



City of Tacoma, WA

CITY OF TACOMA / TACOMA POWER / POWER GENERATION

REQUEST FOR PROPOSAL

**CONSULTING SERVICES FOR FIVE YEAR INSPECTION AND
SAFETY REPORTS**

SPECIFICATION NO. PG21-0493F

**COWLITZ, CUSHMAN, NISQUALLY, AND WYNOOCHEE
HYDROELECTRIC PROJECTS**



City of Tacoma /Tacoma Power / Power Generation

REQUEST FOR PROPOSALS PG21-0493F Consulting Services for 5-Year Inspection and Safety Reports

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, August 03, 2021

Submittal Delivery: Sealed submittals will be received as follows:

By Email:

bids@cityoftacoma.org

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

Bid Opening: Held virtually each Tuesday at 11AM. Attend [via this link](#) or call 1 (253) 215 8782. Submittals in response to a RFP will be recorded as received. As soon as possible, after 1:00 PM, on the day of submittal deadline, preliminary results will be posted to www.TacomaPurchasing.org.

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

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

Pre-Proposal Meeting: A pre-proposal meeting will not be held.

Project Scope: Contract with engineering consultants to perform FERC required 5-year inspections and safety reports for the Cowlitz, Cushman, Nisqually, and Wynoochee Hydroelectric Projects.

Estimate: \$600,000 for initial 5 year period, and an additional \$700,000 for optional 5 year period for a total of \$1,300,000.

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

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

Federal Title VI Information:

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

Additional Information: Requests for information regarding the specifications may be obtained by contacting Seth Hartz, Senior Buyer by email to shartz@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.

Table of Contents

SUBMITTAL CHECK LIST	5
1. BACKGROUND	6
2. MINIMUM REQUIREMENTS	6
3. SUMMARY OF SCOPE OF SERVICES AND DELIVERABLES.....	6
4. CONTRACT TERM.....	13
5. CALENDAR OF EVENTS	13
6. INQUIRIES	14
7. PRE-PROPOSAL MEETING.....	14
8. DISCLAIMER.....	14
9. EVALUATION CRITERIA.....	14
10. INTERVIEWS / ORAL PRESENTATIONS.....	14
11. RESPONSIVENESS	15
12. CONTENT TO BE SUBMITTED – This section represents 100% of the possible scoring criteria.....	15
13. ACCEPTANCE / REJECTION OF SUBMITTALS.....	17
14. ACCEPTANCE OF SUBMITTAL CONTENTS.....	18
15. CONTRACT OBLIGATION.....	18
16. STANDARD TERMS AND CONDITIONS.....	18
17. INSURANCE REQUIREMENTS.....	18
18. PAID LEAVE	18
19. PARTNERSHIPS	18
20. COMMITMENT OF FIRM KEY PERSONNEL	19
21. AWARD.....	19
22. ENVIRONMENTALLY PREFERABLE PROCUREMENT	19
23. EQUITY IN CONTRACTING	20
24. PROPRIETARY OR CONFIDENTIAL INFORMATION.....	20
25. ADDENDUMS	20

Table of Contents (Continued)

Appendix A

Signature Page

Request for Additional Information Form

Appendix B

Part 12D Safety Inspection Report Outline

Appendix C

Questions – Request for Proposals

Dam Summary Sheets

Appendix D

Sample Services Agreement


City of Tacoma Standard Terms and Conditions

City of Tacoma Insurance Requirements

SUBMITTAL CHECK LIST

This checklist identifies items to be included with your submittal. Any submittal received without these required items may be deemed non-responsive and not be considered for award.

Submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposal page.

The following items make up your submittal package:	
One electronic copy of you complete submittal package	
Signature Page (Appendix A)	
Content To Be Submitted in Section 12.1 through 12.10	
Request for Proposals Questions (Appendix C)	
After award, the following documents will be executed:	
Services Contract	
Certificate of Insurance and related endorsements if required	
Verification of Washington business license (Standard Terms and Conditions section 1.05.A – Appendix D)	
City of Tacoma business license, if applicable (Standard Terms and Conditions section 1.05.B – Appendix D)	

1. BACKGROUND

The City of Tacoma (City), Department of Public Utilities, Light Division (dba Tacoma Power), is required by Federal Energy Regulatory Commission (FERC) to submit a Part 12 D, Safety Inspection Report of its licensed hydroelectric projects once every five (5) years. These inspections must be conducted by an independent consultant pursuant to the Code of Federal Regulations (CFR) 18, Chapter 1, Part 12.

Tacoma Power owns, operates, and maintains four (4) hydroelectric projects that require a Part 12 D inspection. Three (3) projects, Cowlitz, Cushman and Nisqually, consist of two (2) dams, associated powerhouses, and other appurtenances necessary for the generation of electricity. The fourth project, Wynoochee, only includes one (1) dam with a powerhouse and related appurtenances.

The Cushman and Wynoochee Projects must be inspected in 2021-2022 and the Nisqually and Cowlitz Projects will be inspected in 2022-2023. A schedule listing when the individual reports are due to the FERC is included in Section 8 – Work Schedule of this Request For Proposal (RFP)

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

The purpose of this RFP is to select a consultant or team of consultants to conduct the necessary inspections and prepare the required reports for all of Tacoma Power's hydroelectric projects. Our preference will be to only hire one consultant (team). Any person(s) or firm(s) certified as or qualified to become certified as an "Independent Consultant" by the FERC is invited to submit a proposal. The FERC certification indicates that the individuals have the experience, knowledge and abilities to perform the inspection.

It is the intention of the City that one or more consultants (team) selected from this RFP will be utilized to review and/or address follow-up issues and new requests from the FERC through 2026 when the next round of inspections will be scheduled. In accordance with the FERC's policy that Independent Consultants are able to perform two (2) consecutive inspections, the City retains the option to renew the contract resulting from this RFP for an additional five (5) year period if mutually agreeable by both parties.

Submittals and/or the selected Consultant(s) may be used for projects of similar size and complexity of scope at the sole discretion of the City for up to one year.

2. MINIMUM REQUIREMENTS

- 2.1** Must be certified as or qualified to become certified as an "Independent Consultant" by the FERC.

3. SUMMARY OF SCOPE OF SERVICES AND DELIVERABLES

It is the City's intent to select a consultant based on qualifications and abilities of the firm and key project individuals. The performance of the described tasks must be fully coordinated with

Tacoma Power employees once the scope and timing of each contract task is clarified and a Notice to Proceed is issued on that task.

When a consultant firm is selected under this RFP, representative from the firm and the contract manager at Tacoma Power will meet to prepare the final contract terms, the compensation to be provided, and will enter into an agreement for the work. The following provisions will apply:

Cost / Schedule Control: By the tenth (10th) of each month, a report detailing the work performed and the cost of the work for the previous month, along with a comparison to estimated expenditures and work progress shall be submitted. A Gantt Chart or other scheme will be utilized by the consultant to track the overall project schedule and costs.

Compensation: The overall contract and each Notice to Proceed / Task Authorization shall contain a not-to-exceed clause, which cannot be exceeded without written approval from Tacoma Power. All work shall be billed on a time and materials basis with rates agreed to in the contract provisions up to the maximum price. Maximum prices are intended, as caps to protect the City and are not to be treated as automatic billing rates for the various disciplines expected to be involved with this project and will be the basis for monthly billing.

Change Orders: Whenever it becomes apparent that a change in the scope of work is required, the consultant shall notify Tacoma Power and define the additional scope of work and estimated expenses prior to doing the work. The consultant and the City shall negotiate an agreement on the changed scope of work and issue an additional task authorization.

Sub-Consultants: Tacoma Power reserves the right to approve or reject any sub-consultant used to perform work under this RFP or to negotiate a contract with its preferred team of consultants.

Drawings: All new drawings created by the consultant or by the manufacturers shall be done electronically created using AutoCAD 2020 version. Drawings shall utilize Tacoma Power AutoCAD Drawing and Layering Standards which will be provided to the consultant should drawings be required. If the consultant is modifying an existing Tacoma Power drawing that is on AutoCAD, all modifications shall be made using the same criteria as new drawings.

3.1 Description of Licenced Projects

A. CUSHMAN PROJECT, FERC NO. 460

Cushman No. 1 Dam is a concrete arch structure with a 9.6-mile long reservoir. The powerhouse is connected to the dam by a 540-foot long concrete lined power tunnel. The dam was completed in 1926 and is located on the north fork of the Skokomish River near Hoodspport, Washington. A separate spillway structure was completed in 1990.

Cushman No. 2 Dam is a concrete arch structure with a 2-mile long reservoir. It is located on the north fork of the Skokomish River approximately two (2) miles downstream from Cushman No. 1 Dam and was completed in 1930. The powerhouse is connected to the reservoir by a 2.5-mile long, concrete lined power tunnel. The powerhouse is located adjacent to Hood Canal just north of Potlatch, Washington.

B. WYNOOCHEE PROJECT, FERC NO. 6842

Wynoochee Dam (Federal ID No. WA00302) is a 175-foot high concrete gravity dam with two earth fill embankment sections that impounds a 4.4-mile long reservoir. The dam was constructed in 1972 and a 1,300-foot long steel penstock leads to the powerhouse that was constructed in 1992. A low hazard, barrier dam with a fish trap facility downstream of the dam is also a part of the project.

The Cities of Tacoma and Aberdeen hold a joint license for the hydroelectric project. All operations and maintenance are under the control of the City of Tacoma.

C. NISQUALLY PROJECT, FERC NO. 1862

Alder Dam is a variable radius concrete arch structure with a 7-mile long reservoir. The powerhouse is located at the base of the dam, approximately 1.5 miles upstream from the LaGrande Dam on the Nisqually River. Both dams were completed in 1945.

LaGrande Dam is a concrete gravity structure with a 1.5-mile long reservoir. The reservoir is connected to the powerhouse through a 6,400-foot long, concrete lined power tunnel. The project is located on the Nisqually River near the communities of LaGrande and Elbe in Pierce County, Washington.

D. COWLITZ PROJECT, FERC NO. 2016

Mossyrock Dam is a 606-foot high, double curvature concrete arch dam creating a 23-mile-long reservoir. The powerhouse is located at the base of the dam and the project was completed in 1968. It is located thirteen (13) miles upstream of Mayfield Dam near the community of Mossyrock, Washington.

Mayfield Dam is a concrete arch dam with a 13-mile long reservoir and was completed in 1963. The concrete lined power tunnel is 860-feet long terminating in the forebay which is connected to the powerhouse by four (4) steel penstocks. It is located at river mile 52 on the Cowlitz River in Lewis County. A low hazard, barrier dam with a fish trap facility is located downstream of the dam and is also part of the project.

Swofford Pond is a 240 acre pond located adjacent to the primary reservoir, Riffe Lake and is considered part of the project. It was once used for steelhead rearing.

- E. NOTE: Additional information on the projects, including location maps, project drawings, and statistical data can be found in Appendix A. For security reasons, only a summary page listing the individual pages and drawings is included with this Request for Proposal. The information will only be provided to qualified consultants upon formal request. Please contact Seth Hartz, shartz@cityoftacoma.org for an electronic copy of this information.

3.2 Consultant Duties

The list of duties for the independent consultant may include, but not be limited to, the following:

- A. Review the previous reports on the safety of each development.
- B. Perform a physical field inspection of each development to include the dam, powerhouse, plunge pool, power tunnel, reservoir, penstocks, etc., excluding transmission and transformation facilities and generation equipment.
- C. Review monitoring data previously collected at each facility as provided by the City. Include significant monitoring data in the safety report.
- D. Review the project's safety, maintenance, operation, inspection and observation programs.
- E. Prepare a separate safety report per the FERC Regulations for each dam for submittal by the City. This report shall include all requirements as outlined in the most recent version of the Part 12 - Safety of Water Power Projects and Projects Works, Subpart D - Inspection by Independent Consultant, Code of Federal Regulations (CFR), 18 CFR, 12.30 to 12.39.
- F. A sample of the outline that will be followed by the selected consultant in the preparation of the required reports included as Appendix B – Part 12 Safety Inspection Report Outline of this RFP.
- G. A review of ongoing analysis of various components of each of the projects. In general, these ongoing studies concern structural analysis, seismic evaluation or other dam safety issues. They have been highlighted to the FERC as ongoing work and may require independent review before being finalized. The following is a list of known activities that may require special review:
 - a. Cushman Project:
 - i. Review and comment on the ongoing seismic hazard analysis for the project.

- ii. Thoroughly inspect and comment on the depressions observed along the left abutment of Cushman No. 1 Spillway. The origin and importance if any depressions or seepage should be assessed.
- iii. Review and assess the caution and action levels for Cushman Dam No. 1 spillway embankment Piezometers PE-10A and PE-20 and the acceptance of minor excursions since the core wall extension (completed 2012).
- iv. Review and assess the adequacy of the current seepage monitoring practices for the right abutment of Cushman Dam No. 2.
- v. Review and comment on the Cushman 2 Power tunnel grouting program.
- vi. Review and assess the lift lines on the right gravity section of Cushman 2 Dam.
- vii. Review and comment on the most recent 10-Year Detailed Spillway Gate Inspection (planned 2021).

b. Wynoochee Project:

- i. Provide an assessment of the risk reduction measures as well as the reasonableness and completeness of the failure mode scenarios.
- ii. Review and assess the threshold and action (Caution and Critical) levels.
- iii. Provide an assessment of the sluice gates.
- iv. Provide a statement of adequacy and reliability of the remote monitoring, communication and control system and the emergency response/reliable access routes for the staff.
- v. Provide a discussion on any geologic conditions that could impact dam safety performance, including any conditions that are important for monitoring the project.
- vi. Ensure that Section 7.9 provides information on the category of the gates and appropriate requirements, date and brief conclusion of the most recent detailed gate inspection and the date and brief conclusion of the most recent test operation.
- vii. Review and respond to various comments in regard to the 2007, 2012 and 2017 PFMA reports.
- viii. Review and comment on the most recent 10-Year Detailed Spillway Gate Inspection (planned 2021).

- c. Nisqually Project:
 - i. Review and comment on the PSHA & DSHA analysis.
 - ii. Review and comment on the most recent 10-Year Detailed Spillway Gate Inspection (planned 2021).
- d. Cowlitz Project:
 - i. Review of Tacoma Power's on-going evaluation of the post-tension anchors in the Mayfield Penstock slope.
 - ii. Review and comment on the current seismic analysis for the project.
 - iii. Review and comment on the most recent 10-Year Detailed Spillway Gate Inspection (planned 2021).
 - iv. Review in relationship to the PFMA's the ongoing work of Mossyrock BOC in regard to the voluntary curtailment of Riffe Lake.
- H. Review and comment on the Potential Failure Mode Analysis (PFMA) for each project and the revisions made since the last Part 12 D Report.
- I. Be available on an "as-needed" basis to provide technical and professional assistance in evaluating potential future dam safety issues over the six (6) year period, 2021 - 2026, contemplated under this contract. Some inspection activities may occur as early as 2021, per this contract.
- J. Be readily available for emergencies and provide home telephone numbers of appropriate staff.
- K. Other professional services relating to dam safety. Scope of Work to be negotiated between Consultant and the City billed at the rates in Exhibit D – City of Tacoma Standard Consultant Contract.

3.3 Key Project Field Inspection Time Estimates

A. Cushman Project, FERC No. 460

It is expected the field inspection may take two (2) days. If necessary, the Cushman No. 1 and Cushman No. 2 power tunnels can each be dewatered (one per day) for eight (8) hours, 8:00 A.M. to 4:00 P.M. in late March or early April of each year due to power generation requirements. However, TPU prefers not to dewater the power tunnels unless there is an explicit concern. The last inspection of the Cushman No. 1 power tunnel was in July 2020 and the Cushman No. 2 power tunnel was also inspected in July 2020. However, TPU strongly prefers not to dewater the power tunnel unless there is an explicit concern.

B. Wynoochee Project, FERC No. 6842

It is expected the field inspection will take one (1) day.

C. Nisqually Project, FERC No. 1862

It is expected the field inspection may take two (2) days. If necessary, the LaGrande power tunnel can be dewatered for eight (8) hours, 8:00 A.M. to 4:00 P.M. between November 15th and December 15th of each year due to power generation requirements or to coincide with planned turbine inlet valve work (also Fall 2021/2022). The last inspection of the LaGrande power tunnel was in 2013. However, TPU strongly prefers not to dewater the power tunnel unless there is an explicit concern.

