall at all times, at his/her own expense, keep the premises free from accumulation of waste materials or debris caused by any workers or the work, at the completion of the work the Contractor shall remove all his waste materials from and about the site and all his/her equipment, sanitary facilities and surplus materials. In the case of dispute, the City of Tacoma may remove the debris and charge the cost to the Contractor as the City of Tacoma shall determine to be just. All material that is deposited or placed elsewhere than in places designated or approved by the Engineer administering the Contract will not be paid for and the Contractor may be required to remove such material and deposit or place it where directed.

3.12 PROGRESS PAYMENT

Progress payments will be made up to the amount of ninety-five percent (95%) of the actual work completed as shall be determined by the Engineer administering the Contract.

The Contractor may request that an escrow account be established as permitted by law, in which event the Contractor will earn interest on the retained funds.

When the time for construction, services and/or installation will exceed thirty (30) days, the Contractor may request, by invoice, to be paid a progress payment based on percentage of work completed. The Engineer will review and approve the progress payment request on a monthly basis.

3.13 FINAL PAYMENT

The final payment of five percent (5%) of the Contract price shall be approved on final acceptance of the work under this Contract by the Superintendent or his/her designee. In addition, before final payment is made, the Contractor shall be required to:

- A. Provide a certificate from the Washington State Department of Revenue that all taxes due from the Contractor have been paid or are collectible in accordance with the provisions of Chapter 60.28 and Title 82 of the Revised Code of Washington;
- B. Provide the General Release to the City of Tacoma on the form set forth in these Contract documents;
- C. Provide a release of any outstanding liens that have been otherwise filed against any monies held or retained by the City of Tacoma;
- D. File with the City Director of Finance, and with the Director of the Washington State Department of Labor and Industries, on the state form to be provided, an affidavit of wages paid;
- E. File with the City Director of Finance, on the state form to be provided, a statement from the State of Washington, Department of Labor and Industries, certifying that the prevailing wage requirements have been satisfied.
- F. File with the City Director of Finance, on the state form to be provided, a statement of release from the Public Works Contracts Division of the State of Washington, Department of Labor and Industries, verifying that all industrial insurance and medical aid premiums have been paid.

If there is a fee assessed to the City for any certificate, release or other form required by law, the contractor agrees that the fee amount may be passed on to the Contractor and deducted from the monies paid to the Contractor.

3.14 FAILURE TO COMPLETE THE WORK ON TIME

Should the completion of the work required under the Contract be delayed beyond the expiration of the period herein set for the completion of said work, or such extension of said period as may be allowed by reason of unavoidable delays, there shall be deducted from the total Contract price of work, for each calendar day by which such completion shall be delayed beyond said period of such extension thereof the sum of \$300 or a sum of money as set forth hereinafter in these Specifications, as the amount of such deduction per calendar day.

Said sum shall be considered not as a penalty, but as liquidated damages, which the City will suffer by reason of the failure of the Contractor to perform and complete the work within the period, herein fixed or such extensions of said period as may be allowed by reason of unavoidable delays.

Any money due or to become due the Contractor may be retained by the City to cover said liquidated damages, and should such money not be sufficient to cover such damages, the City shall have the right to recover the balance from the Contractor or his/her Sureties.

The filing of any bid for the work herein contemplated shall constitute acknowledgment by the Respondent that he/she understands, agrees and has ascertained that the City will actually suffer damages to the amount hereinabove fixed for each and every calendar day during which the completion of the work herein required shall be delayed beyond the expiration of the period herein fixed for such completion or such extension of said period as may be allowed by reason of unavoidable delays.

3.15 CITY RESERVES RIGHT TO USE FACILITIES PRIOR TO ACCEPTANCE

The City of Tacoma hereby reserves the right to use the facilities herein contracted prior to final acceptance under this Contract. The use of said facilities, as mentioned herein, shall not be construed as a waiver or relinquishment of any rights that the City of Tacoma has under this Contract.

3.16 LIST OF SUBCONTRACTORS

Bid proposals for construction, alteration or repair of any building or other public works that may exceed \$1,000,000 including tax shall satisfy the following requirement: Respondent shall submit as part of the bid, the names of the subcontractors, with whom the respondent, if awarded the contract, will subcontract performance of the work of heating, ventilation and air conditioning, plumbing as described in chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW, or to name itself for the work. The respondent shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the respondent must indicate which subcontractor will be used for which alternate. Failure to comply with this provision or the naming of two or more subcontractors to perform the same work shall require the City (pursuant to state law RCW 39.30.060) to determine that respondent's bid is nonresponsive; therefore, the bid will be rejected.

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PART 1 – GENERAL PROVISIONS

1.01 DEFINITIONS

- A. "Application for Payment" means a written request submitted by Contractor to A/E for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner or A/E may require.
- B. "Architect," "Engineer," or "A/E" means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. "Change Order" means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- D. "Claim" means Contractor's exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in Part 8.
- E. "Contract Award Amount" is the sum of the Base Bid and any accepted Alternates.
- F. "Contract Documents" means the Advertisement for Bids, Instructions for Bidders, completed Bid Form, General Conditions, Modifications to the General Conditions, Supplemental Conditions, Public Works Contract, other Special Forms, Drawings and Specifications, and all addenda and modifications thereof.
- G. "Contract Sum" is the total amount payable by Owner to Contractor, for performance of the Work in accordance with the Contract Documents, including all taxes imposed by law and properly chargeable to the Work, except Washington State sales tax.
- H. "Contract Time" is the number of calendar days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- I. "Contractor" means the person or entity who has agreed with Owner to perform the Work in accordance with the Contract Documents.
- J. "Day(s):" Unless otherwise specified, day(s) shall mean calendar day(s)."
- K. "Drawings" are the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- L. "Final Acceptance" means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents, as more fully set forth in Section 6.09 B.
- M. "Final Completion" means that the Work is fully and finally complete in accordance with the Contract Documents, as more fully set forth in Section 6.09 A.
- N. "Force Majeure" means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in paragraph 3.05A.
- O. "Notice" means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.

- P. "Notice to Proceed" means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.
- Q. "Owner" means the state agency, institution, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.
- R. "Person" means a corporation, partnership, business association of any kind, trust, company, or individual.
- S. "Prior Occupancy" means Owner's use of all or parts of the Project before Substantial Completion, as more fully set forth in Section 6.08 A.
- T. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner, as further set forth in Section 3.02.
- U. "Project" means the total construction of which the Work performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- V. "Project Record" means the separate set of Drawings and Specifications as further set forth in paragraph 4.02A.
- W. "Schedule of Values" means a written breakdown allocating the total Contract Sum to each principal category of Work, in such detail as requested by Owner.
- X. "Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- Y. "Subcontract" means a contract entered into by Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.
- Z. "Subcontractor" means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.
- AA. "Substantial Completion" means that stage in the progress of the Work when the construction is sufficiently complete, as more fully set forth in Section 6.07.
- AB. "Work" means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

1.02 ORDER OF PRECEDENCE

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:

1. Signed Public Works Contract, including any Change Orders.
2. Supplemental Conditions.
3. Modifications to the General Conditions.
4. General Conditions.

5. Specifications. Provisions in Division 1 shall take precedence over provisions of any other Division.
6. Drawings. In case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings.
7. Signed and Completed Bid Form.
8. Instructions to Bidders.
9. Advertisement for Bids.

1.03 EXECUTION AND INTENT

Contractor Representations: Contractor makes the following representations to Owner:

1. Contract Sum reasonable: The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents;
2. Contractor familiar with project: Contractor has carefully reviewed the Contract Documents, visited and examined the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;
3. Contractor financially capable: Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and
4. Contractor can complete Work: Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and has sufficient experience and competence to do so.

PART 2 – INSURANCE AND BONDS

2.01 CONTRACTOR'S LIABILITY INSURANCE

General insurance requirements: Prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this part shall be licensed to do business under Chapter 48 RCW or comply with the Surplus Lines Law of the State of Washington. Contractor shall include in its bid the cost of all insurance and bond costs required to complete the base bid work and accepted alternates. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A.M. Best rating shall be indicated on the insurance certificates.

- A. Term of insurance coverage: Contractor shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by Section 5.16.

1. General Liability Insurance: Commercial General Liability (CGL) on an Occurrence Form. Coverage shall include, but not be limited to:
 - a. Completed operations/products liability;
 - b. Explosion, collapse, and underground; and
 - c. Employer's liability coverage.
 2. Automobile Liability Insurance: Automobile liability
- B. Industrial Insurance compliance: Contractor shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen's and Harbor Workers' Act and the Jones Act.
- C. Insurance to protect for the following: All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.
- D. Owner as Additional Insured: All insurance coverages shall be endorsed to include Owner as an additional named insured for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence the Owner as an additional insured.

2.02 COVERAGE LIMITS

Insurance amounts: The coverage limits shall be as follows:

- A. Limits of Liability shall not be less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage (other than Automobile Liability) Each Occurrence; Personal Injury and Advertising Liability Each Occurrence.
- B. \$2,000,000 Combined Single Limit Annual General Aggregate.
- C. \$2,000,000 Annual Aggregate for Products and Completed Operations Liability.
- D. \$1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss.

2.03 INSURANCE COVERAGE CERTIFICATES

- A. Certificate required: Prior to commencement of the Work, Contractor shall furnish to Owner a completed certificate of insurance coverage.
- B. List Project info: All insurance certificates shall name Owner's Project number and Project title.
- C. Cancellation provisions: All insurance certificates shall specifically require 45 Days prior notice to Owner of cancellation or any material change, except 30 Days for surplus line insurance.

2.04 PAYMENT AND PERFORMANCE BONDS

Conditions for bonds: Payment and performance bonds for 100% of the Contract Award Amount, plus state sales tax, shall be furnished for the Work, using the Payment Bond and Performance Bond form published by and available from the American Institute of Architects (AIA) – form A312. Prior to execution of a Change Order that, cumulatively with previous Change Orders, increases the Contract Award Amount by 15% or more, the Contractor shall provide either new payment and performance bonds for the

revised Contract Sum, or riders to the existing payment and performance bonds increasing the amount of the bonds. The Contractor shall likewise provide additional bonds or riders when subsequent Change Orders increase the Contract Sum by 15% or more. No payment or performance bond is required if the Contract Sum is \$35,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 50% of the Contract Sum for the period allowed by RCW 39.08.010.

2.05 ALTERNATIVE SURETY

When alternative surety required: Contractor shall promptly furnish payment and performance bonds from an alternative surety as required to protect Owner and persons supplying labor or materials required by the Contract Documents if:

- A. Owner has a reasonable objection to the surety; or
- B. Any surety fails to furnish reports on its financial condition if required by Owner.

2.06 BUILDER'S RISK

- A. Contractor to buy Property Insurance: Contractor shall purchase and maintain property insurance in the amount of the Contract Sum including all Change Orders for the Work on a replacement cost basis until Substantial Completion. For projects not involving New Building Construction, "Installation Floater" is an acceptable substitute for the Builder's Risk Insurance. The insurance shall cover the interest of Owner, Contractor, and any Subcontractors, as their interests may appear.
- B. Losses covered: Contractor property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for A/E's services and expenses required as a result of an insured loss.
- C. Waiver of subrogation rights: Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E's subconsultants, separate contractors described in Section 5.20, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

PART 3 – TIME AND SCHEDULE

3.01 PROGRESS AND COMPLETION

Contractor to meet schedule: Contractor shall diligently prosecute the Work, with adequate forces, achieve Substantial Completion within the Contract Time, and achieve Final Completion within a reasonable period thereafter.

3.02 CONSTRUCTION SCHEDULE

- A. Preliminary Progress Schedule: Unless otherwise provided in Division 1, Contractor shall, within 14 Days after issuance of the Notice to Proceed, submit a preliminary Progress Schedule. The Progress Schedule shall show the sequence in which Contractor proposes to perform the Work,

and the dates on which Contractor plans to start and finish major portions of the Work, including dates for shop drawings and other submittals, and for acquiring materials and equipment.

- B. Form of Progress Schedule: Unless otherwise provided in Division 1, the Progress Schedule shall be in the form of a bar chart, or a critical path method analysis, as specified by Owner. The preliminary Progress Schedule may be general, showing the major portions of the Work, with a more detailed Progress Schedule submitted as directed by Owner.
- C. Owner comments on Progress Schedule: Owner shall return comments on the preliminary Progress Schedule to Contractor within 14 Days of receipt. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this section.
- D. Monthly updates and compliance with Progress Schedule: Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Progress Schedule at its own expense to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in Section 3.05, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with the Progress Schedule, and if directed by Owner, Contractor shall submit a corrective action plan or revise the Progress Schedule to reconcile with the actual progress of the Work.
- E. Contractor to notify Owner of delays: Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.

3.03 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE

- A. Owner may suspend Work: Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 Days, or for such longer period as mutually agreed.
- B. Compliance with suspension; Owner's options: Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 Days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
 - 1. Cancel the written notice suspending the Work; or
 - 2. Terminate the Work covered by the notice as provided in the termination provisions of Part 9.
- C. Resumption of Work: If a written notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. Equitable Adjustment for suspensions: Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance

directly attributable to such suspension, provided Contractor complies with all requirements set forth in Part 7.

3.04 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE

- A. Owner may stop Work for Contractor's failure to perform: If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. No Equitable Adjustment for Contractor's failure to perform: Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

3.05 DELAY

- A. Force Majeure actions not a default; Force Majeure defined: Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:
1. Acts of God or the public enemy;
 2. Acts or omissions of any government entity;
 3. Fire or other casualty for which Contractor is not responsible;
 4. Quarantine or epidemic;
 5. Strike or defensive lockout;
 6. Unusually severe weather conditions which could not have been reasonably anticipated; and
 7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.
- B. Contract Time adjustment for Force Majeure: Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it makes a request for equitable adjustment according to Section 7.03. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.
- C. Contract Time or Contract Sum adjustment if Owner at fault: Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to Sections 7.02 and 7.03.
- D. No Contract Time or Contract Sum adjustment if Contractor at fault: Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.

- E. Contract Time adjustment only for concurrent fault: To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to Section 7.03, but shall not be entitled to an adjustment in Contract Sum.
- F. Contractor to mitigate delay impacts: Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

3.06 NOTICE TO OWNER OF LABOR DISPUTES

- A. Contractor to notify Owner of labor disputes: If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give notice, including all relevant information, to Owner.
- B. Pass through notification provisions to Subcontractors: Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

A. Liquidated Damages

- 1. Reason for Liquidated Damages: Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents.
- 2. Calculation of Liquidated Damages amount: The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from periodic payments to the Contractor.
- 3. Contractor responsible even if Liquidated Damages assessed: Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.

B. Actual Damages

Calculation of Actual Damages: Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

4.01 DISCREPANCIES AND CONTRACT DOCUMENT REVIEW

- A. Specifications and Drawings are basis of the Work: The intent of the Specifications and Drawings is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Specifications, and other provisions of the Contract Documents.
- B. Parts of the Contract Documents are complementary: The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. Contractor to report discrepancies in Contract Documents: Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to A/E in writing.
- D. Contractor knowledge of discrepancy in documents – responsibility: Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows or reasonably should have known that any of the Contract Documents contain a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction.
- E. Contractor to perform Work implied by Contract Documents: Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.
- F. Interpretation questions referred to A/E: Questions regarding interpretation of the requirements of the Contract Documents shall be referred to the A/E.

4.02 PROJECT RECORD

- A. Contractor to maintain Project Record Drawings and Specifications: Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order Proposals (COP). This separate set of Drawings and Specifications shall be the "Project Record."
- B. Update Project Record weekly and keep on site: The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled "PROJECT RECORD." The Project Record shall be updated at least weekly noting all changes and shall be available to Owner at all times.
- C. Final Project Record to A/E before Final Acceptance: Contractor shall submit the completed and finalized Project Record to A/E prior to Final Acceptance.

4.03 SHOP DRAWINGS

- A. Definition of Shop Drawings: “Shop Drawings” means documents and other information required to be submitted to A/E by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings include, but are not limited to, drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents.
- B. Approval of Shop Drawings by Contractor and A/E: Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Shop Drawings shall be stamped by an appropriate professional licensed by the state of Washington. Shop Drawings submitted to A/E without evidence of Contractor's approval shall be returned for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for A/E review. A/E will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and A/E shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with reviewed Shop Drawings. Submittals made by Contractor which are not required by the Contract Documents may be returned without action.
- C. Contractor not relieved of responsibility when Shop Drawings approved: Approval, or other appropriate action with regard to Shop Drawings, by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain approval before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs of correction.
- D. Variations between Shop Drawings and Contract Documents: If Shop Drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing, separate from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If A/E approves any such variation, an appropriate Change Order will be issued. If the variation is minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order need not be issued; however, the modification shall be recorded upon the Project Record.
- E. Contractor to submit 5 copies of Shop Drawings: Unless otherwise provided in Division 1, Contractor shall submit to A/E for approval 5 copies of all Shop Drawings. Unless otherwise indicated, 3 sets of all Shop Drawings shall be retained by A/E and 2 sets shall be returned to Contractor.

4.04 ORGANIZATION OF SPECIFICATIONS

Specification organization by trade: Specifications are prepared in sections which conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS

- A. A/E, not Contractor, owns Copyright of Drawings and Specifications: The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.
- B. Drawings and Specifications to be used only for this Project: The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of their Work.
- C. Shop Drawing license granted to Owner: Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in Section 5.03 and 5.22 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.
- D. Shop Drawings to be used only for this Project: The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

PART 5 – PERFORMANCE

5.01 CONTRACTOR CONTROL AND SUPERVISION

- A. Contractor responsible for Means and Methods of construction: Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the

Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.

- B. Competent Superintendent required: Performance of the Work shall be directly supervised by a competent superintendent who has authority to act for Contractor. The superintendent must be satisfactory to the Owner and shall not be changed without the prior written consent of Owner. Owner may require Contractor to remove the superintendent from the Work or Project site, if Owner reasonably deems the superintendent incompetent, careless, or otherwise objectionable, provided Owner has first notified Contractor in writing and allowed a reasonable period for transition.
- C. Contractor responsible for acts and omissions of self and agents: Contractor shall be responsible to Owner for acts and omissions of Contractor, Subcontractors, and their employees and agents.
- D. Contractor to employ competent and disciplined workforce: Contractor shall enforce strict discipline and good order among all of the Contractor's employees and other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, request Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.
- E. Contractor to keep project documents on site: Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, and permits and permit drawings.
- F. Contractor to comply with ethical standards: Contractor shall ensure that its owner(s) and employees, and those of its Subcontractors, comply with the Ethics in Public Service Act RCW 42.52, which, among other things, prohibits state employees from having an economic interest in any public works contract that was made by, or supervised by, that employee. Contractor shall remove, at its sole cost and expense, any of its, or its Subcontractors' employees, if they are in violation of this act.

5.02 PERMITS, FEES, AND NOTICES

- A. Contractor to obtain and pay for permits: Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner.
- B. Allowances for permit fees: If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor's bid, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference shall be adjusted by Change Order.
- C. Contractor to comply with all applicable laws: Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

5.03 PATENTS AND ROYALTIES

Payment, indemnification, and notice: Contractor is responsible for, and shall pay, all royalties and license fees. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a

particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement.

5.04 PREVAILING WAGES

- A. Contractor to pay Prevailing Wages: Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.
- B. Statement of Intent to Pay Prevailing Wages: Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, the Contractor shall submit, or shall have previously submitted to the Owner for the Project, a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
- C. Affidavit of Wages Paid: Prior to release of retainage, the Contractor shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed work on the Project.
- D. Disputes: Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.
- E. Statement with pay application; Post Statements of Intent at job site: Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefilled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- F. Contractor to pay for Statements of Intent and Affidavits: In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.
- G. Certified Payrolls: Consistent with WAC 296-127-320, the Contractor and any subcontractor shall submit a certified copy of payroll records if requested.

