PUBLIC WORKS ENGINEERING
REQUEST FOR PROPOSALS
MICROMOBILITY
SPECIFICATION NO. PW20-0099F
REQUEST FOR PROPOSALS PW20-0099F
 Micromobility

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, March 31, 2020

Submittal Delivery: Sealed submittals will be received as follows:

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

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

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

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

Project Scope: The City intends to select one or more companies to operate shared Micromobility throughout the City of Tacoma.

Estimate: N/A

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

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.

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

Additional Information: Requests for information regarding the specifications may be obtained by contacting Doreen Klaaskate, Senior Buyer by email to dklaaskate@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.

Form No. SPEC-040C Revised: 08/07/2019
Request for Proposals

Submittal Checklist

SECTION 1 – Project Information and Requirements

A. Project Overview
B. Minimum Qualifications
C. Inquiries to RFP
D. RFP Revisions
E. Calendar of Events
F. Contract Term
G. Commitment of Key Personnel
H. Proposal Format and Presentation
I. Confidential or Proprietary Information
J. Content to be Submitted
K. Evaluation Criteria
L. Interviews / Oral Presentations
M. Award
N. Equity in Contracting Program Information
O. Payment Method Acceptance

SECTION 2 – DRAFT MICROMOBILITY OPERATING REQUIREMENTS

A. Operating Requirements
B. Funding and Fees
C. Fee Structure

Appendix A

- Signature Page
- City of Tacoma Insurance Requirements
- Standard Terms and Conditions
- TMC 1.07
- Sample Contract
- Draft Indemnity Agreement
SUBMITTAL CHECK LIST

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

Sealed submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposal page at the front of this Specification or subsequent addenda.

Please do not include the entire specification document with your submittal. Doing so may render your submittal non-responsive.

Submittals must be sealed in an envelope or package labeled with the specification number, specification title, and Respondent name and address.

Respondents are encouraged to use recycled/recyclable products and both sides of paper for printed and photocopied materials, wherever possible.

<table>
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<tr>
<td>Confidential information identified and indexed as indicated in 1I</td>
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<tr>
<td>a) Signature Page - Appendix A</td>
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<td>b) Prime Contractor's Pre-Work Form - Appendix A</td>
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<tr>
<td>c) Content to be Submitted - Section 1J</td>
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After award, the following documents will be executed:

| Contract (Sample located in Appendix B) incorporating Standard Terms and Conditions contained herein. |  |

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Provide the following in a sealed envelope as indicated in the Submittal Check List:

One original hardcopy and one electronic copy (Flash Drive) of your complete submittal package.

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| **By U.S. Mail:** |
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| Tacoma Public Utilities |
| PO Box 11007 |
| Tacoma WA 98411-0007 |

| **In Person:** |
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| Administration Building North – Main Floor |
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SECTION 1 – PROJECT INFORMATION AND REQUIREMENTS

A. PROJECT OVERVIEW

The City of Tacoma (hereinafter “City”) is initiating this Request for Proposals (RFP) to solicit proposals from companies interested in operating shared micromobility within the City of Tacoma.

Increasing the use of active and sustainable transportation is a central goal of the City of Tacoma’s Transportation Master Plan and Environmental Action Plan, in alignment with the Tacoma 2025 focus on providing Tacoma residents with accessible and efficient transportation options.

Micromobility programs, such as scooter share and bike share, are one strategy to reduce barriers to using active, sustainable transportation options.

These programs can:

• Capture a new market of active transportation users.
• Address barriers that come with bike or scooter ownership such as cost, maintenance, and storage.
• Help close first and last mile gaps, and connect users to transit.

However, micromobility programs can also bring concerns including ADA access, pedestrian comfort, pedestrian safety, and property damage.

In fall 2018, the City of Tacoma launched a bike share/scooter share pilot with the goal of learning how best to realize the benefits of micromobility programs, while addressing common pitfalls.

From September 21, 2018 through December 17, 2019, 86,434 unique riders have taken 346,585 trips on scooters in Tacoma – travelling over 431,266 miles. A four month pilot of 250 e-bikes in the City of Tacoma in fall 2018 saw 5,773 riders and 14,986 rides. In addition, a second scooter company, which operated in Tacoma from September 21, 2018 to February 11, 2019, logged 22,816 rides during its permit period.

During the pilot, the City has worked with the micromobility vendors on collaborative solutions to address community concerns that have arisen – including implementing an 8 mph speed limit in parts of downtown and along the Ruston Way waterfront. These are areas without dedicated bicycle infrastructure, where pedestrians and micromobility users are sharing limited space.

The City has developed this RFP based on the lessons learned in the pilot program, best practices from other jurisdictions, and feedback from the Tacoma Area Commission on Disability, Transportation Commission, Bicycle and Pedestrian Technical Advisory Group and the City’s Micromobility Stakeholder Group.