D. Cowlitz Project, FERC No. 2016

It is expected that the field inspection may take two (2) days. If necessary, the Mayfield power tunnel can be dewatered for eight (8) hours, 8:00 A.M. to 4:00 P.M. in the spring to coincide with a runoff of each year due to power generation requirements. However, TPU strongly prefers not to dewater the power tunnel unless there is an explicit concern.

3.4 Work Schedule

A. An electronic copy of the draft report for each project shall be submitted to Tacoma Power 60 days before finalizing.

B. All final reports are to be dated in accordance with the schedule detailed below.

C. Cushman Project:

- | | |
|------------------------------------|---------------|
| a. Draft Report to Tacoma Power | April 1, 2022 |
| b. City Comments to Consultant | May 1, 2022 |
| c. Final Reports to Tacoma Power | May 15, 2022 |
| d. Final Reports Submitted to FERC | June 1, 2022 |

D. Wynoochee Project:

- | | |
|----------------------------------|-------------------|
| a. Draft Report to Tacoma Power | October 1, 2022 |
| b. City Comments to Consultant | November 1, 2022 |
| c. Final Reports to Tacoma Power | November 15, 2022 |

- d. Final Reports Submitted to FERC December 1, 2022
- E. Nisqually Project:
 - a. Draft Report to Tacoma Power April 1, 2023
 - b. City Comments to Consultant May 1, 2023
 - c. Final Reports to Tacoma Power May 15, 2023
 - d. Final Reports Submitted to FERC June 1, 2023
- F. Cowlitz Project:
 - a. Draft Report to Tacoma Power October 1, 2023
 - b. City Comments to Consultant November 1, 2023
 - c. Final Reports to Tacoma Power November 15, 2023
 - d. Final Reports Submitted to FERC December 1, 2023

4. CONTRACT TERM

The contract will be for a five year period with the option to renew the contract for one additional five year term if mutually agreeable by both parties. The City reserves the right to cancel the contract for any reason, by written notice, as stipulated in the contract.

5. CALENDAR OF EVENTS

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

Contract may be issued after Public Utility Board approval.

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

Publish and issue RFP:	7/12/2021
Pre-Submittal Questions:	7/19/2021
Response to Questions: on or about:	7/22/2021
Submittal Due Date:	8/3/2021
Submittal Evaluated:	8/10/2021
Interviews/presentations, on or about:	8/17/2021
Award Recommendation, on or about:	8/20/2021
FERC Approval of Consultant	August 2021
Public Utility Board/City Council Approval, on or about:	September 2021

6. INQUIRIES

Questions and requests for clarifications of the specifications may be submitted in writing by 3:00 p.m., Pacific Time, July 19, 2021, to Seth Hartz, Senior Buyer, Purchasing Division, via email to shartz@cityoftacoma.org. Questions will not be accepted after this date and time.

- 6.1** Written answers to all questions submitted will be posted on the Purchasing website at www.TacomaPurchasing.org on or about July 22, 2021.
- 6.2** The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential, and not to respond to any question. The answers are not typically considered an addendum.
- 6.3** Questions marked confidential will not be answered or included.
- 6.4** The City will not be responsible for unsuccessful submittal of questions.

7. PRE-PROPOSAL MEETING

- 7.1** No pre-proposal meeting will be held; however, questions and request for clarifications of the specifications may be submitted as stated in the [inquiries](#) section.

8. DISCLAIMER

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

9. EVALUATION CRITERIA

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

- 9.1** The SAC may select one or more respondents to provide the services required.
- 9.2** The SAC may use references to clarify information in the submittals and interviews, if conducted, which may affect the rating. The City reserves the right to contact references other than those included in the submittal.

10. INTERVIEWS / ORAL PRESENTATIONS

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

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

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

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

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

11. RESPONSIVENESS

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

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

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

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

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

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

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

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

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

Criteria	Max Points
Qualifications / Experience Independent Consultant	40
Qualifications / Experience of Firm	10
Project Timeline	10
Company Location and Ability to Respond to Emergencies	10
Estimated Number of Staff Hours	5
Responses to Questions in Appendix C	15
Sustainability	5
Equity in Contracting	5
Total	100

12.1 Qualifications / Experience of Independent Consultant – 40 points

Describe independent consultant experience with similar projects, include current references (name, position title, phone number, and email address) for each project. Please also include resumes. Resumes and experience of key support staff identified to be committed to working on these inspections. Only submit resumes for those individuals who would be directly involved in this project.

12.2 Qualifications / Experience of Firm – 10 points

Firms past experience with similar projects or past Part 12 inspections. Describe your companies ability to provide the services.

12.3 Project Timeline– 10 points

Describe your ability to meet the schedule and financial guarantee as indicated in Section 3.4 – Work Schedule.

12.4 Company Location and Ability to respond to Emergencies – 10 points

Describe your companies ability to respond to emergencies and general inquiries.

12.5 Estimated Number of Staff Hours – 5 points

Please prepare a billing schedule showing the various staff (for example, engineer, technician, inspector, etc.) hour required to complete tasks as outlined in the consultants proposal rates for each staff level to complete inspections and reports broken down by hydro project.

12.6 Responses to Questions in Appendix C – 15 points

Provide responses to specific questions that are included in Appendix C – Questions – Request for Proposals.

12.7 Sustainability – 5 points

Provide information on your company's commitment to the environment. Include your sustainability statement and current practices.

12.8 Equity in Contracting – 5 points

Is your firm, or the firm you are partnering with, certified with Washington State for any of the below categories (select all that apply)? Selecting any item below will award all 5 points for this category.

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

12.9 Credit Card Acceptance – 0 points

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

12.10 Contract Exceptions – 0 points

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

13. ACCEPTANCE / REJECTION OF SUBMITTALS

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

costs or damages for the cancellation of an award. The Respondent assumes the sole risk and responsibility for all expenses connected with the preparation of this submittal.

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

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

14. ACCEPTANCE OF SUBMITTAL CONTENTS

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

15. CONTRACT OBLIGATION

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

16. STANDARD TERMS AND CONDITIONS

City of Tacoma Standard Terms and Conditions apply.

17. INSURANCE REQUIREMENTS

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

18. PAID LEAVE

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

19. PARTNERSHIPS

The City will allow firms to partner in order to respond to this RFP. Respondents may team under a Prime Respondent's submittal in order to provide responses to all sections in a single submission; however, each Respondent's participation must be clearly delineated by section. The Prime Respondent will be considered the responding vendor and the responsible party at contract award. All contract negotiations will be conducted only with the Prime Respondent. All

contract payments will be made only to the Prime Respondent. Any agreements between the Prime Respondent and other companies will not be a part of the agreement between the City and the Prime Respondent. The City reserves the right to select more than one Prime Respondent.

20. COMMITMENT OF FIRM KEY PERSONNEL

The Respondent agrees that key personnel identified in its submittal or during contract negotiations as committed to this project will, in fact, be the key personnel to perform during the life of this contract. Should key personnel become unavailable for any reason, the selected Respondent shall provide suitable replacement personnel, subject to the approval of the City and the FERC. Substantial organizational or personnel changes within the agency are expected to be communicated immediately. Failure to do so could result in cancellation of the Contract.

21. AWARD

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

Once a finalist (or finalists) has been selected by the Selection Advisory Committee, contract negotiations with that finalist will begin, and if a contract is successfully negotiated, it will, if required, be submitted for final approval by the Public Utility Board and/or City Council. If a contract cannot be negotiated, the City reserves the right to begin contract negotiations with other respondents.

22. ENVIRONMENTALLY PREFERABLE PROCUREMENT

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

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

- Reduction of pollutant releases
- Toxicity of materials used
- Waste generation
- Greenhouse gas emissions, including transportation of materials and services
- Recycle content
- Comprehensive energy conservation measures
- Waste manage reduction plans

- Potential impact on human health and the environment

23. EQUITY IN CONTRACTING

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

24. PROPRIETARY OR CONFIDENTIAL INFORMATION

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

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

All pages or submittals with structural information about the individual dams shall be labeled CEII in accordance with the FERC guidelines.

25. ADDENDUMS

In the event it becomes necessary to revise any part of this RFP, an addendum will be issued and posted on the website www.TacomaPurchasing.org and notification will be sent to the registered bid holders. Failure to acknowledge addendum(s) on the required Signature Page may result in a submittal being deemed non-responsive by the City.

APPENDIX A

Signature Page

Request for Additional Information Form

SIGNATURE PAGE

CITY OF TACOMA TACOMA POWER / POWER GENERATION

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

REQUEST FOR PROPOSALS SPECIFICATION NO. PG21-0493F CONSULTING SERVICES FOR 5-YEAR INSPECTION & SAFETY REPORTS

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.)

E-Mail Address for Communications

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

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.

APPENDIX A
REQUEST FOR ADDITIONAL INFORMATION FORM

Drawings and statistics for the individual dams are available to qualified consultants upon written request (using form provided). Please email the request to Seth Hartz, Senior Buyer, shartz@cityoftacoma.org, for an electronic copy of this information.

PROJECT: **Request for Proposal PG21-0493F**
Consulting Services for 5-Year Inspection & Safety Reports

(Specification/Name/Contract No., if applicable)

We hereby request the additional bid documentation for this project and shall inform our employees, agents, and subcontractors of the confidentiality obligations under this proposal and instruct them so as to ensure such obligations are met per the following:

Consultant acknowledges that unauthorized disclosure of the drawings and summary information may cause substantial economic loss or harm to the City. Except for disclosure of information and documents to Consultant's employees, agents, or subcontractors who have a substantial need to know such information in connection with Consultant's performance of obligations under this RFP and subsequent Contract, the Consultant shall not without prior written authorization by the City allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this RFP.

Is engineer currently approved as an Independent Consultant by the Federal Energy Regulatory Commission (FERC)?

☐ Yes ☐ No

If not currently approved by the FERC as an Independent Consultant, please attach a copy of the resume for the engineer who is qualified and will be requesting Independent Consultant certification from the FERC.

Company Name: _____

Address: _____

City, State, Zip _____

Engineer's Name: _____

Engineer's Title: _____

Engineer's Signature: _____

Phone No. _____ E-mail: _____

APPENDIX B

Part 12D Safety Inspection Report Outline

Appendix B

FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Dam Safety and Inspections - Portland Regional Office
805 SW Broadway, Suite 550
Portland, Oregon 97205
(503) 552-2700

12/21/2020

In reply refer to:
P-460-WA

VIA Electronic Mail

Mr. Chris Mattson
Generation Manager
Tacoma Public Utilities

Subject: Twelfth Independent Consultant's Safety Inspection Report for the Cushman Hydroelectric Project due by June 1, 2022 with revised PFMA requirements.

Dear Mr. Mattson:

Three copies of the Twelfth Independent Consultant's Safety Inspection Report (Report) for the Cushman Hydroelectric Project, FERC No. 460, are to be submitted to this office by June 1, 2022. Code of Federal Regulations (CFR) 18, Part 12, Subpart D, of the Commission's regulations prescribes the scope of the Independent Consultant (IC) evaluations and field inspection, as well as the information that must be contained in the Report. An electronic version of the report in a searchable format should also be included with the submission. **To ensure that the Report will not be rejected you are encouraged to take time and review these responsibilities and our guidance as some requirements have changed.** Enclosure 1 is a bullet list highlighting the changes in the Part 12D process discussed in this letter. Your responsibilities as the Licensee, as well as those for your IC, are discussed in more detail in Enclosure 2; and the Report outline to be used by the IC is included as Enclosure 3. We recently posted updates to Chapter 14, Appendices H, J, K, and L, and encourage you to review these updates and Engineering Guidelines located at:

<https://www.ferc.gov/industries-data/hydropower>

<https://www.ferc.gov/industries-data/hydropower/dam-safety-and-inspections/engineering-guidelines-evaluation-hydropower>

We will be calling you two times during the process of developing a Part 12D report to go over our expectations for the Part 12D report and that of your Independent Consultant (IC). The first call will occur shortly after you receive this letter. Having this call early in the Part12D process should help you frame the scope of work entered into with your IC. The second call will occur at least 90 days before the PFMA review discussed below and will be conducted with your IC also participating.

On January 5, 2018, the Independent Forensic Team (IFT) released their final report on the Oroville Dam Spillway Incident. The IFT Report highlights several issues, one in particular being that the Part 12D inspection program is meant to ensure that there is a “periodic comprehensive review of original design and construction and subsequent performance.” We must all strive to avoid over-relying on the reputation and expertise of previous consultants to justify their assessment of project safety and instead require that the current consultant provide their own critical independent review. This review must also take great care to avoid accepting observed anomalies as normal. Critical review should include the original design and construction documentation and an assessment of any necessary investigation, analysis or remediation.

You are reminded that failure to conform to the requirements of the Part 12D process will result in rejection of the report.

Potential Failure Modes Analysis Update Requirements

Section 1 of your Supporting Technical Information (STI) document should be a PFMA report completed during a previous submittal under the Part 12D process. During a recent FERC-wide reevaluation of PFMs, we discovered that many still do not meet the expectations that we have for complete PFMs. You should be aware that it is likely that many of the existing PFM’s may require revision to more fully describe the actual mode of failure. Each PFM must have a specific loading condition, mode of failure, defined consequence to public safety, and category. To that end, we are requiring you to set up a telephone conference or a face-to-face meeting at least 90 days prior to the PFMA review with your independent consultant to discuss our expectations for the PFMA review. During this meeting, we will review the level of effort required for the PFMA review, as discussed in our first telephone call. This effort could range from simply reviewing the PFMA Report, to performing a complete revision of the PFMA process overseen by a Facilitator. Enclosure 4 provides an outline for additional topics to be discussed during the pre-meeting. It is acceptable to move the original PFMA report to the STI appendix and use a new report in Section 1 if our review of that report determines that it is acceptable. Our determination will include review for adequate references to all previous PFMA reports and cross-references for PFM number changes.

For more information on how to complete well-developed PFMs, please refer to the D2SI website at <https://www.ferc.gov/industries-data/hydropower/dam-safety-and-inspections/potential-failure-modes-pfms>.

The Oroville IFT Report also identified shortcomings with the current PFMA process, noting that it focuses too heavily on uncontrolled release of the reservoir, does not adequately consider interaction of project features, and too often does not reconsider PFMs that have been dismissed previously. Your PFMA review should take these findings into account as part of a complete review.

Project Features

Commission Regulations require that the project works of a development subject to Part 12, Subpart D, of the Commission's Regulations be inspected and analyzed periodically by an IC. This includes all dams and all principal works of the development. If applicable, the IC's inspection should also include inspecting the spillway apron for undermining. The following dams and associated appurtenant water retaining structures require inspection at your project:

- Cushman Dam No. 1
- Cushman Dam No. 1 Spillway
- Cushman Dam No. 2

The following actions, which were either outstanding from previous Part 12 Reports, previously requested by FERC letter, or became apparent during our review of existing documents, will also need to be addressed by the IC in this Report:

1. The ongoing seismic hazard analysis for the project should be reviewed and commented on.
2. The area of observed depressions along the left abutment of Cushman No. 1 Spillway should be inspected thoroughly and the origin and importance if any depressions or seepage should be assessed.
3. The caution and action levels for Cushman Dam No. 1 spillway embankment Piezometers PE-10A and PE-20 and the acceptance of minor excursions since the core wall extension completed in 2012 should be reviewed and assessed.
4. The adequacy of the current seepage monitoring practices for the right abutment of Cushman Dam No. 2 should be reviewed and assessed.
5. The condition of the project intake tunnel should be reviewed.

IC Approval

You must obtain approval of your proposed IC(s) prior to the initiation of the field inspection. You should send three copies of your letter requesting approval of the IC (together with the proposed IC's detailed résumé) to:

Mr. David Capka, P.E., Director
Division of Dam Safety and Inspections
Federal Energy Regulatory Commission
Office of Energy Projects
888 First Street, N.E., Room 6N-01
Washington, D.C. 20426

One copy of the letter and resume should also be sent to this office. By regulation, the request for the approval of the IC and the resume are to be filed at least 60 days prior to the initiation of the safety inspection. In order to allow your IC adequate time to inspect your project and prepare the Report, we request that you submit the request letter and resume at least six months before the Report is due; that is, by **December 1, 2021**.