5.05 HOURS OF LABOR

- A. Overtime: Contractor shall comply with all applicable provisions of RCW 49.28 and they are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Contractor, any Subcontractor, or any other person performing or contracting to do the whole or any part of the Work, shall be permitted or required to work more than eight hours in any one calendar day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight hours of each calendar day shall be not less than one and one-half times the rate allowed for this same amount of time during eight hours of service.

- B. 4-10 Agreements: Notwithstanding the preceding paragraph, RCW 49.28 permits a contractor or subcontractor in any public works contract subject to those provisions, to enter into an agreement with its employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of RCW 49.28 shall not apply to the hours, up to forty hours per week, worked pursuant to any such agreement.

5.06 **NONDISCRIMINATION**

- A. Discrimination prohibited by applicable laws: Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, Sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60, and Gubernatorial Executive Order 85-09. These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.
- B. During performance of the Work:
1. Protected Classes: Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in RCW 49.60.
 2. Advertisements to state nondiscrimination: Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability.
 3. Contractor to notify unions and others of nondiscrimination: Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents and RCW 49.60.
 4. Owner and State access to Contractor records: Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, and by the Washington State Human Rights Commission, for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
 5. Pass through provisions to Subcontractors: Contractor shall include the provisions of this section in every Subcontract.

5.07 **SAFETY PRECAUTIONS**

- A. Contractor responsible for safety: Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.
- B. Contractor safety responsibilities: In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations,

and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.

- C. Contractor to maintain safety records: Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.
- D. Contractor to provide HazMat training: Contractor shall provide all persons working on the Project site with information and training on hazardous chemicals in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.
1. Information. At a minimum, Contractor shall inform persons working on the Project site of:
 - a. WAC: The requirements of chapter 296-62 WAC, General Occupational Health Standards;
 - b. Presence of hazardous chemicals: Any operations in their work area where hazardous chemicals are present; and
 - c. Hazard communications program: The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by chapter 296-62 WAC.
 2. Training. At a minimum, Contractor shall provide training for persons working on the Project site which includes:
 - a. Detecting hazardous chemicals: Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
 - b. Hazards of chemicals: The physical and health hazards of the chemicals in the work area;
 - c. Protection from hazards: The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
 - d. Hazard communications program: The details of the hazard communications program developed by Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.
- E. Hazardous, toxic or harmful substances: Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:
1. Illegal use of dangerous substances: Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or

harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "hazardous substances"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 Days on the Project site.

2. Contractor notifications of spills, failures, inspections, and fines: Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.
- F. Public safety and traffic: All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
- G. Contractor to act in an emergency: In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if so authorized or instructed.
- H. No duty of safety by Owner or A/E: Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

5.08 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS

- A. Limited storage areas: Contractor shall confine all operations, including storage of materials, to Owner-approved areas.
- B. Temporary buildings and utilities at Contractor expense: Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall be removed by Contractor at its expense upon completion of the Work.
- C. Roads and vehicle loads: Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.
- D. Ownership and reporting by Contractor of demolished materials: Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.
- E. Contractor responsible for care of materials and equipment on-site: Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of

Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.

- F. Contractor responsible for loss of materials and equipment: Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

5.09 PRIOR NOTICE OF EXCAVATION

- A. Excavation defined; Use of locator services: "Excavation" means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than 12 inches in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line. Before commencing any excavation, Contractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services.

5.10 UNFORESEEN PHYSICAL CONDITIONS

- A. Notice requirement for concealed or unknown conditions: If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly and in no event later than 7 Days after the first observance of the conditions. Conditions shall not be disturbed prior to such notice.
- B. Adjustment in Contract Time and Contract Sum: If such conditions differ materially and cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor may be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefore as provided in Part 7.

5.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES AND IMPROVEMENTS

- A. Contractor to protect and repair property: Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.
- B. Tree and vegetation protection: Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

5.12 LAYOUT OF WORK

- A. Advanced planning of the Work: Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.

- B. Layout responsibilities: Contractor shall lay out the Work from Owner-established baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.

5.13 MATERIAL AND EQUIPMENT

- A. Contractor to provide new and equivalent equipment and materials: All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of A/E, is equal to that named in the specifications, unless otherwise specifically provided in the Contract Documents.
- B. Contractor responsible for fitting parts together: Contractor shall do all cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.
- C. Owner may reject defective Work: Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this work, in whatever stage of completion, may be rejected by Owner.

5.14 AVAILABILITY AND USE OF UTILITY SERVICES

- A. Owner to provide and charge for utilities: Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at prevailing rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities furnished.
- B. Contractor to install temporary connections and meters: Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

5.15 TESTS AND INSPECTION

- A. Contractor to provide for all testing and inspection of Work: Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner timely notice of when and

where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.

- B. Owner may conduct tests and inspections: Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:
1. Constitute or imply acceptance;
 2. Relieve Contractor of responsibility for providing adequate quality control measures;
 3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
 4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
 5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- C. Inspections or inspectors do not modify Contract Documents: Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- D. Contractor responsibilities on inspections: Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

5.16 **CORRECTION OF NONCONFORMING WORK**

- A. Work covered by Contractor without inspection: If a portion of the Work is covered contrary to the requirements in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at the Contractor's expense and without change in the Contract Time.
- B. Payment provisions for uncovering covered Work: If, at any time prior to Final Completion, Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes such a request as provided in Part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the costs of examination and reconstruction.
- C. Contractor to correct and pay for non-conforming Work: Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or

completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.

- D. Contractor's compliance with warranty provisions: If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under Section 6.08, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. Owner shall give such notice promptly after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.
- E. Contractor to remove non-conforming Work: Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- F. Owner may charge Contractor for non-conforming Work: If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to the Contractor.
- G. Contractor to pay for damaged Work during correction: Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- H. No Period of limitation on other requirements: Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in Section 5.16D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. Owner may accept non-conforming Work and charge Contractor: If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum may be reduced as appropriate and equitable.

5.17 CLEAN UP

Contractor to keep site clean and leave it clean: Contractor shall at all times keep the Project site, including hauling routes, infrastructures, utilities, and storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises its rubbish, tools, scaffolding, equipment, and materials. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Contractor.

5.18 ACCESS TO WORK

Owner and A/E access to Work site: Contractor shall provide Owner and A/E access to the Work in progress wherever located.

5.19 OTHER CONTRACTS

Owner may award other contracts; Contractor to cooperate: Owner may undertake or award other contracts for additional work at or near the Project site. Contractor shall reasonably cooperate with the other contractors and with Owner's employees and shall carefully adapt scheduling and perform the Work in accordance with these Contract Documents to reasonably accommodate the other work.

5.20 SUBCONTRACTORS AND SUPPLIERS

- A. Subcontractor Responsibility: The Contractor shall include the language of this paragraph in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this paragraph apply to all subcontractors regardless of tier. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
1. Have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. If applicable, have:
 - a. Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department number, as required in Title 50 RCW;
 - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
 5. On a project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the Owner's first advertisement of the project.
- B. Provide names of Subcontractors and use qualified firms: Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials in excess of \$2,500. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.

- C. Subcontracts in writing and pass through provision: All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.
- D. Coordination of Subcontractors; Contractor responsible for Work: Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents.
- E. Automatic assignment of subcontracts: Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:
1. Effective only after termination and Owner approval: The assignment is effective only after termination by Owner for cause pursuant to Section 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and
 2. Owner assumes Contractor's responsibilities: After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.
 3. Impact of bond: The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

5.21 WARRANTY OF CONSTRUCTION

- A. Contractor warranty of Work: In addition to any special warranties provided elsewhere in the Contract Documents, Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor.
- B. Contractor responsibilities: With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:
1. Obtain warranties: Obtain all warranties that would be given in normal commercial practice;
 2. Warranties for benefit of Owner: Require all warranties to be executed, in writing, for the benefit of Owner;
 3. Enforcement of warranties: Enforce all warranties for the benefit of Owner, if directed by Owner; and
 4. Contractor responsibility for subcontractor warranties: Be responsible to enforce any subcontractor's, manufacturer's, or supplier's warranties should they extend beyond the period specified in the Contract Documents.
- C. Warranties beyond Final Acceptance: The obligations under this section shall survive Final Acceptance.

5.22 INDEMNIFICATION

- A. Contractor to indemnify Owner: Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:
1. Sole negligence of Contractor: The sole negligence of Contractor or any of its Subcontractors;
 2. Concurrent negligence: The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and
 3. Patent infringement: The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret.
- B. Employee action and RCW Title 51: In any action against Owner and any other entity indemnified in accordance with this section, by any employee of Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to Owner and A/E only, in accordance with RCW Title 51.

PART 6 – PAYMENTS AND COMPLETION

6.01 CONTRACT SUM

Owner shall pay Contract Sum: Owner shall pay Contractor the Contract Sum plus state sales tax for performance of the Work, in accordance with the Contract Documents.

6.02 SCHEDULE OF VALUES

Contractor to submit Schedule of Values: Before submitting its first Application for Payment, Contractor shall submit to Owner for approval a breakdown allocating the total Contract Sum to each principal category of work, in such detail as requested by Owner ("Schedule of Values"). The approved Schedule of Values shall include appropriate amounts for demobilization, record drawings, O&M manuals, and any other requirements for Project closeout, and shall be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

6.03 APPLICATION FOR PAYMENT

- A. Monthly Application for Payment with substantiation: At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.
- B. Contractor certifies Subcontractors paid: By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in Section 1.03, are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment.

- C. Reconciliation of Work with Progress Schedule: At the time it submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.
- D. Payment for material delivered to site or stored off-site: If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
1. Suitable facility or location: The material will be placed in a facility or location that is structurally sound, dry, lighted and suitable for the materials to be stored;
 2. Facility or location within 10 miles of Project: The facility or location is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
 3. Facility or location exclusive to Project's materials: Only materials for the Project are stored within the facility or location (or a secure portion of a facility or location set aside for the Project);
 4. Insurance provided on materials in facility or location: Contractor furnishes Owner a certificate of insurance extending Contractor's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
 5. Facility or location locked and secure: The facility or location (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;
 6. Owner right of access to facility or location: Owner shall at all times have the right of access in company of Contractor;
 7. Contractor assumes total responsibility for stored materials: Contractor and its surety assume total responsibility for the stored materials; and
 8. Contractor provides documentation and Notice when materials moved to site: Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish Notice to Owner when materials are moved from storage to the Project site.

6.04 PROGRESS PAYMENTS

- A. Owner to pay within 30 Days: Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 Days after receipt of a properly executed Application for Payment. Owner shall notify Contractor in accordance with chapter 39.76 RCW if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. Withholding retainage; Options for retainage: Owner shall retain 5% of the amount of each progress payment until 45 Days after Final Acceptance and receipt of all documents required by law or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage. In accordance with chapter 60.28 RCW, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.

- C. Title passes to Owner upon payment: Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.
- D. Interest on unpaid balances: Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in chapter 39.76 RCW.

6.05 PAYMENTS WITHHELD

- A. Owner's right to withhold payment: Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:
1. Non-compliant Work: Work not in accordance with the Contract Documents;
 2. Remaining Work to cost more than unpaid balance: Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
 3. Owner correction or completion Work: Work by Owner to correct defective Work or complete the Work in accordance with Section 5.16;
 4. Contractor's failure to perform: Contractor's failure to perform in accordance with the Contract Documents; or
 5. Contractor's negligent acts or omissions: Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.
- B. Owner to notify Contractor of withholding for unsatisfactory performance: In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with chapter 39.76 RCW.

6.06 RETAINAGE AND BOND CLAIM RIGHTS

Chapters 39.08 RCW and 60.28 RCW incorporated by reference: Chapters 39.08 RCW and 60.28 RCW, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein.

6.07 SUBSTANTIAL COMPLETION

Substantial Completion defined: Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner has full and unrestricted use and benefit of the facilities (or portion thereof designated and approved by Owner) for the use for which it is intended. All Work other than incidental corrective or punch list work shall be completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required occupancy permits have not been issued, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion which must be approved by Change Order. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

6.08 PRIOR OCCUPANCY

- A. Prior Occupancy defined; Restrictions: Owner may, upon written notice thereof to Contractor, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: be deemed an acceptance of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.
- B. Damage; Duty to repair and warranties: Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy. Contractor's one year duty to repair any system warranties shall begin on building systems activated and used by Owner as agreed in writing by Owner and Contractor.

6.09 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT

- A. Final Completion defined: Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing, but in no case shall constitute Final Acceptance which is a subsequent, separate, and distinct action.
- B. Final Acceptance defined: Final Acceptance shall be achieved when the Contractor has completed the requirements of the Contract Documents. The date Final Acceptance is achieved shall be established by Owner in writing. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a written notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the payment and performance bonds, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Final payment waives Claim rights: Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in Part 8.

PART 7 – CHANGES

7.01 CHANGE IN THE WORK

- A. Changes in Work, Contract Sum, and Contract Time by Change Order: Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in Section 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.
- B. Owner may request COP from Contractor: If Owner desires to order a change in the Work, it may request a written Change Order Proposal (COP) from Contractor. Contractor shall submit a Change Order Proposal within 14 Days of the request from Owner, or within such other period as mutually agreed. Contractor's Change Order Proposal shall be full compensation for

implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

- C. COP negotiations: Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in Sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order, Owner may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- D. Change Order as full payment and final settlement: If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- E. Failure to agree upon terms of Change Order; Final offer and Claims: If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 Days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in Part 8.
- F. Field Authorizations: The Owner may direct the Contractor to proceed with a change in the work through a written Field Authorization (also referred to as a Field Order) when the time required to price and execute a Change Order would impact the Project.

The Field Authorization shall describe and include the following:

1. The scope of work
2. An agreed upon maximum not-to-exceed amount
3. Any estimated change to the Contract Time
4. The method of final cost determination in accordance with the requirements of Part 7 of the General Conditions
5. The supporting cost data to be submitted in accordance with the requirements of Part 7 of the General Conditions

Upon satisfactory submittal by the Contractor and approval by the Owner of supporting cost data, a Change Order will be executed. The Owner will not make payment to the Contractor for Field Authorization work until that work has been incorporated into an executed Change Order.

7.02 CHANGE IN THE CONTRACT SUM

A. General Application

1. Contract Sum changes only by Change Order: The Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order Proposal.
2. Owner fault or negligence as basis for change in Contract Sum: If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; the change is concurrently caused by Contractor and Owner; or the change is caused by an act of Force Majeure as defined in Section 3.05.
 - (a) Notice and record keeping for equitable adjustment: A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within 7 Days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.
 - (b) Content of notice for equitable adjustment; Failure to comply: Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 7 Days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
 - (c) Contractor to provide supplemental information: Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with Section 7.03C. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

- (d) Contractor to proceed with Work as directed: Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
 - (e) Contractor to combine requests for same event together: Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together.
- 3. Methods for calculating Change Order amount: The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:
 - a. Fixed Price: On the basis of a fixed price as determined in paragraph 7.02B.
 - b. Unit Prices: By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.
 - c. Time and Materials: On the basis of time and material as determined in paragraph 7.02D.
- 4. Fixed price method is default; Owner may direct otherwise: When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in subparagraph 3 above to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

B. Change Order Pricing – Fixed Price

Procedures: When the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:

- 1. Breakdown and itemization of details on COP: Contractor's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.
- 2. Use of industry standards in calculating costs: All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material quantities, and equipment costs.
- 3. Costs contingent on Owner's actions: If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
- 4. Markups on additive and deductive Work: The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.
- 5. Breakdown not required if change less than \$1,000: If the total cost of the change in the Work or request for equitable adjustment does not exceed \$1,000, Contractor shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.

6. Breakdown required if change between \$1,000 and \$2,500: If the total cost of the change in the Work or request for equitable adjustment is between \$1,000 and \$2,500, Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:
- a. lump sum labor;
 - b. lump sum material;
 - c. lump sum equipment usage;
 - d. overhead and profit as set forth below; and
 - e. insurance and bond costs as set forth below.
7. Components of increased cost: Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
- a. Craft labor costs: These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:
 - (1) Basic wages and benefits: Hourly rates and benefits as stated on the Department of Labor and Industries approved "statement of intent to pay prevailing wages" or a higher amount if approved by the Owner. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.
 - (2) Worker's insurance: Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the Department of Labor and Industries.
 - (3) Federal insurance: Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
 - (4) Travel allowance: Travel allowance and/or subsistence, if applicable, not exceeding those allowances established by regional labor union agreements, which are itemized and identified separately.
 - (5) Safety: Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.
 - b. Material costs: This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.

c. Equipment costs: This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used solely for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources:

- (1) Associated General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement current edition, on the Contract execution date.
- (2) The National Electrical Contractors Association for equipment used on electrical work.
- (3) The Mechanical Contractors Association of America for equipment used on mechanical work.

The EquipmentWatch Rental Rate Blue Book shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, current edition on the Contract execution date.

d. Allowance for small tools, expendables & consumable supplies: Small tools consist of tools which cost \$250 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:

- (1) 3% for Contractor: For Contractor, 3% of direct labor costs.
- (2) 5% for Subcontractors: For Subcontractors, 5% of direct labor costs.

Expendables and consumables supplies directly associated with the change in Work must be itemized.

e. Subcontractor costs: This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.

f. Allowance for overhead: This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any change in the Contract Sum. If the Contractor is compensated under Section 7.03D, the amount of such compensation shall be reduced by the amount Contractor is otherwise entitled to under this subsection (f). This allowance shall compensate Contractor for all noncraft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the rates below:

- (1). Projects less than \$3 million: For projects where the Contract Award Amount is under \$3 million, the following shall apply:

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- (a) Contractor markup on Contractor Work: For Contractor, for any Work actually performed by Contractor's own forces, 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
 - (b) Subcontractor markup for Subcontractor Work: For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
 - (c) Contractor markup for Subcontractor Work: For Contractor, for any work performed by its Subcontractor(s) 6% of the first \$50,000 of the amount due each Subcontractor, and 4% of the remaining amount if any.
 - (d) Subcontractor markup for lower tier Subcontractor Work: For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.
 - (e) Basis of cost applicable for markup: The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.
- (2). Projects more than \$3 million: For projects where the Contract Award Amount is equal to or exceeds \$3 million, the following shall apply:
- (a) Contractor markup on Contractor Work: For Contractor, for any Work actually performed by Contractor's own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
 - (b) Subcontractor markup for Subcontractor Work: For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
 - (c) Contractor markup for Subcontractor Work: For Contractor, for any Work performed by its Subcontractor(s), 4% of the first \$50,000 of the amount due each Subcontractor, and 2% of the remaining amount if any.
 - (d) Subcontractor markup for lower tier Subcontractor Work: For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.
 - (e) Basis of cost applicable for markup: The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.
- g. Allowance for profit: Allowance for profit is an amount to be added to the cost of any change in contract sum, but not to the cost of change in Contract Time for which contractor has been compensated pursuant to the conditions set forth in Section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:
- (1) Contractor / Subcontractor markup for self-performed Work: For Contractor or Subcontractor of any tier for work performed by their forces, 6% of the cost developed in accordance with Section 7.02B 7a. – e.

- (2) Contractor / Subcontractor markup for Work performed at lower tier: For Contractor or Subcontractor of any tier for work performed by a subcontractor of a lower tier, 4% of the subcontract cost developed in accordance with Section 7.02B 7a. – h.
- h. Insurance and bond premiums: Cost of change in insurance or bond premium: This is defined as:
 - (1) Contractor's liability insurance: The cost of any changes in Contractor's liability insurance arising directly from execution of the Change Order; and
 - (2) Payment and Performance Bond: The cost of the additional premium for Contractor's bond arising directly from the changed Work.

The cost of any change in insurance or bond premium shall be added after overhead and allowance for profit are calculated in accordance with subparagraph f. and g above.

