



City of Tacoma, WA

**TACOMA POWER / GENERATION
REQUEST FOR QUALIFICATIONS
ALDER POWERHOUSE UNIT 11 REBUILD PROJECT
SPECIFICATION NO. PG19-0150F**

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City of Tacoma
Tacoma Power / Generation

REQUEST FOR QUALIFICATIONS PG19-0150F
Alder Powerhouse Unit 11 Rebuild Project

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, August 13, 2019

Submittal Delivery: Sealed submittals will be received as follows:

<p>By Carrier: City of Tacoma Procurement & Payables Division Tacoma Public Utilities 3628 S 35th Street Tacoma, WA 98409</p>	<p>In Person: City of Tacoma Procurement & Payables Division Tacoma Public Utilities Lobby Security Desk Administration Building North – Main Floor 3628 S 35th Street Tacoma, WA 98409</p>
<p>By Mail: City of Tacoma Procurement & Payables Division Tacoma Public Utilities PO Box 11007 Tacoma, WA 98411-0007</p>	<p>Note: This is a change in location for in-person deliveries.</p>

Submittal Opening: Sealed submittals in response to a RFB will be opened by a Purchasing representative and read aloud during a public bid opening held in Conference Room M-1, located on the main floor in the same building. Submittals in response to an RFP or RFQ are recorded as received but are not typically opened and read aloud. After 1:00 p.m. the day of bid opening, the names of vendors submitting proposals are posted to the website for public viewing.

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 not be held.

Project Scope: The City of Tacoma seeks Statements of Qualifications (SOQs) from qualified firms to provide Design-Build (DB) Services for the Alder Unit 11 Rebuild Design-Build Project (Project). The Project will consist of design, manufacturing, procurement, and construction services for the replacement, repair, or refurbishment of components of one (1) vertical hydroelectric turbine-generator that has reached the end of its original service life. The unit was originally installed in 1947 and is rated 25 MVA.

Estimate: \$4,500,000 – \$6,000,000

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

The following is applicable to 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.

Additional Information: Requests for information regarding the specifications may be obtained by contacting Samol Hefley by email to shefley@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.

Alder Powerhouse

Unit 11 Rebuild Project



Request for Qualifications (RFQ) Design-Build Services PG19-0150F

RFQ Release Date:
July 10, 2019

Statement of Qualifications (SOQ) Submittal Deadline:
August 13, 2019 at 11:00 AM (PDT)

PROJECT LOCATION: Alder Powerhouse, Pierce County, WA

PROJECT DESCRIPTION: The City of Tacoma seeks Statements of Qualifications (SOQs) from qualified firms to provide Design-Build (DB) Services for the Alder Unit 11 Rebuild Design-Build Project (Project). The Project will consist of design, manufacturing, procurement, and construction services for the replacement, repair, or refurbishment of components of one (1) vertical hydroelectric turbine-generator that has reached the end of its original service life. The unit was originally installed in 1947 and is rated 25 MVA.

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Attachment

- Attachment A Contractor Qualification Form
- Attachment B City’s Signature Page – Receipt of Addenda
- Attachment C Index of Confidential and Proprietary Information
- Attachment D Draft Contract
- Attachment E Draft General Terms and Conditions
- Attachment F Draft Insurance Requirements

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1.0 INTRODUCTION

The City of Tacoma (City), is using a two-step process to select a Design-Builder for the rehabilitation of a hydroelectric generator and turbine (Unit 11) at the City's Alder Dam & Powerhouse utilizing the Design-Build (DB) project delivery method authorized under RCW 39.10. The City was granted project approval from the State of Washington Capital Projects Advisory Review Board, Project Review Committee on May 23, 2019 to use the Design-Build delivery method.

This Request for Qualifications (RFQ) initiates the first step of the procurement, wherein the City will evaluate submitted Statements of Qualifications (SOQs) from experienced Proposers (which may include joint ventures) and select up to three (3) of the highest ranked Proposers (Finalists) to participate in the second step of the procurement. The second step consists of a Request for Proposals (RFP) process to submit competitive sealed Proposals for design and construction of the Project, as more specifically described in the RFP documents. The City intends to award the Design-Build Contract for the Project to the Finalist offering the Proposal that is ranked highest.

The City will pay an honorarium of \$40,000 to all non-successful Finalists who fully participate in the RFP process, including but not limited to submitting a responsive Proposal.

City personnel, in addition to technical consultants and a design-build advisor, have formed a team to provide technical oversight and design-build support for the Project. The Design-Builder will work with the City's team and provide the City with design-build services, as set forth in the RFQ, the RFP, and the final Design-Build Contract. Refer to Section 6.8, Ex Parte Communications, regarding communications with outside third parties.

For clarity throughout the RFQ, the following terms and definitions apply.

City – The terms City, City of Tacoma, Owner, and Tacoma Power are synonymous and interchangeable in respect to this RFQ.

Contract or Design-Build Contract or DB Contract – The design-build contract the City anticipates executing through this procurement process, as provided under RCW 39.10.330.

Design-Build Team – The prime contractor, designer, and major and specialty subs and suppliers including, but not limited to, those parties performing the following: design, supply and/or manufacturing of major components, rotor pole refurbishment, machining, installation, disassembly and reassembly, alignment, and commissioning and testing.

Design-Builder – The firm or joint venture awarded the Design-Build Contract.

Finalists – The short-listed Proposers after SOQ evaluation.

Major and Specialty Work – includes design, supply and/ or manufacturing of major components, rotor pole refurbishment, machining, installation, disassembly and reassembly, alignment, and commissioning and testing.

Proposers – The firms or joint ventures responding to the RFQ; proposed Design-Builder.

2.0 PROJECT DESCRIPTION

2.1 Reasons for Using Design-Build Delivery

Hydroelectric turbine-generator rehabilitation is highly specialized work that requires simultaneous design, material sourcing, and manufacturing, which then must be coordinated and integrated with shipment, installation, and commissioning to meet outage schedules and reduce outage durations; this process lends itself to the use of a design-build project delivery method. The City will also use the design-build project delivery method to maximize innovation and efficiencies between the

designer and the builder for this technical and complex integration of processes.

2.2 Project Background and Scope

Alder Dam is located on the Nisqually River in Pierce County, approximately 32 miles south of Tacoma, Washington. There is one powerhouse with two vertical Francis hydroelectric turbine-generators. The turbine components were supplied by Pelton Water Wheel Co. and include a vertical shaft and Francis-type turbine with a single turbine guide bearing. The generator components include a vertical shaft with a combined guide and thrust bearing mounted above the rotor and a guide bearing mounted below the rotor and a closed system of ventilation with surface air coolers. The generators for Units 11 and 12 were manufactured by General Electric (GE) in Schenectady, New York and went into operation in 1947 and 1945, respectively. Unit 12 is not included in the scope of work for this Design-Build Project.

The Project will consist of design, manufacture, procurement, and construction services for the replacement, repair, or refurbishment of components of one (1) vertical General Electric hydroelectric generator that has reached the end of its useful life. The unit is rated at the original rating of 25 MVA with rated power factor of unity (1.0). The rated voltage is 13.8 kV. The Project will also include replacement, repair, or refurbishment of components for one (1) vertical, Francis-type hydraulic turbine. The turbine has a synchronous speed of 225 rpm, outlet diameter of 91 inches, design net head of 225 feet, and maximum net head of 273 feet. It is currently not planned to replace the turbine runner.

Unit 11 was last rewound in 1973 by GE. Unit 11's turbine was last overhauled in 1986, and a new thrust bearing and high-pressure-lift system were installed in 1989. Other than minor components being replaced during overhauls or as part of maintenance, the major turbine components are original.

The multi-turn stator windings installed in 1973 have been deemed to be at the end of their reliable service life based on their original materials, age, and electrical test history; therefore, replacement is required to ensure ongoing trouble-free service.

Unit 11 still has the original core with splits. Unit 11 will receive a new continuously stacked core under this Design-Build Contract.

The rotor poles on Unit 11 are original and will be refurbished as part of this Design-Build Contract.

While the plan is to reuse the stator frame, the City will consider use of a new frame if it adequately reduces overall outage.

Refurbishment of the turbine-generator components is expected to include, but is not limited to: sandblasting; non-destructive examination; engineering analyses; general repairs and refurbishments; modifications; repair of cavitation, erosion, and wearing/galling; machining; and painting, as well as supply and installation of replacements for worn components such as bushings, seals, wearing rings, etc.

Site services are expected to include, but are not limited to: signature testing on the unit before and after the rebuild; unit disassembly; on-site machining of components; sand-blasting and recoating of turbine and generator parts, as necessary; unit reassembly; machine alignment per industry standards; unit check out, start-up, and commissioning; and unit and generator index and performance testing.

As part of the Design-Build work, instrumentation will be added to the turbine generator to improve condition monitoring, trending and alarming.

2.3 Project Goals

The City has established the following Project Goals:

1. **Maximize the Project Budget and Efficiency of Operations.** The Design-Builder will efficiently design and construct the Project to:
 - a. Optimize capital investment by working collaboratively with the City to determine the best value scope and solutions.
 - b. Re-certify existing re-used components to meet or exceed specified project service life and other requirements.
 - c. Maximize efficiency by extending the timing between future outages and rewinds and reducing the need for both routine maintenance and infrequent major maintenance.
 - d. Extend unit service life to additional 30 years.
2. **Excellent Design-Build Performance.** The Design-Builder will use a management approach to achieve the following objectives:
 - a. Appropriate decision-making authority for on-site personnel and an expedited analysis/decision process so that decisions by the Design-Build Team are made in a timely fashion so as not to delay the unit outage.
 - b. Excellent and intentional communication and collaboration with the City.
 - c. Transparent operations and decision making to reduce surprises to the City and reduce material changes to the project.
 - d. Reduced schedule delays and outages in the context of this project.
 - e. Provide timely resolution to issues, including specifically any issues discovered during the rehabilitation.
 - f. Reliable supply chain and excellent materials procurement plan
 - g. No recordable safety incidents
 - h. Manage the identification, location, and remediation of hazardous materials located at the jobsite.
3. **Quality.** The Design-Builder will employ a robust and effective Quality Management Plan and demonstrate superior technical expertise of personnel performing the work to achieve the following objectives:
 - a. Exceed technical and quality requirements for the Project.
 - b. Development and implementation of a clear and thorough Quality Management Plan that actively and transparently discovers, tracks, and successfully resolves quality issues before they impact schedule and cost.

2.4 Project Funding

The overall project was approved as part of the 2019/20 budget by the Tacoma Public Utility Board with funds available in Tacoma Power's capital program. The estimated spend for the 2021/22 biennium will be included in the City's 2021/22 budget.

2.5 Project Schedule

The following is the anticipated project schedule. The City intends to complete the Design-Builder selection process and execute a contract with the selected Design-Builder in a timely and efficient manner. The dates listed for design, manufacturing and construction are preliminary and may be adjusted by the project team as part of the selection, award, or project scheduling processes.

Key Milestones	Target Date(s)
Step 1 – RFQ Phase	
RFQ Released for Advertisement	July 10, 2019
Deadline for Submitting Questions	July 31, 2019
Last Day for City response to questions and to Issue Addenda	August 6, 2019
Statement of Qualifications Deadline	August 13, 2019 at 11:00 AM PDT
Notification of Finalists	September 6, 2019
Step 2 – RFP Phase	
RFP Issued	September 16, 2019
Proprietary Meetings and Site Visit	October 15 – 17, 2019
Deadline for Submitting Questions	November 22, 2019
Last Day for City response to questions and to Issue Addenda	December 6, 2019
Proposal Deadline	December 17, 2019 at 11:00 AM PDT
Proposal Evaluation	January 2020
Interviews	January 21 – 23, 2020
Announcement of Highest-Ranked Finalist	February 3, 2020
Design-Build Contract Negotiations	February 2020
Design-Build Contract Execution	June 2020
Project Validation and Design	July 2020 – Ongoing
Manufacturing	September 2020 – Ongoing
Unit Outage / Construction	June – November 2022
Commissioning & Operational Testing	November – December 2022
Project Completion	March 2023

3.0 REQUEST FOR QUALIFICATIONS

3.1 Eligibility

Proposers who have a qualified Design-Build Team and are interested in being considered for selection as the Design-Builder may submit a SOQ in accordance with the requirements set forth in this RFQ.

3.2 RFQ Submittal/Statement of Qualification (SOQ) General Requirements

SOQs must address each topic below in a clear, comprehensive, and concise manner and in the format and order described below. SOQs should be prepared to provide straightforward and concise

information that will enable the City's Selection Advisory Committee (SAC) to efficiently evaluate them.

The SOQ shall be formatted as follows:

1. Table of Contents. Refer to Section 3.5 for required sections and order.
2. Use tabs to separate the required SOQ sections.
3. The City has strict page limits for certain sections of the SOQ as shown in Section 3.5. Any pages that exceed the page limit will not be considered for purposes of evaluation. While the City does not intend to reject SOQs for exceeding page limits, it will not consider any information on pages that exceed the page limitation for an individual section.
4. All SOQs shall be in an 8 ½" by 11" format with the exceptions noted. Proposers may use 11" by 17" format for plans, figures, drawings, schedules, exhibits, tables, or other illustrative and graphical information used in responding to the RFQ requirements. All 11" by 17" pages must be folded and bounded in the SOQ and will be counted as one page per one side of a printed page. Pages in 11" by 17" format may not be used for narrative responses.
5. Proposers are encouraged to "double side" the hard copy of their responses; however, for the purposes of page limitations, one side of a printed page is considered one page.
6. All information shall be in English.
7. All narrative text shall be single-spaced in a regular style font at a minimum of 11 points. The type style and size of headings and figures are not prescribed.
8. No text, tables, figures, photos, or other substantive content shall be printed within 1.0 inch of any page edge.
9. The SOQ should only include information required by this RFQ.

Submit one (1) hard-copy original unbound, seven (7) bound hard copies and one electronic copy on a USB thumb drive. Except as noted above, fax, e-mail and electronic copies will not be accepted. Proposers have full responsibility for ensuring that their SOQs arrive at the City by the SOQ deadline.

Packages should be in a sealed box or envelope clearly marked with the name and address of the Purchasing representative and should also be marked with the following:

**Alder Unit 11 Rebuild Design-Build Project
PG19-0150F
Statement of Qualifications
August 13, 2019 at 11:00 AM PDT**

Hard-copy SOQs should be clearly marked on the front cover with the name and address of the Proposer and should also be marked with the following:

**Alder Unit 11 Rebuild Design-Build Project
PG19-0150F
Statement of Qualifications
August 13, 2019 at 11:00 AM PDT**

3.3 RFQ Submittal (SOQ) Evaluation Process

SOQs will be evaluated by a Selection Advisory Committee (SAC). The SAC will be comprised of individuals familiar with the Project and knowledgeable in the scope of work, including representatives from the City and the City's technical consultants.

The SAC will first review SOQs for initial decisions on SOQ responsiveness and on Proposer responsibility. Contractor Qualification Form, signed documents, completion of required forms, and other initial elements of responsiveness and responsibility will be reviewed during initial screening. Those SOQs and Proposers found responsive and responsible will continue to be evaluated and scored.

The City reserves the right to determine, in its sole discretion, which projects submitted by the Proposer meet the definition of "Projects of Similar Scope and Complexity" and to award more points to Proposers who have performed work on projects that incorporate more of the characteristics set forth in this definition and that are more recent. The City also reserves the right to award more points to projects in which the Proposer's Key Personnel had substantial responsibility for their respective scopes of work.

The SAC will evaluate and score the SOQs using the evaluation criteria and weighting presented in this RFQ. SOQs will be scored and then ranked in relation to all other SOQs submitted. Scores will be subjective and may range from zero points to the maximum points available, depending on the appropriateness and completeness of the response to the stated criteria.

The SAC will identify significant and minor strengths and weaknesses from the SOQs. The term "strength" is that part of the SOQ which ultimately represents a benefit to the Project and is expected to increase the Proposer's ability to meet or exceed the Project Goals; a minor strength has a slight positive influence and a significant strength has a considerable positive influence on the Proposer's ability to exceed the Project Goals. The term "weakness" is that part of the SOQ which detracts from the Proposer's ability to meet the Project Goals and may result in inefficient or ineffective performance; a minor weakness has a slight negative influence and a significant weakness has a considerable negative influence on the Proposer's ability to exceed the Project Goals.

The City may contact references furnished by Proposers at any stage in the selection process and may contact other sources that may not have been named by the Proposer but can assist the City in evaluating Proposers.

The City may perform a review of any Proposer's financial status and capacity to perform the work. All Proposers shall comply with requests for information that are deemed necessary by the City to perform a reasonable review of the firm's financial status. The City reserves the right to reject any Proposer if the City's analysis of the Proposer's financial status and capacity indicates, in the City's sole judgment, that the Proposer will not be able to successfully perform the work.