The first Report for newly constructed projects or projects where a major dam safety remediation has recently been completed may be done by the design engineer or an engineer from the design engineer's firm. The next Report must be completed by a different engineer not associated with either the design or construction firm. Subsequent Reports may be completed by an engineer associated with the design, construction, or remediation work. However, an engineer or engineers from the same firm will not be approved as the IC for more than two consecutive Reports for any project. We will be contacting you shortly after you receive this letter to coordinate a teleconference or meeting prior to selecting an IC. This meeting will serve to coordinate any outstanding issues, studies, discuss the condition of the existing PFMA, and otherwise gain an understanding of our expectations for the inspection. This will enable you to better develop a complete scope of work for the IC.

Once the IC has been approved, it is your responsibility to provide the IC with copies of, or access to, all project files well in advance of the field inspection. You should include file review in your scope of work and strongly encourage the IC to adequately prepare for the field inspection by adequately reviewing all the pertinent background information for the project in advance. Inadequate preparation of your IC may result in the need to reschedule the inspection until they are properly prepared to perform a thorough inspection.

Report

It is critically important that the IC review, evaluate, and comment on the appropriateness and current validity of all the previous analyses located in Section 8 of the STI. Section 7 of the Report should contain your IC's detailed assessment of the STI including the PFMA report. Acceptable technical criteria are prescribed in FERC's Engineering Guidelines. If needed, this publication can be downloaded from our website at:

<https://www.ferc.gov/industries-data/hydropower/dam-safety-and-inspections/engineering-guidelines-evaluation-hydropower>

The Report outline to be used by the IC is also included as Enclosure 3 and Enclosure 5 provides a copy of 18 CFR 12D.

Report Follow-Up

If the IC makes specific recommendations in the Report, Section 12.39 of CFR 18 requires you to submit to us, within 60 days of the date the Report is filed, your plan of action and schedule to satisfy these recommendations. It is also necessary to confirm your agreement with the IC's recommendations to continue any ongoing measures (e.g. annual settlement survey) specifically identified in the Report. Your plan of action may include any proposal, including taking no action, that you consider a preferable alternative to any corrective measures recommended by the IC in the Report. However, any proposed alternative must be supported by complete justification and detailed analysis and evaluation in support of that alternative.

Unresponsive Reports Will Be Returned

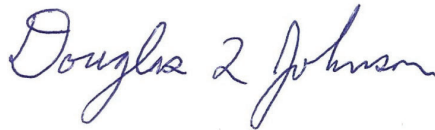
We have noted several instances lately where an IC did not make "*a clear statement that they have reviewed the pertinent analyses and evaluations along with the underlying assumptions and that they have concluded that the assumptions and methods of analysis or evaluation were appropriate for the structure, were applied correctly and are appropriate given current guidelines and the state of dam safety practice*" as is required by the Commission's Guidelines. A general statement is not acceptable. The Report should indicate in each section that this review and concurrence has been completed. Please ensure that the Report fulfills this requirement, as unresponsive Reports received by the D2SI will be returned for resubmittal.

The Commission's dam safety program is a cooperative process that includes the licensee, the IC, and the FERC. The most important of the three elements is the licensee, as they operate the dam, see the dam on a regular basis, and are responsible for the surveillance and monitoring plan used to determine if a potential failure mode is

developing. It is the licensee's responsibility to submit the IC's Report to the FERC and ensure that the Report meets the requirements of the Commission's Regulations and Guidelines before it is submitted. The Report is a FERC requirement and a valuable resource for you as the dam owner. Enclosure 2 provides a more complete discussion of the requirements of the Commission's Regulations and Guidelines.

If you have any questions regarding this letter or Enclosures, please do not hesitate to call me at 503-552-2700. Your support is critically important and I am available to discuss any concerns or comments that you may have.

Sincerely,

A handwritten signature in blue ink that reads "Douglas L. Johnson". The signature is written in a cursive, flowing style.

Douglas L. Johnson, P.E.
Regional Engineer

Enclosures:

1. Bullet list highlighting changes in responsibilities and guidance
2. Licensee and Independent Consultants Responsibilities
3. IC's Safety Inspection Report Outline
4. 90 Day Pre-Meeting Agenda Conference Call
5. 18 CFR 12D

Changes to Part 12D Process

- **Page 1, Paragraph 1** - An electronic version of the consultant's Part 12D report, in a searchable format, is required.
- **Page 1, Paragraph 1** - Chapter 14 of our Guidelines: Appendices H, J, K, and L have been updated and contain new requirements.
- **Page 2, Paragraph 1** - Two teleconferences with D2SI staff and management are required: 1) After you receive this letter, with your staff, to discuss our expectations of your consultant and help you develop the scope of work, and 2) At least 90 days before the Potential Failure Modes Analysis (PFMA) review, with your staff and consultant, to discuss our expectations for the PFMA review and documentation.
- **Page 2, Paragraph 4** - Note paragraph(s) summarizing specific deficiencies in initial PFMA or specific PFMs that need to be re-developed, and list of outstanding studies or items (**Page 3**) that need to be reviewed by and incorporated into the consultant's Part 12D report.
- **Page 5** – Unresponsive Reports will be returned

Reminder: The PFMA review and documentation must be thorough and complete. The consultant's Part 12D report must contain specific statements about their independent review and agreement with the analyses, evaluations, and assumptions described in the Supporting Technical Information (STI) document; and must confirm the analyses and evaluations meet current guidelines and are in accordance with current dam safety practice. *The Part 12D report will be rejected if all requirements are not met.*

- **Enclosure 3** – Revised Section 7 IC assessment outline

Revised Chapter 14, Appendix H, Section 7.0, IC assessment of STI document. Further described the responsibility of the IC to assess the contents of the STI and clarified items to consider when summarizing each section of the STI. Added example statements offered as general guidance for use by the IC when making a definitive statement regarding each section of the STI. PFMA review and documentation must be thorough and complete. The IC's report must contain specific statements about their independent review and agreement with the analyses, evaluations, and assumptions described.

<https://www.ferc.gov/engineering-guidelines-evaluation-hydropower-projects-14>

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Licensee and Independent Consultant Responsibilities

The FERC dam safety process encompasses three distinct and separate entities each with their own responsibility in assuring dam safety; the dam owner, the Independent Consultant, and the FERC Division of Dam Safety and Inspections (D2SI). The triad of dam owner, Independent Consultant, and D2SI was put in place to provide three independent assessments of a dam's suitability for safe and reliable operation.

First and foremost is the dam owner. The Federal Power Act, under Section 10, places full and complete liability for the safe operation of the project on the owner; 16 U.S.C. Section 803c states that:

“the licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain, and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. ***Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto***, constructed under the license and in no event shall the United States be liable therefore.”
(Emphasis added)

The owner is also liable under United States common law (see Legal Liability for Dam Failures, Denis Binder, 2009 and Liability for Water Control Structure Failure Due to Flooding, Edward A. Thomas, 2006).

The second entity, for dams which fall under the requirements of the 18CFR12D of the Commission's Regulations (Regulations – copy attached), is the Independent Consultant. The Regulations specify that dams that meet the requirements outlined in 18CFR12D be:

“... periodically inspected and evaluated by or under the responsibility and direction of at least one independent consultant, who may be a member of a consulting firm, to identify any actual or potential deficiencies, whether in the condition of those project works or in the quality or adequacy of project maintenance, surveillance, or methods of operation, that might endanger public safety.” (18CFR12.32)

The Consultant's report is submitted to the FERC by the licensee. It is the licensee's responsibility to assure that the report meets the requirements of the Commission's Regulations and Guidelines before it submitted to FERC. Although the report is required

by the FERC under the statutes noted above, the report is also a valuable resource for the dam owner, especially those that do not have the staff necessary to assure the safe and reliable operation of the dam.

The FERC is the third entity involved in assuring the safety of dams under Commission regulation. As the regulator, the FERC is responsible for assuring that the requirements of the Commission's Regulations and Guidelines are met and to check licensee's submissions for apparent errors or omissions. FERC's acceptance of a report is recognition that the report, at the time it was submitted, met the Commission's Engineering Guidelines. It does not imply that the report will continue to meet the Guidelines into the future as our Guidelines may change due to evolution in the practice of dam safety; loadings may change due to a better understanding of the seismic or hydrologic regime in which the dam is located, or deterioration of the dam itself.

Chapter 14 of the Commission's current Engineering Guidelines (Guidelines) requires the owner to prepare a Supporting Technical Information Document that is intended to include summaries of "all relevant reports on the safety of the development made by or written under the direction of Federal or state agencies, submitted under Commission regulations, or made by other consultants" related to the safety of the dam. Chapter 14 of the Guidelines also includes the outline for the Independent Consultant's Report. The outline requires

"in each section, where appropriate, the Independent Consultant shall make a clear statement that they have reviewed the pertinent analyses and evaluations along with the underlying assumptions and that they have concluded that the assumptions and methods of analysis or evaluation were appropriate for the structure, were applied correctly and are appropriate given current guidelines and the state of dam safety practice."

This statement is intended to fulfill the requirement in 18CFR12.37 for the report to "Analyze the safety of the project works and the maintenance and methods of operation of the development fully in light of the independent consultant's reviews, field inspection, assessments, and evaluations described in §12.35".

When the Consultant fails to "make a clear statement that they have reviewed the pertinent analyses and evaluations along with the underlying assumptions and that they have concluded that the assumptions and methods of analysis or evaluation were appropriate for the structure, were applied correctly and are appropriate given current guidelines and the state of dam safety practice," the Consultant is failing to meet both the requirements of 18CFR 12.37 to "Analyze the safety of the project works and the maintenance and methods of operation of the development fully in light of the independent consultant's reviews, field inspection, assessments, and evaluations described in §12.35" and the requirements of Chapter 14 of the Guidelines. When a

Consultant justifies the adequateness of a section in the Supporting Technical Information document by stating that the FERC conducted its own study or that the FERC had previously accepted a report submitted by the licensee, the Consultant is, in essence, attempting to delegate their responsibility to the FERC.

The necessary three parts of the dam safety process provided for assuring the safe and reliable operation of FERC regulated dams is effectively reduced to only two when a Consultant does not “analyze the safety of the project works and the maintenance and methods of operation of the development fully in light of the independent consultant's reviews, field inspection, assessments, and evaluations described in §12.35.” This is unacceptable to the FERC and should be unacceptable to any dam owner with an appreciation of their responsibility and liability.

Reports that fail to meet the requirements of the Regulations and/or Guidelines may be considered patently deficient and will not be accepted until they meet the requirements

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Part 12D Safety Inspection Report Outline

Table of Contents

The Table of Contents must show the initial page numbers for each section. If any subsection is not applicable, include the subsection with a statement of “Not Applicable” and an explanation of the reason(s) why.

For licensed projects that include multiple independent dam and powerhouse developments, separate Part 12D reports should be published for each development.

- 1. Findings and Recommendations**
- 2. Project Description**
- 3. Discussion of Potential Failure Modes Analysis Report**
- 4. Surveillance and Monitoring with Respect to Potential Failure Modes**
- 5. Field Inspection**
- 6. Operation and Maintenance Programs Relative to Potential Failure Modes**
- 7. Assessment of Supporting Technical Information Document**

List of Tables (with location)

List of Figures (with location)

List of References

Appendices for Part 12D Inspection Report

A. FERC Letter Requiring Part 12D Inspection

B. FERC Letter Approving Part 12D Consultant - Include date of current report outline provided by FERC. Use report outline provided with FERC letter, not latest revision.

C. Project Figures

Only provide general overview drawings necessary to understand the project and items discussed in the report. If figures are placed in Section 2, provide a statement that figures may be found in Section 2. Optionally, if the STI document is bound with the Part 12D report provide a statement that figures may be found in the STI document; duplicate drawings from the STI document do not need to be included in the Part 12D report.

Detailed drawings should be included in the Supporting Technical Information document.

D. Instrumentation Monitoring Data Plots

List each figure and drawing included in the report. Optionally, instrumentation plots may be placed in Section 4 of the report and a statement included in Appendix D that the plots may be found in Section 4.

E. Inspection Photographs

Optionally, some or all of the photographs may be included in the appropriate sections of the report. If photographs are included within the report, provide a list of the photographs and the corresponding page number in Appendix E.

F. Inspection Checklists and/or Field Notes (Optional)

G. Operation and Maintenance Documentation (If required)

1.0 Findings and Recommendations

This Section includes a summary of the Part 12D Independent Consultant's findings and assessments and the Part 12D Independent Consultant's conclusions and recommendations.

1.1 Findings

- 1.1.1 Summary assessment of the PFMA report
- 1.1.2 Summary assessment of the Surveillance and Monitoring Plan
- 1.1.3 Summary of Field Inspection Findings
- 1.1.4 Summary of O&M status
- 1.1.5 Summary Assessment of "Supporting Technical Information" document

Note: Specifically identify any new calculations prepared subsequent to the previous Part 12D Report.

1.2 Conclusions

The conclusions of the Independent Consultant regarding the condition and suitability for continued safe and reliable operation of the project and specific conclusions regarding the information in each Section of this Part 12D report.

- 1.2.1 Conclusions regarding the suitability of the Project for continued safe and reliable operation.
- 1.2.2 Conclusions regarding the Project Description
- 1.2.3 Conclusions regarding the Potential Failure Modes Analysis Report
- 1.2.4 Conclusions regarding the Surveillance and Monitoring Plan
- 1.2.5 Conclusions regarding the Field Inspection
- 1.2.6 Conclusions regarding the Operation and Maintenance Programs
- 1.2.7 Conclusions regarding the "Supporting Technical Information" document.

1.3 Recommendations

The recommendations of the Independent Consultant to improve or maintain the condition and suitability for continued safe and reliable operation of the project and specific recommendations regarding the information in each Section of this Part 12D report.

- 1.3.1 Recommendations regarding the suitability of the Project for continued safe and reliable operation.
- 1.3.2 Recommendations regarding the Project Description
- 1.3.3 Recommendations regarding the Potential Failure Modes Analysis Report
- 1.3.4 Recommendations regarding the Surveillance and Monitoring Plan
- 1.3.5 Recommendations regarding the Field Inspection
- 1.3.6 Recommendations regarding the Operation and Maintenance Programs
- 1.3.7 Recommendations regarding the “Supporting Technical Information” document

1.4 Certification

Note: By signing this document, the Part 12D Independent Consultant is stating that the entire report has been developed by and under the direction of the undersigned. The Part 12D Independent Consultant shall make a clear statement that he/she generally concurs with the assumptions, methods of analyses, and results of all studies documented in the report.

The Part 12D Independent Consultant is thus taking responsibility for the Part 12D report content as a Professional Engineer.

- 1.4.1 List of all field inspection participants
- 1.4.2 Reference to FERC Order 122 dated March 1, 1981, and paragraph 12.37 (c) (7).
- 1.4.3 Signature(s) of Part 12D Independent Consultant(s) and PE Stamp

See Appendix A: FERC Letter Requiring Part 12D Inspection

See Appendix B: FERC Letter Approving Part 12D Consultant - (Include date of current report outline provided by FERC)

2.0 Project Description

2.1 Brief Project Description

For each major element and ancillary structure, provide a brief description of the type of structure, general dimensions, etc. The detailed project description will be in the “Supporting Technical Information” document.

For multi-project or development licenses, include a brief outline of how this site fits with the other projects.

Include a short paragraph with very brief project history. When constructed, when modified, any incidents.

2.2 Hazard Potential Classification.

Based on views from the dam, other project works inspected and discussion with the licensee, document any changes in upstream or downstream conditions that might affect the Hazard Potential Classification. Review with the licensee the methods and assumptions used to develop the IDF. If the IDF is less than the PMF, the IC should confirm that the IDF is still valid based on an assessment of the downstream conditions as noted above.

2.3 Summary of Standard Operating Procedures

- 2.3.1 Purpose of Project (Run of river, storage, flow augmentation, flood surcharge storage, control reserve, pumped storage, etc.)
- 2.3.2 Reservoir rule curves by season (include seasonal reservoir level operating levels and restrictions of reservoir level due to safety concerns, if any)
- 2.3.4 Standard gate operation procedures (lead and following gates, emergency power systems, etc.)

2.4 Modifications Conducted for Project Safety

Document any modifications to project works since the last Part 12D inspection that have been done to improve project safety. (i.e.: spillway gates reinforced, seepage drain, berm added, crest raised, post-tensioned anchors installed, foundation drains or relief wells cleaned, etc.). In the next Part 12D Safety Inspection Report, these items will become part of Section 2.1. This information should be fully described in the updated “Supporting Technical Information” document submitted with the Part 12D report.

Do not include routine maintenance such as unit overhaul, gate painting, etc. Note that generators, transformers, and transmission facilities are excluded from the Part 12D program under 18CFR subsection 12.35.