C. Change Order Pricing – Unit Prices

- 1. Content of Owner authorization: Whenever Owner authorizes Contractor to perform Work on a unit-price basis, Owner's authorization shall clearly state:
 - a. Scope: Scope of work to be performed;
 - b. Reimbursement basis: Type of reimbursement including pre-agreed rates for material quantities; and
 - c. Reimbursement limit: Cost limit of reimbursement.
- 2. Contractor responsibilities: Contractor shall:
 - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working;
 - b. Leave access as appropriate for quantity measurement; and
 - c. Not exceed any cost limit(s) without Owner's prior written approval.
- 3. Cost breakdown consistent with Fixed Price requirements: Contractor shall submit costs in accordance with paragraph 7.02B and satisfy the following requirements:
 - a. Unit prices must include overhead, profit, bond and insurance premiums: Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead, profit, bond, and insurance costs; and
 - b. Owner verification of quantities: Quantities must be supported by field measurement statements signed by Owner.

D. Change Order Pricing – Time-and-Material Prices

- 1. Content of Owner authorization: Whenever Owner authorizes Contractor to perform Work on a time-and-material basis, Owner's authorization shall clearly state:
 - a. Scope: Scope of Work to be performed;

- b. Reimbursement basis: Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
 - c. Reimbursement limit: Cost limit of reimbursement.
2. Contractor responsibilities: Contractor shall:
- a. Identify workers assigned: Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;
 - b. Provide daily timesheets: Identify on daily time sheets all labor performed in accordance with this authorization. Submit copies of daily time sheets within 2 working days for Owner's review.
 - c. Allow Owner to measure quantities: Leave access as appropriate for quantity measurement;
 - d. Perform Work efficiently: Perform all Work in accordance with this section as efficiently as possible; and
 - e. Not exceed Owner's cost limit: Not exceed any cost limit(s) without Owner's prior written approval.
3. Cost breakdown consistent with Fixed Price requirements: Contractor shall submit costs in accordance with paragraph 7.02B and additional verification supported by:
- a. Timesheets: Labor detailed on daily time sheets; and
 - b. Invoices: Invoices for material.

7.03 CHANGE IN THE CONTRACT TIME

- A. COP requests for Contract Time: The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order Proposal.
- B. Time extension permitted if not Contractor's fault: If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.
- 1. Notice and record keeping for Contract Time request: A request for an equitable adjustment in the Contract Time shall be based on written notice delivered within 7 Days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Contractor shall give Owner access to any such record and if requested, shall promptly furnish copies of such record to Owner.
 - 2. Timing and content of Contractor's Notice: Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 7 Days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the

Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

3. Contractor to provide supplemental information: Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
 4. Contractor to proceed with Work as directed: Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- C. Contractor to demonstrate impact on critical path of schedule: Any change in the Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order Proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.
- D. Cost of change in Contract Time: Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph, 7.03D, subject to the following conditions:
1. Must be solely fault of Owner or A/E: The change in Contract Time shall solely be caused by the fault or negligence of Owner or A/E;
 2. Procedures: Contractor shall follow the procedure set forth in paragraph 7.03B;
 3. Demonstrate impact on critical path: Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and
 4. Limitations on daily costs: The daily cost of any change in Contract Time shall be limited to the items below, less the amount of any change in the Contract Sum the Contractor may otherwise be entitled to pursuant to Section 7.02B 7f for any change in the Work that contributed to this change in Contract Time:
 - a. Non-productive supervision or labor: cost of nonproductive field supervision or labor extended because of delay;
 - b. Weekly meetings and indirect activities: cost of weekly meetings or similar indirect activities extended because of the delay;

- c. Temporary facilities or equipment rental: cost of temporary facilities or equipment rental extended because of the delay;
- d. Insurance premiums: cost of insurance extended because of the delay;
- e. Overhead: general and administrative overhead in an amount to be agreed upon, but not to exceed 3% of the Contract Award Amount divided by the originally specified Contract Time for each Day of the delay.

PART 8 – CLAIMS AND DISPUTE RESOLUTION

8.01 CLAIMS PROCEDURE

- A. Claim is Contractor's remedy: If the parties fail to reach agreement on the terms of any Change Order for Owner-directed Work as provided in Section 7.01, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in Section 7.02 or the Contract Time as provided in Section 7.03, Contractor's only remedy shall be to file a Claim with Owner as provided in this section.
- B. Claim filing deadline for Contractor: Contractor shall file its Claim within 120 Days from Owner's final offer made in accordance with paragraph 7.01E, or by the date of Final Acceptance, whichever occurs first.
- C. Claim must cover all costs and be documented: The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:
 - 1. Factual statement of Claim: A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
 - 2. Dates: The date on which facts arose which gave rise to the Claim;
 - 3. Owner and A/E employee's knowledgeable about Claim: The name of each employee of Owner or A/E knowledgeable about the Claim;
 - 4. Support from Contract Documents: The specific provisions of the Contract Documents which support the Claim;
 - 5. Identification of other supporting information: The identification of any documents and the substance of any oral communications that support the Claim;
 - 6. Copies of supporting documentation: Copies of any identified documents, other than the Contract Documents, that support the Claim;
 - 7. Details on Claim for Contract Time: If an adjustment in the Contract Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
 - 8. Details on Claim for adjustment of Contract Sum: If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail as required by Section 7.02; and

9. Statement certifying Claim: A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.
- D. Owner's response to Claim filed: After Contractor has submitted a fully documented Claim that complies with all applicable provisions of Parts 7 and 8, Owner shall respond, in writing, to Contractor as follows:
1. Response time for Claim less than \$50,000: If the Claim amount is less than \$50,000, with a decision within 60 Days from the date the Claim is received; or
 2. Response time for Claim of \$50,000 or more: If the Claim amount is \$50,000 or more, with a decision within 60 Days from the date the Claim is received, or with notice to Contractor of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.
- E. Owner's review of Claim and finality of decision: To assist in the review of Contractor's Claim, Owner may visit the Project site, or request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth in Section 8.02.
- F. Waiver of Contractor rights for failure to comply with this Section: Any Claim of the Contractor against the Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by the Contractor unless made in accordance with the requirements of this Section.

8.02 ARBITRATION

- A. Timing of Contractor's demand for arbitration: If Contractor disagrees with Owner's decision rendered in accordance with paragraph 8.01D, Contractor shall provide Owner with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than 30 Days after the date of Owner's decision on such Claim; failure to demand arbitration within said 30 Day period shall result in Owner's decision being final and binding upon Contractor and its Subcontractors.
- B. Filing of Notice for arbitration: Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provided to Owner. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:
1. Claims less than \$30,000: Disputes involving \$30,000 or less shall be conducted in accordance with the Northwest Region Expedited Commercial Arbitration Rules; or
 2. Claims greater than \$30,000: Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.
- C. Arbitration is forum for resolving Claims: All Claims arising out of the Work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may

occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.

- D. Owner may combine Claims into same arbitration: Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall, upon demand by Owner, be submitted in the same arbitration or mediation.
- E. Settlement outside of arbitration to be documented in Change Order: If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

8.03 CLAIMS AUDITS

- A. Owner may audit Claims: All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.
- B. Contractor to make documents available: In support of Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents:
1. Daily time sheets and supervisor's daily reports;
 2. Collective bargaining agreements;
 3. Insurance, welfare, and benefits records;
 4. Payroll registers;
 5. Earnings records;
 6. Payroll tax forms;
 7. Material invoices, requisitions, and delivery confirmations;
 8. Material cost distribution worksheet;
 9. Equipment records (list of company equipment, rates, etc.);
 10. Vendors', rental agencies', Subcontractors', and agents' invoices;
 11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
 12. Subcontractors' and agents' payment certificates;
 13. Cancelled checks (payroll and vendors);
 14. Job cost report, including monthly totals;
 15. Job payroll ledger;
 16. Planned resource loading schedules and summaries;

17. General ledger;
 18. Cash disbursements journal;
 19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
 20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
 21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
 22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
 23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
 24. Work sheets, software, and all other documents used by Contractor to prepare its bid.
- C. Contractor to provide facilities for audit and shall cooperate: The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

PART 9 – TERMINATION OF THE WORK

9.01 TERMINATION BY OWNER FOR CAUSE

- A. 7 Day Notice to Terminate for Cause: Owner may, upon 7 Days written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
1. Contractor fails to prosecute Work: Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
 2. Contractor bankrupt: Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
 3. Contractor fails to correct Work: Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
 4. Contractor fails to supply workers or materials: Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
 5. Contractor failure to pay Subcontractors or labor: Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;

6. Contractor violates laws: Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
 7. Contractor in material breach of Contract: Contractor is otherwise in material breach of any provision of the Contract Documents.
- B. Owner's actions upon termination: Upon termination, Owner may at its option:
1. Take possession of Project site: Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
 2. Accept assignment of Subcontracts: Accept assignment of subcontracts pursuant to Section 5.20; and
 3. Finish the Work: Finish the Work by whatever other reasonable method it deems expedient.
- C. Surety's role: Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- D. Contractor's required actions: When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in paragraph 9.02B, and shall not be entitled to receive further payment until the Work is accepted.
- E. Contractor to pay for unfinished Work: If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.
- F. Contractor and Surety still responsible for Work performed: Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. Conversion of "Termination for Cause" to "Termination for Convenience": If Owner terminates Contractor for cause and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to Section 9.02.

9.02 TERMINATION BY OWNER FOR CONVENIENCE

- A. Owner Notice of Termination for Convenience: Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. Contractor response to termination Notice: Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:
1. Cease Work: Stop performing Work on the date and as specified in the notice of termination;

2. No further orders or Subcontracts: Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
 3. Cancel orders and Subcontracts: Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
 4. Assign orders and Subcontracts to Owner: Assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;
 5. Take action to protect the Work: Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and
 6. Continue performance not terminated: Continue performance only to the extent not terminated
- C. Terms of adjustment in Contract Sum if Contract terminated: If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of Part 7.
- D. Owner to determine whether to adjust Contract Time: If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

PART 10 – MISCELLANEOUS PROVISIONS

10.01 GOVERNING LAW

Applicable law and venue: The Contract Documents and the rights of the parties herein shall be governed by the laws of the state of Washington. Venue shall be in the county in which Owner's principal place of business is located, unless otherwise specified.

10.02 SUCCESSORS AND ASSIGNS

Bound to successors; Assignment of Contract: Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party shall assign the Work without written consent of the other, except that Contractor may assign the Work for security purposes, to a bank or lending institution authorized to do business in the state of Washington. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

10.03 MEANING OF WORDS

Meaning of words used in Specifications: Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority,

whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the drawings, or required to complete the installation.

10.04 RIGHTS AND REMEDIES

No waiver of rights: No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall action or failure to act constitute approval or an acquiescence in a breach therein, except as may be specifically agreed in writing.

10.05 CONTRACTOR REGISTRATION

Contractor must be registered or licensed: Pursuant to RCW 39.06, Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27.

10.06 TIME COMPUTATIONS

Computing time: When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

10.07 RECORDS RETENTION

Six year records retention period: The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records subject to audit in accordance with Section 8.03, shall be retained for a period of not less than 6 years after the date of Final Acceptance.

10.08 THIRD-PARTY AGREEMENTS

No third party relationships created: The Contract Documents shall not be construed to create a contractual relationship of any kind between: A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

10.09 ANTITRUST ASSIGNMENT

Contractor assigns overcharge amounts to Owner: Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts, and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

10.10 HEADINGS AND CAPTIONS

Headings for convenience only: All headings and captions used in these General Conditions are only for convenience of reference, and shall not be used in any way in connection with the meaning, effect, interpretation, construction, or enforcement of the General Conditions, and do not define the limit or describe the scope or intent of any provision of these General Conditions.

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Section 00 73 00

PART 1 GENERAL PROVISIONS

1.01 DEFINITIONS

Replace Article O in Section 1.01 with the following City Supplemental Conditions:

- O. “Notice” means a written or electronic notice which has been delivered to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail to the last business address known to the party giving notice.

Replace Article Q in Section 1.01 with the following City Supplemental Conditions:

- Q. “Owner” means the City or its authorized representative with the authority to enter into, administer, and/or terminate the work in accordance with the Contract Documents and make related determinations and findings.*Add the following articles to Section 1.01 of Supplemental Conditions:*
- AB. “Abbreviations” refer to trade association names and titles of general standards that are frequently abbreviated. Where such acronyms or abbreviations are used in the specifications or other Contract documents, they mean recognized name of the trade association, standards generating organization, authority having jurisdiction, or other entity applicable to the context of the text provision. Refer to the "Encyclopedia of Associations" published by Gale Research Co., available in most libraries.
- AC. “Alternate Bid” (or Alternate) is an amount stated in the Bid to be added or deducted from the amount of the Base Bid if the corresponding change in project scope or materials or methods of construction described in the Bidding Documents is accepted.
- AD. “Base Bid” is the sum stated in the Bid for which the Bidder offers to perform the work described as the base, to which work may be added or deducted for sums stated in Alternate Bids and Unit Prices. The Base Bid does not include Force Account work and taxes.
- AE. “Calendar Day” is the 24-hour period from midnight to midnight.
- AF. “City” is the City of Tacoma.
- AG. “Contracting Agency” (or City) is the City of Tacoma.
- AH. “Contract Provisions” is the publication addressing the work required for an individual project. At the time of the call for bids, the Contract provisions may include, for a specific individual project, the general conditions, supplements to the general conditions, the special provisions, a listing of the applicable standard plans, the prevailing minimum hourly wage rates, Contract forms, affirmative action requirements, LEAP and SBE.

- AI. "Engineer" is the City of Tacoma's registered design professional who will act as the City's authorized representative when so designated by the City.
- AJ. "Furnish" is used to mean supply and deliver to the project site, ready for unloading, unpacking, assembly, installation and other.
- AK. "Holiday(s)" means the following calendar days: January 1st, 3rd Monday of January, 3rd Monday of February, last Monday of May, July 4th, 1st Monday of September, November 11th, 4th Thursday of November, 4th Friday of November, December 25th. If a holiday is on a Saturday, the previous Friday will be observed as a holiday. If the holiday is on a Sunday, the following Monday will be observed as a holiday.
- AL. "Indicated" refers to graphic representations, notes or schedules on the drawings, or other paragraphs or schedules in the specifications, and similar requirements in the Contract Documents. Where terms such as "shown," "noted," "scheduled," and "specified" are used, it is to help the reader locate the reference; no limit on location is intended.
- AM. "Install" is used to describe operations at the project site including the actual unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.
- AN. "Installer" is the Contractor or an entity engaged by the Contractor, either as an employee, subcontractor, or Contractor of lower tier for performance of a particular construction activity, including installation, erection, application, and similar operations. Installers are required to be experienced in the operations they are engaged to perform.
- AO. "Provide" means to furnish and install, complete and ready for intended use.
- AP. "Project Site" is the space available to the Contractor for performance of construction activities, either exclusively or in conjunction with others performing other work as part of the project. The extent of the project site is shown in the plans and may or may not be identical with the description of the land on which the project is to be built.
- AQ. "Unit Price" is an amount stated in the Bid as a price per unit of measurement for materials or services as described in the Contract Documents.
- AR. "Utility Owner" is used to describe a service, light, power, water, gas, and telecommunications by a public utility.

1.02 ORDER OF PRECEDENCE

Replace the entire Section 1.02 with the following City Supplemental Conditions:

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:

- A. Addenda.
- B. Signed Public Works Contract, including any Change Orders, and any Special Forms.
- C. Supplemental Conditions as modified by the City of Tacoma.
- D. General Conditions for Washington State Facility Construction.
- E. Specifications – provisions in Division 1 shall take precedence over provisions of any other Division.
- F. Amendments to Specifications.
- G. Drawings – in case of conflict within the Drawings, large scale drawings shall take precedence over small scale drawings.
- H. Construction Documents Appendices.
- I. Signed and Completed Form of Proposal.
- J. Instructions to Bidders.
- K. Advertisement for Bids.
- L. Task Authorization.

1.03 EXECUTION AND INTENT

Replace Section 1.03.2 with the following City Supplemental Conditions:

- 2. Contractor familiar with project: Contractor has carefully reviewed the Contract Documents, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;

Add the following paragraph to Section 1.03 of City Supplemental Conditions:

The intent of the Contract is to be prescribing a complete work. Omissions from the Contract of details of work, which are necessary to carry out the Contract, shall not relieve the Contractor from performing the omitted work.

1.04 SUBSTITUTIONS

Add the following new Section 1.04 to General Provisions:

- A. Approved Equals
 - 1. Unless an item is indicated as "No substitute", special brands, when named, are intended to describe the standard of quality, performance or use desired. Equal items will be considered by the City, provided that the respondent specifies the brand and model, and provides all the descriptive literature, independent test results, product samples, local servicing and parts availability to enable the City to evaluate the proposed "equal".

2. The decision of the City as to what items are equal shall be final and conclusive. If the City elects to purchase a brand represented by the respondent to be an "equal", the City's acceptance of the item is conditioned on the City's inspection and testing after receipt. If, in the sole judgement of the City, the item is determined not to be an equal, the item shall be returned at the respondent's expense.
 3. When the brand name, or level of quality is not stated by the respondent, it is understood the offer is exactly as specified. If more than one brand name is specified, respondent must clearly indicate the brand and model/part number being bid.
- B. Substitution Requests Prior to Bid: Refer to Bid Submittal Package and Specification Section 01 61 00, Common Products for allowable process for substitutions prior to the bid.
- C. Substitution Requests made after Award of Contract: Requests for approval of substitute materials or products will not be considered, except if one or more of the following conditions exists.
1. Indicate one or more reasons why substitution is required with Substitution Request.
 - a. Unavailability: A substitution is required because the specified item is not available, due to factors beyond the control of the Contractor or subcontractor. The request will not be considered if the product or method cannot be provided as a result of failure to pursue the work promptly or coordinate activities properly.
 - b. Unsuitability: Subsequent information or changes disclose inability of the specified item to perform as intended, and where the Contractor certifies that the proposed substitution will overcome such non-performance.
 - c. Regulatory Requirements: Final interpretations of Code, regulatory requirements, safety requirements, or insurance requirements necessitate a change to due inability of the specified item to conform, and the proposed substitution can be approved.
 - d. Warranty: Manufacturer or fabricator cannot certify or warrant performance of specified item as required, and where the Contractor certifies that the proposed substitution will provide the required warranty.
 - e. Owner's Benefit: Acceptance of the proposed substitution is clearly in the Owner's best interest because of cost, quality, or other consideration. In requesting a substitution under this clause, the Contractor shall furnish substantiation of any such reason.
 2. During the construction period, Contractor will be notified in writing of decision to accept or reject the Substitution Request by the Owner.

Permission to make any substitution after award of Contract shall be effected by a Change Order.

3. The Contractor shall accompany any request for substitution with such drawings, specifications, samples, manufacturer's literature, performance data, and other information necessary to describe and evaluate the proposed substitution completely as defined in Section 01 61 00 of the Technical Specifications. The burden of proof shall be on the Contractor.
4. Redesign and Coordination: In making request for approval of substitute materials, the Contractor must represent that it has investigated the proposed product and, in its opinion, it is equal or equivalent in all respects to that specified. Also, Contractor will coordinate all trades including changes thereto as may be required, that it waives all claims for additional costs which subsequently.

1.05 DISQUALIFICATION OF BIDDERS

Add the following new Section 1.06 to City Supplemental Conditions:

- A. A bidder may be deemed not responsible and the proposal rejected by the City for any of the following:
 1. More than one proposal is submitted for the same project from a bidder under the same or different name;
 2. Evidence of collusion exists with any other bidder. Participants in collusion will be restricted from submitting further bids;
 3. A bidder is not pre-qualified for the work or to the full extent of the bid;
 4. An unsatisfactory performance record exists based on past or current work;
 5. There is uncompleted work which might hinder or prevent the prompt completion of the work bid upon;
 6. The bidder failed to settle bills for labor or materials on past or current Contracts;
 7. The bidder has failed to complete a written public Contract or has been convicted of a crime arising from a previous public Contract;
 8. The bidder is unable, financially or otherwise, to perform the work;
 9. A bidder is not authorized to do business in the state of Washington;
 10. Failure by the Contractor to properly review the project documents and/or site;
 11. Bid Evaluation Submittals are not provided in the time specified;
 12. The Contractor fails to meet the SBE requirements as described in these documents;
 13. Receipt of addenda is not acknowledged; or
 14. There are any other reasons deemed proper by the City.