The City intends to select up to the three (3) highest ranked teams to form the short list to which the City intends to issue a RFP. The City will notify all Proposers submitting SOQs of the highest ranked Proposers who will be invited to submit Proposals in response to the Final RFP issued by the City. Scoring from the RFQ will not carry forward or be used in the determination of the selection of the Design-Builder during the RFP phase.

3.4 Projects of Similar Scope and Complexity

The term "Projects of Similar Scope and Complexity" as used in this RFQ refers to projects the

Proposer has completed within the last ten (10) years which have many, or all, of the characteristics listed below. This term will be used when evaluating SOQs.

1. Projects that involved the refurbishment of generators (with minimum scope of stator restack and rewind) rated between 10 and 50 MVA and of a similar speed range to Alder Unit 11. Experience with General Electric (GE) generators, particularly those of similar vintage as Alder Unit 11.
2. Projects that involved the refurbishment of Francis turbines that generate between 10 and 50 MW. Refurbishment of turbine equipment similar in size and vintage to that of Alder Unit 11.
3. Projects that required replacement of driven-type rim keys and/or reshinking rims.
4. Projects that required strong coordination and integration of the design and construction professionals and collaboration with the owner.
5. Projects that required the contractor/vendor to be self-sufficient and not rely on the owner for tools, labor or equipment.
6. Projects where the contractor/vendor improved the functionality and life cycle performance of the generators.
7. Projects that involved complete construction services, including, unit disassembly, site machining of embedded and other components, rigging/handling/transportation of large and heavy components, unit reassembly, and machine alignment.
8. Projects that involved turbine-generator testing, such as signature testing, turbine index testing, generator performance and other testing, etc.
9. Projects that involved hazardous materials remediation.
10. Projects that demonstrate Proposer's approach to this project.

3.5 RFQ Submittal (SOQ) Evaluation Criteria

The SOQs submitted by the Proposers should contain information demonstrating how the proposed team meets the evaluation criteria below. The SOQ must include a Table of Contents (not included in the maximum page count of the SOQ) and be organized by sections corresponding to the criteria, in the order shown below.

SOQ Section No.	Section Title and Required Information	Maximum Pages	Points Available
1	Contractor Qualification Form	-	Pass/Fail*
2	Letter of Interest	2	Pass/Fail*
3	Project Approach	10	25
4	Design-Build Team Qualifications and Past Performance References	10**	25
5	Key Personnel Experience and Qualifications	5***	25
6	Capacity to Perform	5	15

SOQ Section No.	Section Title and Required Information	Maximum Pages	Points Available
7	Innovation and Excellence in Design	5	10
8	Utilization of OMWBE-Certified Businesses	1	Pass/Fail*
9	Forms <ul style="list-style-type: none"> • City's Signature Page* • Index (confidential and proprietary information) 	- -	Pass/Fail* NA
	TOTAL POINTS		100

**Failure to submit information will result in disqualification of the SOQ*

***Page count does not include Identification of Projects Table*

****Page count does not include resumes for Key Personnel. Each individual resume shall not exceed two pages.*

3.6 Contractor Qualification Form

Submit a completed Contractor Qualification Form (refer to Attachment A). Based on the information provided in the Contractor Qualification Form, the City will review and determine, at its sole discretion, whether the Proposer's SOQ will be further reviewed and considered for this work. If the Proposer is a joint venture, a Contractor Qualification Form and related materials shall be submitted for each member of the joint venture. The City reserves the right to deem as "non-responsive" and reject any Proposer's SOQ which does not provide this information or, in its sole discretion, "fails" this portion of the SOQ selection criteria.

3.7 Letter of Interest

At a minimum include the name of the entity submitting as the Proposer and the primary point of contact with address, email, telephone number, and the signature of an authorized representative. The Letter of Interest should introduce your firm (or joint venture), provide supplementary information about your firm (or joint venture) and proposed Design-Build Team that is not provided elsewhere in the SOQ, and explain what makes your team unique and the best fit for the Project. The City desires a Design-Build Team, including Key Personnel, with demonstrated qualifications and experience from Projects of Similar Scope and Complexity.

3.8 Project Approach (25 points)

Describe how the proposed Design-Build Team will be cohesively integrated, including a description of the relationships between team members, their responsibilities/authorities, management strategies, communication protocols, coordination tools, and planning efforts that you will employ to ensure a successful project. The City desires a Design-Builder who will work collaboratively with the City in a relationship built on a high level of trust and communication. The description should include, but not be limited to, the following:

1. Address of Proposer's headquarters or corporate office.
2. Address of local office that will oversee and manage the Project, including design, manufacturing, and construction.

3. Provide an organizational chart to show the structure and relationships of the proposed Design-Build Team and Key Personnel. Chart may be submitted on 11"x17" paper. Chart will count towards the page limit of this section.
4. Describe the plan to effectively oversee and manage the design, procurement, manufacturing, and construction phases of the Project, including, but not limited to, the following:
 - a. Plan to effectively manage project scope, schedule and budget (including change management).
 - b. How work is tracked during an outage and how work plan adjustments are managed to ensure that the overall schedule is maintained. Provide a copy of a detailed outage work plan or schedule. Sample outage work plan or schedule will not count towards the page limit of this section.
 - c. Plan to manage quality (quality control and quality assurance); e.g. non-conformance reports are an example of a quality management process and tool.
 - d. Plan to facilitate cooperation and communication with the City and remain responsive to City requests (e.g. scope, quality) towards exceeding the Project Goals.
 - e. Plan to manage Design-Build Team subcontractors and suppliers, including all manufacturing, and intended level of visibility to the City. This should include the logistics, shipping, and handling plan to get the components safely to and from their shop(s).
5. Describe where responsibility and authority for decisions and purchases is placed and include authority dollar limits for the Project Manager and the Construction Manager (at a minimum) and any other Key Personnel with such authority.
6. A detailed staffing plan that covers all phases of the Project, including indication of project site staffing. Indicate the level of commitment of Key Personnel throughout the entire Project expressed as a percentage (100% = full time).
7. Plan to be self-sufficient on site (e.g., supplying appropriate tooling, equipment, and personnel to complete work with minimal assistance from the Owner).
8. Describe (broadly and briefly) how Proposer will incorporate and ensure safety into design, fabrication, and site work. Discuss how Proposer's corporate culture encourages safety. Provide summary outlines of corporate accident prevention program and environmental health and safety program. Summary outlines will not count towards the page limit of this section; however, please limit summary outlines to no more than a few pages.

In addition, please provide the following information for the proposed Design-Build Team (i.e. subcontractors and suppliers).

1. Address of company's headquarters or corporate office.
2. Address of local office that will provide services for the Project.
3. Current geographic range of entire company's work.
4. Current geographic range of work managed by the local office that will provide services

for the Project.

5. Estimate (percent) of the total scope to be assigned to the company.
6. History of work relationship with the company.
7. Indicate if there is an existing contractual relationship, Letter of Intent, or other agreement in place with the company.

3.9 Design-Build Team Qualifications and Past Performance References (25 points)

Please provide a narrative which includes the following information regarding the Proposer's experience and technical capabilities. For all Major and Specialty Work the Proposer intends to subcontract to a Design-Build Team member, include the subcontractor's and/or supplier's experience and technical capabilities. The Proposer's experience and capabilities should be drawn from and reference three (3) to five (5) Projects of Similar Scope and Complexity that the Proposer has completed.

1. Overall hydro turbine-generator condition assessment and analysis capabilities, including the number, size, and location of turbine-generators assessed and analyzed in the last 10 years. Demonstrate analysis capabilities directly relevant to the Alder Unit 11 Rebuild (e.g., rotor rim/spider shrink calculations, resonant frequency modeling, analyses to evaluate and improve generator ventilation, and generator uprate analyses).
2. Overall hydro turbine-generator design capabilities, including the number and location of new or refurbished turbine-generators designed and installed in the last 10 years. Demonstrate design and installation capabilities directly relevant to the Alder Unit 11 Rebuild (e.g., stator winding designs in the 13.8 kV voltage class or higher, design of replacement stator cores for existing machines, field pole rehabilitation or replacement, and refurbishment design of turbines of similar vintage to Alder Unit 11).
3. Manufacturing capabilities to handle turbines and generators of similar weight and dimensions to Alder Unit 11 (e.g. rotor-and-shaft weight of 110 tons, stator assembly weight of 49 tons, stator bore diameter of 170 inches, and generator shaft length of 17 feet 3 inches).
4. Overall field or on-site construction and commissioning capabilities. Experience with unit disassembly and reassembly and unit alignment. Experience with on-location field machining, fabrication, and modification of turbines and generators of similar weight and dimensions to Alder Unit 11. Experience with turbine-generator performance testing and turbine index testing. Demonstrate field or on-site construction capabilities directly relevant to the Alder Unit 11 Rebuild; restacking and rewinding the stator core; inspection, non-destructive examination, and repair of turbine and generator components).
5. Demonstrate experience working in a collaborative team to develop the best value-engineered solutions to technical issues and to deliver projects on schedule and within budget. Projects may be the same or in addition to those listed in the Identification of Projects Table.

In addition to the information provided in the narrative above, provide the information requested

below for the referenced three (3) to five (5) Projects of Similar Scope and Complexity. If the proposed Design-Build Team has not completed at least three (3) Projects of Similar Scope and Complexity, provide the following information about the last three (3) projects completed within the last ten (10) years by the proposed Design-Builder Team members that best demonstrates the Project Approach and Design-Builder Team members' ability to complete a project of this scope and complexity.

The information below must be submitted in an Identification of Projects Table. The Identification of Projects Table may be submitted on 11" x 17" paper and shall be no more than three pages in length. The Proposer is responsible for ensuring that contact information contained in the table is correct. The inability to contact a reference may have a detrimental impact on the evaluation of qualifications. The City reserves the right to contact any person listed in the Identification of Projects Table or any other person with knowledge regarding any project in which any Key Personnel or Design-Build Team member participated.

1. Project name, name of owner, and location;
2. A description of the project;
3. Contract type (e.g., design-build, design-bid-build, general contractor / construction manager (GCCM), guaranteed maximum price (GMP), other);
4. Indicate if the project meets all the elements of the definition of "Projects of Similar Scope and Complexity";
5. Contract duration from date of notice-to-proceed to the date of physical completion;
6. Original Substantial Completion Date, Actual Substantial Completion Date, and explanation for difference, if any;
7. Awarded contract price and final contract price, including all change orders, with an explanation of the difference, if any, between the award contract price and final contract price;
8. The identity and role played by each of the Design-Build Team members (companies) and each of the Key Personnel (individuals) on each project and if they stayed in the role for the duration of the project;
9. Name, position, and contact information for the owner's representative who is most familiar with the Proposer's work on the project.
10. Identify any key personnel proposed for this project who have worked on these example projects to demonstrate experience.

3.10 Key Personnel Experience and Qualifications (25 points)

Provide a narrative describing the experience and qualifications of your Key Personnel for the roles identified below. Roles for Key Personnel should include, but are not limited to, the following:

- Project Manager
- Lead Turbine Engineer
- Lead Generator Engineer
- (Onsite) Construction Manager/Superintendent
- Rewind Supervisor

- Stack / Restack Supervisor
- Erection Supervisor
- Quality Manager
- Site Safety Manager

Proposers are encouraged to highlight situations where Key Personnel have worked together on previous Projects of Similar Scope and Complexity.

For all Key Personnel roles, identify the approximate number of employees within the organization qualified to fill that position.

Please provide resumes (no more than two pages each) for Key Personnel that include the following information.

1. Name, current firm, geographic location, current title, and years employed by current firm;
2. If employed less than five (5) years at current firm, please list previous firm, previous title and years employed by previous firm;
3. Total years of professional experience;
4. Total years of professional experience in designated role for this project;
5. Education, certifications, professional registration and licenses held;
6. Proficiency in English and other languages;
7. Proposed role on the Project;
8. Proposed percent time involvement during the various project phases – design, manufacturing and procurement, field construction, and startup and commissioning.
9. Provide at least one (1) previous project (include project and owner name, description, current status, dates of involvement) that demonstrates experience that will assist in achieving or exceeding the Project Goals in the role on this Project;
10. Provide three (3) professional references, including name, title, phone number, and email address. References may not be current City employees, and may be checked only for the highest-scoring Proposer teams. Please ensure all reference information provided is current and correct. References may be contacted by the City and used as part of the evaluation process, including references not provided by the Proposer.

3.11 Capacity to Perform (15 points)

Describe your firm's or team's ability and capacity to perform the design, procurement, manufacturing, and construction phases of the Project. If turbine and generator services and work are by more than one firm provide separate data for each. Subcontractors do not need to be broken out for the turbine and generator work.

In graphical form, provide the following information about your firm or team. The contract values shall be further subdivided between equipment supply costs and actual field construction/installation costs.

1. Total hydro turbine and generator contract value for projects currently on the books, delineated by year for 2019 through 2023.

2. Total hydro turbine and generator contract value, delineated by refurbishment and new construction, listed by year, of projects completed in North America in the last 10 years.
3. Total work currently under contract and anticipated through 2022, expressed as a percentage of firm/teams' total capacity, and further subdivided between design, manufacturing, and site work.
4. Bonding capacity for 2019 and anticipated bonding capacity for 2020 through 2023.

In addition, and to the extent possible, identify and discuss the impact of current assignments and other potential projects on the availability of Key Personnel (individuals) for this Project and the capacity of Design-Build Team members (companies) to meet the anticipated project schedule.

3.12 Innovation and Excellence in Design (10 points)

Provide at least two project examples where your team (or each member of your team) has achieved a high level of design quality and innovation, leading to a reduction in project costs or duration while maximizing value and without compromising quality or project requirements. Examples may include, but are not limited to, increased capacity or efficiency, unique design features or construction methods, operational considerations, increased duration between maintenance outages, or entire overall projects. Projects described here may be in addition to those requested above.

3.13 OMWBE Experience (Pass/Fail)

Describe your team's programs, approaches, and specific steps used to include diverse businesses, including but not limited to OMWBE-certified businesses, in previous projects. Please highlight strategies that were successful in increasing diverse-business participation.

4.0 REQUEST FOR PROPOSALS

Finalists from the RFQ stage will be notified in writing and issued an RFP. Only the Finalists may submit a Proposal in response to the RFP.

The RFP will consist of the documents listed below that will provide a more detailed description of the scope of work and to provide a more complete context within which Finalists can appreciate the nature of the work and the relevant experience and expertise being sought from the Finalists.

Volume 1

- Instructions to Finalists
- Proposal Submittal and Forms
- Draft Contract Forms
- Draft Design-Build Contract

Volume 2

- Division 00 General Terms and Conditions
- Division 01 General Requirements
- Division 02 thru 48 Technical Requirements
- Division 51 Information Available to Finalists
- Division 52 Drawings

4.1 Scope of RFP

Finalists will be required to put together a Technical Proposal comprised of a preliminary design package, a detailed project schedule, a project management plan, and other project-related information based on the General and Technical Requirements of the RFP. The City estimates a 15%-25% design effort, including development of preliminary drawings and conceptual design. In addition to the Technical Proposal, Finalists will submit a Price Proposal. Approximately four (4) months are allocated for this process.

4.2 Proposal Submittal

Finalists will submit Technical and Price Proposals on the date set forth in the RFP. The Technical and Price Proposals shall be submitted as separate packages.

4.3 One-on-One (Proprietary) Meeting

The City will conduct one confidential One-on-One Meeting with each Finalist which will be described in further detail in the RFP. The meeting will be to discuss the Technical Proposal and the draft General Terms and Conditions (Volume 2, Division 00 of the RFP). The format of the One-on-One Meeting will be designed to allow the Finalists to ask the City questions regarding the Project and the City's Project Goals and concerns, and for Finalists to explain the general concepts in their Technical Proposal, for Finalists to suggest changes to the Design-Build Contract General Terms and Conditions, and for the City to observe the Finalists' ability to collaborate with their own team members and with the City. The City will provide candid feedback and direction to confirm that the proposed concepts are consistent with the Project Goals and the General and Technical Requirements (Volume 2, Divisions 01 thru 48).

All information from the Finalists provided in the One-on-One Meeting will remain confidential during the procurement process; however, see Sections 6.15 and 6.16 of this RFQ with respect to the potential public disclosure of information provided during the procurement pursuant to Washington's public records act. The One-on-One meeting will also provide an opportunity for direct interaction between the Finalist and the City's SAC.