2.5 Flood History

- 2.5.1 Flood of Record, PMF, IDF
- 2.5.2 Zero freeboard spillway capacity
- 2.5.3 Peak spillway discharge during last five year period
- 2.5.4 Peak reservoir elevation during last five year period

See Appendix C: Project Figures (Note: If the STI document is bound with this report, do not duplicate figures)

3.0 Discussion of Potential Failure Modes Analysis Report

Do not include security issues in the Part 12D report. For licensed projects that include multiple independent dam and powerhouse developments, separate PFMA studies and reports should be made for each development.

3.1 General

Identify the Core Team members, and their affiliations, who developed the comprehensive Potential Failure Modes Analysis (PFMA) or its update. Note that the process was in accordance with FERC “Engineering Guidelines for the Evaluation of Hydropower Projects,” Chapter 14.

3.2 Assessment of Potential Failure Modes Analysis Report

Assess the viable potential failure modes identified in the PFMA report. These would generally be Category 1 through Category 3 PFMs. Provide an assessment of the reasonableness and completeness of the failure mode scenario and whether the PFMs identified have a real possibility of occurrence. Potential Failure modes should be listed in order of importance. Each PFM assessment should include:

- A description that includes the sequence of conditions and events that would lead to the potential failure mode;
- An assessment of the risk reduction opportunities for each PFM; and
- An assessment of the Surveillance and Monitoring Plan for each PFM.

For example, the report would be formatted as follows.

3.2.1 PFM 1. (i.e. internal erosion, piping)

3.2.1.1 Description of PFM (may be taken from PFMA report)

3.2.1.2 Assessment of Risk Reduction Opportunities

3.2.1.3 Assessment of Surveillance and Monitoring Plan

3.2.2 PFM 2. (i.e. Seismic induced deformation)

3.2.2.1 Description of PFM (may be taken from PFMA report)

3.2.2.2 Assessment of Risk Reduction Opportunities

3.2.2.3 Assessment of Surveillance and Monitoring Plan

Etc.

- 3.3 Are there new potential failure modes that have been identified and addressed in this report or that should be assessed? If so, include the appropriate Description of the PFM, Assessment of mitigation actions and Assessment of the SMP as discussed above.

See “Supporting Technical Information” document: **Potential Failure Modes Analysis Study Report** (Update as appropriate)

4.0 Surveillance and Monitoring with Respect to Potential Failure Modes

Note: Review and assessment of Surveillance and Monitoring Plans must always be done from the point of view of potential failure modes. Although the primary assessment is with respect to the potential failure modes identified in the PFMA study, the Independent Consultant must determine if there are potential failure modes not previously addressed or not adequately considered.

For the purposes of this section, a Threshold Level is the value used in the analysis or design, or is established from the historic record. An Action Level is the instrument reading that triggers increased surveillance or an emergency action.

4.1 Operator's Surveillance Program

Daily and weekly operator's inspections and reports.

4.2 Active Instrumentation: Include a schematic figure showing location of instrumentation (not detailed or cross section).

This will vary by project. Discuss only the instruments actually at the project. Is instrumentation in accordance with Chapter IX of the FERC "Engineering Guidelines for the Evaluation of Hydropower Projects?" Is the instrumentation functioning properly? Examples of instrumentation to be included:

- Piezometers
- Weirs
- Settlement/alignment monuments
- Crack gages
- Upstream river and/or rain gage stations
- Headwater/tailwater (alarm systems)

4.3 Threshold and Action levels

For each instrument, or group of instruments as appropriate, provide a table of Threshold and Action levels as defined above.

4.4 Reading procedures/frequency

For each instrument, or group of instruments as appropriate, discuss:

- Data acquisition procedures (manual/automated)
- Data evaluation procedures (process; is data evaluated in a timely manner by a qualified engineer; are readings compared to Threshold and Action levels defined for each instrument)
- Spurious readings (are spurious readings confirmed or explanations provided)

4.5 Assessment of Instrumentation Data and Surveillance and Monitoring Plans Relative to Potential Failure Modes.

Include newly identified potential failure modes

5.0 Field Inspection

5.1 Field Inspection Observations

For each element of the project (i.e.: spillway, earthfill embankment, gravity section, intake, powerhouse, conveyance system, etc.), observe and report visual observations of the following issues as appropriate. Include pictures to document significant project features and observations. If an inspection checklist is used, include a copy of the checklist Appendix F. A site-specific inspection checklist should be formatted to include specific visual surveillance items identified in the PFMA.

The intent of this section is to highlight changed conditions for the report reviewer, not to document unimportant or minor details.

The report should be in text format by structure or element addressed individually. For each structure or element of the project, the Part 12D Independent Consultant should consider the following items as appropriate:

- Settlement
- Movement – including abutments (cracks or other signs of distress or change)
- Erosion
- Seepage/Leakage
- Cracking
- Deterioration
- Spillway gate Operation/Standby Power (At a minimum, the Part 12D Independent Consultant needs to review the licensee's annual certificates of spillway gate operation and interview project operating staff to assure that emergency backup systems work and that operating personnel know how to use them. At least one spillway gate should be operated at least one foot during the Part 12D inspection using the standby generator.)
- Outlet/Sluice Gate Operation
- Water conveyance systems (canals / flumes / penstocks / tunnels / surge chambers, emergency bypass or closure systems, etc.)
- Foundation Drain/Relief Well Operation
- Evidence of high artesian or uplift pressures (structures / foundations / abutments)
- Observations of sediment transport (piping evidence)
- Observations of seeps, wet areas, springs, green grass
- Other Pertinent Observations
- Reservoir Rim Stability

5.2 Status of Response(s) to Recommendation(s) in Last Part 12D Report.

5.3 Field Observations with Respect to Potential Failure Modes

Document field observations pertinent to each potential failure mode noted in Section 3

5.4 Adequacy/Operation of Public Alert Systems

Note: Are upstream spillway warning buoys, and downstream sirens and lights operable?

See Appendix E: **Inspection Pictures** (Optionally, some or all of the pictures may be included in the appropriate sections of the report. If pictures are included within the report, provide in Appendix E a list of the pictures and the corresponding page number)

See Appendix F: **Inspection Check List** (optional)

6.0 Operation and Maintenance Programs Relative to Potential Failure Modes

Do not include security issues in the Part 12D inspection report. If observations of significant O&M issues are made, include in report for possible new potential failure mode analysis.

6.1 Summary of PFMA identified O&M issues (from PFMA report)

6.2 Operation and Maintenance Procedures

6.2.1 Communication/Response

Address adequacy and reliability of remote monitoring, communication and control systems (Operations / Instrumentation / Telemetry – Do the systems provide adequate reliability and redundancy? Can a specific spillway gate, valve or other project component be operated remotely on demand?)

6.2.2 Electrical/Mechanical Systems

- Spillway Gate Motors (line/line voltage, amperage draw, motor name plate rating information)
- Standby and Redundant Power Sources
- Manual/Remote/Automatic Operation of Gates and Valves
- Gate Operation Sequence
- Icing protection (heaters/bubblers/reservoir level restriction)

6.2.3 Human Factors

- Adequate Staff for Emergency Response (Multiple Sites)
- Reliable Access Routes (winter/storm conditions)
- Training
- Electricians/Mechanics/Laborers
- Adequate Time to Respond
- Call Out Systems (time for crew to reach site after call out)

6.3 Assessment of O&M Procedures Relative to Potential Failure Modes

See Appendix G: **Operation and Maintenance Documentation**

7.0 Assessment of Supporting Technical Information Document

The purpose of this section of the Part 12D Report is for the Part 12D Independent Consultant (IC) to assess the contents of the “Supporting Technical Information” (STI) document compiled by the licensee and determine both its completeness and appropriateness to the current standard of the practice of dam safety. The STI document should be considered an executive summary that includes general, yet critical summary information needed to fully understand the design, construction, operation, and performance of the project. It should also contain sufficient information to summarize and confirm the underlying assumptions and the conclusions of the analyses of record supporting the assessment of the safety of the Project.

For each section of the STI, the Independent Consultant shall make a clear statement regarding their assessment of the completeness and appropriateness of the section of the STI. In sections where appropriate, they must state that they have reviewed the pertinent analyses and evaluations along with the underlying assumptions and that they have concluded that the assumptions and methods of analysis or evaluation were appropriate for the structure, were applied correctly and are appropriate given current guidelines and the state of dam safety practice. The IC must perform sufficient review and/or independent analysis and document their rationale to support their statement. This must include a brief summary of the parameters, methodologies, and results that document their decision.

Listed below are items to consider when summarizing each section of the STI. This is not intended to be an all-inclusive listing since each project is unique and requires careful review and consideration when reviewing for dam safety. In addition, this section of the Part 12D report is not intended to repeat the STI verbatim, but to summarize key components used by the IC to make their assessment and conclusions regarding the completeness of the STI.

7.1 Potential Failure Modes Analysis Study Report (Include a statement referring to Section 3 for a detailed discussion of the Potential Failure Modes Analysis)

- Adequacy of the summary of current PFMA Report
- Changes in PFMA during current review, including any new PFMs
- Any changes in category for any PFM

7.2 Description of Project

- Summarizes major components of the project, including all those listed in the project Order
- Review description for accuracy and completeness (elevations, capacities, etc.)

7.3 Construction History

- Summarized procedures/methods used for construction

- Includes construction difficulties that could influence long-term performance of the project.
- Summarize any design changes in the project during construction and any modifications since originally constructed
- Construction photographs

7.4 Standard Operating Procedures

- Summary of key operating procedures for dam safety
- Include procedures/sequence for passing flows (gate/powerhouse/flashboard/fuseplug, etc. operation)
- Does the SOP include all the necessary requirements to safely operate the project?
- Discuss any changes that have been made in the operation of any component of the project that is different than originally designed and if there is any impact resulting from the change.

7.5 Geology and Seismicity

- Geology
 - Adequacy of the summary of regional and local geologic conditions
 - Geologic conditions that could impact dam safety performance
 - Any geologic conditions that are important for monitoring the project
- Seismicity
 - Summary of seismic analysis, including key parameters
 - Date of recent analysis and applicability to current studies
 - Design PGA and recurrence interval (if available)

7.6 Hydrology and Hydraulics

- Hydrology
 - Summary of IDF/PMF, including key assumptions and rainfall/runoff parameters used.
 - Applicability of flood to current methods, HMR, etc
 - Specifically identify the studies of record
- Hydraulics
 - Summary of key issues and assumptions, including review of rating curve for spillway.
 - Summarize routing of IDF/PMF through spillway(s), peak reservoir elevation, and residual freeboard.

7.7 Surveillance and Monitoring Program

This section should have an introductory summary of the analysis of record: the actual analyses should be included or attached as an Appendix. Other prior analyses can be included in the Appendix if they are thought to be of significance.

- Status of current DSSMP and DSSMR
- Applicability of program to PFMs
- Determine if any changes to program are required and recommend those changes.
- Discuss the appropriateness of current threshold and action levels

7.8 Stability and Stress Analyses of Project Structures

- Summary of methods, procedures, critical elements, assumptions, input/design parameters, etc... for each structure analyzed
- Resulting factors of safety and comparison to FERC guidelines
- List of all analysis of records and any supplemental studies currently in process or completed

7.9 Spillway Gates

- Category of gates and appropriate requirements
- Date and brief conclusion of most recent detailed gate inspection
- Date and brief conclusion of most recent test operation.

7.10 Pertinent Correspondence Related to Safety of Project Works

- Completeness of documents required to be included in the STI.

7.11 Status of Studies in Process and Outstanding Issues

- Summarize any ongoing analyses, studies, etc.

7.12 References

- Completeness of the list of references and the attached electronic files, if applicable

7.13 Conclusions

- Overall assessment of the condition of the STI

General Statements

The following example statements are offered as general guidance for use by the IC when making definitive statement regarding each section of the STI, **in addition** to the discussion indicated above. The Positive statements are examples of when the STI is acceptable. The Negative statements are examples where the STI does not meet minimum requirements and must be improved upon. There are intended only as examples to be used for the section indicated.

Copying these examples verbatim into the IC's assessment of each section of the STI may result in the rejection of the Part 12 D report; the assessment should be specifically customized for the project under review.

7.1 PFMA Review

Positive

The PFMA was reviewed for completeness during a PFMA review conducted in conjunction with the Part 12 inspection. I/we reviewed the following items (itemize here) and as a result, consider the PFMs to be, fully developed and appropriately separated by load case and location, well documented, and complete relative to the project information.

Negative

I/we reviewed the following items (itemize here). PFM Number XX was not fully developed and a recommended revision is included in the recommendation section of this report.

After review and concurrence by FERC, the revised PFM should be adopted. The other PFMs are considered to be well written, well documented, and complete relative to the project information.

7.2 Project Description

Positive

The description of the project is correct and adequately summarizes the major components of the project and provides a good executive review level discussion about the project.

Negative

The project description is inadequate. It is recommended that the description of the project included in the STI be enhanced to include a more detailed description of the spillway gate operators, as noted in the recommendation section of this report

7.3 Construction History

Positive

The construction history is adequately described, including all significant construction issues documented during the construction which include the following key points that could potentially impact the operation and performance of the project features. All available construction photographs are included on the accompanying CD and were reviewed to ensure there are no other previously unidentified defects from the original construction or later modifications.

Negative

The construction history is generally adequately described. However, the construction history did not include the modifications made to the project in 1999, which included (describe the modifications). A recommended revision is included in the recommendation section of this report.

7.4 Standard Operating Procedures

Positive

The Standard Operating Procedures are adequately summarized in the STI and include (list here) that are of specific interest regarding the continued safe operation of the project. The SOP includes all the necessary requirements to safely operate the project.

Negative

The SOP does not account for changes in gate operation to accommodate flow releases required for environmental purposes in 2004. It is recommended that the SOP be rewritten to account for this change.

7.5 Geology and Seismology

Positive

The geology and seismology of the project are adequately summarized and highlight specific issues that could impact the operation and performance of the project and include (summarize here). Our/my review of the seismicity indicates that site seismicity was developed

using the most current data and approach available. The assumptions, methods, and use of the data and its application to this project meet the current guidelines and the state of dam safety practice.

Negative

The Geology section of the STI is adequate with the following exceptions:

- The geology does not contain a description of the problematic areas encountered in the foundation during construction. Nor does the geology summarize the actual geology of the site, but only includes a broad regional summary of the area.
- The seismology section of the STI is inadequate. The most current seismic hazard evaluation is not adequately summarized and the design Peak Ground Acceleration is not listed.
- The Geology and Seismology sections of the STI must be enhanced in accordance with the recommendations contained elsewhere in this report.

7.6 Hydrology and Hydraulics

Positive

The hydrology of the project is adequately described in the STI. My/our assessment of the hydrology included a review/analysis of (list studies/reports here). The key assumptions and parameters include (summarize here) and are considered appropriate to the current methodologies, data, and state of dam safety practice for evaluating the hydrologic safety of a dam. The PMF inflow of xxxx cfs is appropriate for this project.

The hydraulics of the project are adequately described in the STI. The spillway and tailwater rating curve(s) are correct and adequately represents the current spillway hydraulics. The project spillway(s)/outlets can pass the PMF/IDF with xx feet of freeboard on the dam. This freeboard is adequate for predicted wind and wave run-up at the dam.

Negative

I/we do not concur with the PMF analysis of record for this project. The PMF was based on PMP developed using HMR43, which was superseded by HMR57 in 1994. It is recommended that the PMF analysis be updated using the updated PMP values from HMR57.

The hydraulics of the project are not properly described in the STI. The rating curve used for the spillway is incorrect and needs to be recalculated.

7.7 Surveillance and Monitoring Program

Positive

The Surveillance and Monitoring Program is adequately described in the STI. My/our review of the DSSMP indicate the most critical elements of the monitoring include (summarize here) and contain appropriate threshold and action levels for each instrument. During the PFMA review, the need for additional surveillance for the project with respect to both identified PFMs

and general health was discussed. It is my opinion that existing monitoring program is adequate and no changes are recommended at this time.

Negative

My/our review indicated that several key elements of the project instrumentation are missing (list here). Thus the SMP is inadequate and needs to be revised.