15. Contractor has altered in any form or fashion the City's bid proposal form

1.06 AWARD OF CONTRACT

Add the following new Section 1.06 to City Supplemental Conditions:

- A. The Owner reserves the right to Award, in any order or combination, such Additives, Deductives, or Alternates, as may be set forth in the Bid Forms.

1.07 MINIMUM EXPERIENCE REQUIREMENTS

Add the following new Section 1.07 to the City Supplemental Conditions:

The Bidder shall submit if required as part of its bid submittal package the necessary information on the Statement of Qualifications Project Experience Form to demonstrate compliance with the minimum experience requirements. The City reserves the right to request for clarifying or additional information.

1.08 UTILITY COORDINATION

Add the following new Section 1.08 to City Supplemental Conditions:

- A. The Contractor shall coordinate his/her work with all utilities and other organizations, which have their facilities within the project area. A Utility coordination meeting with all the utility organization shall be coordinated. These may include but are not limited to
 - 1. City of Tacoma Water Division, Contact: Gary Gates, Phone: 253-502-8742
 - 2. City of Tacoma Power Division, Contact: Daniel Pitsch, Phone: 253-502-8229
 - 3. City of Tacoma Sewer Utility, Contact: Merita Trohimovich Pollard, Phone: 253-502-2103
 - 4. Puget Sound Energy, Contact: Greg Potter, Phone: 253-841-6242 ext. 10
 - 5. Century Link , Contact: Judy Cissell, Phone: 206-733-8860
 - 6. One Call Locators Service: 1-800-424-5555
 - 7. Comcast communications: Contact: Customer Service, Phone: 877-824-2288
- B. The Contractor is responsible for location of private underground utilities within the private property which are not maintained by an outside utility company, and which are not located through the One Call Locators Service.
 - 1. The Contractor shall provide and pay for private locator service to locate private utilities.

1.09 TRAFFIC CONTROL

Add the following new Section 1.09 to City Supplemental Conditions:

- A. All road closures, obstructions, or detours will require approval by the Owner. The Contractor must submit a written request 24-hours in advance of any

planned work that will impact a roadway. There is no guarantee that such request will be granted.

- B. The design, construction, and maintenance of all detours, including traffic control, traffic control signage, and ADA access and pedestrian access is the sole responsibility of the Contractor. This includes detours both outside the limits of the project and within the limits of the project.
- C. For any road closures, obstructions, or detours, the Contractor shall submit a traffic control plan for approval by the Owner. The detour plan shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD), state standard specifications, and these specifications.
- D. The Contractor shall be responsible for obtaining all permits necessary to implement the traffic control plan.

PART 2 INSURANCE AND BONDS

2.01 CONTRACTOR'S LIABILITY INSURANCE

General insurance requirements: Prior to commencement of the Work, Contractor shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this part shall be licensed to do business under Chapter 48 RCW or comply with the Surplus Lines Law of the State of Washington. Contractor shall include in its bid the cost of all insurance and bond costs required to complete the base bid work and accepted alternates. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A.M. Best rating shall be indicated on the insurance certificates. A.M. Best Rating shall not be lower than A(-) VII.

Replace Section 2.01.A of Insurance and Bonds with the following City Supplemental Conditions:

- A. Term of insurance coverage: Contractor shall maintain the following insurance coverage during the Work and for two years after Final Completion. Contractor shall also maintain the following insurance coverage during the performance of any corrective Work required by Section 5.16.
 - 1. Commercial General Liability Insurance shall be written on an Insurance Services Office form CG0001 (04 13) or the equivalent. Coverage shall include, but not be limited to:
 - a. Completed operations/products liability;
 - b. Explosion, collapse, and underground;
 - c. Employer's liability coverage..

2. Automobile Liability Insurance on shall be written on an insurance Services office form CA0001 or the equivalent. Contractor must also maintain an MCS 90 endorsement of equivalent and a CA 9948 endorsement or equivalent if “Pollutants” are to be transported.
- B. Industrial insurance compliance: Contractor shall comply with the Washington State.
 - C. Insurance to protect the following:
 - D. Owner as Additional Insured: All insurance coverages shall be endorsed to include City as an additional insured for both ongoing and completed operations using Insurance Services Office Forms CG2010 and CG2037 or the equivalent for Work performed in accordance with the Contract Documents, and all insurance certificates shall be accompanied with the policy endorsement showing the City as an additional insured. Contractor’s insurance shall be primary and non-contributory with any insurance or self- insurance maintained by the City and contain a “separation of insured” provision and a “waiver of subrogation” clause favor of City of Tacoma (Owner)

Add the following new Section 2.01.E to City Supplemental Conditions:

- E. Any additional coverage specifically required within the project manual.

2.02 COVERAGE LIMITS

Replace Section 2.02 with City Supplemental Conditions:

Commercial General Liability:

\$1,000,000 Each Occurrence, \$2,000,000 General Aggregate

\$2,000,000 Products-Completed Operations Aggregate

\$1,000,000 Personal Injury & Advertising Injury

Employers Liability:

\$1,000,000 each employee

\$1,000,000 each accident

\$1,000,000 policy limit

Commercial Automobile Liability:

\$1,000,000 each accident for any vehicle for bodily injury and property damage.

Workers Compensation: Statutory

Professional Liability:

\$1M per claim and \$2M in the aggregate

2.03 INSURANCE COVERAGE CERTIFICATES

Add the following Articles to Section 2.03 with City Supplemental Conditions:

D. The following shall be required:

1. The Contractor shall furnish acceptable proof of insurance coverage on an Acord Certificate of insurance or the equivalent.
2. A copy of the additional insured endorsements must accompany the insurance certificate. A copy of each of the endorsement are required. Additional insured primary and non-contributory, and waiver of subrogation..

E. The following additional requirements apply:

1. Contractor shall provide with the certificate, evidence of the amount of any deductible or self-insured retention under the policy.
2. It is the Contractor's responsibility to keep an up-to-date Certificate of Insurance on file with the City throughout the contract and must provide 30 day notice of any cancellation.

G. All Insurance coverage the Contractor is required to maintain under this Article shall be written on an "occurrence" basis and not on a "claims made" basis.

2.04 PAYMENT AND PERFORMANCE BONDS

Replace the entire Section 2.04 with the following City Supplemental Conditions:

A Performance Bond shall be obtained by the Contractor utilizing the form entitled "Performance Bond to the City of Tacoma" as found at the front of the Contract Document under "Contract Forms". Contractor shall provide a Performance Bond, including power of attorney, for 100 percent of the amount of his/her bid (including sales tax) per RCW 39.08 securing performance of work; all Contract obligations; materials, payment of laborers, Manufacturers and subcontractors.

In the event that the Contractor intends to have a subcontractor perform all or any portion of the project, the Contractor should consider requiring its own performance bond from the subcontractor to guarantee successful performance of this project component.

2.05 ADDITIONAL BOND SECURITY

Add Section 2.05 with the following City Supplemental Conditions:

D. The Contract amount is increased by 20% or more.

2.06 BUILDER'S RISK

Add Section 2.06.A with the following City Supplemental Conditions:

- A. For projects not involving New Building Construction, 'Installation Floater' is an acceptable substitute for the Builder's Risk Insurance.

Add the following provisions Article B of Section 2.06 of Insurance and Bonds:

- B. Reasonable compensation for A/E services and expenses required as a result of an insured loss shall not exceed \$300,000.00. Any deductible provision in the Builder's Risk Insurance will be paid for by the City, but shall not exceed \$10,000.00. Flood, earthquake, and terrorism insurance are not required under this Contract.

PART 3 TIME AND SCHEDULE

3.02 CONSTRUCTION SCHEDULE

Replace Article C Section 3.02 with the following City Supplemental Conditions:

- C. Owner comments on Progress Schedule: Owner shall return comments on the preliminary Progress Schedule to Contractor within 7 Days of receipt. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this section.

Replace Section 3.02.D with the following City Supplemental Conditions:

- D. Submit a revised Progress Schedule that includes a three (3) week ahead scheduled work with each pay application, or as directed by the City, indicating but not limited to:

PART 1 Actual starts and finishes of activities and changes in slack or float, lags and leads for each item;

PART 2 Percent complete;

PART 3 Changes in network logic.

Content of each revised Progress Schedule shall be the same information required in Section 3.02.B above.

- a. Problem areas; anticipated delay; and impact of these on Schedule.
- b. Report corrective action taken, or proposed, and its effect.
- c. Should actual progress fall more than two (2) weeks behind the progress identified in the Target Schedule, the Contractor shall explain the cause and will take the necessary steps to alter the construction schedule to comply with the Contract Completion date.

Payment will not be made until Progress Schedule revisions are up to date and accurate.

3.05 DELAY

Replace the entire Section 3.05 with the following City Supplemental Conditions:

- A. Avoidable delays in the prosecution or completion of the Work shall include all delays that might have been avoided by the exercise of care, prudence, foresight, or diligence on the part of the Contractor. Avoidable delays may include, but are not limited to:
1. Reasonable loss of time resulting from the necessity of submitting drawings to the City for acceptance,
 2. Collecting survey/field/analytical information,
 3. Site management and coordination,
 4. Measurements and inspections,
 5. Subcontractor management, and
 6. Such interruptions as may occur in the prosecution of the Work on account of the reasonable interference of other Contractors employed by the City,

These delays, which may interrupt the prosecution of parts of the Work, while at the time may be unavoidable but do not necessarily prevent or delay the prosecution of other parts of the Work, or prevent the completion of the whole Work within the time herein specified, will be deemed avoidable within the meaning of this Contract.

- B. Unavoidable delays in the prosecution of completion of the Work under this Contract shall include all delays which may result through causes beyond the control of the Contractor, and which he could not have provided against by the exercise of care, prudence, foresight, or diligence. Unavoidable delays shall hereinafter be referred to as "Force Majeure".

Force Majeure includes, but is not limited to:

1. Acts of God or the public enemy;
2. Acts or omissions of any government entity;
3. Fire or other casualty for which Contractor is not responsible;
4. Quarantine or epidemic;
5. Strike or defensive lockout;
6. Orders issued by the Owner, changing the amount of Work to be accomplished in excess of 25% per single change.
7. Failure of the Owner to provide rights-of-entry.

These delays shall be considered unavoidable so far as they necessarily interfere with the Contractor's completion of the whole Work.

- D. Whenever the Contractor foresees any delay in the prosecution of the Work, and in any event immediately upon the occurrence of any such delay, the Contractor shall submit a written notice to the City as provided in Section 7.02 of the General Conditions. The City may determine whether the delay is to be considered avoidable or unavoidable ("Force Majeure"), how long it

continues, and to what extent the prosecution and completion of the Work are to be delayed thereby.

Contractor may be entitled to an equitable adjustment in the Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of City, provided the Contractor makes a request according to sections 7.02 and 7.03.

After the completion of any part or the whole of the Work, the City, in approving the amount due the Contractor, will assume that any and all delays which have occurred in its prosecution and completion have been avoidable, except such delays as shall have been called to the attention of the City in writing as per Section 7.02 at the time of their occurrence, and later found by the City to have been unavoidable. The Contractor shall make no claims that any delay not called to the attention of the City, in writing, at the time of its occurrence has been an unavoidable delay ("Force Majeure").

- E. For delays which are unavoidable ("Force Majeure"), as determined by the City, an extension of time beyond the time specified for completion will be allowed, within which to complete the Contract. The Contractor will not be charged, because of any extension of time for such unavoidable delay, any liquidated damages or engineering and related costs, as are charged in the case of avoidable delays. Contractors overhead cost associated with "Force Majeure" are excluded from equitable adjustment.
- F. If the Work called for under this Contract is not finished and completed by the Contractor, in all parts and in accordance with all requirements in the time specified, including extensions of time granted because of an unavoidable delay; the Contractor will be charged liquidated damages, or direct engineering and related costs as provided for in the Standard Specifications.

In addition, the City shall charge to the Contractor, and may deduct from the [mal payment for the Work, all engineering and related costs incurred by the City in connection with the Work during the period of such extension or extensions. The City shall make the final determination as to the appropriateness of charges required to complete the Work.
- G. The granting of any extension of time on account of delays, which in the judgment of the City are avoidable delays, shall in no way operate as a waiver on the part of the City of its rights under this Contract.

3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

Add Section 3.07.A to City Supplemental Conditions:

- (a) Time is of the essence on the Contract. Delays inconvenience the City's daily operation and add undue time and cost required for administration, engineering, inspections, and supervision. Accordingly, the Contractor agrees:

1. To Pay (according to the following formula) liquidated damages for each calendar day beyond the number of days established for final completion, and
2. To authorize the City to deduct these liquidated damages from any money due or coming due to the Contractor.

LIQUIDATED DAMAGES FORMULA

$$LD = \frac{0.20C}{T}$$

Where: LD = liquidated damages per calendar day (rounded to nearest dollar)

C = original contract amount for Work Order

T = original time for final completion

When the contract work has progressed to the extent that the City has full use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains to physically complete of the total contract, the City may determine the work is substantially complete. The City will notify the Contractor in writing of the substantial completion date. For overruns in contract time occurring after the date so established, the formula for liquidated damages as shown above will not apply. For overruns in contract time occurring after the substantial completion date, liquidated damages shall be assessed on the basis of direct engineering and related costs assignable to the project until actual final completion date of all the contract work. The Contractor shall complete the remaining work as promptly as possible.

3.08 SUSPENSION OF WORK

Add Section 3.08 to City Supplemental Conditions:

- A. The City may order suspension of all or any part of the work if:
 1. The Contractor does not comply with the contract or the City's orders.
- B. When ordered by the City to suspend or resume work, the Contractor shall do so immediately.
- C. If the work is suspended for reason (1) above, the period of work stoppage will be counted as calendar days maintaining the original contract completion requirement. The lost work time, however, shall not relieve the Contractor from any Contract responsibility.
- D. If the work is suspended for reason (2) above, the period of work stoppage will be counted as working days. The lost work time, however, shall not relieve the Contractor from any contract responsibility.

- E. If the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the Contracting Agency in the administration of the Contract, or by failure to act within the time specified in the Contract (or if no time is specified), the City will make an adjustment for any increase in the cost or time for the performance of the Contract (excluding profit, overhead, home office expense, supervisory personnel labor not specifically assigned to the project) necessarily caused by the suspension, delay, or interruption. However, no adjustment will be made for any suspension, delay, or interruption if (1) the performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or (2) an equitable adjustment is provided for or excluded under any other provision of the Contract.
- F. If the Contractor believes that the performance of the work is suspended, delayed, or interrupted for an unreasonable period of time and such suspension, delay, or interruption is the responsibility of the Contracting Agency, the Contractor shall immediately submit a written request for equitable adjustment to the Engineer as provided in Section 7.02. No adjustment shall be allowed for any costs incurred more than 2 calendar days before the date the Engineer receives the Contractor's written request for equitable adjustment. If the Contractor contends damages have been suffered as a result of such suspension, delay, or interruption, the protest shall not be allowed unless the request for equitable adjustment (stating the amount of damages) is asserted in writing within 14 calendar days of end of the delay. The Contractor shall keep full and complete records of the costs and additional time of such suspension, delay, or interruption and shall permit the Engineer to have access to those records and any other records as may be deemed necessary by the Engineer to assist in evaluating the protest.
- G. The City will determine if an equitable adjustment in cost or time is due as provided in this section. The equitable adjustment for increase in costs, if due, shall be subject to the limitations provided in Section 7.02, provided that no profit of any kind will be allowed on any increase in cost necessarily caused by the suspension, delay, or interruption.
- H. Request for extensions of time will be evaluated in accordance with Section 7.03.
- I. No claim by the Contractor under this clause shall be allowed unless the Contractor has followed the procedures provided in this Section and Sections 7.02 and 7.03.
- J. Contractor shall notify surety of all claims.

3.09 MAINTENANCE DURING SUSPENSION

Add Section 3.09 with City Supplemental Conditions:

- A. Before and during any suspension (as described in Section 3.08) the Contractor shall protect the work from damage or deterioration. Suspension shall not relieve the Contractor from anything the Contract requires unless this section states otherwise.

- B. After any suspension, the Contractor shall retain all responsibilities the Contract assigns for repairing or restoring the construction area to the requirement of the plans.

3.10 EXECUTION OF CONTRACT – SCHEDULE

Add Section 3.10 to City Supplemental Conditions:

Copies of the Contract Provisions, including the unsigned Form of Contract, will be available for signature by the successful bidder on the first business day following award. The number of copies to be executed by the Contractor will be determined by the Contracting Agency.

Within 5 calendar days after the award date, the successful bidder shall return the signed Contracting Agency-prepared contract, an insurance certification and a satisfactory bond as required.

Until the Contracting Agency executes a contract, no proposal shall bind the Contracting Agency nor shall any work begin within the project limits or within Contracting Agency-furnished sites. The Contractor shall bear all risks for any work begun outside such areas and for any materials ordered before the contract is executed by the Contracting Agency.

If the bidder experiences circumstances beyond their control that prevents return of the contract documents within 5 calendar days after the award date stated above, the Contracting Agency may grant up to a maximum of 2 additional calendar days for return of the documents, provided the Contracting Agency deems the circumstances warrant it.

PART 4 SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

4.03 SHOP DRAWINGS

Replace Section 4.03.E with City Supplemental Conditions:

- E. Contractor to submit Shop Drawings electronically: Unless otherwise provided in Division 1, Contractor shall submit to Owner for approval Shop Drawings electronically through e-Builder.

Add Section 4.03.F with City Supplemental Conditions:

- F. The Contractor shall submit a submittal schedule with dates for Shop Drawings within 7 Calendar Days of issuance of Notice To Proceed.

4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS

Add Section 4.05.E with City Supplemental Conditions:

- E. The Contractor may pick up, at their own cost, additional plans and specifications from ARC located at 632 Broadway, Tacoma, Washington 98402 or by going to <http://www.nwcontractorsnetwork.com>.

PART 5 PERFORMANCE

5.02 PERMITS, FEES AND NOTICES

Add Section 5.02.A with City Supplemental Conditions:

- A. The actual cost of the general building permit shall be paid directly to the permitting agency by the City.

5.04 PREVAILING WAGES

Add Section 5.04.H with City Supplemental Conditions:

- H. Copies of approved Intents to Pay Prevailing Wages for the Contractor and all subcontractors shall be submitted with the Contractor's first application for payment. As additional subcontractors perform work on the project, their approved Intent forms shall be submitted with the Contractor's next application for payment.
1. The Contractor and all subcontractors shall promptly submit to the City certified payroll copies if requested, with the second pay application.
 2. The City of Tacoma reserves the right to withhold payment if the Contractor does not provide copies of Certified Payroll with each application of payment.