4.4 Interview

The City will hold an interview with each Finalist after the submission of the Technical and Price Proposals. During the interview, Finalists will be provided an opportunity to present their Proposals. The SAC may ask questions of the Finalists in advance of the interview to be addressed in writing or to be addressed as part of the presentation. The SAC may ask questions of the Finalists during the interview. Presentations will be evaluated on how the technical solutions and management approach will meet or exceed the City's Project Goals. Finalists will be evaluated on their ability to address the concerns from the SAC, effectively communicate and collaborate, and provide achievable and collaborative solutions to meet or exceed the City's Project Goals. Interview requests with specific information, including a list of the team members and Key Personnel expected to attend, will be emailed to each Finalist. At a minimum, the Project Manager and Construction Manager/Superintendent shall attend the interview. The interview will be evaluated and scored.

4.5 Proposal Evaluation

The City’s SAC will evaluate the Proposals based solely on the factors, weighting, and scoring identified in the RFP and in any addenda. The Finalist with the highest score shall be selected as the Highest Ranked Finalist.

Responsible Finalists submitting responsive Technical and Price Proposals will be evaluated and scored using the criteria in the table below and following the process described below and in Section 3.3 of this RFQ.

Evaluation Criteria	Max Points
Technical Proposal	80
Design	30
Management Plan	30
Schedule	20
Price Proposal	15
Small Business Enterprise (SBE)	5
Interview	25
Total	125

The Price Proposal will not be scored until after the scoring of the Technical Proposal. Each Price Proposal will be opened, and the Finalist with the lowest Price Proposal (LPP) will receive the maximum points allocated for the Price Proposal criteria. The remaining Finalists will receive a proportionate share of the points based on their Price Proposal (PP) and the following equation $(LPP \div PP) \times \text{Max Points}$ rounded down to the next lowest whole number.

4.6 Selection and Notification

The City will notify all Finalists submitting proposals of the Highest Ranked Finalist and will also make a selection summary of the final proposals available to all Proposers within two (2) Business Days of such notification.

4.7 Honorarium

Finalists submitting responsive proposals which are not awarded a Design-Build contract will be paid an honorarium of \$40,000. The City reserves the right to issue less than the full honorarium amount in the event that, in its sole discretion, it determines that less than 100% of the requirements of the RFP were satisfactorily completed.

5.0 NEGOTIATION, AWARD, AND EXECUTION

5.1 Notice of Award Recommendation Letter

The Highest Ranked Finalist will receive a Notice of Award Recommendation letter from the City, announcing the City’s intent to initiate negotiations with the selected Finalist.

5.2 Negotiation

The City will initiate negotiations with the Highest Ranked Finalist to finalize the Technical Requirements and the General Terms and Conditions. If the City is unable to reach mutual agreement with the Highest Ranked Finalist, negotiations with that Finalist may be suspended or terminated, and the City may proceed to negotiate with the next highest scored Finalist. The City will continue in accordance with this procedure until mutual agreement is reached, or the selection process is terminated.

Upon successful negotiation, the City will send a Contract Award Letter that will include a request for documents that are to be submitted within ten (10) Business Days of receipt and prior to execution of the contract, including:

1. Unless the Finalist has already submitted a Taxpayer Identification Number and Certification Request Form (W-9) to the City, the Finalist must submit this form prior to Contract Execution
2. Certificate of Insurance and all required insurance documents including endorsements
3. Evidence of required licenses for Finalist and identified Subcontractors
4. Payment and Performance Bond
5. Retainage Bond, if applicable
6. Original, signed Contract Cover (or Agreement Form)

5.3 Insurance Requirements

The Finalist receiving a Contract Award Letter must promptly provide proof of insurance required for this Project. The Design-Build Contract will not be executed until all required proof of insurance has been received and approved by the City.

6.0 GENERAL CONDITIONS

6.1 Addenda

All RFQ and RFP documents will be posted on <http://www.TacomaPurchasing.org>. It is the Proposer/Finalist's responsibility to ensure it has received a complete set of documents from the website.

Proposers/Finalists may submit written questions to the Purchasing representative at any time until the deadline stated in the RFQ or RFP. No further questions will be accepted after this date and time. The City will publish the questions and any answers on <http://www.tacomapurchasing.org>. The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential.

The City reserves the right to revise the RFQ and RFP at any time before the submittal deadline. Such revisions, if any, will be announced by written addendum to the RFQ and RFP.

The City will issue addenda for any changes to the RFQ and RFP, which will become part of the RFQ and RFP. If an addendum is issued, all other provisions in the RFQ and RFP that are not modified remain unchanged. Addenda will be issued on <http://www.tacomapurchasing.org>.

It is the obligation and responsibility of the Proposer/Finalist to learn of any addenda, responses, or notices issued by the City. Note that some third-party services may independently post City of

Tacoma solicitations or other procurement documents on their websites. Proposer/Finalists relying on such services do so at their own risk.

Proposers/Finalists shall acknowledge receipt of addenda on the City's Signature Page (Attachment B).

6.2 **Validity of SOQs**

Proposers agree that the information included in the SOQs, including Key Personnel, will remain valid and accurate for a minimum of ninety (90) days from submission. Finalists will be required to extend their validation through final selection and the Finalist awarded a Design-Build Contract will be required to extend through contract execution.

6.3 **Cost of Preparing Statement of Qualifications**

The Proposer is solely responsible for all costs incurred in the preparation and presentation of a SOQ in response to this RFQ.

The City is not liable for any costs incurred by the Proposer in preparation of materials or a proposal submitted in response to this RFQ, for attending any interviews, or any other activities related to responding to this RFQ.

6.4 **No Objections**

If the Proposer does not object to any of the provisions of this RFQ prior to the SOQ deadline, the Proposer waives all rights to protest the provisions of this RFQ. By submitting an SOQ in response to this RFQ, Proposer agrees that the process, criteria, and requirements described in this RFQ are fair and proper, and that the Proposer has no objection to any provisions of the RFQ.

6.5 **Proposer Responsibility in Responding**

It is the Proposer's responsibility to provide a full and complete written response, which does not require interpretation or clarification by the City. The Proposer is to provide all requested materials, forms, and information. During evaluation and scoring (prior to interviews, if any), the City will rely upon the submitted materials and will not accept materials from the Proposer after the SOQ deadline; however, this does not limit the right of the City to consider additional information independently available to the City (such as references that are not provided by the Proposer but are known to the City, or past experience by the City in assessing the Proposer), or to seek clarifications from the Proposer as needed by the City.

For a Proposer proposing as a Joint Venture, each member of the Joint Venture shall separately provide their own individual information where this RFQ requests specific evidence of a Proposer's qualifications.

Proposers are advised that the City's ability to evaluate SOQs is dependent in part on the Proposer's submitting SOQs that are well-ordered, detailed, comprehensive, and readable. Proposers are responsible for errors and omissions in their SOQs. No such error or omission shall diminish the Proposer's obligations to the City.

Prior to the SOQ deadline, a Proposer may make changes to its SOQ. No change shall be allowed after the deadline. If any changes are made to the SOQ after submitting to the City and prior to the deadline, the Proposer shall contact the Purchasing representative in writing to request the return

of SOQ. The Proposer will be required to resubmit the SOQ package.

6.6 Withdrawal

At any time, by written request, a Proposer may withdraw their SOQ.

6.7 Cancellation and Rejection of Statement of Qualifications

The City reserves the right to reject non-responsive SOQs, and may reject all SOQs for any reason at its sole discretion. The City may choose not to award and/or execute a Design-Build Contract even after declaration of the Highest Ranked Finalist. Proposers acknowledge that a Notice of Award Recommendation confers no right of contract. A decision by the City to cancel the RFQ, RFP, and/or not enter into a contract will not be the basis of any claims or causes of action for costs or damages by any Proposers.

6.8 Ex Parte Communications

Proposers are advised to refrain from initiating and/or engaging in communications specific to this procurement with third party agencies, City consultants, and other non-designated employees of the City and its departments who may or may not have knowledge of the Project. These agencies and/or employees are not authorized to represent the interests of the City in this procurement. Proposers are advised not to rely on any information obtained other than what is provided by the designated City representative through the City of Tacoma's purchasing website. The City reserves the right to take actions deemed appropriate to the City, up to and including the disqualification of the Proposer, for engaging in unauthorized communications deemed detrimental to this procurement.

6.9 Ethics

The Proposer must be aware, familiar and comply with the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code and educate Proposer workers accordingly.

6.10 Gifts and Gratuities

A Proposer shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work, or meals) to any City employee, consultant, volunteer or official.

6.11 Involvement of Current and Former City Employees

A Proposer (including officer, director, trustee, partner or employee) must not have a business interest or a close family or domestic relationship with any City official, officer or employee who was, is, or will be involved in selection, negotiation, drafting, signing, administration or evaluating Proposer performance. If a Proposer has any current or past (within the most recent 24 months) involvement with City employees, officials or volunteers that are working or assisting on this procurement or on the Design-Build Contract, Proposer must notify the Purchasing representative. The City shall make sole determination as to compliance.

6.12 Organizational Conflicts of Interests

Organizational Conflict of Interest means that because of other activities or relationships with other persons or entities, a person or entity:

1. Is unable or potentially unable to render impartial assistance or advice to the City; or
2. Is or might be otherwise impaired in its objectivity in performing the contract work; or
3. Has an unfair competitive advantage.

The integrated nature of the Design-Build project delivery method creates the potential for Organizational Conflicts of Interest. Disclosure, evaluation, neutralization, and management of these conflicts and of the appearance of conflicts, is in the interests of the public, the City, and the consulting and construction communities.

The City will take steps to ensure that individuals involved in the preparation of the procurement documents (e.g., RFQ, RFP), evaluation of SOQs and Proposals, and selection of Design-Builder are not influenced by Organizational Conflicts of Interest, and that no Proposer is given an unfair competitive advantage over another.

Proposers are required to disclose all relevant facts concerning any past, present, or currently planned interests, activities, or relationships which may present an Organizational Conflict of Interest. Proposers shall state how their interests, activities, or relationships, or those of the chief executives, directors, Key Personnel, or any proposed consultant, subconsultant at any tier, contractor, or subcontractor at any tier may result, or could be viewed as, an organizational conflict.

If an Organizational Conflict of Interest is determined to exist, the City may, at its sole discretion, offer the Proposer the opportunity to avoid or neutralize the Organizational Conflict of Interest; disqualify the Proposer from further participation in the procurement; cancel this procurement; or, if Award has already occurred, declare the Proposal non-responsive and Award the Design-Build Contract to the next highest scored Finalist, or cancel the Design-Build Contract. If the Proposer was aware of an Organizational Conflict of Interest prior to Award of a Design-Build Contract and did not disclose the conflict to the City, the City may terminate the Design-Build Contract for default.

6.13 Licensing and Registration

All Proposers must be registered pursuant to RCW 18.27 (Contractor's Registration Statute).

Proposers must 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/.

Any resultant contract may require the additional licensing listed below. The Highest Ranked Finalist must meet all licensing requirements that apply to its type of business immediately after receiving Notice of Award Recommendation **(unless required earlier in the procurement process per this RFQ)** or the City may find the Finalist not responsible.

Before the Design-Build Contract is Executed, the Design-Builder must have a State of Washington business license (a State "Unified Business Identifier" known as a UBI#). If the State of Washington has exempted Design-Builder's business from State licensing (for example, some foreign companies are exempt and in some cases, the State waives licensing because the company does not have a physical presence in the State), then submit proof of that exemption to the City. All costs for any licenses, permits and associated tax payments due to the State because of licensing shall be borne by the Proposer and not charged separately to the City. Instructions and applications are at:

<http://bls.dor.wa.gov>, and the State of Washington Department of Revenue is available at 1-800-647-7706.

In addition to the Minimum Qualifications required at the time the SOQ is submitted, no later than the Execution of the Design-Build Contract, Proposer must have an Employment Security Department Account number for Unemployment Insurance and be current on payments; and a Labor & Industries Account for Industrial Insurance (Worker's Compensation), and be current on amounts due or submit proof of being self-insured; and have a Department of Revenue tax account set up and be current on payments.

6.14 Team Continuity and Changes to Organizational Structure

Part of the evaluation of SOQs will be based on the qualifications of the proposed Key Personnel. A Proposer/Finalist may not, without the written consent of the City, substitute, or change any of the Key Personnel for the duration of the selection process and for the duration of the Design-Build Contract. Requests shall not be unreasonably withheld. All proposed Key Personnel are to be committed throughout the selection process and be available for the post-Proposal Interview. If a Proposer substitutes any Key Personnel prior to Award, the City reserves the right to revise its scoring of that team.

Requests for removal, replacements, and additions shall be submitted in writing. To qualify for approval, the written request shall document that the proposed removal, replacement, or addition will be equal to or better qualified than the Key Personnel provided in the SOQ. The City will use the criteria specified in the RFQ to evaluate all requests.

6.15 Requesting Disclosure of Public Records

This procurement is subject to RCW 39.10.470(3), which provides that all documents related to a procurement under RCW 39.10.330 are exempt from disclosure until the notification of the highest scoring Finalist is made in accordance with RCW 39.10.330(6) or the selection required under RCW 39.10.330(3).

6.16 Public Disclosure Proprietary and Confidential Material Must be Marked

Proposer submittals, all documents and records related to the submittal, and all other documents and records provided to the City by Proposer 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 Proposer has complied with the requirements to mark records considered confidential or proprietary as such requirements are stated below, City agrees to provide Proposer 10 days written notice of impending release. Should legal action thereafter be initiated by Proposer to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Proposer, 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 Design-Builder took no action to oppose the release of information.

If Proposer provides City with records or information that Proposer considers confidential or proprietary, Proposer 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 this

Request for Qualifications or a subsequent 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 Proposer 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 to mark confidential or proprietary content above; and Proposer expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said record(s). Proposer may not simply mark everything with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected.

Submission of materials in response to City's RFQ and RFP shall constitute assent by Proposer to the foregoing procedure and Proposer shall have no claim against the City on account of actions taken pursuant to such procedure.

Proposers must be familiar with the Washington State Public Records Act and the limits of record disclosure exemptions. For more information, visit the Washington State Legislature's website at <http://www1.leg.wa.gov/LawsAndAgencyRules>).

6.17 The City's Rights

Throughout the procurement process, the City reserves the right, at its sole discretion, to:

1. Appoint evaluation committees to review SOQs and Proposals;
2. Investigate the qualifications of any Proposer;
3. Seek or obtain data related to the SOQs or Proposals from any source and consider such data in the evaluation of the SOQ;
4. Require confirmation of information furnished by a Proposer;
5. Hold meetings and conduct discussions and correspondence with the Proposers to seek an improved understanding and evaluation of the SOQs or Proposals;
6. Require additional information from a Proposer concerning its SOQ or Proposal;
7. Require additional evidence of qualifications to perform the work;
8. Modify the procurement process as permitted by law;
9. Waive minor deficiencies and irregularities in a SOQ or Proposal;
10. Reject any or all SOQs or Proposals;
11. Issue a new RFQ or RFP;
12. Conduct negotiations with the Highest Ranked Finalist prior to award of the Contract;
13. Cancel a Contract signed by the selected Design-Builder but not yet executed by the City; and
14. Not issue a Notice to Proceed after execution of the Contract.

6.18 Debriefing

Unsuccessful Proposers may ask the Purchasing representative for a debriefing, once the protest deadline has concluded and the Design-Build Contract has been signed. Debriefings may include a review of the debriefed Proposer's points for each evaluation criteria, overall ranking, the strengths

and weaknesses of its SOQ and Proposal, and presentation in the interview, and answers to questions regarding the selection process.

6.19 **Protests**

The City has rules to govern the rights and obligations of Proposers that desire to submit a protest to this process. Please see the City website at <http://www.tacomapurchasing.org> for these rules. Proposers have the obligation to be aware of and understand these rules, and to seek clarification as necessary from the City.

END OF RFQ

Attachments

Contractor Qualification Form – Attachment A

City’s Signature Page – Receipt of Addenda – Attachment B

Index of Confidential and Proprietary Information – Attachment C

Draft Contract – Attachment D

Draft General Terms and Conditions – Attachment E

Draft Insurance Requirements – Attachment F

Attachment A
Contractor Qualification Form

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Attachment A
Contractor Qualification Form
Alder Unit 11 Rebuild Project

1. Date: _____
2. Name of organization: _____
3. Mailing address: _____
4. Telephone: _____
5. Type of Organization: (Circle One)
Individual Co-Partnership Corporation Joint Venture
Other (Explain) _____
6. Date of inception of organization:
7. How many years has your organization been in business as a Contractor for rehabilitating, rebuilding, repairing and servicing hydro-generating units?
8. Name of Owners (individual), Officers (Corporation) or Partners (Partnership):
9. How many years has your organization been in business under its present business name?
10. Under what other name or former names has your organization operated?