Through this RFP, the City intends to select one or more companies to operate shared micromobility in the City of Tacoma.
The City will select up to one vendor per mode. The determination of what constitutes a “mode” is fully at the discretion of the City. The City is under no obligation to select a vendor for every mode.

The target launch date for shared mobility operation is June 1, 2020. Final terms of the contract, fees and operating requirements will be determined through the contract negotiation process.

B. MINIMUM QUALIFICATIONS

Shared mobility companies operating within the City of Tacoma must be able to meet and comply with the City’s contract provisions and Micromobility Operating Requirements. Draft copies of each are included as attachments to this RFP.

The Firm must be licensed to do business in the State of Washington and secure a City of Tacoma business license.

C. INQUIRIES TO RFP

The City is not holding a pre-proposal conference. However, questions and requests for clarification of the specifications may be submitted in writing by 3:00 p.m., Pacific Time, March 20, 2020, to Doreen Klaaskate, Senior Buyer, Purchasing Division, via email to d klaaskate@cityoftacoma.org. Questions will not be accepted after this date and time. The City will not be responsible for unsuccessful submittal of questions.

Written answers to all questions submitted will be posted on the Purchasing website at www.TacomaPurchasing.org on or about March 25, 2020. The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential. The answers are not typically considered an addendum to the RFP.

D. RFP REVISIONS

In the event it becomes necessary to revise any part of this RFP, addenda will be issued to all registered planholders and posted on the Purchasing website. Answers in response to RFP inquiries (see Section 1.C. above) are not typically provided as an addendum.

E. CALENDAR OF EVENTS

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

- Publish and issue RFP: March 12, 2020
- Pre-Proposal Questions: March 20, 2020
- Response to Questions: March 25, 2020
- Submittal Due Date: March 31, 2020
- Submittals evaluated: April 10, 2020
- Interviews/presentations, if conducted: April 13-17, 2020
- Award recommendation: April 21, 2020

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

Subject to the terms of the contract, the period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about June 1, 2020 and to end May 31, 2021.

Contract renewals or extensions shall be initiated at the discretion of the City and subject to mutual agreement. The contract may be extended for two (2) additional one-year contract periods with the total contract period not to exceed three (3) years.

G. 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 prior approval of the City. Substantial organizational or personnel changes within the agency are expected to be communicated immediately. Failure to do so could result in cancellation of the Contract. Specific language pertaining to personnel substitution is contained within the sample contract in Appendix A.

H. PROPOSAL FORMAT AND PRESENTATION

Respondents are encouraged to use recycled/recyclable products and both sides of paper for printed and photocopied materials, wherever possible.

Submittals should be limited to 40 pages, double-sided, excluding any required forms.

I. CONFIDENTIAL OR PROPRIETARY INFORMATION

Information that is confidential or proprietary must be clearly marked on each affected page. 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. See section 1.06 of the Standard Terms and Conditions. Marking the entire submittal as "confidential" or "proprietary" or "trade secret" in not acceptable and is grounds for reject such submittal.

J. CONTENT TO BE SUBMITTED

Proposals shall be submitted on eight and one-half by eleven inch (8” 1/2 x 11”) paper with tabs separating the major sections of the Proposal. Use recycled paper and both sides of paper sheets whenever practicable.

The major sections of the Proposal are to be submitted in the order noted below:
1. Letter of Submittal.
2. Technical Proposal.
Proposals shall provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the Proposal, but should assist the Proposer in preparing a thorough response.

1. Letter of Submittal

The Letter of Submittal shall be signed and dated by a person authorized to legally bind the Firm to a contractual relationship, e.g., the president or executive director of a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include the following information about the Firm and any proposed subcontractors:

a. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written;
b. Legal status of the Firm (sole proprietorship, partnership, corporation, etc.);
c. Location of the facility from which the Firm would operate;
d. Identify any current or former City employees employed by or on the Firm’s governing board as of the date of the Proposal or during the previous twelve (12) months; and

e. Acknowledgement that the Firm will comply with all terms and conditions set forth in the Request for Proposals, unless otherwise agreed by the City.

2. Technical Proposal

The Technical Proposal shall contain a comprehensive description of services with specific attention to the attached draft Micromobility Operating Requirements.

Referring to the attached draft Contract and draft Micromobility Operating Requirements, identify how the firm intends to address the requirements. This proposal should convey the firm’s understanding of City’s expectations for the shared micromobility program.

Responses should be organized according to the Operating Requirements and include responses to the questions below which references to each question (i.e. 1, 2a., 2ci., etc.):

1. Will your company comply with the requirements outlined in the draft Micromobility Operating Requirements? If no, please include detailed information on which requirement(s) your company anticipates being unable to comply with and your proposed remedy.