5.07 SAFETY PRECAUTIONS

Replace Section 5.07.A with City Supplemental Conditions:

- B. In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoid work interruptions. For these purposes, the Contractor shall:
1. Follow Washington Industrial Safety and Health Act (WISHA) regional directives and provide a site-specific safety program that will require an accident prevention and hazard analysis plan for the Contractor and each subcontractor on the work site. The Contractor shall submit a site-specific safety plan to the City's representative prior to the initial scheduled construction meeting.
 2. Provide adequate safety devices and measures including, but not limited to, the appropriate safety literature, notice, training, permits, placement and use of barricades, signs, signal lights, ladders, scaffolding, staging, runways, hoist, construction elevators, shoring, temporary lighting, grounded outlets, wiring, hazardous materials, vehicles, construction processes, and equipment required by Chapter 19.27 RCW, State Building Code (Uniform Building, Electrical, Mechanical, Fire, and Plumbing Codes); Chapter 212-12 WAC,

Fire Marshal Standards, Chapter 49.17 RCW, WISHA; Chapter 296-155 WAC, Safety Standards for Construction Work; Chapter 296-65 WAC; WISHA Asbestos Standard; WAC 296-62-071, Respirator Standard; WAC 296-62, General Occupation Health Standards, WAC 296-24, General Safety and Health Standards, WAC 296-24, General Safety and Health Standards, Chapter 49.70 RCW, and Right to Know Act.

3. Comply with the State Environmental Policy Act (SEPA), Clean Air Act, Shoreline Management Act, and other applicable federal, state, and local statutes and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources.
4. Post all permits, notices, and/or approvals in a conspicuous location at the construction site.
5. Provide any additional measures that the City determines to be reasonable and necessary for ensuring a safe environment in areas open to the public. Nothing in this part shall be construed as imposing a duty upon the City or A/E to prescribe safety conditions relating to employees, public, or agents of the Contractors.
6. All construction personnel shall wear highly visible reflective vests and hardhats while on North End Treatment Plant property.

5.10 UNFORESEEN PHYSICAL CONDITIONS

Replace Section 5.10.A with City Supplemental Conditions:

- A. Notice requirement for concealed or unknown conditions: If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly and in no event later than 2 Days after the first observance of the conditions. Conditions shall not be disturbed prior to such notice.

5.15 TESTS AND INSPECTION

. Replace Section 5.15.A with City Supplemental Conditions:

- A. The City will enlist and pay for the services of a qualified testing agency to provide quality control, third party testing, and special inspection services as stated specifically in Division 01 and Technical Specifications of the Project Specifications. All other testing or inspecting shall be by Contractor's 3rd Party Agency and paid for by Contractor.
 1. Tests and Inspections shall include the following minimum requirements:
 - a. Preparatory Inspection (pre-installation meetings): This shall be performed prior to beginning any work and shall include:

- b. A review of applicable specifications;
- c. A review of the Contract plans;
- d. A check to assure that all materials and/or equipment have been tested, submitted and approved;
- e. A check to assure that provisions have been made to provide control inspection and testing;
- f. Examination of the work area to assure that all required preliminary work has been completed and is in Contract compliance;
- g. A physical examination of required materials, equipment and sample work to assure that they conform to approved shop drawings or submitted data and are properly stored;
- h. Discussion of procedures for constructing the work, including repetitive deficiencies, construction tolerances and workmanship standards specified in the documents.
- i. Initial Inspection: This shall be performed as soon as work begins on a definable feature of work and the following shall be accomplished:
- j. A check of preliminary work to ensure that it is in Contract compliance and review of the preparatory meeting minutes;
- k. Verification of full Contract compliance and verify that required control inspection and testing is underway;
- l. Establish level of workmanship, verify that it meets minimum acceptable workmanship standards, and compare work with sample panels, etc., as appropriate;
- m. Resolve all differences;
- n. This inspection phase shall be repeated for each new crew on site performing the work, or any time standards are not being met.
- o. Follow-Up Inspections: These follow up inspections shall be performed daily to assure continuing compliance with contract requirements, including control testing, until completion of the particular feature of work. The City or City's representative may require joint Contractor inspections at any time and on a periodic basis to evaluate the effectiveness of the quality control system.
- p. Tests: All operation and acceptance tests, where specified, are to be performed to verify control measures are adequate.
- q. Costs for re-testing work that was previously tested but did not meet the requirements for the work shall be the responsibility of the Contractor.

5.20 SUBCONTRACTORS AND SUPPLIERS

Replace Section 5.20.B with City Supplemental Conditions:

- B. The Contractor shall submit the Request for Sublet Form provided by the City of Tacoma for every subcontractor used on the project prior to construction. Contractor shall not utilize any subcontractor or manufacturer to whom the City has a reasonable objection, and shall obtain City's written consent before making any substitutions or additions.

Add Section 5.20.F, 5.20.G, 5.20.H, 5.20.I with City Supplemental Conditions:

- F. The LEAP and EIC Programs have been adopted by the City to counteract economic and social ills, which accompany high rates of unemployment within the City of Tacoma.
1. The Tacoma City Council established the LEAP Program for Public Works Contracts pursuant to City of Tacoma Ordinance No. 26301. The primary goal for this program is to provide an opportunity for City of Tacoma and Empowerment Zone/Enterprise Community residents to acquire skills, enter Apprenticeship Programs, and perform work that provides living wages.
 2. The Tacoma City Council established the EIC Program for Public Works Contracts pursuant to City of Tacoma Ordinance No. 28625. The primary goal for this program is to ensure equitable participation of historically under-utilized business enterprises, by establishing goals for their utilization in public Contracting.
- G. The Contractor shall not subcontract work unless the City approves in writing. Each request to subcontract shall be on the form the City provides. The subcontractor shall be a licensed State of Washington Contractor and shall have a valid City of Tacoma business license. If the City requests, the Contractor shall provide proof that the subcontractor has the experience, ability, and equipment the work requires. The City will approve the request only if satisfied with the proposed subcontractor's record, equipment, experience, and ability. Approval to subcontract shall not:
- a. Relieve the Contractor of any responsibility to carry out the Contract;
 - b. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond;
 - c. Create any Contract between the Contracting Agency and the subcontractor; or
 - d. Convey to the subcontractor any rights against the Contracting Agency.
- H. The Contracting Agency will not consider the following as subcontracting:
- e. Purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants
- I. If City determines that any subcontractor is performing services in an unsatisfactory manner or is not completing the Work in accordance with the requirements of the Contract Documents or is otherwise undesirable or unacceptable, City will by written notice so notify Contractor. Contractor shall then take immediate steps to rectify and correct the situation. If City and Contractor mutually agree such actions are

ineffective or infeasible, Contractor shall terminate such subcontractor.
Subcontracting by subcontractors will be subject to the same regulations.

5.21 WARRANTY OF CONSTRUCTION

Add Section 5.21.D with City Supplemental Conditions:

D. Warranties shall commence upon issuance of Substantial Completion.

Add Section 5.23 with City Supplemental Conditions:

5.23 ADJACENT PROPERTIES AND FACILITIES

- A. Contractor shall be responsible for negotiations of any waivers or alternate arrangements required to enable transportation of materials to the site at the Contractor's expense. The Contractor shall provide City with any written agreements as a matter of record only.
- B. Maintain conditions of access road to site such that access is not hindered as the result of construction related deterioration.

PART 6 PAYMENTS AND COMPLETION

6.02 SCHEDULE OF VALUES

Add Section 6.02 with City Supplemental Conditions:

Subcontracted Work shall be paid to the Contractor on the basis of Contractor's actual cost of amounts properly paid to such subcontractors. A Schedule of Values shall be submitted for the Work of each subcontractor, as well as suppliers providing materials in excess of \$2,500.00. The total for all progress payments shall not exceed the Contract Sum, as may be adjusted by Change Orders. The General Contractor shall provide a schedule of values for Lump Sum bid items for review and acceptance.

The General Contractor shall be required to submit signed lien waivers by Corporate Office for all parties. The General Contractor shall submit the anticipated cash flow for the project and update monthly.

6.03 APPLICATION FOR PAYMENT

Replace Article B in Section 6.03 with the following City provision:

- B. Contractor certifies Subcontractors paid: By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in section 1.03 are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment. Contractor shall submit application for payment on AIA form G702/G703, with modifications made for payment certification. Payment shall be certified by a corporate officer of the Contractor.

Replace Article D In Section 6.03 with the following City provision:

- D. Payment for material delivered to site or stored off-site: If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. No payment will be made for material stored at an alternate location. The Contractor shall comply with or furnish satisfactory evidence of the following:

Delete items 1 through 8 of Article D of Section 6.03 of Payments and Completion and replace with the following:

- 1 Contractor assumes total responsibility for stored materials: Contractor and its surety assume total responsibility for the stored materials; and
2. Title: Title to all Work and materials covered by an accepted and paid Application For Payment shall pass to the Owner at the time of such payment, free and clear of all liens, claims, security interest, and encumbrances. Passage of title shall not, however, (1) relieve Contractor from any of its duties and responsibilities for the Work or materials, (2) waive any rights of the Owner to insist on full compliance by Contractor with the Contract requirements, or (3) constitute acceptance of the Work or materials

6.04 PROGRESS PAYMENTS

Add Section 6.04.E with City Supplemental Conditions:

E. Taxes.

Unless otherwise required in this Specification, applicable federal, state, city and local taxes shall be included in the submittal as indicated below. The total cost to the City, including all applicable taxes, may be the basis for Contract award determination. As used herein, the term "taxes" shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.

1. Federal Excise Tax

The City of Tacoma is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required. If the Respondent fails to include applicable tax in its submittal, then Respondent shall be solely responsible for the payment of said tax.

2. State and Local Sales Tax

The City of Tacoma is subject to Washington state sales tax. It is the Respondent's obligation to state the correct sales tax percentage and include the applicable Washington state, city, and local sales tax as a separate line item(s) in the submittal.

3. City of Tacoma Business and Occupation Tax

It is the Respondent's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal.

Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City of Tacoma may be subject to the City's Business and Occupation Tax.

It is the responsibility of the Respondent awarded the Contract to register with the City of Tacoma's Tax and License Division, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, telephone (253) 591-5252, website <http://www.cityoftacoma.org/Page.aspx?nid+201>.

4. Any or All Other Taxes

Any or all other taxes are the responsibility of the Respondent unless otherwise required by law.

6.07 SUBSTANTIAL COMPLETION

Add Section 6.07.A with City Supplemental Conditions:

A. The prerequisites for issuance of a Certificate of Substantial Completion by the City are as follows:

1. Submit the final progress payment showing 100% completion for the work being claimed as substantially complete. List any incomplete items of work along with their value and an explanation of why the work is incomplete.
2. Coordinate with the City for changeover of all insurance coverage.
3. Submit all warranties, guarantees, maintenance agreements, and workmanship/warranty bonds as required by the Contract Documents.
4. Deliver all tools, spare parts, "Attic Stock" and other deliverables to the City as required by the Contract Documents.
5. Submit Record Drawings as required by the Contract Documents
6. Perform all work as required to obtain a Certificate of Occupancy.
7. Punch List Procedures
 - i. Prior to Substantial Completion (approximately 10 working days) Contractor provide its own initial Punch List (List of Deficiencies) for the Owner's review. Owner shall review and make edits as they deem appropriate. The List of Deficiencies will be sent back to the Contractor for the Contractor to perform the work. The Contractor must complete the work in a satisfactorily manner before the Owner will accept.

6.09 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT

Add Section 6.09.A with City Supplemental Conditions:

A. Final Completion shall be the same as Physical Completion.

Add Section 6.09.D with City Supplemental Conditions:

D. Prerequisites for Final Acceptance

1. Obtain the City's written approval that all items on the List of Deficiencies as prepared by the Contractor have been completed.
2. Submit consent of Surety. Provide the standard form of the surety company or submit consent using the AIA Document G-707 form.
3. Submit all Record Drawings and Record Specifications.
4. Complete final clean up and repair of items damaged during construction.
5. Reinsertion Procedure
 - i. Upon receipt of the Contractor's Notice that work on the List of Deficiencies has been completed, the City will visit the site to determine if the work has progressed to an acceptable level of quality justifying a final inspection. If Contractor's work is acceptable and complete the Owner shall issue written acceptance of corrections so stated on List of Deficiencies.

PART 7 CHANGES

7.01 CHANGE IN THE WORK

Replace Section 7.01.B with City Supplemental Conditions:

- B. If City desires to order a change in the Work, it may request a written Change Order proposal from Contractor. Contractor shall submit a Change Order proposal within 7 days of the request from City, or within such other period as mutually agreed. Contractor's Change Order proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

Replace Section 7.01.E with City Supplemental Conditions:

- E. Failure to agree upon terms of Change Order; Final offer and Claims: If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 14 Days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in Part 8.

Add Section 7.01.G with City Supplemental Conditions:

G. Change Order Documentation

1. A log will be maintained by the Contractor subject to review and comment by Owner for each of the documents identified in this section leading up to issuances of Change Order. These logs will record transmittals, suspense dates, review stopovers, dates of actions, and other specific pertinent information to track the progress of the subject documents. The Owner reserves the right to dispute any and all entries to which the Contractor shall include in said log.
2. The City reserves the right to include and exclude as many Requests for Proposals and or Change Order Proposals into one Change Order as the City determines is in its best interest.

7.02 CHANGE IN THE CONTRACT SUM

Replace Section 7.02.A.2(b) and (c) with City Supplemental Conditions:

- (b) Content of notice for equitable adjustment; Failure to comply: Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 2 Days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
- (c) Contractor to provide supplemental information: Within 14 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path, in accordance with Section 7.03C. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

Replace Section 7.02.B.4 with City Supplemental Condition:

4. Markups on additive and deductive Work: The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work unless deductive change exceeds \$10,000.
Where a change in the Work involves additive or deductive Work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.

Replace Section 7.02.B.7.a(1) with City Supplemental Conditions:

1. Basic wages and benefits: Hourly rates and benefits as stated on the Department of Labor and Industries approved "statement of intent to pay prevailing wages" or a higher amount if approved by the City only if supported by certified payrolls. Direct supervision shall be a reasonable percentage not to exceed 10% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.

Delete Section 7.02.B.7.a(4) in its entirety.

Replace Section 7.02.B.7.d with City Supplemental Conditions:

Allowance for small tools, expendables & consumable supplies: Small tools consist of tools which cost \$250 or less and are normally furnished by the performing contractor.

The maximum rate for small tools shall not exceed the following:

- A. 1% for Contractor: For Contractor, 1% of direct labor costs.
- B. 2% for Subcontractors: For Subcontractor, 2% if direct labor costs.

Expendables and consumables supplies directly associated with the change in Work must be itemized.

Replace Section 7.02.B.7.f(1)(a) with City Supplemental Conditions, Projects less than \$3 million:

- a. Contractor markup on Contractor Work for Overhead: For Contractor, for any Work actually performed by Contractor's own forces, 10% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.

Replace Section 7.02.B.7.f(1)(b) with City Supplemental Conditions, Projects less than \$3 million:

- b. Subcontractor markup for Subcontractor Work for Overhead: For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.

Replace Section 7.02.B.7.f(1)(c) with City Supplemental Conditions, Projects less than \$3 million:

- c. Contractor markup for Subcontractor Work: For Contractor, for any work performed by its Subcontractor(s) 6% of the first \$50,000 of the amount due each Subcontractor, and 4% of the remaining amount, if any.

Replace Section 7.02.B.7.f(1)(d) with City Supplemental Conditions, Projects less than \$3 million:

- d. Subcontractor markup for lower tier Subcontractor Work: For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.

Replace Section 7.02.B.7.f(1)(e) with City Supplemental Conditions, Projects less than \$3 million:

- e. Basis of cost applicable for markup: The cost to which overhead is to be applied shall be developed in accordance with Section 7.02B 7a. – e.

Replace Section 7.02.B.7.g(1) with City Supplemental Conditions:

- 1. Contractor / Subcontractor markup for self-performed Work for Profit: For Contractor or Subcontractor of any tier for work performed by their forces, 5% of the cost developed in accordance with Section 7.02B 7a.-e.

Replace Section 7.02.B.7.g(2) with City Supplemental Conditions:

- 2. Contractor / Subcontractor markup for Work performed at lower tier for Profit: For Contractor or Subcontractor of any tier for work performed by a subcontractor of a lower tier, 5% of the subcontract cost developed in accordance with Section 7.02B 7a – h.

Replace Section 7.02.B.7.h(1) with City Supplemental Conditions:

- 1. Contractor's liability insurance: The cost of any changes in Contractor's liability insurance arising directly from execution of the Change Order shall not exceed 1%; and

Replace Section 7.02.B.7.h(2) with City Supplemental Conditions:

2. Payment and Performance Bond: The cost of the additional premium for Contractor's bond arising directly from the changed Work shall not exceed 1.5%.

Add Section 7.02C, 7.02.D with City Supplemental Conditions:

All mark-ups per Section 7.02.B.7.f

Add Section 7.02.D with City Supplemental Conditions:

4. Subcontractor and sub-subcontractor proposals to the Contractor for time and material Work shall include all direct costs plus overhead, profit, taxes, bond, and insurance costs, calculated as provided in Section 7.02B.

7.03 CHANGE IN THE CONTRACT TIME

Replace Section 7.03.B.2 with City Supplemental Conditions:

2. Timing and content of Contractor's Notice: Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than 2 Days before Contractor's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

Replace Section 7.03.B.3 with City Supplemental Conditions:

3. Within 14 days of the occurrence of the event giving rise to the request, unless city agrees in writing to allow an additional period of time to ascertain more accurate data, contractor shall supplement the written notice provided in accordance with subparagraph 7.03.B.2 with additional supporting data. such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the contract documents provide entitlement to an equitable adjustment in contract time for such act, event, or condition; and supporting documentation sufficiently detailed to permit an informed analysis of the request by City. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent city's interests are prejudiced, constitute a waiver of contractor's right to an equitable adjustment.

Replace Section 7.03.D.4.a with City Supplemental Conditions:

- a. Non-productive supervision or labor: cost of Contractor and its crews specifically assigned to the project. Home office cost is not allowed.

Delete section 7.03.D.4.b in its entirety.

Replace Section 7.03.D.4.c with City Supplemental Conditions:

- c. Temporary facilities or equipment rental: cost of temporary facilities or equipment rental extended because of the delay, at invoiced cost, no mark-ups allowed.

Replace Section 7.03.D.4.d with City Supplemental Conditions:

- d. Insurance premiums: cost of insurance by invoice extended because of the delay

Replace Section 7.03.D.e with City Supplemental Conditions:

- e. Overhead: general and administrative overhead in an amount to be agreed upon, but not to exceed 1% of the Contract Award Amount divided by the originally specified Contract Time for each Day of the delay.

Add Section 7.03.E with City Supplemental Conditions:

- E. Notwithstanding any other provision of the Contract Documents, no claim by the Contractor for an equitable adjustment hereunder will be allowed if not asserted within seven (7) days of discovery.

7.04 DELETED OR TERMINATED WORK

Add the following new Section 7.04 with City Supplemental Conditions:

- A. If the Agreement is terminated for convenience in accordance with Section 9.02, or as modified or if any item of Work is deleted in whole or in part, payment will be made for partially completed items mutually agreed or as determined by the City in the proportion that the partially completed Work is to the total item. No claim for damages of any kind or for loss of anticipated profits on deleted or uncompleted work will be allowed because of the termination or deductive Change Order.
- B. If the Agreement is terminated for convenience or parts of the Work are deleted, the Contract Time shall be adjusted as the Parties agree. If the Parties cannot agree, the City shall determine the equitable adjustment for Contract Time.
- C. Acceptable materials ordered by the Contractor or delivered on the Work prior to the date the Work was terminated or deleted by the City, will either be purchased from the Contractor by the City at the actual cost and shall become the property of the City, or the City will reimburse the Contractor for the actual costs connected with returning these materials to the Manufacturers.

- D. If Agreement is terminated prior to the Notice to Proceed, no cost will be incurred by either party.

PART 8 CLAIMS AND DISPUTE RESOLUTION

8.01 CLAIMS PROCEDURE

Replace Section 8.01.B with City Supplemental Conditions:

- B. Claim filing deadline for Contractor: Contractor shall file its Claim within 30 days from Owner's final offer made in accordance with paragraph 7.01E, or by the date of Substantial Completion, whichever occurs first.