11. Name of Bonding Company:
Agent: _____
Years with: _____
Telephone No: _____
12. Name of Principal Bank:
Branch: _____
Years with: _____
Telephone No: _____
13. In the past 10 years, has your firm ever failed to complete any work awarded to it? If yes, please describe.

14. Are there any judgments, claims, arbitration proceedings or suits pending, involving or outstanding against your organization or its officers or principals?

15. Has your organization filed any lawsuits or requested arbitration with regards to construction contract within the last five years?

16. Append the following information to this form (as applicable):

- Proof of Legal Name: If a JV, this is not required. If Proposer intends a JV agreement, use the proposed name of the JV partnership. For all other Proposers, submit a certificate, copy of web-page, or other documentation from the Secretary of State of the state in which Proposer firm is incorporated that shows legal company name. Many companies use a "Doing Business As" name or a nickname in their daily business. However, the City requires the legal company name, as it is legally registered. When preparing all forms below, use the company legal name. Verify legal name through the State Corporation Commission in the state in which Proposer firm was established: <http://www.coordinatedlegal.com/SecretaryOfState.html>
- Proof of Insurance and Bonding Capacity (signed letter from sureties).
- Letter of Intent to Joint Venture (JV) (if applicable): For those submitting as a JV, provide a signed understanding describing the intent of the JV including but not limited to identifying the JV partners, a description of their respective roles and responsibilities, intended participation percentages, the duration of the JV agreement, and other information necessary to demonstrate the makeup and operation of the JV. A fully executed JV agreement will be required to be provided by short-listed teams and submitted with their Proposal.

The undersigned Contractor certifies the following:

- | | | |
|---|------------------------------|-----------------------------|
| 17. Is the Contractor registered with the Washington State Department of Labor and Industries in accordance with RCW 18.27.020? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| 18. Does the Contractor have Unified Business Identifier (UBI) issued by the State of Washington? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| 19. Does the Contractor have Industrial Insurance (Worker's compensation) coverage for the Proposer Design-Builder's employees working in Washington as required in RCW Title 51? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| 20. Does the Contractor have Washington Employment Security Department Number as required in RCW Title 50? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| 21. Does the Contractor have Washington Department of Revenue State Excise Tax registration number as required in RCW Title 82? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| 22. Does the Contractor meet the eligibility for bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3)? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

23. Does the Contractor have the ability to satisfy the Proposer responsibility criteria in RCW 39.26.160(2)? YES NO
24. Has the Contractor been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through civil judgement entered by a court of limited or general jurisdiction to have willfully violated as defined in RCW 49.48.082 any provisions of chapters 49,46,49.48 or 49.52 within the three-year period immediately preceding the bid solicitation date? YES NO

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: _____ E-Mail: _____

Place executed: (City) _____ State: _____

Company Name: _____

(Complete, Registered Company Name)

Submitted by: _____

(Name of Proposer – typewritten or printed)

Per: _____

(Signature and Title)

Address: _____

(Business Address – typewritten or printed)

Contractor's License No. (Pursuant to RCW 18.27):

Contractor's State Registration No. (Pursuant to RCW 23.B.15):

Washington State Dept. of L&I Insurance Account No. (Pursuant to RCW 51):

Washington State Employment Security Account No. (Pursuant to RCW 50):

Washington State Unified Business Identifier (UBI) No:

Washington State Excise Tax Registration No. (Pursuant to RCW 82):

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Attachment B
City's Signature Page – Receipt of Addenda

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SIGNATURE PAGE

**CITY OF TACOMA
TACOMA POWER / GENERATION**

All submittals must be in ink or typewritten and must be executed by a duly authorized officer or representative of the bidding/proposing entity. 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.

Submittals will be received and time stamped only at the City of Tacoma Procurement & Payables Division, located in the Tacoma Public Utilities Administration Building North, 4th Floor, at 3628 South 35th Street, Tacoma, WA 98409. **See the Request for the specification for additional details.**

**REQUEST FOR
Alder Powerhouse Unit 11 Rebuild Project**

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

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.)

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

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.

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Attachment C
Index of Confidential and Proprietary Information

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Attachment D
Draft Contract

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CONTRACT

Resolution No.
Contract No.

This Contract is made and entered into effective this _____ day of ,20____, (“Effective Date”) by and between the City of Tacoma, a Municipal Corporation of the State of Washington (“City”), and legal name of Supplier including type of business entity (“Design-Builder”).

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

- I. The City is authorized under the Revised Code of Washington (“RCW”) Chapter 39.10, the Alternative Public Works Contracting Procedures Act (the “Act”), as amended, to undertake the Project through the alternative public works contracting design-build procedures, including public solicitation of proposals for design-build services.
- II. The City began the design-build procurement for the Project by issuing a Request for Qualifications (“RFQ”) on _____.
- III. Following an evaluation of the statements of qualifications submitted in response to the RFQ, based on the criteria set forth in the RFQ, the City short-listed three (3) firms deemed to be the most qualified to submit Proposals.
- IV. On _____, the City began the second phase of the competitive process by issuing a Request for Proposals to design, manufacture, construct, and acceptance and performance test the Project (the “RFP”) to the three (3) shortlisted Proposers.
- V. Proposals submitted in response to the RFP were received on _____ from ____ (____) shortlisted firms.
- VI. The Proposals were evaluated by the City in accordance with the evaluation criteria and scoring method set forth in the RFQ and RFP.
- VII. Based on the evaluations of the Proposals, the City determined that the Proposal submitted by Design-Builder was the Highest Scored Proposal received in response to the City’s RFP.
- VIII. The Project will be owned, financed, operated and maintained by the City.
- IX. Design-Builder 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. Enter Spec Number and Enter Spec Title (“the Project”) together with all authorized addenda, attached and incorporated as Exhibit A
 2. Contractor’s submittal (*or specifically described portions thereof*) dated Enter Submittal Date submitted in response to Specification No. Enter Spec Number and Enter Spec Title, attached and incorporated as Exhibit B.
 3. General Terms and Conditions attached incorporated as Exhibit C.
 4. City of Tacoma Insurance Requirements attached and incorporated as Exhibit D.
 5. *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.*
-

- X. 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 in 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
2. List remaining Contract Documents in applicable controlling order.

- XI. The Contract terminates on xxxxx.
- XII. The City has determined that it is in the City's best interest to contract with a single entity to design, manufacture and construct the Alder Unit 11 Rebuild Project (the "Project") in accordance with, and as described in the Contract which is awarded as follows:
- XIII. Lump Sum Price \$ _____
- XIV. Sales Tax @ ____ % \$ _____
- XV. Awarded Contract Price \$ _____
- XVI. The total price to be paid by City for Contracts full and complete performance hereunder may not exceed:
\$ _____, plus any applicable taxes.
- XVII. The Design-Builder shall begin the Design-Build Work on the Notice to Proceed Date in the Notice to Proceed issued to Design-Builder by the City. Following Notice to Proceed, the Design-Builder shall perform the Design-Build Work regularly and without interruption (unless the City directs otherwise in writing) with such forces as necessary to complete the Design-Build Work in a manner acceptable to the City and on the schedule as follows:

Unit 11: Scheduled Performance Test _____
Scheduled Commercial Operation Date _____

The time of beginning, rate of progress, and time of completion are essential and material provisions of the Contract.

- XVIII. If the Design-Build Work is delayed or does not meet certain Performance Guarantees and/or certain project milestones, the Design-Builder agrees to Liquidated Damages as set forth in the Contract Documents.
- XIX. The City shall pay the Design-Builder to complete the Design-Build Work as set forth herein and in accordance with the Contract Documents. The Design-Builder shall inform all Subcontractors who work on the Project of this Contract and of the manner and method of payment.
- XX. In accordance with RCW Chapter 39.12 and the Contract, the Design-Builder shall pay, or cause to be paid to persons employed on or in connection with this Work, not less than the prevailing rate of wage for the labor performed.
- XXI. Design-Builder 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 Design-Builder 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.
- XXII. The Design-Builder on behalf of his or her heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants to which the Design-Builder is obligated under the terms of the Contract.
- XXIII. 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. DESIGN-BUILDER 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.

- XXIV. Failure by City to identify a deficiency in the insurance documentation provided by Design-Builder or failure of City to demand verification of coverage or compliance by Design-Builder with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- XXV. Design-Builder acknowledges, and by signing this Contract agrees, that the Indemnification provisions set forth in the controlling Contract Documents, including the Industrial Insurance immunity waiver (if applicable), are totally and fully part of this Contract and, within the context of the competitive bidding laws, have been mutually negotiated by the Parties hereto.
- XXVI. Design-Builder 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.
- XXVII. It is further provided that no liability shall attach to City by reason of entering into this Contract, except as expressly provided herein.
- XXVIII. If the Design-Builder violates any material covenant or provision of this Contract the City may exercise its options as afforded under this Contract, including but not limited to: withhold payment due; order that the Design-Build Work be stopped; terminate the Contract, or; debar the Design-Builder.

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

CITY OF TACOMA:

DESIGN-BUILDER:

By:

By:

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

Director of Finance: _____

City Attorney (approved as to form): _____

Approved By: _____

Attachment E
Draft General Terms and Conditions

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GENERAL TERMS AND CONDITIONS

SECTION I DEFINITIONS

1.01 DEFINITIONS

- A. “Applicable Law”** means (1) any federal, State or local law, code or regulation, including the City’s rules and regulations; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate regulatory Governmental Body if such interpretation is documented by such regulatory body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or similar agreement between the City and any Governmental Body, in each case having the force of law and applicable from time to time, over the Project, the Design-Build Work or any other transaction contemplated hereby.
- B. “City” or “City of Tacoma”** means City of Tacoma, inclusive of Tacoma Public Utilities, Light Division dba Tacoma Power.
- C. “Changed Condition”** means any act, event or condition that (1) is beyond the reasonable control of the affected party, (2) could not reasonably have been assumed, anticipated or provided for in the Design-Builder’s Proposal, and (3) materially expands the scope, interferes with, delays, or increases the cost of performing the Design-Build Work under the Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Contract on the part of the party claiming the occurrence of a Changed Condition.
- D. “Commercial Operation”** means the Unit is fully operational and has been placed in service by the City.
- E. “Contract”** means the City of Tacoma’s contract documents to include, at a minimum, these General Terms and Conditions.
- F. “Design-Build Work” or “Work”** means everything required to be furnished and done for and relating to the design and construction required by the Contract both during the term of the Contract and relating to the Warranty Obligations set forth in the Contract Documents. Design-Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Design-Builder’s design, engineering, procurement, construction, quality assurance and quality control, acceptance and performance testing, and related obligations with respect to the design and construction required by the Contract, including all completed structures, assemblies, fabrications, acquisitions and installations, all testing, and all of the Design-Builder’s administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under this Contract pertaining to such obligations. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless the context otherwise requires and shall include all Design-Build Work authorized by change order or other Contract amendment or modification.
- G. “Event(s) of Default”** means those events permitting termination of the Contract and which are set forth in Sections 2.13 and 2.14.
- H. “Force Majeure Event”** means an event which (1) is not the result of a party’s action or failure to act, and (2) is not foreseeable, (3) is otherwise beyond a party’s reasonable control, and (4) prevents a party from performing its obligations under the Contract. Examples of possible Force Majeure Events include but are not limited to an act of nature, act of civil or military authority, fire, flood, windstorm, earthquake, terrorism, or war.
- I. “General Requirements”** means the general requirements for the Design-Build Work set forth in the General Requirements exhibit.
- J. “Good Engineering and Construction Practice”** means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the electrical utility industry as followed in the northwestern region of the United States.
- K. “Governmental Approval”** means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or

maintained by any person with respect to the Design-Build Work.

- L. **“Governmental Body”** means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction other than the City.
- M. **“Hazardous Substances”** means any waste, substance, object or material designated as, or containing any component designated as, hazardous, toxic or harmful under Applicable Law including, without limitation, “hazardous substances” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and “hazardous waste” as defined under the Resource Conservation and Recovery Act (RCRA).
- N. **“Project”** means the Design-Build Work required by the Contract.
- O. **“Performance Guarantees”** means the performance requirements set forth in the General and Technical Requirements.
- P. **“Performance Test”** means the tests set forth in the General and Technical Requirements to determine whether the unit met the Performance Guarantees.
- Q. **“Project Site”** means the project site as more fully set forth in the General and Technical Requirements.
- R. **“Regulated Site Condition”** means, and is limited to, the presence of Regulated Substances in environmental media anywhere in, on or under the Project Site, whether or not disclosed to the Design-Builder.
- S. **“Regulated Substance”** means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Substances.
- T. **“Subcontractor”** means every other person or entity (other than employees of the Design-Builder) employed or engaged by the Design-Builder or any person directly or indirectly in privity with the Design-Builder (including but not limited to all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Design-Build Work, whether for the furnishing of design, services, labor, materials, equipment, supplies, services, or otherwise.
- U. **“Technical Requirements”** means the technical requirements for the Design-Build Work set forth in the Technical Requirements exhibit.

SECTION II CONTRACT REQUIREMENTS

2.01 CONTRACTOR'S RESPONSIBILITY

A. Contract Documents

The Respondent to whom the Contract is awarded, hereinafter called the Design-Builder, shall enter into a Contract with the City within 10 days after receipt from the City of a properly prepared Contract. The Contract Documents will consist of, at a minimum, the Contract, the General Terms and Conditions, the General and Technical Requirements, applicable written equipment manufacturers' specifications, the Design-Builder's Proposal, the Instructions to Finalists, Change Orders, Design-Builder's Statement of Qualifications, and the Request for Qualifications. Design-Builder will perform the scope of services of the Contract and do all things required to promptly perform the Contract pursuant to its terms. The Contract Documents are intended to be complementary and are listed below in their order of precedence to this Contract.

- (1) Change Orders;
- (2) Contract;
- (3) General and Technical Requirements;
- (4) General Terms and Conditions;
- (5) Design-Builder's Proposal, including all appendices and attachments, unless the Design-Builder's Proposal provides any promises or commitments to exceed the General and Technical Requirements, in which case, the promises or commitments to exceed the General and Technical Requirements have a higher order of precedence than the General and Technical Requirements;
- (6) Instructions to Finalists;
- (7) Design-Builder's Statement of Qualifications; including all appendices and attachments;
- (8) Request for Qualifications.

B. Surety Bonds

The Design-Builder to whom the Contract is awarded shall provide a payment bond 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 any guarantee. The bonds must utilize City forms and be executed by a surety company licensed to do business in the State of Washington.

C. Independent Contractor

Design-Builder is an independent contractor; no personnel furnished by the Design-Builder shall be deemed under any circumstances to be the agent or servant of the City. Design-Builder 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.

D. Assistance

The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

E. Good Engineering and Construction Practice

The Design-Builder shall utilize Good Engineering and Construction Practice in carrying out the Design-Build Work and to supplement and in no event displace or lessen the stringency of, the requirements under this Contract. In the event that, over the course of the performance of this Contract, Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Design-Builder, the Design-Builder shall be relieved of its obligation to comply with such evolved construction practice (but not Good Engineering and Construction Practice as of the Contract Date) unless the City agrees to adjust the Awarded Contract Price, as appropriate, to account for such additional costs. Except to the extent that the Design-Builder is relieved of its obligation to comply with such evolved Good Engineering and Construction Practice, as provided above, in no event shall any evolution of Good Engineering and Construction Practice, or any City election to pay or not pay any such additional costs, relieve the Design-Builder of its obligations under the Contract.

F. Key Personnel

The Design-Builder has identified, and the City has approved, the Key Personnel who are assigned to the Project. Exhibit ___ sets forth the key Project staff, their Project assignments, and the expected amounts of their available time that will be spent on the Project for design, manufacturing, construction, and/or testing. Percentage of time estimates shall be based on 100% of the hours available over the entire phase, assuming 40 hours per week (for non-construction personnel only), minus time for vacations, sick leave, training, professional societies, and conferences as a basis.

G. City Rights With Respect to Key Personnel

The Design-Builder acknowledges that the identity of the Key Personnel proposed by the Design-Builder and its Subcontractors in its responses to the RFQ and RFP was a material factor in the selection of the Design-Builder. The Design-Builder shall utilize the Key Personnel to perform the tasks at the level of effort identified in Exhibit ____. If any Key Personnel must be changed during the Project, the Design-Builder shall provide the City with thirty (30) days written Notice of the proposed change with such additional information as the City may reasonably require. For the duration of the Project, Design-Builder may not, without written consent of the City, substitute or change any of Key Personnel.