7.8 The Stability and Stress Analyses of Project Structures

Positive

I have reviewed the pertinent analyses and evaluations along with the underlying assumptions and that have concluded that the assumptions and methods of analysis or evaluation were appropriate for the structure, were applied correctly and are appropriate given current guidelines and the state of dam safety practice. I also performed an independent check of the stability calculations and my results agree with the analysis of record. The following project structures are thus found to be safe for continued operation:

- Main embankment
- West diversion dam
- Integral power house
- (List all)

Negative

The STI is inadequate with regards to a summary of the stability and stress analyses for the project structures. The design assumptions are missing for the (xxxx) structural analysis. In addition, the resulting factors of safety on the recently submitted stability analysis do not meet the FERC minimum guidelines and must be reviewed with regards to dam safety concerns.

7.9 The Spillway Gates

Positive

I have reviewed the pertinent inspection reports and stability and stress analyses (if applicable) and have determined that the spillway gates are safe for continued operation.

Negative

I have reviewed the pertinent inspection reports and stability and stress analysis for the spillway gates. The analyses do not properly account for the bent strut on Gate No. 1 that I observed during my field inspection. Thus, before I can determine if the spillway gates are safe for continued operation, the stress analyses need to be redone to account for this issue with Gate No. 1.

7.10 The Pertinent Correspondence Related to Safety of Project Works

Positive

The Pertinent Correspondence Related to Safety of Project Works is complete and adequate in accordance with the requirements of the FERC. This correspondence includes the following items of specific note that are most important regarding the continued safety of the project:

- 1.
- 2.

Negative

The Pertinent Correspondence Related to Safety of Project Works is incomplete with regards to the requirements of the FERC. The following documents are missing and my/our recommendation is included to obtain and include the following documents in the STID:

- Past three years of the FERC Annual Dam Safety Inspection Reports
- Etc... (detail all accordingly)

7.11 Status of Studies in Process and Outstanding Issues

The Status of Studies in Process and Outstanding Issues include the following:

- List specifics and summarize the issue

OR

There are no outstanding studies in process or outstanding issues with the project that are in process or need to be initiated resulting from my/our conclusions of this Part 12D review and inspection.

7.12 References

Postive:

The References included in the STI and associated electronic files enclosed with the STI are complete and accurate and are formatted for easy reference.

Negative:

The references in the STI are incomplete and inadequately contain all the information contained in the STI. It is recommended that all studies and reports listed below be transferred to a disk and included in the end of the STI.

7.13 The Conclusions

Positive

The overall STI document is complete, well organized, and adequately addresses all of the requirements of the FERC but more importantly provides a complete executive summary document that is useful to all those associated with this project.

Negative

The STI document is inadequate. Rather than summaries of the necessary information, the document contains random copies of studies, project information, and incomplete information that does not allow the user to obtain a general overview of the entire project. Specifically, Sections (list sections) are particularly poor in content and must be completed in accordance with our recommendations.

APPENDICES

List of Tables (with location)

List of Figures (with location)

List of References

A. FERC Letter Requiring Part 12D Inspection

Note: May include specific FERC concerns to be addressed by Part 12D Independent Consultant.

B. FERC Letter Approving Consultant

Note: Include date of report outline provided by FERC.

C. Project Figures

This Appendix should include the following figures as appropriate. All Figures should be consecutively numbered. Figures should be general without excessive detail so as to be clearly legible. Figures should include documentation of significant changes since last Part 12D report. If STI document to be directly bound in this report, do not duplicate the figures. FERC Exhibit and relicensing drawings can be used.

- Location map with project facilities located including conveyance systems and access routes from main roads and nearest town
- Plans of project facilities
- Typical sections and profiles of key project features (dams, spillways, powerhouses, intakes, emergency/fuse plug spillways, chute profiles, etc.)
- Profiles and typical sections of water conveyance systems (canals, tunnels, penstocks, flumes, surge chambers, etc)
- Satellite or aerial picture of project and downstream area
- Spillway and tailwater rating curves

D. Instrumentation Monitoring Data Plots

Note: Plans and cross-sections with locations of each instrument, including design phreatic surface or uplift pressure profile, and tabulated data for each instrument are included in the "Supporting Technical Information" document only. See Chapter IX, Instrumentation and Monitoring, of the FERC Engineering Guidelines for the Evaluation of Hydropower Projects for additional information. Only time versus reading graphs are included here as NEW information. Tables of data should be provided on a CD bound into the Part 12D report

If data plots are included in Section 4 of the Part 12D report, a statement should be provided here directing the reader to Section 4 for the information.

- Time versus Reading data plots

- Plot all data to date, not just last five years (alternative is to plot last 15 years and note historic range for each unit)
- Do not put too many instruments on one plot
- Try to put all instruments from one section or profile on the same plot
- Mark tip elevation, unscreened length, ground elevation and top of piezometer elevation for each piezometer on the data plot. This information can be provided in a Table to enhance legibility of the graph.
- Use symbols and/or different line types for each unit, not just colors (colors do not reproduce in black and white and some people are color blind - Note that yellow and blue do not reproduce on certain copiers)
- Include headwater and tailwater levels on each plot
- Force all time scales to show full year cycles from January through December
- For multiple plots for the same project, force vertical and horizontal scales on all plots of the same type to have the same scale or total range so plots can be directly overlaid
- Mark threshold values
- Show monthly precipitation on one sheet
- Mark action levels requiring emergency response

E. Inspection Pictures

F. Inspection Checklist (optional)

G. Operation and Maintenance Documentation (if required)

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90 Day Pre-meeting Agenda Conference Call

1. Purpose of call.
 - a. To discuss what is expected from the Owner.
 - b. To discuss what is expected from the P-12 Consultant.
 - c. To discuss what is expected during the PFMA review.
 - d. To discuss outstanding studies and items of special interest.
2. Owner
 - a. The Owner should provide a copy of the STI, 3 past Part 12D Reports and any items of special interest to the IC well in advance of the inspection.
 - b. All portions of the site must be readily assessable and cleared of excessive vegetation. If a complete visual inspection cannot be completed the IC will need to re-inspect before the Part 12D Report is submitted.
3. P-12 Consultant
 - a. Must review the STI including the PFMA report and the past Part 12D Inspection Reports prior to the inspection.
4. Discussion of the PFMA Report.
 - a. FERC to review and provide clarification as to the PFM categories.
 - b. Discuss current PFMs and the level of effort that may be expected to review. This may range from a review of the PFMA report to a complete revision of the PFMA process including a facilitator and full document review.
5. Items of special interest.
 - a. Outstanding studies.
 - b. Past Part 12D recommendations that have not been fulfilled.
 - c. Schedule for inspection.
 - d. Any other items of interest.

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§ 12.35 Specific inspection requirements.

(a) *Scope of inspection.* The inspection by the independent consultant shall include:

- (1) Due consideration of all relevant reports on the safety of the development made by or written under the direction of Federal or state agencies, submitted under Commission regulations, or made by other consultants;
- (2) Physical field inspection of the project works and review and assessment of all relevant data concerning:
 - (i) Settlement;
 - (ii) Movement;
 - (iii) Erosion;
 - (iv) Seepage;
 - (v) Leakage;
 - (vi) Cracking;
 - (vii) Deterioration;
 - (viii) Seismicity;
 - (ix) Internal stress and hydrostatic pressures in project structures or their foundations or abutments;
 - (x) The functioning of foundation drains and relief wells;
 - (xi) The stability of critical slopes adjacent to a reservoir or project works; and
 - (xii) Regional and site geological conditions; and

(3) Specific evaluation of:

- (i) The adequacy of spillways;
- (ii) The effects of overtopping of non-overflow structures;
- (iii) The structural adequacy and stability of structures under all credible loading conditions;
- (iv) The relevant hydrological data accumulated since the project was constructed or last inspected under this subpart;
- (v) The history of the performance of the project works through analysis of data from monitoring instruments; and
- (vi) The quality and adequacy of maintenance, surveillance, and methods of project operations for the protection of public safety.

(b) *Evaluation of spillway adequacy.* The adequacy of any spillway must be evaluated by considering hazard potential which would result from failure of the project works during flood flows.

- (1) If structural failure would present a hazard to human life or cause significant property damage, the independent consultant must evaluate the ability of project works to withstand the loading or overtopping which may occur from a flood up to the probable maximum flood or the capacity of spillways to prevent the reservoir from rising to an elevation that would endanger the project works.
- (2) If structural failure would not present a hazard to human life or cause significant property damage, spillway adequacy may be evaluated by means of a design flood of lesser magnitude than the probable maximum flood, if the report of the independent consultant pursuant to Sec. 12.37 provides a detailed explanation of the basis for the finding that structural failure would not present a hazard to human life or cause significant property damage.

§ 12.37 Report of the independent consultant.

(a) *General requirement.* Following inspection of a project development as required under this

subpart, the independent consultant must prepare a report and the licensee must file three copies of that report with the Regional Engineer. The report must conform to the provisions of this section and be satisfactory to the authorized Commission representative.

(b) General information in the initial report.

(1) The initial report filed under this subpart for any project development must contain:

- (i) A description of the project development;
- (ii) A map of the region indicating the location of the project development;
- (iii) Plans, elevations, and sections of the principal project works;
- (iv) A summary of the design assumptions, design analyses, spillway design flood, and the factors of safety used to evaluate the structural adequacy and stability of the project works; and
- (v) A summary of the geological conditions that may affect the safety of the project works.

(2) To the extent that the information and analyses required in paragraph (b)(1) of this section, are contained in a report of an independent consultant prepared and filed in compliance with Commission regulations in effect before March 1, 1981, the information and analyses may be incorporated by specific reference into the first report prepared and filed under this subpart.

(c) Information required for all reports. Any report of an independent consultant filed under this subpart must contain the information specified in this paragraph.

(1) *Monitoring information.* The report must contain monitoring information that includes time-versus-reading graphs depicting data compiled from any existing critical or representative monitoring instruments that measure the behavior, movement, deflection, or loading of project works or from which the stability, performance, or functioning of the structures may be determined.

(i) Any monitoring data plotted on graphs must be presented in a manner that will facilitate identification and analysis of trends. The data may be summarized to facilitate graphical representation.

(ii) Plan and sectional drawings of project structures sufficient to show the location of all critical or representative existing monitoring instruments must be included. If these drawings have been included in a previous report prepared and filed by an independent consultant, they may be incorporated by specific reference to that earlier report.

(2) *Analyses.* The report must:

(i) Analyze the safety of the project works and the maintenance and methods of operation of the development fully in light of the independent consultant's reviews, field inspections, assessments, and evaluations described in Sec. 12.35;

(ii) Identify any changes in the information and analyses required by paragraph (b) of this section that have occurred since the last report by an independent consultant under this subpart and analyze the implications of those changes; and

(iii) Analyze the adequacy of existing monitoring instruments, periodic observation programs, and other methods of monitoring project works and conditions affecting the safety of the project or project works with respect to the development.

(3) *Incorporation by reference.* To the extent that conditions, assumptions, and available information have not changed since the last previous report by an independent consultant under this subpart, the analyses required under paragraphs (c)(2)(i) and (ii) of this section may be incorporated by specific reference to the last previous report.

(4) *Recommendations*. Based on the independent consultant's field observations and evaluations of the project works and the maintenance, surveillance, and methods of operation of the development, the report must contain the independent consultant's recommendations on:

- (i) Any corrective measures necessary for the structures or for the maintenance or surveillance procedures or methods of operation of the project works;
- (ii) A reasonable time to carry out each corrective measure; and
- (iii) Any new or additional monitoring instruments, periodic observations, or other methods of monitoring project works or conditions that may be required.

(5) *Dissenting views*. If the inspection and report were conducted and prepared by more than one independent consultant, the report must clearly indicate any dissenting views concerning the analyses or recommendations of the report that might be held by any individual consultant.

(6) *List of participants*. The report must identify all professional personnel who have participated in the inspection of the project or in preparation of the report and the independent consultant who directed those activities.

(7) *Statement of independence*. The independent consultant must declare that all conclusions and recommendations in the report are made independently of the licensee, its employees, and its representatives.

(8) *Signature*. The report must be signed by each independent consultant responsible for the report

APPENDIX C

Questions – Request for Proposals
Facility Summary Sheets

APPENDIX C

QUESTIONS - REQUEST FOR PROPOSALS

Prepare a written response to each of the following questions:

1. Any potential deficiencies of previous studies (structural, PMF, etc.) relative to current regulations which would require updating or re-analysis including an estimate of cost.
2. Methods for penstock evaluation, including any plan for inspection of interior coatings.
3. Method of plunge pool inspection.
4. Method of dam inspections.
5. Method of reservoir inspection.
6. Method of power tunnel inspections, Cushman No. 1, Cushman No. 2, Mayfield and LaGrande, if necessary.
7. The City currently owns a borescope with approximately 300-feet of pushable cord. Explain how you might be able to utilize this resource.

CUSHMAN NO. 1 DAM SUMMARY SHEET

Structure: Cushman Dam No. 1

Type: Concrete Arch

Height Above Foundation: 260 feet

Crest Length: 412 feet

Top of Dam Elevation: 741.5 feet

Top Width: 8 feet

Base Width: 45.5 feet

Axis Alignment: Circular

Central Angle - Arch: 118 degrees

Foundation Gallery: No

Grout Curtain: No

Drains:

Foundation: No

Internal: No

Solid Parapet: Yes

Height: 3.5 feet

Structure: Left and Right Wing Dams

Type: Concrete Gravity Dam

Height Above Foundation: 45 feet

Crest Length: 365± feet

Top of Dam Elevation: 741.5 feet

Top Width: 8 feet

D/S Face Slope (H to V): 0.65 to 1.0 Below elevation 729± feet

U/S Face Slope (H to V): Vertical

Axis Alignment: Straight on left side, curved on right side

CUSHMAN NO. 1 DAM (continued)
SUMMARY SHEET

Cushman Dam No. 1: Left and Right Wing Dams (continued)

Foundation Gallery: No

Grout Curtain: Yes

Drains:

Foundation: Right Side – Yes; Left Side - No

Internal: No

Solid Parapet: Yes

Height: 3.5 feet

Structure: Left Abutment Core Wall Embankment

Type: Embankment with Core Wall

Height Above Foundation: 40 feet maximum

Crest Length: 180 feet

Top Width: 25 feet

D/S Face Slope (H to V): 2.0 to 1.0

U/S Face Slope (H to V): 2.0 to 1.0

Core Wall Thickness: 2 feet minimum

CUSHMAN NO. 2 DAM

SUMMARY SHEET

Structure: Cushman Dam No. 2

Type: Single Curvature Arch

Height Above Stream Bed: 175 feet

Height Above Foundation: 235 feet

Crest Length: 460 feet

Top of Dam Elevation: 481.5 feet

Parapet Wall Elevation: 485 feet

Top Width: 8 feet with 12.5 feet wide road deck

Base Width: 40 feet

Axis Alignment: Circular

Central Angle: 136.3 degrees

Foundation Gallery: No

Grout Curtain: Yes

Drains:

Foundation: Yes

Internal: No

Solid Parapet: Yes

Height: 3.5 feet

Structure: Right and Left Abutment Thrust Blocks

Left Gravity Abutment:

Crest Width: 8 feet

Upstream Batter: 1:1

Downstream Batter: 2-1/2:12

Height/Width at Elevation 481.5: 40 foot high x 73.65 foot long

Right Gravity Thrust Block:

Crest Width: 8 feet

Upstream Batter: 8:10

Downstream Batter: 2-1/2:12

Height/Width at Elevation 481.5: 35 foot high x 62 foot long

ALDER DAM SUMMARY SHEET

Structure: Alder Dam

Type: Variable Curvature Arch

Height Above Foundation: 330 feet

Crest Length: 1,000 feet

Top of Dam Elevation: 1,207 feet

Top Width: 15 feet

Base Width: 120 feet

Axis Alignment: Circular

Central Angle: 123 degrees

Foundation Gallery: No

Grout Curtain: Yes

Drains:

Foundation: No

Internal: No

Solid Parapet: Yes

Height: 3.83 feet

Additional Information: Left abutment thrust block 120 feet high and gravity wing dam 176 feet long.