Replace Section 8.01.C.6 with City Supplemental Conditions:

6. Copies of supporting documentation: Copies of any identified documents, inclusive of the Contract Documents, that support the Claim;

Replace Section 8.01.D.1 and 8.01.D.2 with City Supplemental Conditions:

1. Response time for Claim less than \$50,000: If the Claim amount is less than \$50,000, with a decision within 30 Days from the date the Claim is received; or
2. Response time for Claims of \$50,000 or more: If the Claim amount is \$50,000 or more, with a decision within 45 Days from the date the Claim is received, or with notice to Contractor of the date by which it will render its decision. City will then respond with a written decision in such additional time.

Add the following Section 8.01.G with City Supplemental Conditions:

8. Contractor shall fully investigate its subcontractor's claims and process said claim(s) as Contractor's Claim. Any and all claims which do not meet notification requirements shall be considered null and void.

8.02 ARBITRATION

Replace Section 8.02.B with City Supplemental Conditions:

- B. Filing of Notice of arbitration: Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), in the state where project is located, with a copy provided to the City. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:

1. Claims for less than \$30,000: Disputes involving \$30,000 or less shall be conducted in accordance with the Northwest Region Expedited Commercial Arbitration Rules; or
2. Claims greater than \$30,000: Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of AAA, unless the parties agree to use the expedited rules.

8.03 CLAIMS AUDIT

Add Section 8.03.B with City Supplemental Conditions:

25. Schedules

26. Expediting Records and Information

27. Privilege documentation shall be allowed for all Claims of \$500,000 and over.

8.04 AUDIT

Add the following new Section 8.04.A with City Supplemental Conditions:

- A. At such times as City deems necessary for reasonable cause, Contractor shall permit the City to inspect and audit all pertinent books and records of the Contractor and its subcontractors or other persons or entities that have performed work in connection with or related to the Contractor's Work under this Agreement. The audit may take place up to three years after Completion. The books and records are to be made available at reasonable times in Pierce County, Washington, or at such other reasonable location as City selects. At City's request, Contractor shall supply City with, or shall permit City to make a copy of, any books and records and any portion thereof. Contractor shall ensure that such inspection, audit and copying right is a condition of any Subcontract, agreement or other arrangement under which any person or entity is permitted to perform work in connection with or related to the Work under this Agreement. Any failure of the Contractor to incorporate contract requirements shall be at the expense of the Contractor.

PART 9 TERMINATION OF THE WORK

9.01 TERMINATION BY CITY FOR CAUSE

Add the following Articles to Section 9.01 with City Supplemental Conditions:

- H. If the Contractor defaults, fails, or neglects to carry out the Work in accordance with the Contract Documents, the City may give written notice to cure the problem within seven (7) days. If the problem is not cured or the City determines the effort for correction is inadequate within this time, the City may give a second notice to cure within seven (7) days. If the problem is not cured within this time, the City may issue a notice to terminate for cause, which shall be effective immediately upon issuance.

- I. The City rights to the site are subject to the rights and duties of the surety, if any, that may be obligated under any bond provided in accordance with the Contract Documents.
- J. In a termination situation, the City reserves the right to use any subcontractor, material Manufacturer, fabricator, or any vendor originally contracted by the Contractor or to assign their Contract with the Contractor to the City. The cost of completing the work shall include additional management, design services, legal fees, and other associated costs to complete the project as scheduled.
- K. The Contractor will be terminated for cause if any employee, agent, or representative of the Contractor gives, or offers to give, any gratuity such as a gift or entertainment to an official, employee, officer, or agent of the City.

9.02 TERMINATION BY CITY FOR CONVENIENCE

Add Section 9.02.C with City Supplemental Conditions:

- C. This Contract may be terminated by the City upon fourteen (14) days written notice to the Contractor in the event the City determines it is in the best interest of the City to terminate this project. If such termination occurs, cost incurred by the Contractor for any bid/proposal preparation prior to award of contract is the sole responsibility of the Contractor. The City shall only pay the Contractor for work completed and materials or equipment delivered after Notice to Proceed as previously approved by the City.

PART 10 MISCELLANEOUS PROVISIONS

No provisions were made by the City of Tacoma.

END OF SUPPLEMENTAL CONDITIONS

Appendix C

Sample Contract

Sample Performance and Payment Bond

Prevailing Wage Rates

Certificate of Insurance Requirements

Local Employment and Apprenticeship Training Program – LEAP Tacoma Municipal Code:

LEAP Document Submittal Schedule

Economically Distressed ZIP Codes Map

LEAP Apprenticeship Verification Form

Local Employment and Apprenticeship Training Program Instruction and Goal Form

No Work Performed Report

Prime Contractor LEAP Utilization Plan

CONTRACT

Resolution No. [#####]
Contract No. [#####]

This Contract is made and entered into effective as of July 1, 2023 ("Effective Date") by and between the City of Tacoma, a Municipal Corporation of the State of Washington ("City"), and [TBD] ("Contractor").

That in consideration of the mutual promises and obligations hereinafter set forth the Parties hereto agree as follows:

- I. Contractor shall fully execute and diligently and completely perform all work and provide all services and deliverables described herein and in the items listed below each of which are fully incorporated herein and which collectively are referred to as "Contract Documents":

-
1. Specification No. ES22-0324F On-Call Facility Contracting Services Request for Proposal together with all authorized addenda.
 2. Contractor's submittal [or specifically described portions thereof] dated [Enter Submittal Date] submitted in response to Specification No. ES22-0324F On-Call Facility Contracting Services Request for Proposal
 3. Describe with specific detail and list separately any other documents that will make up the contract (fee schedule, work schedule, authorized personnel, etc.) or any other additional items mutually intended to be binding upon the parties.
-

- II. If federal funds will be used to fund, pay or reimburse all or a portion of the services provided under the Contract, the terms and conditions set forth at this Appendix A are incorporated into and made part of this Contract and CONTRACTOR will comply with all applicable provisions of Appendix A and with all applicable federal laws, regulations, executive orders, policies, procedures, and directives in the performance of this Contract.

If CONTRACTOR's receipt of federal funds under this Contract is as a sub-recipient, a fully completed Appendix B, "Sub-recipient Information and Requirements" is incorporated into and made part of this Contract.

- III. In the event of a conflict or inconsistency between the terms and conditions contained in this document entitled Contract and any terms and conditions contained the above referenced Contract Documents the following order of precedence applies with the first listed item being the most controlling and the last listed item the least controlling:

1. Contract, inclusive of Appendices A and B.

- IV. List remaining Contract Documents in applicable controlling order The Contract terminates on June 30, 2025, and may be renewed for three additional 1 year terms

- V. The total price to be paid by City for Contractor's full and complete performance hereunder, including during any authorized renewal terms, may not exceed:
\$[TBD], plus any applicable taxes.

- VI. Contractor agrees to accept as full payment hereunder the amounts specified herein and in Contract Documents, and the City agrees to make payments at the times and in the manner and upon the terms and conditions specified. Except as may be otherwise provided herein or in Contract Documents Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work and providing the services and deliverables required by this Contract.

- VII. The City's preferred method of payment is by ePayables (Payment Plus), followed by credit card (aka procurement card), then Electronic Funds Transfer (EFT) by Automated Clearing House (ACH), then check or other cash equivalent. CONTRACTOR may be required to have the capability of accepting the City's ePayables or credit card methods of payment. The City of Tacoma will not accept price changes

or pay additional fees when ePayables (Payment Plus) or credit card is used. The City, in its sole discretion, will determine the method of payment for this Contract.

- VIII. Failure by City to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by Contractor with the insurance requirements contained in the Contract Documents shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- IX. Contractor shall comply with all federal, state, municipal, and/or local laws and regulations in the performance of all terms and conditions of the Contract. Contractor shall be solely responsible for all violations of the law from any cause in connection with its performance of work under the Contract.
- X. Contractor and for its heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the requirements contained herein and in Contract Documents.

It is further provided that no liability shall attach to City by reason of entering into this Contract, except as expressly provided herein.

DRAFT

IN WITNESS WHEREOF, the Parties hereto have accepted and executed this Contract, as of the Effective Date stated above, which shall be Effective Date for bonding purposes as applicable.

CITY OF TACOMA:
Signature:

CONTRACTOR:
Signature:

Name:

Title:

Name:

Title:

(City of Tacoma use only - blank lines are intentional)

Director of Finance: _____

Deputy/City Attorney (approved as to form): _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

**APPENDIX A
FEDERAL FUNDING**

1. Termination for Breach

CITY may terminate this Contract in the event of any material breach of any of the terms and conditions of this Contract if CONTRACTOR's breach continues in effect after written notice of breach and 30 days to cure such breach and fails to cure such breach.

2. Prevailing Wages

- A. If federal, state, local, or any applicable law requires CONTRACTOR to pay prevailing wages in connection with this Contract, and CONTRACTOR is so notified by the CITY, then CONTRACTOR shall pay applicable prevailing wages and otherwise comply with the Washington State Prevailing Wage Act (RCW 39.12) in the performance of this Contract.
- B. If applicable, a Schedule of Prevailing Wage Rates and/or the current prevailing wage determination made by the Secretary of Labor for the locality or localities where the Contract will be performed is made of part of the Contract by this reference. If prevailing wages apply to the Contract, CONTRACTOR and its subcontractors shall:
 - i. Be bound by and perform all transactions regarding the Contract relating to prevailing wages and the usual fringe benefits in compliance with the provisions of Chapter 39.12 RCW, as amended, the Washington State Prevailing Wage Act and/or the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable, including the federal requirement to pay wages not less than once a week.
 - ii. Ensure that no worker, laborer or mechanic employed in the performance of any part of the Contract shall be paid less than the prevailing rate of wage specified on that Schedule and/or specified in a wage determination made by the Secretary of Labor (unless specifically preempted by federal law, the higher of the Washington state prevailing wage or federal Davis-Bacon rate of wage must be paid.
 - iii. Immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington and/or the federal Department of Labor, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages and/or other or additional documentation required by applicable federal law, must be submitted by CONTRACTOR and its subcontractors to the CITY, in the manner requested by the CITY, prior to any payment by the CITY hereunder, and an Affidavit of Wages Paid and/or other or additional documentation required by federal law must be received or verified by the CITY prior to final Contract payment.

3. COPELAND ANTI-KICKBACK ACT

For Contracts subject to Davis Bacon Act the following clauses will be incorporated into the Contract:

- A. CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.

- B. CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses federal agencies may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.
- C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

4. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. If the CONTRACTOR does over \$10,000 in business a year that is funded, paid or reimbursed with federal funds, CONTRACTOR will take specific and affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- A. 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 apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- D. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- F. In the event of CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further federally funded contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. CONTRACTOR will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

5. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- A. Overtime requirements. Neither CONTRACTOR or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (3)(A) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (3)(A) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (3)(A) of this section.

- C. Withholding for unpaid wages and liquidated damages. The CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (3)(B) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (3)(A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (3)(A) through (D) of this section.

6. CLEAN AIR ACT

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal funds.

7. FEDERAL WATER POLLUTION CONTROL ACT

- A. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the appropriate federal agency.
- C. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal funding.

8. DEBARMENT AND SUSPENSION

- A. This Contract is a Covered Transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONTRACTOR is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000,

subpart C, and must include a requirement to comply with these regulations in any lower tier Covered Transaction it enters into.

- C. This certification is a material representation of fact relied upon by the CITY. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. CONTRACTOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Contract and to include a provision requiring such compliance in its lower tier covered transactions.

9. BYRD ANTI-LOBBYING AMENDMENT

- A. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification with CITY. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the CITY.
- B. If applicable, CONTRACTOR must sign and submit to the CITY the certification required by Appendix A to 44 CFR Part 18 contained at Appendix A-1 to this Contract.

10. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this Contract, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
- B. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

APPENDIX A-1

APPENDIX A to 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, [REDACTED], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap.38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

APPENDIX B—Sub-recipient information and requirements

Pursuant to 2 CFR 200.332(a)(1) Federal Award Identification

(i) Agency Name (must match the name associated with its unique entity identifier)		(ii) Unique Entity Identifier <i>(i.e., DUNS)</i>	City of Tacoma Number for This Agreement
(iii) Federal Award Identification Number (FAIN)	(iv) Federal Award Date	(v) Federal Period of Performance Start and End Date	(vi) Federal Budget Period Start and End Date
(vii) Amount of Federal Funds <i>Obligated</i> to the agency <i>by this action</i>: \$	(viii) Total Amount of Federal Funds <i>Obligated</i> to the agency		(ix) Total Amount of the Federal Award <i>Committed</i> to the agency \$
(x) Federal Award Project Description: CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS– City of Tacoma			
(xi) Federal Awarding Agency: DEPARTMENT OF THE TREASURY	Pass-Through Entity: City of Tacoma	Awarding Official Name and Contact Information:	
(xii) Assistance Listing Number and Name (the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listing number at time of disbursement)			(xiii) Identification of Whether the Award is R&D
(xiv) Indirect Cost Rate for the Federal Award	Award Payment Method (lump sum payment or reimbursement) REIMBURSEMENT		



PERFORMANCE BOND TO THE CITY OF TACOMA

Resolution No.
Bond No.

That we, the undersigned,

as principal, and

as a surety, are jointly and severally held and firmly bound to the CITY OF TACOMA, in the penal sum of

\$ _____, for the payment whereof Contractor and Surety bind themselves,

their executors, administrators, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

This obligation is entered into in pursuance of the statutes of the State of Washington, the Ordinances of the City of Tacoma.

WHEREAS, under and pursuant to the City Charter and general ordinances of the City of Tacoma, the said City has or is about to enter with the above bounden principal, a contract, providing for

Specification No. _____

Specification Title: _____

Contract No. _____

(which contract is referenced to herein and is made a part hereof as though attached hereto), and

WHEREAS, the said principal has accepted, the said contract, and undertake to perform the work therein provided for in the manner and within the time set forth.

This statutory performance bond shall become null and void, if and when the principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increase.

If the City shall commence suit and obtain judgment against the Surety for recovery hereunder, then the Surety, in addition to such judgement, shall pay all costs and attorney's fees incurred by the City in enforcement of its rights hereunder. Venue for any action arising out of in connection with this bond shall be in Pierce County, Washington.

Surety companies executing bonds must be authorized to transact business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Department of the Treasury.

One original bond shall be executed, and signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed power of attorney for the office executing on behalf of the surety.

Principal: Enter Vendor Legal Name

By: _____

Surety:

By: _____

Agent's Name: _____

Agent's Address: _____



PAYMENT BOND TO THE CITY OF TACOMA

Resolution No.
Bond No.

That we, the undersigned,

as principal, and _____
as a surety, are jointly and severally held and firmly bound to the CITY OF TACOMA, in the penal sum of,
\$ _____, for the payment whereof Contractor and Surety bind themselves,
their executors, administrators, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

This obligation is entered into in pursuance of the statutes of the State of Washington, the Ordinances of the City of Tacoma.

WHEREAS, under and pursuant to the City Charter and general ordinances of the City of Tacoma, the said City has or is about to enter with the above bounden principal, a contract, providing for

Specification No. _____

Specification Title: _____

Contract No. _____

(which contract is referenced to herein and is made a part hereof as though attached hereto), and

WHEREAS, the said principal has accepted, the said contract, and undertake to perform the work therein provided for in the manner and within the time set forth.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28, including all workers, laborers, mechanics, subcontractors, and materialmen, and all person who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract shall in any way affect its obligation on this bond, and waives notice of any changes, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

No suit or action shall be commenced hereunder by any claimant unless claimant shall have given the written notices to the City, and where required, the Contractor, in accordance with RCW 39.08.030.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of claims which may be properly filed in accordance with RCW 39.08 whether or not suit is commenced under and against this bond.

If any claimant shall commence suit and obtain judgment against the Surety for recovery hereunder, then the Surety, in addition to such judgment and attorney fees as provided by RCW 39.08.030, shall also pay such costs and attorney fees as may be incurred by the City as a result of such suit. Venue for any action arising out of or in connection with this bond shall be in Pierce County, WA.

Surety companies executing bonds must be authorized to transact business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Department of the Treasury.

Resolution No.
Bond No.
Specification No.
Contract No.

One original bond shall be executed, and be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed power of attorney for the office executing on behalf of the surety.

Principal: Enter Vendor Legal Name

By: _____

Surety:

By: _____

Agent's Name: _____

Agent's Address: _____

SAMPLE



CITY OF TACOMA

INSURANCE REQUIREMENTS FOR CONTRACTS

The Contractor (Contractor) shall maintain at least the minimum insurance set forth below. By requiring such minimum insurance, the City of Tacoma shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Contract. Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

1. GENERAL REQUIREMENTS

The following General Requirements apply to Contractor and to Subcontractor(s) of every tier performing services and/or activities pursuant to the terms of this Contract. Contractor acknowledges and agrees to the following insurance requirements applicable to Contractor and Contractor's Subcontractor(s):

- 1.1. City of Tacoma reserves the right to approve or reject the insurance provided based upon the insurer, terms and coverage, the Certificate of Insurance, and/or endorsements.
- 1.2. Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by City of Tacoma.
- 1.3. Contractor shall keep this insurance in force during the entire term of the Contract and for Thirty (30) calendar days after completion of all work required by the Contract, unless otherwise provided herein.
- 1.4. Insurance policies required under this Contract that name "City of Tacoma" as Additional Insured shall:
 - 1.4.1. Be considered primary and non-contributory for all claims.
 - 1.4.2. Contain a "Separation of Insured provision and a "Waiver of Subrogation" clause in favor of City of Tacoma.
- 1.5. Section 1.4 above does not apply to contracts for purchasing supplies only.
- 1.6. Verification of coverage shall include:
 - 1.6.1. An ACORD certificate or equivalent.
 - 1.6.2. Copies of all endorsements naming the City of Tacoma as additional insured and showing the policy number.
 - 1.6.3. A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.
- 1.7. Liability insurance policies, with the exception of Professional Liability and Workers' Compensation, shall name the City of Tacoma and its officers, elected officials, employees, agents, and authorized volunteers as additional insured.
 - 1.7.1. No specific person or department should be identified as the additional insured.
 - 1.7.2. All references on certificates of insurance and endorsements shall be listed as "City of Tacoma".
 - 1.7.3. The City of Tacoma shall be additional insured for both ongoing and completed operations using Insurance Services Office (ISO) form CG 20 10 04 13 and CG 20



CITY OF TACOMA

INSURANCE REQUIREMENTS FOR CONTRACTS

37 04 13 or the equivalent for the full available limits of liability maintained by the Contractor irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract and irrespective of whether the Certificate of Insurance describes limits lower than those maintained by the Contractor.

- 1.8. Contractor shall provide a Certificate of Insurance for each policy of insurance meeting the requirements set forth herein when Contractor provides the signed Contract for the work to City of Tacoma. Contractor shall provide copies of any applicable Additional Insured, Waiver of Subrogation, and Primary and Non-contributory endorsements. Contract or Permit number and the City Department must be shown on the Certificate of Insurance.
- 1.9. Insurance limits shown below may be written with an excess policy that follows the form of an underlying primary liability policy or an excess policy providing the required limit.
- 1.10. Liability insurance policies shall be written on an "occurrence" form, except for Professional Liability/Errors and Omissions, Pollution Liability, and Cyber/Privacy and Security
- 1.11. If coverage is approved and purchased on a "Claims-Made" basis, Contractor warrants continuation of coverage, either through policy renewals or by the purchase of an extended reporting period endorsement as set forth below.
- 1.12. The insurance must be written by companies licensed or authorized in the State of Washington pursuant to RCW 48 with an (A-) VII or higher in the A.M. Best's Key Rating Guide www.ambest.com.
- 1.13. Contractor shall provide City of Tacoma notice of any cancellation or non-renewal of this required insurance within Thirty (30) calendar days.
- 1.14. Contractor shall not allow any insurance to be cancelled or lapse during any term of this Contract, otherwise it shall constitute a material breach of the Contract, upon which City of Tacoma may, after giving Five (5) business day notice to Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to City of Tacoma by Contractor upon demand, or at the sole discretion of City of Tacoma, offset against funds due Contractor from City of Tacoma.
- 1.15. Contractor shall be responsible for the payment of all premiums, deductibles and self-insured retentions, and shall indemnify and hold the City of Tacoma harmless to the extent such a deductible or self-insured retained limit may apply to the City of Tacoma as an additional insured. Any deductible or self-insured retained limits in excess of Twenty Five Thousand Dollars (\$25,000) must be disclosed and approved by City of Tacoma Risk Manager and shown on the Certificate of Insurance.
- 1.16. City of Tacoma reserves the right to review insurance requirements during any term of the Contract and to require that Contractor make reasonable adjustments when the scope of services has changed.