H. Character of Design-Builder's Employees

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

2.02 INSPECTION

A. Observation and Design Review Program

During the progress of the Design-Build Work through Project completion, the Design-Builder shall at all times during normal working hours afford the City every reasonable opportunity for observation and shall comply with any Design-Build Work review procedures set forth in the Contract. The Design-

Builder shall use its best efforts to provide City employees with safe access to the Design-Build Work. During any such observation, all representatives of the City shall comply with the Design-Builder's site-specific health and safety plan applicable to areas visited and shall in no material way interfere with the Design-Builder's performance of any Design-Build Work.

B. Design-Builder Tests

The Design-Builder shall conduct all tests or inspections of the Design-Build Work as required by the Contract. The Design-Builder shall give the City reasonable advance notice (unless otherwise noted in the Contract, at least ten (10) business days) of tests or inspections prior to the conduct thereof. Unless the City provides express written direction to the contrary, Design-Builder shall not conduct any test or inspection required pursuant to the Contract unless the City is present to observe the test or inspection. If required by the Contract, the Design-Builder shall engage an engineer licensed in the State at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction and shall be subject to the approval of the City, which approval shall not be unreasonably withheld.

C. City Tests, Observations and Inspections

The City, its employees, agents, representatives and contractors (which may be selected in the City's sole discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site or off-site observations and inspections, and such civil, structural, mechanical, electrical or other tests as the City deems necessary or desirable to ascertain whether the Design-Build Work complies with this Contract. Off-site locations include, but are not limited to, any Design-Builder or Subcontractor fabrication sites. The costs of such test, observation or inspection shall be borne by the City unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Contract or Applicable Law, in which event the Design-Builder shall bear all reasonable costs and expenses of such observation, inspection or test. In the event that any requested test, observation or inspection causes a material delay in the progress schedule, the progress schedule shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

D. Certificates and Reports

The Design-Builder shall secure and deliver to the City promptly, at the Design-Builder's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as and when required by the Contract. The Design-Builder shall provide to the City, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Design-Builder from or in connection with any Governmental Body, Subcontract, or Payment and Performance Bond.

E. Notice of Covering Design-Build Work

The Design-Builder shall give the City notice in the monthly progress report of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period (at least five (5) business days) before such covering and completion. The City shall give the Design-Builder reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the City a reasonable opportunity to conduct a full inspection of such Design-Build Work. At the City's written request, the Design-Builder shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that the City's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the City as to whether the disputed Design-Build Work complies with the requirements of this Contract. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

- (1) by the Design-Builder, if such Design-Build Work was covered prior to any observation or test required by the Contract or if such Design-Build Work was covered prior to any observation or test for which the City was not provided reasonable advance notice hereunder, and, therefore, did not observe the test; and
- (2) in all other cases, as follows:
 - a. by the Design-Builder, if such observation or test reveals that the Design-Build Work does not comply with this Contract; or
 - b. by the City, if such observation or test reveals that the Design-Build Work complies with this Contract.

In the event such Design-Build Work does comply with this Contract, the delay caused by such observation or test shall be treated as having been caused by a Changed Condition and any costs

incurred with respect to such observation or test shall be borne by the City (through and only through a written modification to the Contract).

2.03 REPORTS, RIGHT TO AUDIT

A. Reports

Design-Builder shall, at such times and in such form as the City may reasonably require, furnish the City with periodic status reports pertaining to the services undertaken or goods provided pursuant to the Contract.

B. Right to Audit

Upon City's request, Design-Builder shall make available to City all accounts, records and documents related to the scope of work for City's inspection, auditing, or evaluation during normal business hours as reasonably needed by City to assess performance, compliance and/or quality assurance under the Contract or in satisfaction of City's public disclosure obligations as applicable.

2.04 INDEMNIFICATION

A. Indemnification

Design-Builder acknowledges that pursuant to the terms of this agreement, Design-Builder 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, Design-Builder assumes the risk of all damages, loss, cost, penalties and expense and agrees to indemnify, defend and hold harmless the City, from and against any and all liability which may accrue to or be sustained by the City on account of any claim, suit or legal action made or brought against the City for the death of or injury to persons (including Design-Builder's or subcontractor's employees) or damage to property involving Design-Builder, 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 the case of concurrent negligence, Design-Builder shall only be liable to the extent of the negligence of Design-Builder and the parties for which it is responsible.

In this regard, Design-Builder recognizes that Design-Builder 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. 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 Design-Builder's employee to have a claim or cause of action against Design-Builder.

2.05 ASSIGNMENT AND SUBLETTING OF CONTRACT

A. Assignment

The Contract shall not be assigned except with the consent of the City.

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. City's acceptance of any assignment shall be documented in writing using the City's Assignment of Agreement template.

B. Subletting

The Contract shall not be sublet except with the written consent of the City. 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 Design-Builder of his/her responsibility for the fulfillment of the Contract. The Subcontractor shall be

considered to be the agent of the Design-Builder and the Design-Builder 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.

2.06 EXTENSION

The Contract may be mutually extended in writing by the parties, subject to the same prices, terms and conditions.

2.07 DELAY

A. Extension of Time

With the written approval of the City, the Design-Builder may be granted additional time for completion of the work required under this Contract, if, in the City's opinion the additional time requested arises from unavoidable delay.

B. Unavoidable Delay

Unavoidable delays in the prosecution of the work shall include only delays from causes beyond the control of the Design-Builder 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 Design-Builder, Subcontractors or their employees will be considered unavoidable delays insofar as they necessarily interfere with the Design-Builder's completion of the work, and such delays are not part of this Contract.

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

2.08 FORCE MAJEURE; CHANGED CONDITIONS

A. Relief from Obligations

Except as expressly provided under the terms of this Contract, neither party to this Contract shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from a Force Majeure Event; however if a Force Majeure Event would otherwise operate to relieve Design-Builder from an obligation under the Contract, the City may elect to treat the Force Majeure Event as a Changed Condition. The occurrence of a Force Majeure Event shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Contract, or to perform any obligation hereunder not affected by the occurrence of the Force Majeure Event.

B. Changed Condition - Notice and Mitigation

If Design-Builder encounters or experiences any Changed Condition for which the Design-Builder does or should reasonably anticipate may result in a request for an adjustment to the Contract time or price, the City shall be entitled to prompt notice and information in order to allow the City to anticipate and mitigate any costs. The party that asserts the occurrence of a Changed Condition shall notify the other party, on or promptly after the date the party experiencing such Changed Condition first knew of the occurrence, followed within 15 days by a written description of: (1) the Changed Condition and the cause (to the extent known); and (2) the date the Changed Condition began, its estimated duration, the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected, and the impact, if any, on the Acceptance Date. As soon as practicable after the occurrence of an Changed Condition, the affected party shall also provide the other party with a description of: (i) the amount, if any, by which the Awarded Contract Price is proposed to be adjusted as a result of such Changed Condition; (ii) any areas where costs might be reduced and the approximate amount of such cost reductions; and (iii) its estimated impact on the other obligations of such party under this Contract. The affected party shall also provide prompt written notice of the cessation of such Changed Condition. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably practicable, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Contract, except that with respect to the discovery of possible Regulated Substances the parties shall follow the process described in Section 2.38. While the Changed Condition continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by a Changed Conditions shall bear the burden of proof and shall furnish promptly any additional documents or other information relating to the Changed Condition reasonably requested by the other party.

C. Conditions to Performance, Schedule and Awarded Contract Price Relief

If and to the extent that any Changed Condition materially expands the scope of the Design-Builder's obligations hereunder, materially interferes with, materially delays or materially increases the cost of the Design-Builder's performing its obligations hereunder, the Design-Builder shall be entitled to relief from the performance of its obligations hereunder, an extension of schedule or an increase in the Awarded Contract Price, or any combination thereof, which properly reflects the interference with performance, the time lost or the amount of the increased cost, in each case as a result thereof, but only to the minimum extent reasonably forced on the Design-Builder by the event, and the Design-Builder shall perform all other Design-Build Work. The proceeds of any Required Insurance available to meet any such increased cost, and the payment by the Design-Builder of any deductible, shall be applied to such purpose prior to any determination of cost increase payable by the City under this Section. Any cost reduction achieved through the mitigating measures undertaken by the Design-Builder pursuant to subsection (B) of this Section upon the occurrence of a Changed Condition shall be reflected in a reduction of the amount by which the Awarded Contract Price would have otherwise been increased or shall serve to reduce the Awarded Contract Price to reflect such mitigation measures, as applicable. In the event that the Design-Builder believes it is entitled to any relief on account of an Changed Condition, it shall furnish the City written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection (B) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed within such 30-day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Design-Builder the City shall issue a written determination as to the extent, if any, it concurs with the Design-Builder claim for performance, price or schedule relief, and the reasons therefor. The Design-Builder acknowledges that its failure to give timely notice pertaining to a Changed Condition as required under this Section may adversely affect the City. To the extent the City asserts that any such adverse effect has occurred and that the relief to the Design-Builder or the additional cost to be borne by the City under this subsection should be reduced to account for such adverse effect, the Design-Builder shall have the affirmative burden of refuting the City's assertion. Absent such refutation, the reduction in relief to the Design-Builder and the reduction in additional cost to the City asserted by the City in such circumstances shall be effective. The agreement of the parties as to the specific relief to be given the Design-Builder hereunder on account of a Changed Condition shall be evidenced by a Change Order.

D. Exclusions

It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute a Changed Condition for purposes of any adjustment to the Contract:

- (1) any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;
- (2) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates or other general economic conditions, except as addressed in the Contract;
- (3) changes in the financial condition of the City, the Design-Builder or their affiliates or Subcontractors affecting the ability to perform their respective obligations;
- (4) the consequences of error, neglect or omissions by the Design-Builder, any Subcontractor, any of their Affiliates or any other person in the performance of the Design-Build Work;
- (5) union or labor work rules, requirements or demands (other than City changes to its union or labor work rules, requirements or demands) which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost to the Design-Builder of performing the Design-Build Work;
- (6) weather conditions normal for the area surrounding the Project Site;
- (7) any and all surface, subsurface and other conditions affecting the Project Site, which may increase costs of performing or cause delay in the performance of the Design-Build Work, except those constituting Regulated Site Conditions or unfavorable Changed Conditions;
- (8) mechanical failure of equipment;
- (9) power outages caused by the Design-Builder or its Subcontractors;
- (10) failure of the Design-Builder to secure any patent or other intellectual property right which is or may be necessary for the performance of the Design-Build Work;
- (11) a Change in Law pertaining to Taxes (except an increase or decrease in the rate of the local Tax currently imposed on building materials used in the construction of the Project); or
- (12) local labor disputes or strikes involving employees of the Design-Builder, its Affiliates, or Subcontractors which affect the performance of the Design-Build Work.

E. Acceptance of Relief Constitutes Release

Either party's acceptance of any performance, price or schedule relief under this Section shall be construed as a release of the other party for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed.

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 Design-Builder of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Design-Builder 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 Design-Builder 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 Design-Builder's sole cost and expense without delay and with the least practicable inconvenience to the City. Rejected material and equipment shall be removed from the City's property by and at the expense of the Design-Builder.

B. Guarantee for Supply Contracts

Unless a longer period is specified, the Design-Builder 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 Design-Builder and/or manufacturer.

When the Design-Builder is not the manufacturer of the item of equipment, Design-Builder agrees to be responsible for this guarantee and Design-Builder 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 Design-Builder 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 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'S RIGHT TO TERMINATE CONTRACT

A. City Termination for Cause

The City shall have the right during the term of the Contract to terminate the Contract for cause and to pursue all remedies available pursuant to this Section, without cost or liability to the City, if the Design-Builder 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, or in the case of and other Event of Default by the Design-Builder.

The City may serve written notice upon the Design-Builder and Surety executing the Payment and Performance Bond of City's 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 for correction thereof shall be made, the Contract shall, upon the expiration of said 10 days, cease and terminate and all rights of the Design-Builder hereunder shall be forfeited. In the event the Contract is terminated for cause, Design-Builder shall not be entitled to any lost profits resulting therefrom.

In the event of any such termination, the City shall immediately send (by regular mail or other method) written notice thereof to the Surety and the Design-Builder. 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 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 Design-Builder, and the Design-Builder and the Surety shall be liable to the City for all cost occasioned to the City thereby. The City 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 Design-Builder as may be on the site of the work and necessary therefore.

B. City Convenience Termination Option

The City shall have the right at any time during the term of this Contract, exercisable in its sole discretion, for its convenience and without cause, to terminate this Contract upon 10 days written notice to the Design-Builder. Upon any such termination, the City, subject to the Design-Builder substantiating its costs, shall pay the Design-Builder all amounts due for the Design-Build Work actually performed to be paid as part of the Awarded Contract Price but not yet paid as of the date of termination

2.12 REMEDIES FOR BREACH

The parties agree that, except as otherwise provided in the Contract with respect to termination rights, in the event that either party breaches this Contract, the other party may exercise any legal rights it may have under this Contract, under the Payment and Performance Bond and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Contract except upon the occurrence of an Event of Default or as otherwise provided herein; provided that upon any such termination, the terminating party shall have all of the rights and remedies provided for herein.

2.13 EVENTS OF DEFAULT BY THE DESIGN-BUILDER

A. Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination

Each of the following shall constitute an Event of Default by the Design-Builder upon which the City, by notice to the Design-Builder, may terminate this Contract without any requirement of having given notice previously or of providing any further cure opportunity:

- (1) Insolvency. The insolvency of the Design-Builder as determined under the Bankruptcy Code;
- (2) Voluntary Bankruptcy. The filing by the Design-Builder of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Design-Builder to the filing of any bankruptcy or reorganization petition against the Design-Builder under the Bankruptcy Code; or the filing by the Design-Builder of a petition to reorganize the Design-Builder pursuant to the Bankruptcy Code; or
- (3) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Design-Builder or of a major part of the Design-Builder's property, respectively, or the filing against the Design-Builder of a petition to reorganize the Design-Builder pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively.

B. Events of Default Requiring Previous Notice and Cure Opportunity for Termination

It shall be an Event of Default by the Design-Builder upon which the City may terminate this Contract, by notice to the Design-Builder, if:

- (1) any representation or warranty of the Design-Builder hereunder was false or inaccurate in any material respect when made, and the legality of this Contract or the ability of the Design-Builder to carry out its obligations hereunder is thereby materially and adversely affected; or
- (2) The Design-Builder fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the City under this Contract within sixty (60) days following the due date for such payment, or (b) to perform any other material obligation under this Contract (unless such default is excused by an Changed Conditions as and to the extent provided herein), except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the City the right to terminate this Contract for cause under this subsection unless:
 - a. The City has given prior written notice to the Design-Builder stating that a specified default has occurred which gives the City a right to terminate this Contract for cause under this Section, and describing the default in reasonable detail; and
 - b. The Design-Builder has neither challenged in an appropriate forum the City's conclusion that such a default has occurred or constitutes a material breach of this Contract nor corrected or

diligently taken steps to correct such default within a reasonable time but not more than 30 days from the date of the notice given pursuant to item (1) above (but if the Design-Builder shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for so long as the Design-Builder is continuing to take such steps to correct such default).

2.14 EVENTS OF DEFAULT BY THE CITY

A. Events of Default Permitting Termination

Each of the following shall constitute an Event of Default by the City upon which the Design-Builder, by notice to the City, may terminate this Contract:

- (1) Failure to Pay or Perform. The failure, refusal or other default by the City in its duty to perform any material obligation under this Contract (unless such default is excused by a Changed Conditions as and to the extent provided herein); or
- (2) Bankruptcy. The authorized filing by the City of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for the City shall not in and of itself constitute an Event of Default hereunder.

B. Notice and Cure Opportunity

No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Design-Builder the right to terminate this Contract for cause under this subsection unless:

- (1) The Design-Builder has given prior written notice to the City stating that a specified default has occurred which gives the Design-Builder a right to terminate this Contract for cause under this Section, and describing the default in reasonable detail; and
- (2) The City has neither challenged in an appropriate forum the Design-Builder's conclusion that such default has occurred or constitutes a material breach of this Contract nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than 30 days from the date of the notice given pursuant to item (1) above (but if the City shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the City is continuing to take such steps to correct such default).