LAGRANDE DAM SUMMARY SHEET

Structure: LaGrande Dam

Type: Curved Gravity

Height Above Foundation: 217 feet

Crest Length: 710 feet

Top of Dam Elevation: 942.0 feet

Top Width: 13.75 feet

Base Width: 120 feet

Axis Alignment: Circular Arc

Foundation Gallery: Yes

Grout Curtain: Yes

Drains:

Foundation: No

Internal: Yes

Solid Parapet: Yes

Height: 3.83 feet

Additional Information:

MAYFIELD DAM SUMMARY SHEET

Structure: Arch Dam

Type: Double Curvature Concrete Arch

Height Above Foundation: 250 feet

Crest Length: 209 feet

Top of Dam Elevation: 445.0 feet

Top Width: 5 feet

Base Width: 22 feet

Axis Alignment: Circular

Central Angle: 120 degrees

Structure: Thrust Blocks

Type: Gravity

Height Above Foundation: 150+ feet

Crest Length: Right side – 54.7 feet; Left side – 42.4 feet

Top of Dam Elevation: 446.75 feet

Top Width: 18 feet

Base Width: Varies

Axis Alignment: Straight

Structure: Wing Blocks

Type: Gravity

Height Above Foundation: 75 feet

Crest Length: Right side – 100 feet; Left side – 180 feet

Top of Dam Elevation: 446.75 feet

Top Width: 20 feet

Base Width: Varies

Axis Alignment: Straight and curved segments

MOSSYROCK DAM

SUMMARY SHEET

Structure: Mossyrock Dam

Type: Double Curvature Concrete Arch

Height Above Foundation: 606 feet

Center Crest Length: 1,264.54 feet

Thrust Block: Right – 91.25 feet; Left – 127.5 feet

Gravity Section: Right – 105.2 feet; Left – 75 feet

Top of Dam Elevation: 785 feet

Top Width: 27 feet

Base Width: 199 feet

Axis Alignment: Circular

Central Angle: 79 degrees, 45 minutes

Foundation Gallery: Yes

Grout Curtain: Yes

Drains:

Foundation: Yes

Internal: Yes

Solid Parapet: Yes

Height: 3 feet

Structure: Left Abutment Embankment Dam

Type: Zoned Embankment

Height Above Foundation: 100 feet maximum

Crest Length: 210 feet

Top of Dam Elevation: 785 feet

Top Width: 30 feet

Solid Parapet: 3 feet

D/S Face Slope (H to V): 2.0 to 1.0

U/S Face Slope (H to V): 2.0 to 1.0

WYNOOCHEE DAM

SUMMARY SHEET

Structure: Wynoochee Lake Dam

Type: Concrete Gravity Non-Overflow Dam and Spillway

Height Above Foundation: 175 feet

Crest Length: 700 feet

Top of Dam Elevation: 805 feet

Top Width: 21 feet

D/S Face Slope (H to V): 0.75 to 1.0, Below Elevation 781.0 feet

U/S Face Slope (H to V): Vertical

Foundation Gallery: Yes

Distance to U/S Face: 11 feet

Grout Curtain: Yes

Drains:

Foundation: Yes

Internal: Yes

Solid Parapet: Yes (not on embankment sections)

Structure: Embankment Dams

Type: Zoned Embankment

Height Above Foundation: 100 feet maximum

Crest Length: 411 feet (total left and right embankments)

Blanket Length: 511 feet (total left and right abutments)

Top of Dam Elevation: 805 feet

Top Width: 22.5 feet

D/S Face Slope (H to V): 2.5 to 1.0

U/S Face Slope (H to V): 2.0 to 1.0

APPENDIX D

Sample Services Agreement

City of Tacoma Standard Terms and Conditions

City of Tacoma Insurance Requirements

SERVICES CONTRACT

Click here for the [Contract Questionnaire Popup Quick Reference](#)

Start Questionnaire

Finalize Document

THIS CONTRACT, made and entered into effective as of the ____ day of _____, 20__ (EFFECTIVE DATE) by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and **[INSERT legal name of Supplier exactly as it appears in Ariba]**, (hereinafter referred to as "CONTRACTOR");

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

1. Scope of Services/Work

The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables consisting of [INSERT A BRIEF DESCRIPTION OF THE WORK TO BE PERFORMED] as is described in Exhibit XXXXX [A, B, ETC., if needed] attached hereto and incorporated herein.

2. Order of Precedence

To the extent there is any discrepancy or conflict between and/or amongst the terms of this Contract and Exhibit(s) _____, the controlling terms for this Contract will be interpreted in the following order of precedence, with the first listed being the most controlling, and the last listed being the least controlling: Contract, Exhibit ____, Exhibit _____. [INSERT EXHIBIT REFERENCES IN ORDER OF WHICH IS MOST CONTROLLING]

3. Changes to Scope of Work

The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

4. On Call Contracts

If the services and deliverables performed under this Contract are on an on call or as assigned basis, service and deliverables may be assigned by Task Authorization or Statements of Work, are subject to Section 9, and cannot augment any other work that the CONTRACTOR is doing for the CITY on another Contract. Actual compensation will depend upon the actual purchases made by the City during the life of this Contract and will be paid at the rates set in Exhibit A

5. Term

All services shall be satisfactorily completed on or before [INSERT CONTRACT TERMINATION DATE] and this Contract shall expire on said date unless mutually extended by a written and executed Amendment to this Contract.

6. Renewals

At CITY's sole option, the Term of this Contract may be renewed for additional [INSERT THE RENEWAL PERIOD - 1 YEAR, ETC] periods, not to exceed [INSERT THE MAXIMUM NUMBER OF RENEWAL PERIODS]. CITY will provide written notice of its intent to exercise any renewal options at least 30 days prior to the then existing Term and a written Amendment to this Contract will be mutually executed.

7. Delay

Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

8. Compensation

The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract [in accordance with OR on the basis of] [INSERT DESCRIPTION OF COMPENSATION ARRANGEMENTS – REFERENCE EXHIBIT, TIME AND MATERIALS, LUMP SUM ETC.]

9. Not to Exceed Amount

The total price to be paid by CITY for CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed \$ [INSERT TOTAL AMOUNT OF CONTRACT] plus applicable taxes without a written and executed Amendment to this Contract. Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

10. Payment

CONTRACTOR shall submit XXXXXXXXX {monthly, weekly, annual, Contract milestone, etc.} invoices for services completed and/or deliverables furnished during the invoice period. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.

Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.

11. Payment Method

The City's preferred method of payment is by ePayables (Payment Plus), followed by credit card (aka procurement card), then Electronic Funds Transfer (EFT) by Automated Clearing House (ACH), then check or other cash equivalent. CONTRACTOR may be required to have the capability of accepting the City's ePayables or credit card methods of payment. The City of Tacoma will not accept price changes or pay additional fees when ePayables (Payment Plus) or credit card is used. The City, in its sole discretion, will determine the method of payment for this Contract.

12. Independent Contractor Status

The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create an employer and employee relationship. The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless stated otherwise in this Contract. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.

13. Services Warranty

The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in the Scope of Work. In the performance of services under this Contract, the CONTRACTOR and its employees further agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals or service providers rendering the same or similar type of service. All obligations and services of the CONTRACTOR hereunder shall be performed diligently and completely according to such professional standards.

Unless a higher standard or longer periods of warranty coverage for product deliverables provided under this Contract is provided herein, CONTRACTOR agrees to correct any defect or failure of deliverables supplied under this Contract which occurs

within one year from _____ [FILL IN APPROPRIATE TIME FRAME, E.G. GO LIVE, FIRST USE, ETC]. During said warranty period, all of the costs (including shipping, dismantling and reinstallation) of repairs or corrections is the responsibility of the CONTRACTOR. If CONTRACTOR is not the manufacturer of the item of equipment, CONTRACTOR agrees to be responsible for this warranty and shall not be relieved by a lesser manufacturer's guarantee. This Contract warranty period shall be suspended from the time a significant defect is first documented by the CITY until repair or replacement by CONTRACTOR and acceptance by the CITY. In the event less than ninety (90) days remain on the warranty period (after recalculating), the warranty period shall be extended to allow for at least ninety (90) days from the date of repair or replacement and acceptance by the CITY.

14. Reliance on CITY Provided Data or Information

If the CONTRACTOR intends to rely on information or data supplied by the CITY, other CITY contractors or other generally reputable sources without independent verification, such intent shall be brought to the attention of the CITY.

15. Contract Administration

[INSERT NAME TITLE AND DEPARTMENT OF CONTRACT ADMINISTRATOR] for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.

16. Specific Personnel

If before, during, or after the execution of this Contract, CONTRACTOR represents to the CITY that certain personnel would or will be responsible for performing services and deliverables under this Contract, then the CONTRACTOR is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the CITY, and on a case-by-case basis.

17. Right to Audit

During the Term of this Contract, and for six (6) years thereafter, the CITY shall have the right to inspect and audit during normal business hours all pertinent books and records of the CONTRACTOR and/or any sub-contractor or agent of CONTRACTOR that performed services or furnished deliverables in connection with or related to the Scope of Work hereunder as reasonably needed by CITY to assess performance, compliance and quality assurance under this Contract or in satisfaction of City's public disclosure obligations, as applicable.

CONTRACTOR shall, upon three (3) business days of receipt of written request for such inspection and audit from CITY, provide the CITY with, or permit CITY to make, a copy of any work-related books, accounts, records and documents, in whole or in part, as specified in such request. Said inspection and audit shall occur in Pierce County, Washington or such other reasonable location as the CITY selects. The CITY shall bear the cost of any inspection audit requested hereunder, provided, that if an inspection

audit in accordance with the foregoing provisions discloses overpricing or overcharges (of any nature) by the CONTRACTOR to the CITY in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the CITY's audit shall be reimbursed to CITY by CONTRACTOR. Any adjustments or payments that must be made as a result of any audit and inspection hereunder shall be made no later than 90 days from presentation of CITY's findings to CONTRACTOR.

CONTRACTOR shall ensure that the foregoing inspection, audit and copying rights of the CITY are a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform the Scope of Work under this Contract.

18. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters related to the performance of this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of _____ [INSERT THE TIME THE RECORDS SHOULD BE KEPT. MOST COMMON IS 6 YEARS] years after receipt of the final payment under this Contract or termination of this Contract.

If CONTRACTOR retains any City records or data hosted in a Cloud Service. CITY shall have the ability to access its records hosted in a Cloud Service at any time during the Term of this Contract. CITY may export and retrieve its records during the Term of the Contract and, no later than 30 days from the termination of this Contract, CONTRACTOR shall export CITY records to City's custody and control.

19. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY:	CONTRACTOR:
Name:	Name:
Title:	Title:
Address:	Address:
Telephone No.:	Telephone No.:
E-mail:	E-mail:

20. Termination

Except as otherwise provided herein, the CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR.

In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein. Termination of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

21. Suspension

The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days' written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends. Suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

22. Taxes

Unless stated otherwise in Exhibit A, CONTRACTOR is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and CONTRACTOR 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. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR holds CITY harmless from such costs, including attorney's fees.

If CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including by Tacoma City ordinance, and including by a court of law, CITY will deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. Any such payments shall be deducted from the CONTRACTOR's total compensation.

23. Licenses and Permits

The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30. If applicable, CONTRACTOR must have a Washington state business license.

24. Indemnification

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject

matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the sole negligence of the CITY, or its officers, agents, or employees. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

It is expressly agreed that with respect to design professional services performed by CONTRACTOR herein, CONTRACTOR's duty of indemnification, including the duty and cost to defend, against liability for damages arising out of such services or out of bodily injury to persons or damage to property shall, as provided in RCW 4.24.115 apply only to the extent of CONTRACTOR's negligence.

CONTRACTOR hereby warrants and represents CONTRACTOR is owner of any products, solutions or deliverables provided and licensed under this Contract or otherwise has the right to grant to CITY the licensed rights under this Contract, without violating the rights of any third party worldwide. CONTRACTOR shall, at its expense, defend, indemnify and hold harmless CITY and its employees, officers, directors, contractors, agents and volunteers from any claim or action against CITY which is based on a claim against CITY for infringement of a patent, copyright, trademark, or other propriety right or appropriation of a trade secret.

25. Title 51 Waiver

CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

26. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services and deliverables provided under this Contract. The City of Tacoma Insurance Requirements documents are fully incorporated herein by reference.

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.

27. Nondiscrimination

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the

presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

28. 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 this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR 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 this Contract subjecting the Contract to termination.

29. City ownership of Work/Rights in Data and Publications

To the extent CONTRACTOR creates any Work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, CONTRACTOR agrees to the following: The Work has been specially ordered and commissioned by CITY. CONTRACTOR agrees that the Work is a "work made for hire" for copyright purposes, with all copyrights in the Work owned by CITY. To the extent that the Work does not qualify as a work made for hire under applicable law, and to the extent that the Work includes material subject to copyright, CONTRACTOR hereby assigns to CITY, its successors and assigns, all right, title and interest in and to the Work, including but not limited to, all patent, trade secret, and other proprietary rights and all rights, title and interest in and to any inventions and designs embodied in the Work or developed during the course of CONTRACTOR'S creation of the Work. CONTRACTOR shall execute and deliver such instruments and take such other action as may be required and requested by CITY to carry out the assignment made pursuant to this section. Any documents, magnetically or optically encoded media, or other materials created by CONTRACTOR pursuant to this Contract shall be owned by CITY and subject to the terms of this subsection. To the maximum extent permitted by law, CONTRACTOR waives all moral rights in the Work. The rights granted hereby to CITY shall survive the expiration or termination of this Contract. CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.

30. Public Disclosure

This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents 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 CONTRACTOR has complied with the requirements herein to mark all content considered to be confidential or proprietary, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, 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 CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.

31. Confidential or Proprietary Records Must be Marked

If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the notice requirements above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

32. Duty of Confidentiality

CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.

Except for disclosure of information and documents to CONTRACTOR's employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR's performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.

CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

CITY is required to provide notice of the Red Flags Rules published by the Federal Trade Commission in Title 16 Code of Federal Regulations, Part 681 ("Rules") to all entities that receive confidential or otherwise protected personal information of CITY's customers. Terms in quotations in this Section refer to defined terms contained in the "Rules." CONTRACTOR is, as to "Covered Accounts" of CITY for which CONTRACTOR

performs activities under the Contract, a "Service Provider." "Service Provider" will perform in accordance with its reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft and will promptly report to CITY any specific "Red Flag" incidents detected as to "Covered Accounts" of CITY and upon request by CITY will respond to or reasonably assist CITY in responding reported "Red Flags." This Section shall survive for six (6) years after the termination or expiration of this Contract.

33. Approval for Release of Information Related to Contract

If requested by CITY, CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles without CITY's prior written approval. CONTRACTOR may submit at any time for review and approval a generic abstract describing the component parts of the completed Scope of Services ("Project Abstract"). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

34. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

35. Miscellaneous Provisions

Governing Law and Venue

Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration, or litigation arising out of this Contract.

Assignment

The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

No Third Party Beneficiaries

This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

Waiver

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

Severability and Survival

If any term, condition or provision of this Contract 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 this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

Entire Agreement

This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

Modification

No modification or amendment of this Agreement shall be effective unless set forth in a written and executed Amendment to this Contract.

Direct Solicitation and Negotiation

For service contracts valued \$25,000 or less the City signature authorizes waiver of competitive solicitation by "Direct Solicitation and Negotiation" of professional and personal services in accordance with Tacoma Municipal Code 1.06.256 and the Purchasing Policy Manual.

IN WITNESS WHEREOF, the Parties hereto have accepted and executed this Contract, as of the Effective Date stated above, which shall be Effective Date for bonding purposes as applicable. The undersigned Contractor representative, by signature below, represents and warrants they are duly authorized to execute this legally binding Contract for and on behalf of Contractor.

CITY OF TACOMA:
By: _____

CONTRACTOR:
By: _____

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

Director of Finance: _____

City Attorney (approved as to form): _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

**CITY OF TACOMA
STANDARD TERMS AND CONDITIONS
GOVERNS BOTH GOODS AND SERVICES AS APPLICABLE**

In the event of an award by the City, these Terms and Conditions stated herein, Additional Contract Documents if issued, Solicitation if issued, Purchase Orders if issued by City, and Supplier's Submittal, if provided, shall constitute the Contract between City and Supplier for the acquisition of goods, including materials, supplies, and equipment or for the provision of services and deliverables.

Said documents represent the entire Contract between the parties and supersede any prior oral statements, discussions, or understandings between the parties, and/or subsequent Supplier invoices. No modification of the Contract shall be effective unless mutually agreed in writing.

The specific terms and conditions of any Solicitation (Specification, Request for Bids, Request for Proposals, Requests for Qualifications, Requests for Quotations, Request for Information, bid documents, request to enter into negotiations, or other form of solicitation issued by City including any general, special, or technical provisions associated with such Solicitations) are incorporated herein by reference and supersede these Terms and Conditions where there is conflict or inconsistency.