CITY OF TACOMA INSURANCE REQUIREMENTS FOR CONTRACTS

- 1.17. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made by City of Tacoma to Contractor.
- 1.18. Insurance coverages specified in this Contract are not intended and will not be interpreted to limit the responsibility or liability of Contractor or Subcontractor(s).
- 1.19. Failure by City of Tacoma to identify a deficiency in the insurance documentation provided by Contractor or failure of City of Tacoma to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 1.20. If Contractor is a State of Washington or local government and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this Section.

2. CONTRACTOR

As used herein, "Contractor" shall be the Supplier(s) entering a Contract with City of Tacoma, whether designated as a Supplier, Contractor, Vendor, Proposer, Bidder, Respondent, Seller, Merchant, Service Provider, or otherwise.

3. SUBCONTRACTORS

It is Contractor's responsibility to ensure that each subcontractor obtain and maintain adequate liability insurance coverage. Contractor shall provide evidence of such insurance upon City of Tacoma's request.

4. REQUIRED INSURANCE AND LIMITS

The insurance policies shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve Contractor from liability in excess of such limits.

4.1 Commercial General Liability Insurance

Contractor shall maintain Commercial General Liability Insurance policy with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate. The Commercial General Liability Insurance policy shall be written on an Insurance Services Office form CG 00 01 04 13 or its equivalent. Products and Completed Operations shall be maintained for a period of three years following Substantial Completion of the Work related to performing construction services.

This policy shall include product liability especially when a Contract solely is for purchasing supplies. The Commercial General Liability policy shall be endorsed to include:

- 4.2 A per project aggregate policy limit, using ISO form CG 25 03 05 09 or an equivalent endorsement.

4.3 Commercial (Business) Automobile Liability Insurance

Contractor shall maintain Commercial Automobile Liability policy with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage and bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles. Commercial Automobile Liability Insurance shall be written using ISO form CA 00 01 or



CITY OF TACOMA

INSURANCE REQUIREMENTS FOR CONTRACTS

equivalent. Contractor must also maintain an MCS 90 endorsement or equivalent and a CA 99 48 endorsement or equivalent if "Pollutants" are to be transported.

4.4 Workers' Compensation

4.4.1 Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states. The Contractor must comply with their domicile State Industrial Insurance laws if it is outside the State of Washington.

4.5 Employers' Liability Insurance

Contractor shall maintain Employers' Liability coverage with limits not less than One Million Dollars (\$1,000,000) each employee, One Million Dollars (\$1,000,000) each accident, and One Million Dollars (\$1,000,000) policy limit.

4.6 Excess or Umbrella Liability Insurance

Contractor shall provide Excess or Umbrella Liability Insurance with limits not less than Three Million Dollars (\$3,000,000) per occurrence and in the aggregate. This coverage shall apply, at a minimum, in excess of primary underlying Commercial General Liability, Employer's Liability, Pollution Liability, Marine General Liability, Protection and Indemnity, and Automobile Liability if required herein.

4.7 Installation Floater Insurance

Contractor shall maintain during the term of the Contract, at its own expense, Installation Floater Insurance covering Contractor's labor, materials, and equipment to be used for completion of the work performed under this Contract against all risks of direct physical loss, excluding earthquake and flood, for an amount equal to the full amount of the Contract improvements.

4.8 Builder's Risk Insurance

Contractor shall maintain during the term of the Contract and until final acceptance of the work by the City of Tacoma, a policy of Builder's Risk Insurance providing coverage for all-risk of physical injury to all structures to be constructed according to the Contract. City of Tacoma shall be included as a named insured (not named as additional insured) on the policy. Builder's Risk Insurance policy shall:

4.8.1 Have a deductible of no more than Five Thousand Dollars (\$5,000) for each occurrence, the payment of which will be the responsibility of Contractor. Any increased deductibles accepted by City of Tacoma will remain the responsibility of Contractor.

4.8.2 Be on an ISO Special Form Causes of Loss or equivalent and shall insure against the perils flood, earthquake, theft, vandalism, malicious mischief, and collapse.

4.8.3 Include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site.

4.8.4 Be written in the amount of the completed value of the structures, with no coinsurance provisions exposure on the part of Contractor or City of Tacoma.

4.8.5 Contain a Waiver of Subrogation provision whereby each insured waives their subrogation rights to the extent the loss is covered by this insurance.

4.8.6 Grant permission to occupy, allowing the building or structure to be partially occupied prior to completion, without detrimental effect to the coverage provided.

4.8.7 Include coverage for the testing and startup of the building's operating



CITY OF TACOMA

INSURANCE REQUIREMENTS FOR CONTRACTS

systems.

- 4.8.8 Include coverage for City of Tacoma's loss of use or business interruption arising out of a covered loss which delays completion.
- 4.8.9 Include resultant damage coverage for loss due to faulty workmanship and defective material.

Contractor and City of Tacoma waive all rights against each other, their respective subcontractors, agents, and representatives for damages caused by fire or other perils to the extent covered by Builder's Risk Insurance or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

4.9 Other Insurance

Other insurance may be deemed appropriate to cover risks and exposures related to the scope of work or changes to the scope of work required by City of Tacoma. The costs of such necessary and appropriate Insurance coverage shall be borne by Contractor.

CHAPTER 1.90
LOCAL EMPLOYMENT AND APPRENTICESHIP TRAINING PROGRAM

Sections:

- 1.90.010 Purpose.
- 1.90.020 Scope.
- 1.90.030 Definitions.
- 1.90.040 LEAP goals.
- 1.90.050 *Repealed.*
- 1.90.060 Effect of program on prime contractor/subcontractor relationship.
- 1.90.070 Apprentice utilization requirements – Bidding and contractual documents.
- 1.90.080 Enforcement.
- 1.90.090 Compliance with applicable law.
- 1.90.100 Review and reporting.
- 1.90.105 Authority
- 1.90.110 Interpretation.

1.90.010 Purpose.

The purpose of this Chapter is to establish a means of providing for the development of a trained and capable workforce possessing the skills necessary to fully participate in the construction trades.

(Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.020 Scope.

The provisions of this Chapter shall apply to all Public Works or Improvements funded in whole or in part with City funds or funds which the City expends or administers in accordance with the terms of a grant.

(Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.030 Definitions.

As used in this chapter, the following terms shall have the following meanings:

- A. “Apprentice” shall mean a person enrolled in a course of training specific to a particular construction trade or craft, which training shall be approved by the Washington State Apprenticeship and Training Council established pursuant to RCW 49.04.010.
- B. “Building Projects” shall mean all Public Works or Improvements having an Estimated Cost greater than \$750,000.00, and for which a building permit must be issued pursuant to Chapter 1 of the current edition of the state building code (Uniform Building Code).
- C. “City” shall mean all divisions and departments of the City of Tacoma, and all affiliated agencies, provided, however, that the Tacoma Community Redevelopment Authority shall not be included within this definition.
- D. “Civil Projects” shall mean all Public Works or Improvements that are not defined as a “Building Project,” provided that those projects having an Estimated Cost of less than \$250,000.00 shall not be included in this definition.
- E. “Contractor or Service Provider” means a person, corporation, partnership, or joint venture entering into a contract with the City to construct a Public Work or Improvement.
- F. “Director” shall mean the Director of Community and Economic Development, or the Director’s Designee.
- G. “Economically Distressed ZIP Codes” shall mean ZIP codes in the Tacoma Public Utilities Service Area that meet two out of three (2/3) of the thresholds of:
 1. High concentrations of residents living under 200% of the federal poverty line in terms of persons per acre (69th percentile)
 2. High concentrations of unemployed people in terms of persons per acre (45th percentile)
 3. High concentrations of people 25 years or older without a college degree in terms of persons per acre (75th percentile)

Said thresholds shall be updated within 30 days following any Prevailing Wage updates issued by the Washington State Labor and Industry. All updates are to be published on the first business day in August and in February of each calendar year.

H. “Electrical Utility” and “Water Utility” shall mean, respectively, the Light Division of the Department of Public Utilities of the City of Tacoma, and shall include the electrical and telecommunications services of that Division, and the Water Division of the Department of Public Utilities of the City of Tacoma.

I. “Estimated Cost” shall mean the anticipated cost of a Public Work or Improvement, as determined by the City, based upon the expected costs of materials, supplies, equipment, and labor, but excluding taxes and contingency funds.

J. “Estimated Labor Hours” shall mean the anticipated number of Labor Hours determined by the City to be necessary to construct a Public Work or Improvement and set forth in the specifications for the project, or as may be subsequently revised due to contract or project adjustment, or pursuant to an agreed upon change order.

K. “Existing Employee” shall mean an employee whom the Contractor or Service Provider can demonstrate was actively employed by the Contractor or Service Provider for at least 1000 hours in the calendar year prior to bid opening plus one month following bid opening, and who was performing work in the construction trades.

L. “Labor Hours” shall mean the actual number of hours worked by workers receiving an hourly wage who are employed on the site of a Public Work or Improvement, and who are subject to state or federal prevailing wage requirements. The term “Labor Hours” shall include hours performed by workers employed by the Contractor or Service Provider and all Subcontractors, and shall include additional hours worked as a result of a contract or project adjustment or pursuant to an agreed upon change order. The term “Labor Hours” shall not include hours worked by workers who are not subject to the prevailing wage requirements set forth in either RCW 39.12 or the Davis-Bacon Act - 40 U.S.C. 276 (a).

M. “LEAP Coordinator” shall mean the City of Tacoma staff member who administers LEAP.

N. “LEAP Program” or “Program” shall mean the City of Tacoma’s Local Employment and Apprenticeship Training Program, as described in this chapter.

O. “LEAP Regulations” or “Regulations” shall mean the rules and practices established in this document.

P. “LEAP Utilization Plan” shall mean the document submitted by the Contractor to the LEAP Coordinator which outlines how the associated goals will be met on the project.

Q. “Priority Hire Resident” shall mean any resident within the Economically Distressed ZIP Codes.

R. “Project Engineer” shall mean the City employee who directly supervises the engineering or administration of a particular construction project subject to this chapter.

S. “Public Work or Improvement” shall have the same meaning as provided in Section 39.04.010 RCW, as that Section may now exist or hereafter be amended.

T. “Resident of Tacoma” shall mean any person, not defined as a Resident of the Community Empowerment Zone, who continues to occupy a dwelling within the boundaries of the City of Tacoma, has a present intent to continue residency within the boundaries of the City, and who demonstrates the genuineness of that intent by producing evidence that the person’s presence is more than merely transitory in nature.

U. “Service Area - Electrical” or “Electrical Service Area” shall mean that area served with retail sales by the Electrical Utility of the City of Tacoma at the time a bid is published by the Electrical Utility for a Public Work or Improvement to be performed primarily for the Electrical Utility.

V. “Service Area - Water” or “Water Service Area” shall mean that area served with retail sales by the water utility of the City of Tacoma at the time a bid is published by the water utility for a Public Work or Improvement to be performed primarily for the water utility.

W. “Service Contract” shall mean all City contracts relating to a Public Work or Improvement which utilize labor at a City site and which are not within the exceptions to nor defined as “Building Projects” or “Civil Projects.”

X. “Subcontractor” means a person, corporation, partnership, or joint venture that has contracted with the Contractor or Service Provider to perform all or part of the work to construct a Public Work or Improvement by a Contractor.

Y. “Tacoma Public Utilities” means the City of Tacoma, Department of Public Utilities.

Z. “Tacoma Public Utilities Service Area” shall mean every ZIP code listed by Tacoma Public Utilities as an area that either receives services or maintains infrastructure to provide services.

AA. Washington State Labor and Industry Prevailing Wage shall mean the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers, and mechanics. Prevailing wages are established, by the Department of Labor & Industries, for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions.

(Ord. 28520 Ex. A; passed Jul. 17, 2018; Ord. 28147 Ex. B; passed May 7, 2013; Ord. 28110 Ex. C; passed Dec. 4, 2012; Ord. 27815 Ex. A; passed Jun. 30, 2009; Ord. 27368 § 1; passed Jun. 21, 2005; Ord. 26698 § 1; passed Sept. 12, 2000; Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.040 LEAP goals.

A. Utilization Goals.

1. All Contractors constructing Civil Projects or Building Projects, and all Service Providers involved with the construction of a Public Work or Improvement, shall ensure that at least 15 percent of the total Labor Hours actually worked on the Project are performed by persons having their residence within the boundaries of the City of Tacoma or Economically Distressed ZIP Codes, whether or not any such person is an Apprentice.

a. The thresholds for this section shall be \$250,000.00 for Civil Projects and \$750,000.00 for Building Projects.

2. Fifteen percent (15%) of the Total Labor Hours on contracts above one-million dollars (\$1,000,000.00) shall have work performed by Apprentices who are residents of the Tacoma Public Utilities Service Area consistent with RCW 39.04.320(1)(a), subject to waiver based on exceptions as specified in RCW 39.04.320(2)(a), (b), and (c).

3. Labor Hours performed by non-residents of the State of Washington will be deducted from a project's total Labor Hours for purposes of determining compliance with the requirements of this chapter.

4. All Contractors and Service Providers shall submit a LEAP Utilization Plan as provided for in the regulations adopted under this chapter, and shall meet with the LEAP Coordinator to review said Plan prior to being issued a Notice to Proceed. Failure to submit a LEAP Utilization Plan may be grounds for the City to withhold remittance of a progress payment until such Plan is received from the responsible Contractor or Provider. A meeting with the LEAP Coordinator prior to issuance of a Notice to Proceed shall be excused only when the LEAP Coordinator is unavailable to meet prior to the scheduled date for issuance of the Notice to Proceed and the Contractor and the LEAP Coordinator have otherwise scheduled a meeting for the coordinator to review the Contractor's or Provider's plan.

The Contractor or Service Provider shall be responsible for meeting the LEAP utilization goal requirements of the contract, including all amendments and change orders thereto, and shall be responsible for overall compliance for all hours worked by Subcontractors. To the extent possible, the Contractor or Service Provider shall recruit Apprentices from multiple trades or crafts.

B. Failure to Meet Utilization Goal.

1. Contracts for the construction of Building projects or Civil projects and Service Contracts shall provide that Contractors or Service Providers failing to meet the LEAP utilization goals shall be assessed an amount for each hour that is not achieved. The amount per hour shall be based on the extent the Contractor or Service Provider met its goal. The amount per hour that shall be assessed shall be as follows:

Percent of Goal Met	Assessment per unmet hour
100%	\$ 0.00
90% - 99%	\$ 2.00
75% to 89%	\$ 3.50
50% to 74%	\$ 5.00
1% to 49%	\$ 7.50
0%	\$10.00

When determining the percent of goal that is met, all rounding shall be down to the nearest whole percent. No penalty shall be waived by the City unless it is determined by the Director to be in the best interests of the City, which determination shall be made after consultation with the LEAP Coordinator.

2. Deposit of Assessments. All assessments imposed pursuant to this section shall be deposited into a separate account and utilized to support the City's pre-apprenticeship and training program. The policies and regulations adopted by the City Manager and Director of Utilities pursuant to this chapter shall address issues pertaining to a Contractor's existing workforce. Contributions need not be made for Labor Hours that have been adjusted in accordance with Section 1.90.040(E).

C. LEAP Reports.

Notwithstanding the provisions of TMC 1.90.100, the Director shall, not less than annually, publish a LEAP report setting forth Contractor compliance with this chapter. Said report shall include information on all contracts and all Contractors to which this chapter applies, and shall detail the level and nature of LEAP participation by contract and by Contractor, The

Director's LEAP report may include such other information as may be helpful to assuring fair and accurate representation of the contracts, Contractors or projects covered in the report. The Director's LEAP reports may be considered by the Board of Contracts and Awards in its determinations as to bidder responsibility.

D. LEAP Goal Adjustments.

1. LEAP utilization goals may be adjusted prior to bid opening and/or as a result of a contract amendment or change order on a Building Project, Civil Project, or Service Contract.

a. If LEAP utilization goals are adjusted prior to bid opening, they shall be set forth in the bid or Request For Proposal advertisement and specification documents or in an addendum timely provided to prospective bidders, provided that such adjustment shall be based upon a finding by the Project Engineer that the reasonable and necessary requirements of the contract render LEAP utilization unfeasible at the required levels. The Director shall concur with the Project Engineer's finding, provided that should the Project Engineer and the Director fail to reach agreement on the Project Engineer's finding, then in that circumstance the matter shall be referred to the City Manager or the Director of Utilities, as appropriate, for ultimate resolution. Notwithstanding any other provision of this chapter to the contrary, the decision of the City Manager or the Director of Utilities with regard to LEAP goal adjustment may not be appealed.

b. If LEAP utilization goals are adjusted due to contract amendment or change order, the amount of adjustment shall be consistent with the utilization goals set forth in this chapter and shall be determined pursuant to regulations adopted pursuant to this chapter for administration of LEAP utilization goal adjustments.

2. The methodology of determining the appropriate adjustments to LEAP utilization goals shall be determined in consultation with the LEAP Advisory Committee, established pursuant to this ordinance for so long as the LEAP Advisory Committee remains in existence.

3. LEAP utilization goals shall not apply to those portions of a project that are funded by sources other than (a) City funds, or (b) funds which the City expends or administers in accordance with the terms of a grant to the City, provided that the Project Engineer shall notify the Director of such non-application prior to bid advertisement. For the purposes of this paragraph, credits extended by another entity for the purpose of providing project funding shall not be considered to be City funds.

E. Utilization - Electrical Projects Outside Electrical Service Area.

Civil Projects or Building Projects that are constructed primarily for the benefit or use by the City's Electrical Utility, which are wholly situated outside the Electrical Service Area, and for which the estimated cost is less than \$1,000,000.00, are exempt from the requirements of this chapter.

F. Utilization - Water Projects Outside Water Service Area.

Civil Projects or Building Projects that are constructed primarily for the benefit or use by the City's water utility, which are wholly situated outside the Water Service Area, and for which the estimated cost is less than \$1,000,000.00 are exempt from the requirements of this chapter.

G. Utilization - Projects Outside Tacoma Public Utilities Service Area.

Civil Projects or Building Projects that are constructed primarily for the benefit or use by Tacoma Public Utilities, which are wholly situated outside the retail service area of the Tacoma Public Utilities Service Area, and for which the estimated cost is less than \$1,000,000.00 are exempt from the requirements of this chapter. Projects wholly situated outside the Tacoma Public Utilities Service Area, and for which the estimated cost is more than \$1,000,000.00, shall be exempt from 15% utilization goal specified in subsection A1. of this section. The 15% utilization goal specified in subsection A2. of this section may be met if project work is performed by Apprentices who are enrolled in a course of training specific to a particular construction trade or craft, provided such training has been approved by the Washington State Apprenticeship and Training Council in accordance with Chapter 49.04, RCW.