2.15 OBLIGATIONS OF THE DESIGN-BUILDER UPON TERMINATION

A. Design-Builder Obligations

Upon a termination of the Design-Builder's right to perform this Contract or upon expiration of this Contract, the Design-Builder shall, as applicable:

- (1) stop the Design-Build Work on the date and to the extent specified by the City;
- (2) promptly deliver to the City all design documents and "as-built" construction record drawings prepared by the Design-Builder in carrying out the Design-Build Work which have been paid for but have not previously been delivered to the City;
- (3) promptly take all action as necessary to protect and preserve all materials, equipment, tools, and other property;
- (4) promptly remove from the Project all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Design-Builder (including, but not limited to sheds, trailers, and workshops), and repair any damage caused by such removal;
- (5) clean the Project and the Project Site and leave them in a neat and orderly condition;
- (6) promptly remove all employees of the Design-Builder and any Subcontractors and vacate the Project Site;
- (7) promptly deliver to the City a list of all supplies, materials, equipment, property and special order items previously delivered or fabricated by the Design-Builder or any Subcontractor but not yet incorporated in the Project;
- (8) provide the City with any spare parts and additional materials required by the Contract Documents;
- (9) deliver to the City the Operation and Maintenance Manual used at the Project in the performance of the Design-Build Work, including all revisions and updates thereto;
- (10) deliver to the City a copy of all books and records in its possession relating to the performance of the Design-Build Work;
- (11) advise the City promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;
- (12) promptly deliver to the City copies of all Subcontracts, together with a statement of:
 - a. the items ordered and not yet delivered pursuant to each agreement;
 - b. the expected delivery date of all such items;

- c. the total cost of each agreement and the terms of payment; and
 - d. the estimated cost of canceling each agreement;
- (13) assign to the City any Subcontract that the City elects in writing, at its sole election and without obligation, to have assigned to it. The City shall assume, and the Design-Builder shall be relieved of its obligations under, any Subcontract so assigned;
 - (14) unless the City directs otherwise, terminate all Subcontracts related to this Project;
 - (15) provide the City with a list of all Project equipment subject to patents, licenses, franchises, trademarks or copyrights and the associated royalties and license fees associated therewith which the City will be responsible for paying on or after the Termination Date;
 - (16) as directed by the City, transfer to the City by appropriate instruments of title, and deliver to the Project (or such other place as the City may specify), all special order items pursuant to this Contract for which the City has made or is obligated to make payments;
 - (17) notify the City promptly in writing of any Legal Proceedings against the Design-Builder by any Subcontractor or other third parties relating to the termination of the Design-Build Work (or any Subcontracts);
 - (18) give written notice of termination, effective as of date of termination of this Contract, promptly under each policy of Required Insurance (with a copy of each such notice to the City), but permit the City to continue such policies thereafter at its own expense, if possible; and
 - (19) take such other actions and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the City's costs and take no action which shall increase any amount payable by the City under this Contract.

B. Design-Builder Payment of Certain Costs

If termination is pursuant to cause, the Design-Builder shall be obligated to pay the costs and expenses of undertaking its obligations under subsection A. of this Section. If the Design-Builder fails to comply with any obligation under this Section, the City may perform such obligation and the Design-Builder shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

C. City Payment of Certain Costs

If termination is due to a City Event of Default or termination for the City's convenience, the City shall pay to the Design-Builder within 60 days of the date of the Design-Builder's invoice supported by Cost Substantiation all reasonable cost and expenses incurred by the Design-Builder in satisfying its obligations under the Contract.

D. Delivery of Design-Build Work to the City

Concurrently with payment by the City to the Design-Builder of the amount due upon any termination of this Contract under this Section, the Design-Builder shall deliver to the City all materials including Deliverables-in-progress produced for this Contract during the period to the Termination Date hereunder, which Deliverables and Deliverables-in-progress immediately shall become the property of the City. The City's use of any such Deliverables and Deliverables-in-progress for any purpose other than the continuation of the Design-Build Work shall be at its own risk and the Design-Builder shall have no liability therefor.

2.16 SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION

All representations and warranties of the parties hereto contained in this Contract, the Design-Builder's indemnity obligations in this Contract with respect to events that occurred prior to the Termination Date, , and all other provisions of this Contract that so provide shall survive the termination of this Contract. No termination of this Contract shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the performance of this Contract.

2.17 LIENS

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

2.18 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. The Design-Builder and the City each irrevocably consents to the jurisdiction of such

courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

B. Attorney Fees

If the Contract becomes 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's Deputy City Attorneys is agreed to be \$250 per hour or the same as the hourly rate for Design-Builder's legal counsel, whichever is greater.

C. Dispute Resolution Process

All claims, disputes and other matters in question between the City and the Design-Builder arising out of, or relating to, this Contract, shall be resolved in accordance with the following procedures: (1) dispute, (2) claims, (3) mediation, and (4) judicial resolution.

D. Claims

The City and the Design-Builder acknowledge the benefits of resolving, and attempting to resolve, all disputes by discussion between themselves, without proposing to any third parties, and agree therefore to negotiate in good faith to resolve all disputes before invoking any other method of dispute resolution as provided for in this Contract; provided, however, that the period of time for good faith negotiations shall not exceed 30 days, unless a longer period is mutually agreed.

E. Mediation

- (1) If the City and the Design-Builder cannot resolve a dispute through the administrative claims process, either party may request mediation. The party requesting mediation shall do so within 30 days of receiving the other parties notice of denial.
- (2) The parties will select and agree upon a mediator. If they are unable to agree, the City and the Design-Builder shall seek the selection of the mediator by Pierce County Superior Court, Seattle WA. Mediation will occur within sixty (60) days of the filing of the Design-Builder's written notice to mediate unless both parties agree to a later date or unless the mediator's schedule requires a later date. Each party will participate in the mediation process in good faith and may be represented at the mediation by lawyers. The parties shall each bear their respective costs incurred in connection with this procedure, except that they shall share equally the fees and expenses of the mediator and the cost of the facility for the mediation. If mediation does not resolve the disputed matter, the Design-Builder may pursue judicial resolution as provide herein.

F. Judicial Resolution

- (1) If mediation does not resolve the disputed matter, the Design-Builder may serve and file a lawsuit in Pierce County Superior Court in Tacoma, WA. Such lawsuit shall be filed within one hundred eighty (180) business days of the Project Completion Date or within ninety (90) business days of the mediation process under Section C, whichever is later. This requirement cannot be waived except by an explicit waiver signed by the City. The failure to file a lawsuit within the 180 business day period shall result in the City's decision rendered in accordance with Section B being final and binding on the Design-Builder and all its Subcontractors.
- (2) Actions by the Design-Builder against the City or between the Design-Builder and its Subcontractor arising out of a common set of circumstances shall, upon demand by the City, be submitted in a single forum or the City may consolidate such claims or join any party necessary to the complete adjudication of the matter in the same forum.

2.19 CONTINUANCE OF WORK DURING DISPUTE

At all times during the course of any dispute process, the Design-Builder shall continue with the Design-Build Work as directed by the City, in a diligent manner and without delay or conform to the City's decision or order and shall be governed by the applicable provisions of this Contract. Records of the Design-Build Work performed during such time shall be kept in sufficient detail to enable payment in accordance with the applicable provisions in this Contract, if necessary.

2.20 CONFLICT OF INTEREST

No officer, employee, or agent of the City, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in a Contract, either in fact or in appearance. Design-Builder shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations. Design-Builder represents that Design-Builder presently has no interest and shall not acquire any interest, direct or indirect, in the program to which the Contract pertains that would conflict in any manner or degree with the performance of Design-Builder's services and obligations hereunder. Design-Builder further covenants that, in performance of a Contract, no person having any such interest shall be employed. Design-Builder also agrees that its violation of the City's Code

of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of Contract subjecting the Contract to termination.

2.21 CONTRACTOR'S DUTY TO EXAMINE

Design-Builder 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.

2.22 PERMITS

Except when modified by the Special Provisions, the Design-Builder shall procure and pay for all permits and licenses necessary for the completion of this Contract including those permits required by the City. The City will obtain county or state road crossing permits if required. In the event a necessary permit is not obtained, the Design-Builder 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.

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

The Design-Builder shall notify all other affected governmental agencies and utilities whenever underground work is done under the terms of this Contract. The Design-Builder 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 Design-Builder 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 division responsible for this Contract. It is the Design-Builder'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 Design-Builder may pursue the party responsible for not properly marking or identifying the underground facility. The Design-Builder agrees not to file any claim or legal action against the City (division responsible for this Contract) for said "changed or differing" conditions unless said City division is solely responsible for the delay or damages that the Design-Builder may have incurred.

2.24 INSURANCE

- A.** During the course and performance of a Contract, Design-Builder will provide proof and maintain the insurance coverage in the amounts and in the manner specified in the City Insurance Requirements as is applicable to the services, products, and deliverables provided under the Contract. The City 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.
- C.** The Design-Builder shall not commence work under this Contract until all required insurance has been obtained and such insurance has been approved by the City, nor shall the Design-Builder allow any subcontractor to commence work on his/her subcontract until all insurance required herein has been obtained by Subcontractor. It is the Design-Builder's responsibility to ascertain that all Subcontractors have the insurance as required by this Contract at all times such Subcontractors are performing the work. The insurance coverages required herein shall be maintained and effective at all times any work including guarantee work is being performed by the Design-Builder or a Subcontractor.

2.25 SAFETY

A. General

The Design-Builder 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 Design-Builder's responsibility to furnish safety equipment or to contractually require Subcontractors to furnish adequate safety equipment relevant to their responsibilities.

The Design-Builder 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 Design-Builder and the Safety Officer of any safety violations. It is the Design-Builder'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 Design-Builder of any provisions of this Contract and shall be at the sole cost of the Design-Builder. 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 shall in no way relieve the Design-Builder of his/her responsibility to provide for the safety of all persons, including his/her employees.

B. Work Hazard Analysis Report

The Design-Builder will be required to complete a work hazard analysis report. This report shall outline how the Design-Builder 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).

2.26 PROTECTION OF WORKERS AND PROPERTY

The Design-Builder 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 Design-Builder 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 Design-Builder is responsible for all roads and property damaged by his/her operations as shall be determined by the Engineer administering this Contract. The Design-Builder 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.

2.27 DESIGN-BUILDER'S COMPLIANCE WITH THE LAW

A. Hours of Labor

The Design-Builder 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 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

The Design-Builder and any Subcontractors shall be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits. No worker, laborer, or mechanic employed in the performance of any part of this Contract shall be paid less than the "prevailing rate of wage" as determined by the industrial Statistician of the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where this Contract will be performed is by reference made a part of this Contract as though fully set forth herein. Current prevailing wage data will be furnished by the Industrial Statistician upon request. The Design-Builder shall immediately upon award of the Contract, contact the Department of Labor and Industries, ESAC Division, General Administration Building, Olympia, Washington 98504, to obtain full information, forms and procedures relating to these matters.

Before payment is made by or on behalf of the City, of any sum or sums due on account of a Public Works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the Design-Builder and each and every Subcontractor from the Design-Builder or a Subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages." Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the Department of Labor and Industries before it is submitted to said officer. Unless otherwise authorized by the Department of Labor and Industries each voucher claim submitted by a Design-Builder for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a Public Works project, it shall be the duty of the officer charged with the disbursement of public funds to require the Design-Builder and each and every Subcontractor from the Design-Builder or a Subcontractor to submit to such officer an "Affidavit of Wages Paid" before the

funds retained according to the provisions of RCW 60.28.010 are released to the Design-Builder. Each affidavit of wages paid must be certified by the industrial statistician of the Department of Labor and Industries before it is submitted to said officer.

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.

2.28 TAXES

- A.** Applicable federal, state, City, and local taxes shall be included in the Contract price. 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 is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required.
 - (2) State and Local Sales Tax. The City is subject to Washington state sales tax. It is Design-Builder'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 prices submitted.
 - (3) City of Tacoma Business and Occupation Tax. It is Design-Builder'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 may be subject to the City's Business and Occupation Tax.
- B.** Any or All Other Taxes. Any or all other taxes are the responsibility of Design-Builder unless otherwise required by law. Except for state sales tax, Design-Builder acknowledges that it is responsible for the payment of all taxes applicable to the Contract and Design-Builder agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law.
- C.** If the City is assessed, made liable, or responsible in any manner for taxes contrary to the provisions of the Contract, Design-Builder agrees to hold the City harmless from such costs, including attorney's fees. In the event Design-Builder fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, other than those taxes the City is required to pay, then Design-Builder authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from Design-Builder's total compensation.

2.29 LICENSES/PERMITS

- A.** Design-Builder must 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/.
- B.** During the term of the Contract, Design-Builder, at its expense, shall obtain and keep in force any and all necessary licenses and permits including a Washington State business license and a business license as is required by Tacoma Municipal Code Subtitle 6C.20.

2.30 COMPENSATION

- A.** The City shall compensate Design-Builder in accordance with the Contract. Said compensation shall be the total compensation for Design-Builder's performance hereunder including, but not limited to, all work, services, deliverables, materials, supplies, equipment, subcontractor's fees and all reimbursable travel and miscellaneous or incidental expenses to be incurred by Design-Builder. Unless stated otherwise the total stated compensation may not be changed without a written change order or other form of contract amendment.
- B.** Payment(s) made in accordance with the Contract shall fully compensate Design-Builder for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Supplier.

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

When the time for construction, services and/or installation will exceed thirty (30) days, the Design-Builder 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.

2.32 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 City. Also, before final payment is made, the Design-Builder shall be required to:

- A.** Provide a certificate from the Washington State Department of Revenue that all taxes due from the Design-Builder 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 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;
- G.** 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 Design-Builder and deducted from the monies paid to the Design-Builder.

2.33 CHANGES

A. In Plans or Quantities

The City, 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 Design-Builder 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 Design-Builder and City have agreed upon a price prior to commencing extra work, and the agreement has been signed by the Design-Builder and approved by the City, 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, 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 City;
- (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 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 Design-Builder shall each day, report to the City 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 City, may properly be classified under items for which prices are established in the Contract.

D. Claims for Extra Work

If the Design-Builder claims that any instructions by drawings or otherwise, involve extra cost under this Contract, he/she shall give the City 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 Design-Builder for payment of claims for extra work performed under the terms of this Contract.

2.34 CLEANING UP

The Design-Builder 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 Design-Builder 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 may remove the debris and charge the cost to the Design-Builder as the City shall determine to be just. All material that is deposited or placed elsewhere than in places designated or approved by the City will not be paid for and the Design-Builder may be required to remove such material and deposit or place it where directed.

2.35 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.

2.36 ACCESS TO AND SUITABILITY OF THE PROJECT SITE

A. Familiarity with the Project Site

The Design-Builder acknowledges that the Design-Builder's agents and representatives have visited, inspected and are familiar with the Project Site, its physical condition relevant to the obligations of the Design-Builder under this Contract; that the Design-Builder is familiar with all local and other conditions which may be material to the Design-Builder's performance of its obligations under this Contract (including, but not limited to transportation; seasons and climate; access; availability; disposal, handling and storage of materials and equipment; and availability and quality of labor and utilities); and that the Design-Builder reviewed all information regarding the Project Site provided or otherwise made available through this Contract or the RFP process, or otherwise obtained in the course of performing its obligations hereunder; and that based on the foregoing and the reasonably observable conditions at the Project Site Walkthrough, the Project Site constitutes an acceptable and suitable site for the construction of the Project in accordance herewith, and the Project can be constructed on the Project Site within the Awarded Contract Price in accordance with the progress schedule and Design-Builder's Price Proposal, subject to the provisions hereof relating to Regulated Site Conditions and other Changed Conditions. The Design-Builder shall further validate the information during the Project Validation Period and the Unit Validation Periods.

B. Access to Project Site

The execution of this Contract and Notice to Proceed shall constitute the granting of access to the Design-Builder to the Project Site, conditioned upon compliance with site security requirements and solely for the purpose of performing all Design-Build Work.

2.37 PROJECT PHASES AND VALIDATION PERIODS

A. Project Phases

(1) TBD

B. Validation Periods

(1) TBD

2.38 REGULATED SITE CONDITIONS

A. Design-Builder Obligations

In performing the Design-Build Work, the Design-Builder shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition or otherwise address and manage such Regulated Site Conditions in accordance with Good Engineering and Construction Practice after the location and existence of such Regulated Site Condition has been disclosed to the Design-Builder, or becomes actually known by the Design-Builder through physical observation (including any such observation made during any demolition). The Design-Builder shall also comply with all requirements concerning Regulated Site Conditions. The Design-Builder shall be liable for any loss and expense incurred by the City arising out of or resulting from: (1) the Design-Builder's, or its agents' or Subcontractors', failure to exercise due care with respect to such disclosed or known Regulated Site Condition; (2) the Design-Builder's, or its agents' or Subcontractors', failure to comply with any requirements in the Schedules concerning Regulated Site Conditions; and (3) any new release of Regulated Substances caused by the Design-Builder or its agents or Subcontractors, such as a spill. The Design-Builder shall not otherwise be responsible for any Regulated Site Condition, including any loss and expense relating to any Regulated Site Condition.