In the event Additional Contract Documents are negotiated and agreed to in writing between Supplier and City, the specific terms of such Additional Contract Documents are incorporated herein by reference and supersede all other terms and conditions where there is conflict or inconsistency.

These Terms and Conditions, Additional Contract Documents if issued, Solicitation if issued, City purchase order if issued, are controlling over Supplier's Submittal if a Submittal is provided. Submittals if provided are incorporated herein by reference.

1.01 SUPPLIER / CONTRACTOR

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

1.02 SUBMITTAL

Submittal means Bids, Proposals, Quotes, Qualifications or other information, content, records or documents submitted in response to a City Solicitation.

1.03 FORMS OF SUBMITTAL

Unless stated otherwise, all submittals must be in SAP Ariba and submitted exactly as specified or directed, and all required forms must be used.

1.04 COSTS TO PREPARE SUBMITTAL

The City is not liable for any costs incurred by Supplier for the preparation of materials or a Submittal provided in response to a solicitation, conducting presentations to the City, or any other activities related to responding to the City's Solicitation.

1.05 LICENSES/PERMITS

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

1.06 PUBLIC DISCLOSURE: PROPRIETARY OR CONFIDENTIAL INFORMATION

- A. Supplier Submittals, all documents and records comprising the Contract, and all other documents and records provided to the City by Supplier 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 Supplier has complied with the requirements to mark records considered confidential or proprietary as such requirements are stated below, City agrees to provide Supplier 10 days written notice of impending release. Should legal action thereafter be initiated by Supplier to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Supplier, 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 Supplier took no action to oppose the release of information.
- B. If Supplier provides City with records or information that Supplier considers confidential or proprietary, Supplier must mark all applicable pages or sections of said record(s) as "Confidential" or "Proprietary." Further, in the case of records or information submitted in response to a Request for Proposals, an index must be provided indicating the affected pages or sections and locations of all such material identified Confidential or Proprietary. Information not included in the required index will not be reviewed for confidentiality or as proprietary before release. If Supplier fails to so mark or index Submittals and related records, then the City, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and Supplier 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 Supplier to the foregoing procedure and Supplier shall have no claim against the City on account of actions taken pursuant to such procedure.

1.07 SUSTAINABILITY

- A. The City has interest in measures used by its contractors to ensure sustainable operations with minimal adverse impact on the environment. The City seeks to do business with vendors that value community and environmental stewardship that help us meet our sustainable purchasing goals.
- B. The City encourages the use of environmentally preferable products or services that help to minimize the environmental and human health impacts of City operations. Suppliers are encouraged to incorporate environmentally preferable products or services into Submittals wherever possible. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.
- C. Environmental Standards. The City seeks to ensure that all purchases comply with current environmental standards and product specifications. Where appropriate, third party independent certifiers such as Green Seal and USEPA Standards shall be a minimum specification for products to the City, unless specified otherwise herein.
- D. The City encourages the use of sustainability practices and desires any awarded Suppliers to assist in efforts to address such factors when feasible for:
 - 1. Pollutant releases
 - 2. Toxicity of materials used
 - 3. Waste generation
 - 4. Greenhouse gas emissions, including transportation of materials and services
 - 5. Recycle content
 - 6. Energy consumption
 - 7. Depletion of natural resources
 - 8. Potential impact on human health and the environment

1.08 ALTERATIONS NOT ALLOWED

Except as otherwise specifically provided in a Solicitation, Submittals that are incomplete or conditioned in any way, contain erasures, alternatives or items not called for, or not in conformity with law, may be rejected as being non-responsive. Any attempt to condition a Submittal by inserting exceptions to the Solicitation or any conditions, qualifications or additions that vary its terms may result in rejection of the Submittal. The City may reject any submittal containing a material deviation from the Solicitation.

1.09 CORRECTION OF AMBIGUITIES AND OBVIOUS ERRORS

- A. The City reserves the right to correct obvious errors in Supplier's Submittal. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.
- B. Supplier shall notify the City of Tacoma Procurement and Payables Division in writing of any ambiguity, conflict, discrepancy, omission or other error in a Solicitation no later than five business days prior to the submittal deadline.
 - 1. For solicitations conducted in SAP Ariba, Supplier shall notify the City of Tacoma Procurement and Payables Division on the message board of the event.
 - 2. For all other solicitations, Supplier shall notify the contract person listed in the Solicitation.
- C. The City will make necessary modifications by addendum.
- D. Supplier is responsible for identifying ambiguities, conflicts, discrepancies, omissions or other errors in the Solicitation prior to providing its Submittal or the ambiguity, conflict, discrepancy, omission, or other error is waived. Any Submittal that includes assumed clarifications and/or corrections without the required authentication of the same is subject to rejection.

1.10 WARRANTIES/GUARANTEE

- A. Suppliers warrant that all items, including services, as applicable:
 - 1. Are merchantable.
 - 2. Comply with the City's latest drawings and specifications.
 - 3. Are fit for the City's intended use.
 - 4. Will be performed according to the skill and care required by customarily accepted good practices and procedures followed by service providers rendering the same or similar type of service.
 - 5. Are new and unused unless otherwise stated.
 - 6. Comply with all applicable safety and health standards established for such products by the Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA) and/or Consumer Products Safety Act (CPSA), and all other applicable state and federal laws or agency regulations.
 - 7. Are properly packaged and contain appropriate instructions or warnings, including applicable MSDS sheets.

1.11 PATENTS, TRADEMARKS AND COPYRIGHTS

Suppliers warrant that equipment and/or materials furnished, including software, do not infringe on any patent, trademark or copyright, and agree to indemnify, defend and hold harmless, the City in the event of any infringement or claim thereof.

1.12 DELIVERY OF SUBMITTALS TO THE CITY'S PROCUREMENT AND PAYABLES DIVISION

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

1.13 SUBMITTAL IS NON-COLLUSIVE

Supplier acknowledges that by its delivery of a Submittal to the City in response to a Solicitation, it represents that the prices in such Submittal are neither directly nor indirectly the result of any formal or informal agreement with another Supplier.

1.14 PARTNERSHIPS

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

1.15 WITHDRAWAL OF SUBMITTALS

- A. Prior to Submittal Deadline. Submittals may be withdrawn (including in SAP Ariba) prior to the scheduled submittal deadline.
- B. After Submittal Deadline. No Submittal can be withdrawn after having been opened before the actual award of the contract, unless the award is delayed more than 90 calendar days beyond the date of opening. If a delay of more than 90 calendar days does occur, Supplier must submit written notice to the City purchasing manager that Supplier is withdrawing its submittal.

1.16 ACCEPTANCE OF SUBMITTALS

- A. If the solicitation announcement so states, submittals, unless previously withdrawn, will be read aloud, irrespective of any irregularities or informalities in such submittal, at the time and place specified in the solicitation announcement.
- B. All submittals must remain open for acceptance by the City for a period of at least 90 calendar days from the submittal deadline.

1.17 RIGHT TO REJECT

The City of Tacoma reserves the right to reject any and all submittals, waive minor deviations or informalities, supplement, amend, reduce or otherwise modify the scope of work or cancel the solicitation, and if necessary, call for new submittals.

1.18 RESERVED RIGHTS

- A. By providing a submittal in response to a City solicitation, Supplier acknowledges and consents to the below City rights and conditions. With regard to this procurement process, the City reserves, holds without limitation, and may exercise, at its sole discretion, the following rights and conditions:
 - 1. To terminate the procurement process or decide not to award a contract as a result thereof by written notice to the Suppliers for any reason whatsoever with or without substitution of another solicitation.
 - 2. To waive any defect, technicality, or any other minor informality or irregularity in any submittal, or any other response from Suppliers.
 - 3. To issue addenda for any purpose including:
 - a. To make minor or major changes or alterations to the evaluation, selection and/or performance schedule(s) for any events associated with a procurement.
 - b. To supplement, amend, reduce, cancel, or otherwise modify a Solicitation, including but not limited to modifications to the description of services and/or products contained in the solicitation, by omitting services/products and/or including services/products.
 - 4. To request clarifications, additional information, and/or revised Submittals from one or more Suppliers.
 - 5. To conduct investigations with respect to the qualifications and experience of Supplier(s), including inspection of facilities and to request additional evidence to support any such information.

6. To eliminate any Supplier that submits an incomplete or inadequate response, or is non-responsive to the requirements of a Solicitation, or is otherwise deemed to be unqualified during any stage of the procurement process.
7. To select and interview a single finalist or multiple finalists to further the City's evaluation of Submittals provided in response to a Solicitation. The City may, in its sole and exclusive discretion as to what is in the City's best interest, elect not to conduct interviews of any or all Suppliers in connection with a solicitation process.
8. Except in the case of Requests for Bids, to negotiate any rate/fee offered by a Supplier. The City shall have the sole right to make the final rate/fee offer during contract negotiations. If the selected Supplier does not accept the City's final offer, the City may, in its sole discretion discontinue contract negotiations and commence negotiations with another Supplier, except as otherwise provided in Chapter 39.80, RCW.
9. To select and enter into a Contract with one or more Suppliers whose Submittal best satisfies the interests of the City and is most responsive, in the sole judgment of the City, to the requirements of a Solicitation.
10. To award by line item or group of line items.
11. To not award one or more items.
12. To issue additional or subsequent solicitations.
13. To seek partnerships between one or more Suppliers.
14. Request additional related products and services from the selected Supplier(s) as necessary throughout the term of the Contract.
15. Negotiate costs or fees in the event of new legislation or regulatory changes, or issuance of related compliance guidance, technology enhancements, and innovative solutions.
16. In the event the City receives questions concerning a Solicitation from one or more Suppliers prior to the deadline for response, the City reserves the right to provide such questions, and the City's responses, if any, to all Suppliers.
17. If an award is made and, prior to entering into a contract, subsequent information indicates that such award is not in the best interest of the City, the City may rescind the award without prior notice to Supplier and either award to another Supplier or reject all submittals or cancel this solicitation.
18. To cancel award of a contract at any time before execution of the Contract by both parties if cancellation is deemed to be in the City's best interest. In providing a submittal, Suppliers agree that the City is not liable for any costs or damages for the cancellation of an award. Supplier assumes the sole risk and responsibility for all expenses connected with the preparation of its submittal.
19. To add additional City departments or divisions to the Contract or develop a separate Contract with the Supplier subject to all terms, conditions and pricing of the original Contract
20. To take any other action affecting a Solicitation or a procurement process that is determined to be in the City's best interests.

1.19 SUBMITTAL CLARIFICATION

Suppliers may be asked to clarify their Submittal. This action shall not be construed as negotiations or any indication of intentions to award. If called upon, Supplier must respond to such requests within two business days or the timeframe set forth by the City in its request for clarification. Supplier's failure to respond to such a request may result in rejection of its Submittal.

1.20 EVALUATION OF SUBMITTALS

- A. The City of Tacoma reserves the right to award to the lowest and best responsible Supplier(s) delivering a Submittal in compliance with the Solicitation, provided such Submittals are reasonable and are in the best interest of the City to accept. The City may use a number of criteria for determining award, including evaluation factors set forth in Municipal Code Section 1.06.262. Suppliers who are inexperienced or who fail to properly perform other contracts may have their submittal rejected for such cause.
1. Evaluation Factors. In addition to the factors set forth in Municipal Code Section 1.06.262, the following may be used by the City in determining the lowest and best responsible Submittal:
 - a. Compliance with a Solicitation and with applicable City requirements, including by not limited to, the City's Ethics Code and its Small Business Enterprise and Local Employment and Apprenticeship programs.
 - b. Submittal prices, listed separately if requested, as well as a lump sum total (if the unit price does not compute to the extended total price, the unit price shall govern).
 - c. The total cost to the City, including all applicable taxes, may be the basis for contract award.
 - d. Time of delivery and/or completion of performance (delivery date(s) offered).
 - e. Warranty terms.
 - f. Quality of performance of previous contracts or services, including safety requirements and past compliance with the City's Ethics Code.
 - g. Previous and existing compliance with laws and ordinances relating to contracts or services.
 - h. Sufficiency of financial resources.
 - i. Quality, availability, and adaptability of the supplies or services to the particular use required.
 - j. Ability to provide future maintenance and service on a timely basis.
 - k. Location of nearest factory authorized warranty repair facility or parts dealership.
 - l. Ability, capacity, experience, stability, reputation, integrity, character, judgment, technical qualifications, and skill to perform the contract or provide the services required.
 2. Prompt Payment Discount. Payment discount periods of 20 calendar days or more, if offered in the submittal, will be considered in determining the apparent lowest responsible submittal. Discounts will be analyzed in context of their overall cumulative effect.
 - a. ePayable/Credit Card Acceptance. Submittals offering ePayable/Credit card acceptance may be compared against submittals offering a prompt payment discount to evaluate the overall cumulative effect of the discount against the advantage to the City of the ePayable/Credit card acceptance, and may be considered in determining the apparent lowest responsible submittal.
 3. All other elements or factors, whether or not specifically provided for in a Solicitation, which would affect the final cost to, and the benefits to be derived by, the City, may be considered in determining the award of a Contract. The final award decision will be based on the best interests of the City.

1.21 CONTRACT OBLIGATION

- A. The Submittal contents of the successful Supplier will become contractual obligations if a Contract ensues.
- B. In the event the City of Tacoma determines to award a Contract, the selected Supplier(s) may be requested to execute Additional Contract Documents.
- C. Supplier shall register with the City of Tacoma on the SAP Ariba Network and be enabled for transactions upon request by the City.
- D. Suppliers may propose amendments to City's Contract documents or to these Terms and Conditions, but the City retains the right to accept or reject proposed amendments.
- E. No costs chargeable for work under the proposed Contract may be incurred before mutual acceptance and execution as directed.

1.22 AWARD

The City reserves the right to award Contracts for any or all items to one or more Suppliers in the best interests of the City.

1.23 SUPPLIER'S REFUSAL TO ENTER INTO CONTRACT

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

1.24 LEGAL HOLIDAYS

A. The City of Tacoma observes the following holidays, which shall apply to performance of all contracts:

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

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

1.25 CONTRACT TERM

All services shall be satisfactorily completed and all deliverables provided by the termination date stated, and the Contract shall expire on said date unless mutually extended in writing by the parties.

1.26 EXTENSION OF CONTRACT

Contracts shall be subject to extension at City's sole discretion.

1.27 TERMINATION AND SUSPENSION

A. Termination for Convenience

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

B. Termination for Cause. The City may terminate a Contract for either services or supplies in the event of any material breach of any of the terms and conditions of the Contract if the Supplier's breach continues in effect after written notice of breach and 30 days to cure such breach and fails to cure such breach.

C. Suspension. For either services or supplies, the City may suspend a Contract, at its sole discretion, upon three business days' written notice to Supplier. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Supplier's actual expenses and shall be subject to verification. Supplier shall resume performance of services under the Contract without delay when the suspension period ends.

D. Termination or suspension of a Contract by City shall not constitute a waiver of any claims or remaining rights the City may have against Supplier relative to performance under a Contract.

1.28 DEFAULT/BREACH

In the event of material default or breach by Supplier on any of the conditions of a Contract, Supplier agrees that the City may, at its election, procure the goods or services from other sources, and may deduct from the unpaid balance due Supplier, or collect against the bond or security (if any), or may invoice and recover from Supplier all costs paid in excess of the price(s) set forth in the Contract.

1.29 SCOPE OF SERVICES/CONTRACT MODIFICATION

Supplier agrees to diligently and completely perform the services and provide the deliverables required by a Contract.

- A. Supplies. The City at any time by written change order or other form of written contract amendment may make reasonable changes in the place of delivery, installation, or inspection, the method of shipment or packing, identification and ancillary matters that Supplier may accommodate without substantial additional expense.
- B. Services. The City shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or other written form of contract amendment. If the changes will result in additional work effort by Supplier the City agrees to reasonably compensate Supplier for such additional effort up to the maximum amount specified in the Contract or as otherwise provided by Tacoma Municipal Code. Any new services accepted by the City may be added to the Contract and/or substituted for discontinued services. New services shall meet or exceed all requirements of original award.
- C. Expansion Clause. A Contract may be further expanded in writing to include other related services or products normally offered by Supplier, as long as the price of such additional services or products have a profit margin equal to or less than that in place at the time of original submittal. Such additions and prices will be established in writing. New items not meeting these criteria will not be added to the Contract. Supplier profit margins are not to increase as a result any such expansion.