H. Emergency.

This chapter shall not apply in the event of an Emergency. For the purposes of this section, an "Emergency" means unforeseen circumstances beyond the control of the City that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

I. Conflict with State or Federal Requirements.

If any part of this chapter is found to be in conflict with federal or state requirements which are a prescribed condition to the allocation of federal or state funds to the City, then the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the City departments directly affected. This provision does not affect the operation of the

remainder of this chapter. Administrative rules or regulations adopted under this chapter shall meet federal and state requirements which are a necessary condition to the receipt of federal or state funds by the City.

(Ord. 28520 Ex. A; passed Jul. 17, 2018; Ord. 28147 Ex. B; passed May 7, 2013; Ord. 27815 Ex. A; passed Jun. 30, 2009; Ord. 27368 § 2; passed Jun. 21, 2005; Ord. 26992 § 1; passed Oct. 15, 2002; Ord. 26698 § 2; passed Sept. 12, 2000; Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.050 Repealed by Ord. 27368. Good faith efforts.

(Ord. 27368 § 3; passed Jun. 21, 2005; Ord. 26698 § 3; passed Sept. 12, 2000; Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.060 Effect of program on prime contractor/service provider - subcontractor relationship.

The LEAP Program shall not be construed so as to modify or interfere with any relationship between any Contractor or Service Provider and Subcontractor. The LEAP Program shall not grant the City any authority to control the manner or method of accomplishing any construction work that is additional to any authority retained by the City in a Public Works contract.

(Ord. 26698 § 4; passed Sept. 12, 2000; Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.070 Apprentice utilization requirements – Bidding and contractual documents.

All packages of bid documents for every Building Project and every Civil Project shall incorporate provisions satisfactory to the City Attorney so as to allow enforcement of the provisions contained in this Chapter. Such contractual provisions may include liquidated damages, calculated to reimburse the City for the Contractor's breach of these performance requirements, which shall be published with the City's call for bids.

(Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.080 Enforcement.

A. The Director shall review the Contractor's or Service Provider's and all Subcontractor's employment practices during the performance of the work for compliance with LEAP Program requirements. On-site visits may be conducted as necessary to verify compliance with the requirements of the LEAP Program. The Contractor, Service Provider, or Subcontractors shall not deny to the City the right to interview its employees, provided that the Director shall make reasonable efforts to coordinate employee interviews with employers.

B. Any knowing failure or refusal to cooperate in compliance monitoring may disqualify the defaulting Contractor, Service Provider, or Subcontractor from eligibility for other City contracts.

C. The making of any material misrepresentation may disqualify the defaulting Contractor, Service Provider, or Subcontractor from eligibility for other City contracts.

D. Any action by the City, its officers and employees, under the provisions of this Chapter may be reviewed by the Board of Contracts and Awards, upon written application of the party so affected. Application shall be made within twenty (20) days of the date of the action upon which the appeal is based, and provided to the City by certified mail or by personal service. Any action taken by the Board of Contracts and Awards may be appealed to the City Council or Public Utility Board, as appropriate, and thereafter if desired, to the Superior Court of Pierce County, Washington, within fifteen (15) days of the previous decision.

(Ord. 26698 § 5; passed Sept. 12, 2000; Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.090 Compliance with applicable law.

Nothing in this Chapter shall excuse a Prime Contractor, Service Provider, or Subcontractor from complying with all relevant federal, state, and local laws.

(Ord. 26698 § 6; passed Sept. 12, 2000; Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.100 Review and reporting.

The City Manager and Director of Utilities shall review the Program on or before January 1, 2000, and every two (2) years thereafter, and shall report to the City Council and Public Utility Board the Manager's and Director's findings, conclusions, and recommendations as to the continued need for the Program, and any revisions thereto that should be considered by the Council and Board.

(Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.105 Authority.

The City Manager and the Director of Utilities shall have authority to jointly adopt policies and regulations consistent with this chapter to implement the LEAP program.

(Ord. 26698 § 7; passed Sept. 12, 2000: Ord. 26301 § 1; passed Oct. 6, 1998)

1.90.110 Interpretation.

This Chapter shall not be interpreted or construed so as to conflict with any state or federal law, nor shall this Chapter be enforced such that enforcement results in the violation of any applicable judicial order.

(Ord. 26301 § 1; passed Oct. 6, 1998)



City of Tacoma
LEAP Office
747 Market Street, Room 900
Tacoma, WA 98402
(253) 591-5590 or leap@cityoftacoma.org

LEAP

Documents and Submittal Schedule

In the attached packet, you will find the LEAP forms that are required to be submitted by the Prime and Sub Contractors.

- ❑ **LEAP Abbreviated Program Requirements:** brief overview of LEAP Program requirements
- ❑ **LEAP Employee Verification Form:** to be submitted on an ongoing basis for each employee who may be a LEAP-qualified employee
- ❑ **Tacoma Public Utilities Service Area Map and List, Economically Distressed ZIP Codes Map and List:** for your reference on LEAP-qualified zoning areas

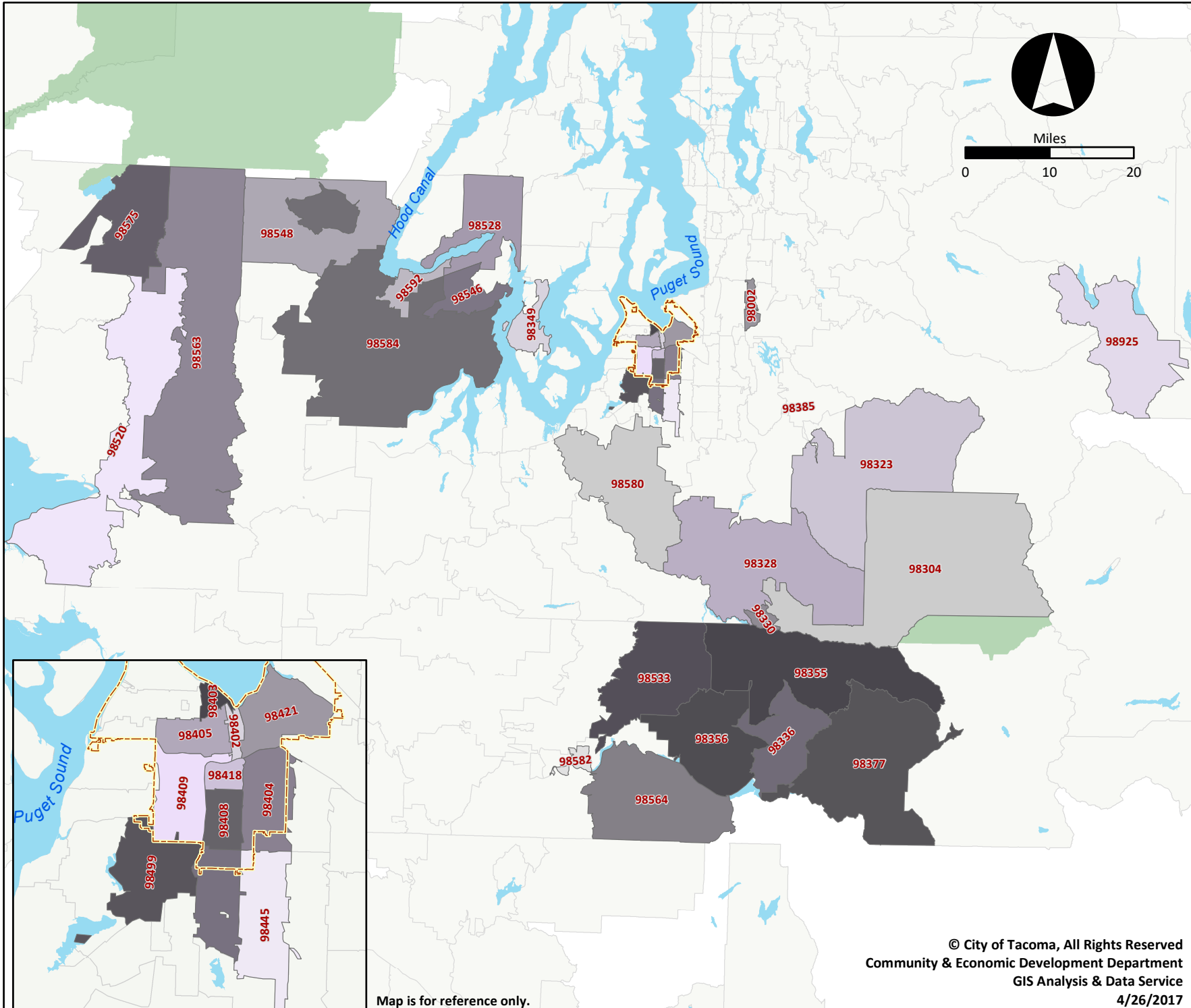
In addition, the City of Tacoma will also require from the Prime Contractor and all its Subcontractors:

- ❑ **Weekly Certified Payrolls:** to be submitted via LCP Tracker weekly, biweekly or monthly with the LEAP Payroll Report attached as scheduled by the Prime
- ❑ **Statement of Intent to Pay Prevailing Wages:** to be submitted prior to commencing work
- ❑ **Affidavit of Wages Paid:** to be submitted upon completion of each contractor's work
- ❑ **Document Verification:** provide required information when requested from LEAP Office

Please submit above documents as instructed by the LEAP Coordinator.

If you have any questions or request further information, please feel free to contact the City of Tacoma's LEAP Program at (253) 591-5590 or email dtrevorrow@cityoftacoma.org

Appendix C: Economically Distressed ZIP Codes Map



City Limits

- 98002
- 98304
- 98323
- 98328
- 98330
- 98336
- 98349
- 98355
- 98356
- 98377
- 98385
- 98520
- 98528
- 98533
- 98546
- 98548
- 98563
- 98564
- 98575
- 98580
- 98582
- 98584
- 98592
- 98925
- 98402
- 98403
- 98404
- 98408
- 98409
- 98418
- 98421
- 98444
- 98445
- 98499

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Community & Economic Development Department
GIS Analysis & Data Service
4/26/2017

Map is for reference only.

Economically Distressed ZIP Codes (Journeyman AND Apprentice)

Zip Code	200% Pov	Unemployed	25+ College	Area
98002	Y		Y	Auburn
98304	Y		Y	Ashford/Rainier
98323	Y	Y	Y	Carbonado
98328	Y		Y	Eatonville
98330	Y		Y	Elbe
98336	Y		Y	Glenoma
98349	Y	Y		Lakebay
98355		Y	Y	Mineral
98356	Y	Y	Y	Morton
98377	Y	Y	Y	Randle
98385		Y	Y	South Prairie
98402	Y	Y		Downton
98403	Y	Y		Stadium/St. Helens
98404	Y	Y		Eastside
98405	Y	Y		Hilltop/Central
98408	Y		Y	South End
98409	Y	Y		South Tacoma
98418	Y		Y	Lincoln/South End
98421	Y	Y	Y	Port
98439	Y	Y		McChord AFB
98444	Y	Y		Parkland
98445	Y		Y	Midland
98499	Y	Y		Lakewood
98520	Y	Y	Y	Aberdeen
98528	Y		Y	Belfair
98533		Y	Y	Cinebar
98546	Y	Y	Y	Grapeview
98548	Y	Y	Y	Hoodsport
98563	Y	Y	Y	Montesano
98564	Y	Y	Y	Mossyrock
98575	Y		Y	Quinault
98580	Y		Y	Roy
98582	Y		Y	Salkum
98584	Y		Y	Shelton
98591	Y		Y	Toledo
98592		Y	Y	Union
98925	Y		Y	Easton



City of Tacoma LEAP Office
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Tacoma, WA 98402
(253) 591-5590 or leap@cityoftacoma.org
www.cityoftacoma.org/leap

LEAP EMPLOYEE VERIFICATION FORM

Contractor/Sub: _____ Specification Number: _____

Project Description: _____

Employee Name: _____ Craft: _____

Ethnic Group (*optional*): ☐ Asian/Pac Isl. ☐ Black ☐ Hispanic ☐ Native American ☐ White ☐ Other

Gender (*optional*): ☐ MALE ☐ FEMALE

Complete Physical Address (No PO Boxes): _____

City: _____ State: _____ Zip: _____ Telephone: _____ Date of Hire: _____

Apprenticeship County: _____ Apprentice Registration I.D. (*if applicable*): _____

Age: _____ Copy of DD-214: _____

*******Please fill out entire form for tracking LEAP performance*******

LEAP qualified employee categories: (check all that apply and provide evidence for each check)

_____ a. Resident (journey level or certified apprentice) within the geographic boundaries of the City of Tacoma

_____ b. Resident (journey level or certified apprentice) within Economically Distressed ZIP Codes of the Tacoma Public Utilities Service Area

_____ c. WA State Approved Apprentice living in the Tacoma Public Utilities Service Area (Only valid for projects over \$1,000,000)

_____ d. WA State Approved Apprentice *(Only valid for contracts where 100% of work is performed outside of Pierce County)

Signature of Employee: _____ Date: _____

Contractor Representative: _____ Date: _____

LEAP EMPLOYEE VERIFICATION FORM

To be Completed by Contractor or Subcontractor

Please attach a legible copy of one or more of the following document(s) showing the address of residence as proof of local (Tacoma) and/or Economically Distressed Area and/or TPU Service Areas residency. For youth, see first line and for veteran status, see second line.

.....

_____ For Youth - Copy of Birth Certificate or WA State ID or
_____ WA Driver's License (projects advertised after 05-20-13)

_____ For Veterans – Copy of DD-214(Projects advertised after
_____ 05-20-13)

_____ Driver's License with current address

_____ Utility Bill/Phone Bill/Cell Bill/Cable Bill with current
_____ address

_____ Copy of current tax form W-4

_____ Rental Agreement/Lease (residential)

_____ Computer Printout From Other Government Agencies

_____ Property Tax Records

_____ Apprentice Registration I.D.

_____ Food Stamp Award Letter

_____ Housing Authority Verification

_____ Insurance Policy (Residence/Auto)

*Any of the above must have a complete physical address verified by the www.govme.org website.

No PO Boxes

Contractor Representative:_____

Date:_____

Title:_____

LOCAL EMPLOYMENT AND APPRENTICESHIP TRAINING PROGRAM (LEAP)

LEAP REQUIREMENTS & PROCEDURES:

The LEAP office enforces post-award mandatory requirements. Bidders do not have to submit any information in the bid submittal package to be in compliance with LEAP.

Post-award Submittals:

- LEAP Employee Verification Form. This form is to be completed for employees who may be LEAP-Qualified and may be able to help meet the LEAP Goals.
- LEAP Weekly Payroll. These must be submitted via LCP Tracker. By submitting payrolls in LCP Tracker before the Labor & Industry's website, you can reduce data entry.

The City of Tacoma's LEAP office enforces two mandatory requirements on City projects based on certain monetary thresholds.

Local Employment Utilization Goal - the Prime Contractor performing a qualifying public works project must ensure that 15 percent of the total labor hours worked on the project are performed by residents of the City of Tacoma or Economically Distressed Zip Codes ,whether or not any such person is an apprentice.

Apprenticeship Utilization Goal – for contracts above one-million dollars, the Prime Contractor performing a qualifying public works project must ensure that 15 percent of the total labor hours worked on the project are performed by Apprentices who are residents of the City of Tacoma or Tacoma Public Utilities Service Area. The accompanying LEAP Regulations, forms, and maps are included in these specifications.

***Exceptions:** If the project is located outside of the retail service area of the Tacoma Public Utilities Service Area, then Apprentices may come from the county in which the work is performed.

This project is below \$1 million and is thusly subject to the:

1. 15% Local Employment Utilization Goal

LEAP staff can assist contractors in the recruitment, screening and selection of qualified City of Tacoma residents, Economically Distressed Area residents, and Apprentices. Contractors may obtain further information by contacting the City's LEAP Office at (253) 316-3057 or (253) 591-5590. The LEAP Office is located in the Tacoma Municipal Building, 747 Market Street, Room 900, Tacoma, WA 98402. www.cityoftacoma.org/leap

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City of Tacoma
Community and Economic Development Department
LEAP Office
747 Market Street, Room 900
Tacoma, WA 98402
(253) 591-5590
leap@cityoftacoma.org

LEAP LOCAL EMPLOYMENT AND APPRENTICESHIP TRAINING PROGRAM ABBREVIATED PROGRAM REQUIREMENTS

LEAP is a mandatory City of Tacoma program adopted to provide employment opportunities for City of Tacoma residents and residents of Economically Distressed Areas of the Tacoma Public Utilities Service Area. Based on the dollar amounts of projects, it requires Prime Contractors performing qualifying public works projects or service contracts ensure that a percentage of the total labor hours worked on the project are performed by LEAP-Qualified local employees and/or LEAP-Qualified apprentices approved by the Washington State Apprenticeship Council (SAC), youth, veterans, residents of Tacoma, residents of surrounding Economically Distressed Areas, and/or TPU Service Areas (as outlined below). Compliance may be met through any combination LEAP-Qualified employees.

Prime Contractors may obtain further information by contacting the City of Tacoma's LEAP Coordinator, Deborah Trevorow, at (253) 591-5590, or e-mail leap@cityoftacoma.org. The LEAP Coordinator can assist contractors in the recruitment of qualified entry-level workers to work on City of Tacoma Public Works projects. The LEAP Office is in the Tacoma Municipal Building, 747 Market Street, Rm 900.

LEAP PROGRAM REQUIREMENTS:

1. **LOCAL EMPLOYMENT GOAL:** The Prime Contractor is required to ensure that 15 percent of the total Labor Hours worked on the project are performed by residents of the City of Tacoma or Economically Distressed ZIP Codes for the following projects:
 - a) Civil Projects over \$250,000
 - b) Building Projects over \$750,000
2. **APPRENTICE GOAL:** The Contractor is required to ensure that an additional 15 percent of the total Labor Hours worked on any project over \$1,000,000 are performed by Apprentices who are residents of the Tacoma Public Utilities Service Area. This is in addition to the Local Employment Goal.
3. **SUBCONTRACTOR NOTIFICATION:** Prime Contractors shall notify all Subcontractors of the LEAP Program requirement. Subcontractor labor hours may be utilized towards achievement of the LUG. Owner/Operator hours may be used for the Local Employment Goal.
4. **FAILURE TO MEET LEAP UTILIZATION GOAL:** Contractors shall be assessed an amount for each hour that is not achieved. The amount per hour shall be based on the extent the Contractor met its goal. The amount per hour that shall be assessed shall be as follows:

• 100% achievement	\$0.00 penalty	
• 99% to 90% achievement	\$2.00 penalty	
• 89% to 75% achievement	\$3.50 penalty	
• 74% to 50% achievement	\$5.00 penalty	
• 49% to 1% achievement	\$7.50 penalty	
• 0% achievement	\$10.00 penalty	

*Penalty may be waived in the best interests of the City of Tacoma.

LEAP DOCUMENT SUBMITTALS:**

1. *LEAP EMPLOYEE VERIFICATION FORM*: The Contractor must provide the LEAP Office with a form for every person whom the contractor thinks will assist with attaining credit towards meeting the LEAP Utilization requirements with at least one piece of verifying documentation. The LEAP Office staff will respond regarding whether or not the employee is LEAP-Qualified.
2. *WEEKLY CERTIFIED PAYROLL*: In LCP Tracker: the Prime and Subcontractors must submit weekly Certified Payrolls that include, employee name, address, social security number, craft/trade, class, hours worked on this job, rate of pay, and gross wages paid including benefits for this job.
3. *DEPARTMENT OF LABOR & INDUSTRIES (L&I)*: The Prime must enter the project in the L&I project site under the 'Tacoma, City of' account and notify the LEAP Office when this has been completed.

****WITHHOLDING PROGRESS PAYMENTS**: The LEAP Coordinator may withhold progress payments for failure to follow the above-outlined procedures