B. Asbestos Discovery - Notification Obligations

- (1) The City has provided notice of existing asbestos in the Project Site. In the event that the presence of any asbestos is discovered in the vicinity of the Work that existed prior to the Design-Builder's entry ("pre-existing asbestos"), the Design-Builder shall promptly suspend all work and notify the City. The Design-Builder shall be responsible for the removal, abatement, and disposal of any pre-existing asbestos in accordance with the Contract.
- (2) To the extent that the Design-Builder fails to promptly suspend all work and notify the City of the discovery of any pre-existing asbestos, or to the extent the Design-Builder, its Subcontractors or agents, negligently cause any pre-existing asbestos, the location of which the City has notified the Design-Builder, to become disturbed, the Design-Builder shall remain responsible for such asbestos related claims.

C. City Obligations

If at any time a Regulated Site Condition is determined to exist which (1) reasonably requires a Response Action or other action in order to comply with Applicable Law, (2) interferes with the performance of the Design-Build Work, or (3) increases the cost to the Design-Builder of performing the Design-Build Work, then the Design-Builder shall immediately provide written notice to the City of such Regulated Site Condition. The City shall promptly after written notice from any Governmental Body or the Design-Builder of the presence or existence thereof, commence and diligently prosecute Response Actions or other actions as may be necessary to dispose of, remediate or otherwise correct the Regulated Site Condition or otherwise make the Regulated Site Condition comply with Applicable Law.

2.39 COMMENCEMENT OF DESIGN-BUILD WORK

A. Commencement

The Design-Builder shall proceed, promptly following the Contract Date, to undertake, perform and complete the Design-Build Work in accordance with the Contract Documents. The Design-Builder shall not commence the manufacturing or construction portion of the Design-Build Work until the Design-Builder has satisfied all pre-construction requirements set forth in or such requirements have been waived by the City.

B. Sole Responsibility and Liability

The Design-Builder shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding any term, condition or provision

pertaining to the Project set forth in the RFQ or RFP. The Design-Builder acknowledges that, in the proposal and negotiation process leading to the execution of this Contract, the Design-Builder had the unrestricted right and opportunity not to execute this Contract if the Design-Builder had determined that any such term, condition or provision would in any manner or to any degree impair the Design-Builder's ability to perform the Design-Build Work in compliance herewith.

C. City Review and Comment on Design Documents

The City shall have the right to review and comment on the Design-Builder's design documents in order to confirm the compliance and consistency of the design documents with the General and Technical Requirements. The Design-Builder shall give due consideration and provide written responses, in the time and manner provided in the Contract Documents, to any comments delivered by the City as to the Design-Builder's design documents. Neither compliance by the Design-Builder with the General and Technical Requirements, nor review and comment by the City of the design documents, nor any failure or delay by the City in commenting on any design documents shall in any way relieve the Design-Builder of full responsibility for the timely design, construction and performance of the Project in accordance with the Contract.

D. Documents at the Project Site

The Design-Builder shall maintain at the Project Site all design and construction documents, including a complete set of record drawings, in accordance with the Contract Documents. These documents shall be available to the City for reference, copying and use.

2.40 DESIGN-BUILDER DESIGN – GENERAL AND TECHNICAL REQUIREMENTS

A. Conformity of Design-Builder Design Documents with the General and Technical Requirements

The Design-Builder shall prepare all design documents necessary or appropriate to carry out and complete the Project. All working and final design documents shall comply with the General and Technical Requirements and shall ensure that the Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the General and Technical Requirements.

B. City Interest in the General and Technical Requirements

The Design-Builder acknowledges the City's material interest in each provision of the General and Technical Requirements and no change to the General and Technical Requirements shall be made except with the consent of the City, which may be withheld or conditioned in its sole discretion. Any such changes shall be evidenced by a Change Order, as applicable.

C. General and Technical Requirement Changes Made At Design-Builder Request

The Design-Builder shall give the City written notice of, and reasonable opportunity to review and comment upon, any General or Technical Requirement changes proposed to be made at the Design-Builder's request. The notice shall contain sufficient information for the City to determine that the General or Technical Requirements change: (1) does not diminish the capacity of the Project to comply with the Contract; (2) does not impair the quality, integrity, durability and reliability of the Project; (3) is reasonably necessary or is advantageous for the Design-Builder to fulfill its obligations under this Contract; and (4) is feasible. The City shall have the absolute right to accept, reject or modify any General or Technical Requirements change proposed by the Design-Builder. Any such General or Technical Requirement change accepted or modified by the City, and any related change in the terms and conditions of this Contract, shall be reflected in a Change Order.

D. General and Technical Requirement Changes Made On Account Of Changed Condition

Upon the Notice of Changed Conditions, the City shall promptly proceed, subject to the terms, conditions and procedures set forth in Section 2.33, to make or cause to be made all General and Technical Requirements changes reasonably necessary to address the Changed Condition(s). The Design-Builder shall consult with the City concerning possible means of addressing and mitigating the effect of any Changed Conditions, and both parties shall cooperate in order to minimize any delay, lessen any additional cost and modify the Project so as to permit the Design-Builder to continue performing the Design-Build Work in light of such Changed Conditions. The design and construction costs resulting from any General or Technical Requirement resulting from a Changed Condition shall be borne by the City. Any General or Technical Requirement change made on account of Changed Conditions, and any related change in the terms and conditions of this Contract, shall be reflected in a Change Order.

E. General and Technical Requirement Changes Required By Governmental Bodies

The parties recognize that a Governmental Body may impose conditions in connection with a Governmental Approval, not known at the time of Technical and Price Proposal submittals, that requires a General or Technical Requirement(s) change. In the event of any such additional conditions are set

by a Governmental Body, the City shall promptly proceed to accommodate any General or Technical Requirement changes reasonably necessary to comply with such additional conditions by Change Order.

F. General and Technical Requirement Changes Made At City Direction

The City shall have the right to make General and Technical Requirement changes at any time for any reason whatsoever, whether and however the exercise of such rights affects this Contract. The design and construction costs resulting from any such General or Technical Requirement change made at the City's direction under this Section shall be added to the Contract by Change Order. No General or Technical Requirement change shall be made at the direction of the City under this Section that impairs any right, impairs the ability to perform, imposes any additional obligation or liability, or increases the costs of the Design-Builder hereunder, unless the Design-Builder is specifically compensated or specifically provided relief for such impairment, obligation, cost or liability.

2.41 COMMENCEMENT OF CONSTRUCTION

A. Pre-Construction Requirements

The Design-Builder shall not commence construction of the Unit or any portion thereof until all of the following pre-construction requirements have been satisfied by the Design-Builder or waived by the City:

- (1) Plans and Reports for Design-Build Work. The Design-Builder shall have received approval from the City on all final versions of plans, drawings and reports required for the Design-Build Work in accordance with the requirements set forth in the Contract Documents.
- (2) Updated Construction Schedule. The Design-Builder shall have provided the City an updated Construction Schedule in accordance with the Contract Documents.
- (3) Materials on Site. The Design-Builder shall have delivered and inspected all materials required to be on site in accordance with the requirements of the Contract Documents.
- (4) Pre-Construction Conference. The Design-Builder has held a pre-construction conference for the Unit with the City in accordance with the requirements of the Contract Documents.

2.42 CONSTRUCTION PRACTICE

The Design-Builder shall perform the Design-Build Work in accordance with the Contract and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Design-Builder to provide the following construction requirements: construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Project Site; construction personnel; temporary parking; vehicle traffic; safety and first aid facilities and equipment; correction of or compensation for defective work or equipment; Subcontractors' insurance; additional storage areas; temporary fire protection; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination and supervision.

2.43 ENGAGEMENT OF CITY

The Design-Builder shall fully cooperate with the City's Contract Representative of this Contract and the performance of its duties for the City. In the performance of such services, the Design-Builder agrees that the City may, without limiting other possible services to the City: review and monitor construction progress, payments and procedures; determine the completion of specified portions of the Design-Build Work; review proposed changes to the General and Technical Requirements; review plans, drawings and specifications of the Project for compliance with the General and Technical Requirements; review the validity of any Design-Builder written notice that a Changed Conditions has occurred (including the discovery of Regulated Site Conditions); and provide certificates and perform such other duties as may be specifically conferred on the City hereunder. It is understood that while the services intended to be provided by the City shall be of an observational and review nature, the City may, if appropriate, have the authority to interfere with, halt or delay, in any way it deems necessary, the construction of the Project or require or approve changes to the General and Technical Requirements or the Design-Builder's design documents prepared in connection therewith.

2.44 PROGRESS SCHEDULE AND REPORTS

A. General

The Design-Builder shall submit to the City design submittals, monthly progress schedules and reports in accordance with the requirements of the Contract Documents. The Design-Builder agrees that the

Design-Builder's submission of the monthly progress schedule and report (or any revised progress schedule and report) is for the City's information only, and the City's acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the City in any manner. Thus, the City's acceptance of the monthly progress schedule and report (or any revised monthly progress schedule and report) shall not imply City approval or consent to any of the matters set forth therein.

B. Design and Construction Schedule

The Design-Builder shall perform the Design-Build Work according to the accepted progress schedule.

2.45 UNIT ACCEPTANCE

A. Acceptance Process

At least 100 days before the Construction Commencement Date of the Unit, the Design-Builder shall prepare and submit to the City for its approval a detailed Performance Test Plan, which shall conform to the requirements of the Contract Documents in all respects.

B. Final Punchlist

The Design-Builder shall submit a proposed Final Punch List to the City's Contract Representative when the Design-Builder believes that the Design-Build Work for the Unit has been substantially completed in compliance with this Contract prior to Performance Testing. The Final Punch List shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work which need to be completed as a condition of Project Completion. The Design-Builder and the City will agree in writing upon the Final Punch List (or, if they are unable to agree, the City will prepare and issue the Final Punch List to the Design-Builder within fifteen (15) business days of the Design-Builder having submitted its proposed Final Punch List to the City). Completion of the Final Punch List work shall be verified by a final walk-through of the Project conducted by the City and the City's Contract Representative with the Design-Builder and the Construction Manager.

C. Performance Testing

- (1) Conduct the Performance Test. When the Design-Builder has reassembled the unit, the Design-Builder shall conduct the Performance Test in accordance with the Contract Documents.
- (2) Commercial Operation. If the Unit cannot be placed in Commercial Operation by the Scheduled Commercial Operation Date, Liquidated Damages will apply pursuant to Section 2.47. If the Unit fails to meet the Performance Guarantees, the City may elect, in its discretion, to place the Unit in Commercial Operation while the Design-Builder continues to correct the conditions to meet the Performance Guarantees. If the Performance Test indicates that the Unit meets the Performance Guarantees and all other Unit Acceptance Date Conditions set forth below, the Unit will be accepted, and when all of the Units have been accepted, the parties shall begin Project closeout/completion. If the Unit Acceptance Date Conditions are not met, the parties shall proceed as set forth below.
- (3) Performance Test Report. Within thirty (30) days following the last day of any Performance Test, the Design-Builder shall furnish the City with a written Performance Test report consistent with the requirements specified in the Contract Documents. If the Design-Builder fails to furnish the certified Performance Test report within such 30-day period, the Unit shall be deemed to have failed to meet the Performance Test requirements.
- (4) Costs of Performance Test. The cost of all Performance Test activities which the Design-Builder incurs, including any repetition of the Performance Test, shall be included in the Awarded Contract Price. If repeated Performance Tests are required due to the failure of the Design-Builder to meet Performance Test requirements or other Performance Guarantees, the Design-Builder shall reimburse the City for all costs of the City in conducting any such repeated Performance Tests.

D. Unit Acceptance Date Conditions

The following conditions shall constitute the "Unit Acceptance Date Conditions," each of which must be satisfied in all material respects by the Design-Builder in order for the Unit Acceptance Date to occur, and each of which must be and remain satisfied as of the Unit Acceptance Date:

Achievement of Performance Guarantees. The Design-Builder shall have completed the Performance Tests and such tests shall have demonstrated that the Unit has met the Performance Guarantees. Unit Acceptance shall not be deemed to have been achieved unless the Performance Test, conducted in the manner provided in the Contract Documents and the Performance Test Plan, demonstrates that the Performance Guarantees have been met. In the event the Unit does not successfully meet the Performance Guarantees, the Design-Builder, at Design-Builder's expense, shall take corrective action and re-test the Unit in accordance with the Contract Documents. The Design-Builder shall provide the

City with at least two weeks' written notice of any repeat of the Performance Test. The City reserves the right to reschedule the Performance Test retest or rework due to failed Performance Tests.

Design-Build Work Completed. All Work on the Unit, including all items on the Final Punch List for the Unit has been completed.

Final Operation and Maintenance Manual. The Design-Builder has delivered to the City the final Operation and Maintenance Manual for the Unit.

E. Concurrence Or Disagreement With Unit Acceptance Date Conditions

- (1) **Unit Acceptance Date Concurrence.** The "Unit Acceptance Date" shall be the day upon which the Design-Builder certifies that all Unit Acceptance Date Conditions have occurred. The City shall determine, within 30 Days of its receipt of such report, whether it concurs with such certification. If the City states in writing that it concurs with the Design-Builder's certification, the Unit shall be deemed to have achieved Acceptance and the Unit Acceptance Date shall be established on the date of the Design-Builder's original certification. In cases where the City does not determine in writing the concurrence or disagreement with Unit Acceptance Date Conditions certified by the Design-Builder within thirty (30) Days of the receipt by the City of such report, the date of the Design-Builder's original certification of the Unit Acceptance Date shall be deemed to have been achieved and established.
- (2) **Unit Acceptance Date Disagreement.** If the City determines at any time during such 30-Day review period that it does not concur with the Design-Builder's certification of Unit Acceptance, the City shall immediately send written notice to the Design-Builder of the basis for its disagreement. In the event of any such non-concurrence by the City, the parties shall attempt to resolve the matter through discussion and negotiation for the remainder of the 30-Day review period. If the parties do not resolve the dispute within the 30 Days allowed for review, either party may elect to refer the dispute to Mediation pursuant to Section 2.18. If the parties are unable to resolve the dispute through Mediation, then either party may initiate judicial proceedings.

2.46 PROJECT COMPLETION

A. Requirements

"Project Completion" shall be deemed to have occurred when all of the following conditions have been satisfied:

- (1) Unit Acceptance Achieved. The Design-Builder has achieved Unit Acceptance in accordance with this Section;
- (2) Deliverables. The Design-Builder shall have delivered to the City all Deliverables required under the Contract Documents;
- (3) Final Record Drawings. The Design-Builder shall have delivered to the City construction record drawings as required in the Contract Documents;
- (4) Spare Parts In Storage. All spare parts and additional materials required by the applicable General and Technical Requirements have been delivered and are in storage at the Project Site or other area designated by the City;
- (5) Final Punch List. The items on the Final Punch List have been completed by the Design-Builder and then approved and verified by the City.
- (6) Contract Documentation. The Design-Builder shall have delivered all other documentation required by the Contract or by Applicable Law;
- (7) Payment of Claims. The Design-Builder has certified to the City that all of its claims against the City have been paid; and
- (8) Cleanup. Clean up and removal of construction materials, debris, and any temporary facilities has been completed.

2.47 LIQUIDATED DAMAGES

A. General

This Contract provides for the assessment of Liquidated Damages against the Design-Builder for delay, for failure of the Unit to meet requirements to be placed in Commercial Operation, or for delay or failure of the Unit to achieve Performance Guarantees. Each party agrees that the City's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that could occur as a result of such non-performance, breach or default of the Design-Builder), and that the Liquidated Damages provided for herein with respect to each such circumstance are a fair and reasonable determination of such damages and are intended to place the City in the same economic position as it would have been in had the circumstance not occurred. Liquidated Damages shall constitute the only damages that will be assessed against the Design-Builder for delay

or failure to achieve Performance Guarantees, and are the exclusive remedy of the City; provided that such Liquidated Damages shall not preclude, limit or alter any other remedies available at law or equity for default or breach for which Liquidated Damages are not specifically provided for in this Contract. The parties acknowledge and agree that such additional remedies are intended to address harms and damages which are separate and distinct from those which the Liquidated Damages are meant to remedy. The City's assessment of Liquidated Damages shall not be construed as a penalty.