1.30 FEDERAL, STATE, AND MUNICIPAL LAWS AND REGULATIONS

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

1.31 PREVAILING WAGES

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

1.32 COPELAND ANTI-KICKBACK ACT

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

1. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

1.33 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.

1.34 FEDERAL FINANCIAL ASSISTANCE

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

- A. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Contract, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
1. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
 4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (B)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (B)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B)(2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (B)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (B)(1) through (4) of this section.

C. CLEAN AIR ACT

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

D. FEDERAL WATER POLLUTION CONTROL ACT

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

E. DEBARMENT AND SUSPENSION

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

F. BYRD ANTI-LOBBYING AMENDMENT

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

2. If applicable, Contractor must sign and submit to the City the following certification:

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

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

G. PROCUREMENT OF RECOVERED MATERIALS

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

1.35 CONTRACT PRICING

- A. Submitted prices shall include costs of submittal preparation, servicing of the account, all contractual requirements during contract period such as transportation, permits, insurance costs, bonds, labor, wages, materials, tools, components, equipment, and appurtenances necessary to complete the work, which shall conform to the best practice known to the trade in design, quality, material, and workmanship.
- B. Surcharges of any type will not be paid.
- C. If applicable, related additional products and corresponding services of benefit to the City not specifically required in a solicitation, but which Supplier offers to provide, may be included with the submittal. Supplier may request to add new products if the City approves them and Supplier can demonstrate the pricing is from the same pricing structure/profit margin.
- D. Unless specifically stated otherwise, only firm prices will be accepted and all prices shall remain firm during the term of a Contract.
- E. Price increases may at City's discretion be passed along during a contract period if the increase is mandated by statute, or the result of a tariff.
- F. By submitting prices, Supplier warrants prices equal to or better than the equivalent prices, terms, and benefits offered by Supplier to any other government unit or commercial customer.
- G. Should Supplier, during the term of a Contract, enter into any other contract, agreement or arrangement that provides lower prices, more favorable terms or greater benefits to any other government unit or commercial customer, the Contract with the City shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the City. This provision applies to comparable products and purchase volumes by the City that are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits, or more favorable terms.
- H. If at any time during the term of the Contract, Supplier reduces prices to other buyers purchasing approximately the same quantities stated on the Contract, Supplier will immediately notify the City purchasing manager of such fact, and the price(s) for future orders under the Contract shall be reduced accordingly.
- I. The City is entitled to any promotional pricing during the Contract period.
- J. Price decreases shall be immediately passed on to the City.
- K. The City reserves the right to increase or decrease the quantities of any item awarded pursuant to the Contract and pay according to the unit prices quoted in the submittal with no adjustments for anticipated profit.

1.36 APPROVED EQUALS WHEN ALTERNATES ARE ALLOWED

- A. Unless an item is indicated as "no substitute," special brands, when named, are intended to describe the standard of quality, performance, or use desired. Equal items will be considered by the City, provided that Supplier specifies the brand and model, and provides all descriptive literature, independent test results, specification sheets, schematic drawings, photographs, product samples, local servicing, parts availability, etc., to enable the City to evaluate the proposed equal. Performance testing in the field may be required.
- B. The decision of the City as to what items are equal shall be final and conclusive. If the City elects to purchase a brand represented by Supplier to be an "equal," the City's acceptance of the item is conditioned on the City's inspection and testing after receipt. If, in the sole judgment of the City, the item is determined not to be an equal, the item shall be returned at Supplier's expense.
- C. When a brand name or level of quality is not stated in Supplier's submittal, it is understood Supplier's submittal shall exactly confirm with those required in the Contract. If more than one brand name is stated in a Solicitation, Supplier(s) must indicate the brand and model/part number to be supplied.

1.37 RISK OF LOSS, SHIPPING AND DELIVERY

- A. Shipping. Prices must be quoted FOB destination (the place of destination as defined in RCW 62A.2-319, as that statute may hereafter be amended), with freight prepaid and allowed (shipping costs included in unit prices), and risk of loss remaining with Supplier until delivery is tendered.
- B. Delivery. Delivery will be to the designated addresses set forth in a Solicitation or as otherwise stated in the Contract. Deliveries shall be between 9:00 a.m. and 3:30 p.m., Monday through Friday only, except Legal Holidays. Failure to make timely delivery shall be cause for termination of the contract or order and return of all or part of the items at Supplier's expense except in the case of force majeure.

1.38 DELIVERY OF PRODUCTS AND PROVISION OF SERVICES – IDLING PROHIBITED

- A. The City of Tacoma has a commitment to reduction of unnecessary fuel emissions and improving air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public's enjoyment of City properties and programs, conservation of natural resources, and good stewardship practices.
- B. Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City of Tacoma for more than three minutes. The City requires contractors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when associated power is necessary to make a delivery or provide the service, when the engine is used to provide power to another device, and when a running engine is required for proper warm-up and cool-down of the engine.

1.39 PACKING SLIPS AND INVOICES

- A. Each invoice shall show City of Tacoma purchase order number, release number if applicable, quantity, unit of measure, item description, unit price and extended price for each line if applicable, services and deliverables provided if applicable. Line totals shall be summed to give a grand total to which sales tax shall be added, if applicable.
 - 1. For transactions conducted in SAP Ariba, invoices shall be submitted through Ariba.
 - 2. For invoices paid by ACH or by check, unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to accountspayable@cityoftacoma.org.
 - 3. For invoices paid by credit card, invoices shall also display the last name of the cardholder and last four digits (only) of the card number (e.g., Jones/6311). Unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number listed in the subject line to (do not combine different POs into one invoice or charge) to pcardadmin@cityoftacoma.org.

- B. Any terms, provisions or language in Supplier's invoice(s) that conflict with the terms of the Contract are superseded and shall not apply to the Contract unless expressly accepted in writing by the City.
- C. Packing slips and shipping notices shall be sent to the specific City Division or Department receiving the item(s) at the address stated in City's Solicitation or as otherwise stated in the Contract and include complete description of items, contents of items if crated or cased, quantity, shipping point, carrier, bill of lading number and City of Tacoma purchase order.
- D. Supplier shall package orders, preferably in environmental friendly packaging such as reduced packaging and recyclable packing materials.

1.40 COOPERATIVE PURCHASING

The Washington State Interlocal Cooperation Act RCW 39.34 provides that other governmental agencies may purchase goods and services based on the Contract with the City in accordance with the terms and prices of the Contract if all parties are agreeable. Each public agency shall formulate a separate contract with Supplier, incorporating the terms and conditions of the Contract with the City of Tacoma. The City shall incur no liability in connection with such contracts or purchases by other public agencies thereunder. It will be Supplier's responsibility to inform such public agencies of the Contract with the City. Supplier shall invoice such public agencies as separate entities.

1.41 TAXES

- A. Unless otherwise stated, applicable federal, state, City, and local taxes shall be included in the submittal and in contract as indicated below. As used herein, the term "taxes" shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.
 - 1. Federal Excise Tax. The City of Tacoma is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required. If Supplier fails to include any applicable tax in its submittal, then Supplier shall be solely responsible for the payment of said tax.
 - 2. State and Local Sales Tax. The City of Tacoma is subject to Washington state sales tax. It is Supplier's obligation to state the correct sales tax percentage and include the applicable Washington state, city and local sales tax as a separate line item(s) in the submittal.
 - 3. City of Tacoma Business and Occupation Tax. It is Supplier's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal. Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City of Tacoma may be subject to the City's Business and Occupation Tax.
- B. Any or All Other Taxes. Any or all other taxes are the responsibility of Supplier unless otherwise required by law. Except for state sales tax, Supplier acknowledges that it is responsible for the payment of all taxes applicable to the Contract and Supplier 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, Supplier agrees to hold the City harmless from such costs, including attorney's fees. In the event Supplier 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 Supplier 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 Supplier's total compensation.

1.42 COMPENSATION

- A. The City shall compensate Supplier in accordance with the Contract. Said compensation shall be the total compensation for Supplier'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 Supplier. 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 Supplier for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Supplier.

1.43 PAYMENT TERMS

- A. Payment shall be made through the City's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. The City may withhold payment to Supplier for any services or deliverables not performed as required hereunder until such time as Supplier modifies such services or deliverables to the satisfaction of the City.
- B. Invoices will not be processed for payment, nor will the period of cash discount commence, until all invoiced items are received and satisfactory performance of the Contract has been attained. Upon CITY'S request, Supplier shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.

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

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

1.45 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 Supplier's registered agent and to the applicable City department representative.

1.46 INDEPENDENT CONTRACTOR STATUS

- A. Supplier is considered an independent contractor who shall at all times perform his/her duties and responsibilities and carry out all services as an independent contractor and shall never represent or construe his/her status to be that of an agent or employee of the City, nor shall Supplier be eligible for any employee benefits. No payroll or employment taxes or contributions of any kind shall be withheld or paid by the City with respect to payments to Supplier. Supplier shall be solely responsible for all said payroll or employment taxes and/or contributions including, but not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. If the City is assessed, made liable or responsible in any manner for such taxes or contributions, Supplier agrees to indemnify and hold the City harmless from all costs incurred, including attorney fees.
- B. Unless otherwise specified in writing, Supplier shall provide at its sole expense all materials, working space, and other necessities and instruments to perform its duties under the Contract. Supplier, at its sole expense, shall obtain and keep in force any and all applicable licenses, permits and tax certificates necessary to perform the Contract.

1.47 NONDISCRIMINATION

Supplier agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. Supplier 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 Supplier 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.

1.48 REPORTS, RIGHT TO AUDIT, PERSONNEL

- A. Reports. Supplier 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, Supplier 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.
- C. Personnel. If before, during, or after the execution of a Contract, Supplier has represented or represents to the City that certain personnel would or will be responsible for performing services pursuant to the Contract, then Supplier is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. Substantial organizational or personnel changes within Supplier's firm are expected to be communicated to City immediately. Failure to do so could result in termination of the Contract. This provision shall only be waived by written authorization by the City, and on a case-by-case basis.

1.49 INSURANCE

- A. During the course and performance of a Contract, Supplier will provide proof and maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services, products, and deliverables provided under the Contract. The City of Tacoma Insurance Requirements document, if issued, is fully incorporated into the Contract by reference.
- B. Failure by City to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

1.50 INDEMNIFICATION – HOLD HARMLESS

- A. Supplier agrees to indemnify, defend, and hold harmless the City of Tacoma, its officers, agents and employees, from and against any and all liability which may accrue to or be sustained by the City of Tacoma for any claim, suit or legal action made or brought against the City for the death of or injury to persons (including Supplier's or subcontractor's employees), or damage to property involving Supplier or subcontractor(s) and their employees or agents, or for any other cause arising out of and in connection with or incident to the performance of the Contract, except for injuries or damages caused by the sole negligence of the City. In this regard, Supplier recognizes it is waiving immunity under Industrial Insurance Law, Title 51 RCW. This indemnification includes attorney's fees and the cost of establishing the right to indemnification hereunder in favor of the City of Tacoma. By Supplier's acceptance of this order, he/she agrees that this subsection has been mutually negotiated.
- B. These indemnifications shall survive the termination of a Contract.

1.51 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. Supplier shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations. Supplier represents that Supplier 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 Supplier's services and obligations hereunder. Supplier further covenants that, in performance of a Contract, no person having any such interest shall be employed. Supplier 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.

1.52 CITY OWNERSHIP OF WORK/RIGHTS IN DATA/PUBLICATIONS

- A. To the extent that Supplier creates any work subject to the protections of the Copyright Act (Title 17 U.S.C.) in its performance of a Contract, Supplier agrees to the following: The work has been specially ordered and commissioned by the City. Supplier agrees that the work is a "work made for hire" for copyright purposes, with all copyrights in the work owned by City. To the extent that the work does not qualify as a work made for hire under applicable law, and to the extent that the work includes material subject to copyright, Supplier hereby assigns to City, its successors and assigns, all right, title and interest in and to the work, including but not limited to, all copyrights, patent, trade secret and other proprietary rights, and all rights, title and interest in and to any inventions and designs embodied in the work or developed during the course of Supplier's creation of the work.
- B. Supplier shall be solely responsible for obtaining releases and/or licenses for the reproduction, distribution, creation of derivative works, performance, display, or other use of copyrighted materials. Should Supplier fail to obtain said releases and/or licenses, Supplier shall indemnify, defend, and hold harmless the City for any claim resulting there from.

1.53 DUTY OF CONFIDENTIALITY

Supplier acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the City except for disclosure of information and documents to Supplier's employees, agents, or subcontractors who have a substantial need to know such information in connection with Supplier's performance of obligations under the Contract. Supplier shall not, without prior written authorization by the City allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to a Contract.

1.54 DISPUTE RESOLUTION

In the event of a dispute pertaining to a Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the City's right to terminate.

1.55 GOVERNING LAW AND VENUE

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

1.56 ASSIGNMENT

Supplier shall not assign, subcontract, delegate or transfer any obligation, interest or claim to or under the Contract without the prior written consent of the City.

1.57 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.

1.58 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.

1.59 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.

1.60 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.



CITY OF TACOMA INSURANCE REQUIREMENTS FOR CONTRACTS

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

1. GENERAL REQUIREMENTS

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

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



CITY OF TACOMA INSURANCE REQUIREMENTS FOR CONTRACTS

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

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



CITY OF TACOMA INSURANCE REQUIREMENTS FOR CONTRACTS

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

2. CONTRACTOR

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

3. SUBCONTRACTORS

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

4. REQUIRED INSURANCE AND LIMITS

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

4.1 Commercial General Liability Insurance

Contractor shall maintain Commercial General Liability Insurance policy with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate. The Commercial General Liability Insurance policy shall be written on an Insurance Services Office form CG 00 01 04 13 or its equivalent. Products and Completed Operations shall be maintained for a period of three years following Substantial Completion of the Work related to performing construction services.

This policy shall include product liability especially when a Contract solely is for purchasing supplies. The Commercial General Liability policy shall be endorsed to include:

- 4.1.1 A per project aggregate policy limit, using ISO form CG 25 03 05 09 or an equivalent endorsement.

4.2 Commercial (Business) Automobile Liability Insurance

Contractor shall maintain Commercial Automobile Liability policy with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage and bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles.



CITY OF TACOMA

INSURANCE REQUIREMENTS FOR CONTRACTS

Commercial Automobile Liability Insurance shall be written using ISO form CA 00 01 or equivalent. Contractor must also maintain an MCS 90 endorsement or equivalent and a CA 99 48 endorsement or equivalent if "Pollutants" are to be transported.

4.3 Workers' Compensation

Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states. The Contractor must comply with their domicile State Industrial Insurance laws if it is outside the State of Washington.

4.4 Employers' Liability Insurance

Contractor shall maintain Employers' Liability coverage with limits not less than One Million Dollars (\$1,000,000) each employee, One Million Dollars (\$1,000,000) each accident, and One Million Dollars (\$1,000,000) policy limit.

4.5 Professional Liability Insurance or Errors and Omissions

Contractor and/or its subcontractor shall maintain Professional Liability or Errors and Omissions with limits of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate covering acts, errors and omissions arising out of the professional services under this Contract.

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 Professional Liability 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.

4.6 Excess or Umbrella Liability Insurance

Contractor shall provide Excess or Umbrella Liability Insurance with limits not less than Three Million Dollars (\$3,000,000) per occurrence and in the aggregate. This coverage shall apply, at a minimum, in excess of primary underlying Commercial General Liability, Employer's Liability, Pollution Liability, Marine General Liability, Protection and Indemnity, and Automobile Liability if required herein.

4.7 Cyber/Privacy and Security Insurance

Contractor shall maintain Cyber Privacy and Security Insurance with coverage of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) general aggregate that includes, but is not limited to, coverage for first party costs and third-party claims. Coverage shall include loss resulting from data security/privacy breach, unauthorized access, denial of service attacks, introduction of virus and malicious code, network security failure, dissemination or destruction of electronic data, business interruptions, privacy law violation, and disclosure of non-public, personal and confidential information, and failure to disclose breaches as required law or Contract. Coverage shall include notifications and other expenses incurred in remedying a privacy breach as well as costs to investigate and restore data. Coverage shall also include communications liability (e.g., infringement of copyrights, title, slogan, trademark, trade name, trade dress, service mark, or service name in the policy holders covered material).

4.8 Other Insurance

Other insurance may be deemed appropriate to cover risks and exposures related to the scope of work or changes to the scope of work required by City of Tacoma. The costs of such necessary and appropriate Insurance coverage shall be borne by Contractor.