B. Liquidated Damages for Delay

- (1) The parties have agreed on the following Liquidated Damages resulting from failure to achieve specific progress schedule milestones . The Design-Builder authorizes the City to deduct the Liquidated Damages pursuant to the schedule set forth below from any money due or become due the Design-Builder. Liquidated Damages will not be assessed for any Day for which an extension of time is granted. No deduction or payment of such damages for delay will release the Design-Builder, in any degree, from further obligations and liability to complete the Contract.
- (2) Material and Design Delivery. In the event that the Design-Builder (1) fails to have all required materials on site in accordance with the timeframe set forth in the approved progress schedule; and/or (2) fails to submit 90% design deliverables (as identified in the Contract Documents no later than thirty (30) Days prior to the Scheduled Outage Commencement Date for the Unit, Liquidated Damages will apply in the amount of \$XXX per day for each Day that the materials or design required to be on site or submitted are late.
- (3) Liquidated Damages for Failure to Achieve Commercial Operation. In the event that the Design-Builder fails to achieve the Performance Guarantees, the City may, in its sole discretion, determine whether to place the Unit in Commercial Operation. If the Unit is not placed in Commercial Operation by the Scheduled Commercial Operation Date, Liquidated Damages will apply as set forth below for the Unit for each calendar day beyond the Scheduled Commercial Operation Date until the Design-Builder achieves Commercial Operation.

1 to 5 Days	\$XXX
6 to 10 Days	\$XXX
Beyond 10 Days	\$XXX

C. Failure to Achieve Performance Guarantees

- (1) In the event that the Design-Builder initially fails to achieve the Performance Guarantees, the Design-Builder shall be required to conduct the Performance Test at least one additional time. Prior to any retest, the Design-Builder shall provide, for the City's approval, a written plan laying out the remedial steps the Design-Builder plans to take to meet the Performance Guarantees.
- (2) If the City decides to place the Unit in Commercial Operation even though the Unit failed to achieve the Performance Guarantees, the Design-Builder shall provide to the City, a written plan (hereinafter "Remedial Plan") describing, in detail, the remedial steps the Design-Builder proposes to take to meet the Performance Guarantees, including but not limited to whether the Remedial Plan requires an outage and the planned duration of the outage. The City shall have the right to approve the Remedial Plan in whole or in part, provided the City shall not unreasonably withhold approval of the Remedial Plan. If the approved Remedial Plan requires a Unit outage, the City shall conduct an outage to allow the Design-Builder an opportunity to perform the Corrective Work; however, such Corrective Work may be limited if the disassembly of other Units restricts the ability to disassemble the Unit in question. In addition, the City shall determine, in its sole discretion, the date and duration of any outage, and the extent of disassembly of the Unit. In no circumstance will the City remove the rotor from the Unit for this outage. If such an outage is conducted, Liquidated Damages will apply in the amount of \$XXX per day for each day of the outage.
- (3) If the City decides to place the Unit in Commercial Operation despite the failure to achieve the Performance Guarantees, and not allow an outage, the City will proceed as set forth in Section D below and shall not be entitled to the liquidated remedies for delay.

D. Liquidated Damages for Continued Failure to Achieve Performance Guarantees

TBD

2.48 COST RECORDS AND REPORTING

During the Term of this Contract, the Design-Builder shall prepare and maintain proper, accurate and complete books and records of the cost and description of the Design-Build Work that the Design-Builder has performed since the Contract Date, the cost of which would be the responsibility of the City if the City were to elect to terminate this Contract pursuant to this Section. All financial records of the Design-Builder and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards. The Design-Builder shall submit a reasonably detailed summary thereof acceptable to the City, together with a summary statement of monthly and aggregate reimbursable expenses incurred, to the City at any time after the Contract Date at its request. Specific requests by the Design-Builder for the payment of reimbursable expenses shall be supported by Cost Substantiation. In the event that the City

terminates the Contract, the Design-Builder shall make available to the City a copy of all books and records of the Design-Build Work.

2.49 NO WAIVERS

No action of the City or Design-Builder pursuant to this Contract (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Contract. No course of dealing or delay by the City or Design-Builder in exercising any right, power or remedy under this Contract shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Design-Builder under this Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

2.50 NOTICES

Unless otherwise specified, except for routine operational communications, which may be delivered personally or transmitted by electronic mail, all notices required by the Contract shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to Design-Builder's registered agent and to the applicable City representative.

2.51 NONDISCRIMINATION

Design-Builder agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. Design-Builder shall not discriminate in any employment action because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental, or physical handicap. In the event of non-compliance by Design-Builder with any of the non-discrimination provisions of the Contract, the City shall be deemed to have cause to terminate the Contract, in whole or in part.

2.52 FEDERAL, STATE, AND MUNICIPAL LAWS AND REGULATIONS

Design-Builder shall comply with all federal, state, municipal, and/or local laws and regulations in the performance of all terms and conditions of the Contract. Design-Builder shall be solely responsible for all violations of the law from any cause in connection with its performance of work under the Contract.

2.53 FEDERAL, STATE AND MUNICIPAL REGULATIONS

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

2.54 PUBLIC DISCLOSURE: PROPRIETARY OR CONFIDENTIAL INFORMATION

- A.** Design-Builder submittals, all documents and records comprising the Contract, and all other documents and records provided to the City by Design-Builder 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 Design-Builder has complied with the requirements to mark records considered confidential or proprietary as such requirements are stated below, City agrees to provide Design-Builder 10 days written notice of impending release. Should legal action thereafter be initiated by Design-Builder to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Design-Builder, 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 Design-Builder took no action to oppose the release of information.
- B.** If Design-Builder provides City with records or information that Design-Builder considers confidential or proprietary, Design-Builder 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 Design-Builder 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 Design-Builder expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said record(s).
- C.** Submission of materials in response to City's Solicitation shall constitute assent by Design-Builder to

the foregoing procedure and Design-Builder shall have no claim against the City on account of actions taken pursuant to such procedure.

2.55 WAIVER

A waiver or failure by either party to enforce any provision of the contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of the Contract.

2.56 SEVERABILITY AND SURVIVAL

If any term, condition or provision herein or incorporated by reference is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of the Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of the Contract, shall survive termination of the Contract.

2.57 NO CITY LIABILITY

Neither the City, its officials, staff, agents, employees, representatives, or consultants will be liable for any claims or damages resulting from any aspect of this procurement process.

2.58 SIGNATURES

A signed copy of Submittals, Contract Documents, including but not limited to contract amendments, contract exhibits, task orders, statements of work and other such Contract related documents, delivered by email or other means of electronic transmission including by using a third party service, which service is provided primarily for the electronic execution of electronic records, shall be deemed to have the same legal effect as delivery of an original signed copy.

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Attachment F
Draft Insurance Requirements

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Alder Unit 11 Rebuild

CITY OF TACOMA INSURANCE REQUIREMENTS

The Design-Builder (Design-Builder) shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the City of Tacoma (City) shall not be deemed or construed to have assessed the risk that may be applicable to Design-Builder under this Contract. Design-Builder 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 Design-Builder and to Subcontractor(s) and Subconsultant(s) of every tier (collectively "Subcontractors") performing services or activities pursuant to the terms of this Contract. Design-Builder acknowledges and agrees to the following insurance requirements applicable to Design-Builder and Design-Builder's Subcontractor(s):

- 1.1. City 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. The insurance must be written by companies licensed 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.
- 1.3. Design-Builder 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. Policies of Insurance, *such as Commercial General Liability or Commercial Auto Liability or Marine General Liability or Aircraft General liability or Excess Liability*, required under this Contract that name City as Additional Insured shall:
 - 1.4.1. Be considered primary and non-contributory for all claims.
 - 1.4.2. Contain a "Severability of Insureds", "Separation of Interest", or "Cross Liability" provision and a "Waiver of Subrogation" clause in favor of City.
- 1.5. A Waiver of Subrogation in favor of City for General Liability and Automobile Liability.
- 1.6. 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.
- 1.7. Insurance policy(ies) shall be written on an "occurrence" form, except for Professional Liability/Errors and Omissions, Pollution Liability, and Cyber/Privacy and Security.
- 1.8. If coverage is approved and purchased on a "Claims-Made" basis, Design-Builder warrants continuation of coverage, either through policy renewals or by the purchase of an extended reporting period endorsement as set forth below.
- 1.9. Design-Builder shall provide City notice of any cancellation or non-renewal of this required insurance within 30 calendar days.
- 1.10. Design-Builder shall not begin work under the Contract until the required insurance has been obtained and approved by City.
- 1.11. Design-Builder 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 may,



Alder Unit 11 Rebuild

CITY OF TACOMA INSURANCE REQUIREMENTS

after giving five (5) business day notice to Design-Builder 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 by Design-Builder upon demand, or at the sole discretion of City, offset against funds due Design-Builder from City.

- 1.12. Design-Builder shall be responsible for all premiums, deductibles and self-insured retentions. All deductibles and self-insured retained limits shall be shown on the Certificates of Insurance. Any deductible or self-insured retained limits in excess of Ten Thousand Dollars (\$10,000) must be approved by City Risk Management Division.
- 1.13. Insurance coverages specified in this Contract are not intended and will not be interpreted to limit the responsibility or liability of Design-Builder or Subcontractor(s).
- 1.14. City reserves the right to review insurance requirements during any term of the Contract and to require that Design-Builder make reasonable adjustments when the scope of services has been expanded.
- 1.15. 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 to Design-Builder.
- 1.16. City, including its officers, elected officials, employees, agents, and authorized volunteers, and any other entities, as required by the Contract, shall be named as additional insured(s) by endorsement for all liability insurance policies set forth below. No specific person or department should be identified as the additional insured.
- 1.17. Design-Builder shall deliver a Certificate of Insurance for each policy of insurance meeting the requirements set forth herein when Design-Builder delivers the signed Contract for the work to City. Design-Builder shall deliver 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.
- 1.18. Failure by City to identify a deficiency in the insurance documentation provided by Design-Builder or failure of City to demand verification of coverage or compliance by Design-Builder with these insurance requirements shall not be construed as a waiver of Design-Builder's obligation to maintain such insurance.
- 1.19. Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

2. SUBCONTRACTORS

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

3. 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 Design-Builder from liability in excess of such limits.

3.1. Commercial General Liability (CGL) Insurance

The CGL insurance policy must provide limits not less than Two Million Dollars (\$2,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate.



Alder Unit 11 Rebuild

CITY OF TACOMA INSURANCE REQUIREMENTS

The CGL policy shall be written on an Insurance Services Office (ISO) form CG 00 01 (04-13) or its equivalent. Products and Completed Operations shall be maintained for a period of one year following final acceptance of the work. The CGL policy shall be endorsed to include:

- 3.1.1 A per project aggregate policy limit.
- 3.1.2 Contractual Liability-Railroad using ISO form CG 24 17 (10-01) or equivalent if Design-Builder is performing work within fifty (50) feet of a City railroad right of way.
- 3.1.3 City as additional insured using ISO form endorsements CG 20 10 (04-13) and CG 20 37 (04-13) or equivalent for ongoing and completed operations, or using ISO form endorsement CG 20 26 (04-13) or equivalent for Facility Use Agreements. Neither additional insured provisions within an insurance policy form, nor blanket additional insured endorsements will be accepted in lieu of the endorsements specified herein.

3.2 Commercial Automobile Liability (CAL) Insurance

Design-Builder shall obtain and keep in force during the term of the Contract, a policy of CAL insurance coverage, providing bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles.

Design-Builder must also maintain an MCS 90 endorsement or equivalent and a CA 9948 endorsement or equivalent if "Pollutants" are to be transported. CAL policies must provide limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage. Must use ISO form CA 0001 or equivalent.

3.3 Workers' Compensation

Design-Builder 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.

3.4 Employers' Liability (EL) (Stop-Gap) Insurance

Design-Builder shall maintain EL 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.

3.5 Professional Liability Insurance (PLI) or Errors and Omissions (E&O)

3.5.1 Design-Builder and/or its subcontractor shall maintain PLI or E&O covering acts, errors and omissions arising out of the professional services under this contract. Such policy must provide minimum limits of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate. If the policy limit includes the payment of claims or defense costs, from the policy limit, the per claim limit shall be Two Million Dollars (\$2,000,000). If the scope of such design-related professional services includes work related to pollution conditions, the PLI policy shall include Pollution Liability coverage. If provided on a "claims-made" basis, such coverage shall be maintained by policy renewals or an extended reporting period endorsement for not less than three years following the end of the Contract.

3.5.2 The Design-Builder's policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-Builder's valid and collectible commercial general liability/umbrella excess liability



Alder Unit 11 Rebuild

CITY OF TACOMA INSURANCE REQUIREMENTS

policies. Notwithstanding the above, a Design-Builder's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures. Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed. Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-Builder.

3.5.3 The policy must provide coverage for damages resulting from delays, including delays in project completion, and cost overruns that result from the rendering or failure to render professional services.

3.5.4 If any portion of the design or other professional service is to be performed by any person or entity other than Design-Builder then it is the responsibility of Design-Builder to ensure that person or entity provide Design-Builder with evidence of insurance to comport with this Exhibit.

3.6 Excess or Umbrella Liability (UL) Insurance

Design-Builder shall provide Excess or UL coverage at limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate. This coverage shall apply, at a minimum, in excess of primary underlying Commercial General Liability, Employer's Liability, Marine General Liability, Protection and Indemnity, and Automobile Liability if required herein.

3.7 Pollution Liability (PL) Insurance

Design-Builder shall procure and maintain a PL or Environmental Liability policy providing coverage, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage shall provide both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage City damage claims for loss arising out of Design-Builder's work with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate. This policy shall include Environmental Resource Damage coverage.

Such insurance may be provided on an "occurrence" or "claims-made" basis. If such coverage is provided on a "claims-made" basis, the following additional conditions must be met:

3.7.1 The policy shall include coverage for Hazardous Substance Removal.

3.7.2 The policy must contain no retroactive date, or the retroactive date must precede the commencement date of this Contract.

3.7.3 The extended reporting period (tail) must be purchased to cover a minimum of six (6) years beyond completion of work.

3.8 Commercial Property (CP) Insurance

Design-Builder shall provide CP for loss or damage to any and all equipment owned by City while in the care, custody, or control of Design-Builder, Subcontractors, or their agents. The coverage shall be provided on an ISO special form Causes of Loss form or equivalent and shall provide full replacement cost coverage. The deductible shall not exceed Two Thousand Five Hundred Dollars (\$2,500). Design-Builder shall be responsible for paying the deductible for the applicable coverage.

3.9 Installation Floater Insurance (IFI)

Design-Builder shall maintain in force during the term of this Contract, at its own expense, an IF insurance covering Design-Builder's labor, materials, and equipment to be used for completion of the work performed under this Contract against all risks of direct physical loss,



Alder Unit 11 Rebuild

CITY OF TACOMA INSURANCE REQUIREMENTS

excluding earthquake and flood, for an amount equal to the full amount of the Contract improvements.

3.10 Builder's Risk (BR) Insurance

Design-Builder shall maintain during the term of the Contract and until final acceptance of the work by City, a policy of BR insurance providing coverage for all-risk of physical injury to all structures to be constructed according to the Contract. City shall be included as a named insured (not named as additional insured) on the policy. BR insurance shall:

- 3.10.1 Be on an ISO special form Causes of Loss form or equivalent and shall insure against the perils flood, earthquake, theft, vandalism, malicious mischief, and collapse.
- 3.10.2 Include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site.
- 3.10.3 Be written in the amount of the completed value of the structures, with no coinsurance provisions exposure on the part of Design-Builder or City.
- 3.10.4 Have a deductible of no more than Five Thousand Dollars (\$5,000) for each occurrence, the payment of which will be the responsibility of Design-Builder. Any increased deductibles accepted by City will remain the responsibility of Design-Builder.
- 3.10.5 The policy shall contain a Waiver of Subrogation provision whereby each insured waives their subrogation rights to the extent the loss is covered by this insurance.
- 3.10.6 The policy shall grant permission to occupy, allowing the building or structure to be partially occupied prior to completion, without detrimental effect to the coverage provided.
- 3.10.7 The policy shall include coverage for the testing and startup of the building's operating systems.
- 3.10.8 The policy shall include coverage for City's loss of use or business interruption arising out of a covered loss which delays completion.
- 3.10.9 The policy shall include resultant damage coverage for loss due to faulty workmanship and defective material.

Design-Builder and City 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 BR insurance or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

3.11 Inland Marine (Cargo) Insurance

Design-Builder shall procure and maintain Cargo insurance. Coverage shall protect the property from all risk of injury, and coverage shall be in an amount of the full replacement cost of the property, with no coinsurance exposure. Any applicable deductible shall not exceed Five Thousand Dollars (\$5,000).

3.12 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. The costs of such necessary and appropriate insurance coverage shall be borne by Design-Builder.

4. DESIGN-BUILDER

As used herein, "Design-Builder" shall be the Supplier(s) entering a Contract with City, whether designated as a Supplier, Design-Builder, Vendor, Proposer, Bidder, Respondent, Seller, Merchant,



Alder Unit 11 Rebuild CITY OF TACOMA INSURANCE REQUIREMENTS

Service Provider, or otherwise.