2. Describe the following elements of your micromobility program:
   a. Proposed launch approach & schedule, assuming June 1, 2020 start date. Include information on your ability and plan for deploying staff in the field during the first few weeks of operation to educate and encourage users of the proper and safe use of their micromobility vehicles, encourage the use of helmets and proper parking. Discuss your intentions for scaling the program or any planned phased implementation.
   b. Hours of operation – list typical micromobility vehicle deployment time, pick-up time, and the typical hours your micromobility vehicles are available to rent.
   c. Pricing plan, including discounted pricing plans offered
      i. Given that the City will select up to one vendor per mode, can you commit to maintaining this pricing for the entirety of a one-year contract? If no, please outline your expected pricing changes and commitments.
3. Equipment and Safety
   a. Provide a detailed description, with images, of the vehicle model(s) that you will use in the City of Tacoma – including compliance with S1 & S2, top speed, description of the wheel type and material, and measurements. Describe any elements of the vehicle that have been designed to minimize property damage (i.e. non-marking wheels that do not create marks on light-colored pavement through normal use and cannot be used to intentionally create lines or images).
   b. Provide proposed language, placement and font size for each of the required messaging below and any additional planned messages:
      i. Unique vehicle identification number
      ii. Mobility vendor’s customer service information (including phone number)
      iii. Mobility vendor’s name
   c. Outline your ability to limit speeds, create no-ride zones, and create no-parking zones, based on geofencing, as described in S3 & S4. Describe any associated limitations (i.e. number of speed limits that can be set, accuracy of geofencing, etc.)
   d. Describe the process private property owners will use to request speed limits, no-ride zones, and no-parking zones.
   e. Outline your plan for rider education, as described in S7.
4. Parking
   a. Describe your approach to ensuring that users park in appropriate spaces, as outlined in P1 and P3. Include strategies your company uses to incentivize proper parking behavior.
   b. Does you anticipate seeking permits to install objects (i.e. docking or parking stations) in the Right-of-Way? If so, please describe.
5. Operations
   a. Describe the availability of vendor staff for rebalancing or moving improperly vehicles, as outlined in P8 and O5.
   b. Describe your proposed fleet size – including your approach to seasonal variation in demand
   c. Describe your plan to ensure equitable distribution of micromobility vehicles throughout the City of Tacoma, including your approach to re-balancing.
   d. Describe the strong, proactive process you will use to prevent property damage and address property damage claims and complaints related to operation of their shared mobility vehicles. What does the process look like for a property owner who contacts you with a property damage complaint? How will you address property damage claims?
   e. Describe your plan to address dumping of your vehicles (i.e. in water, hillsides, forested areas, etc.) including a proactive approach to identify vehicles that have likely been dumped and retrieval plans – including retrieval timelines – to minimize environmental impacts (i.e. partnerships with local dive groups).
   f. Describe your plan to suspend the accounts of users with non-compliant behavior, including property damage & parking violations. How are users identified? Does your company fine users for property damage and/or parking violations?
6. Special Events and Severe Weather/Emergency
   a. Describe your approach to special events including your ability to:
      i. Create temporary reduced speed, no park, or no ride zones
      ii. Provide staffing during special events
      iii. Partner with the City of Tacoma and Metro Parks Tacoma to increase
active transportation access to the event

7. Data Sharing
   a. Describe the “data dashboard” you will make available to City staff, include screenshots and describe what data will be included and the format of that data.
   b. Describe what data will be included in the following reports and the format of the data:
      i. Monthly maintenance activities (DS4)
      ii. Monthly report on property damage complaints (DS5)
      iii. Monthly report on daily deployment (DS7)
      iv. Quarterly report on equity outcomes (DS8)
   c. Describe your collision-reporting process – include how users report a collision and the format of the report provided to the City of Tacoma.

8. Equity
   a. Describe your program that allows for use of its fleet without a smart phone.
   b. Describe your program that allows for cash payment.
   c. Describe the availability of materials outlining your sign-up process, safety information, and equity/access programs and options for customer support in English, Spanish, Korean, Khmer, Vietnamese and Russian.
   d. Describe what programs you have in place to increase the affordability & accessibility of your fleet for low-income users.
   e. Describe how you will partner with public transit and promote connections to transit.
   f. Is your application and website compliant with ADA standards and screen reader compatible?
   g. Do you offer TTY options for customer service?
   h. How can individuals without a drivers’ license access your program?
   i. How will you publicize and promote your equity programs?

9. Fees
   a. If you are requesting discounted fees based on the incentives outlined in the fee schedule, include a specific outline of your commitments (i.e.: # of new rider events, # of helmets to be given away) and your proposed discount.

10. Sustainability
    a. Please demonstrate your firm’s commitment to providing a micromobility program in the City of Tacoma in a sustainable manner. What measures will your firm take to minimize negative impacts to the environment in the delivery of services? Please provide details of efforts, practices, and/or processes.

11. Equity in Contracting
    a. Is your firm a minority/women owned firm certified with the Washington State Office of Minority and Women’s Business Enterprise?
    b. Is your firm partnering with a minority/women owned firm certified with the Washington State Office of Minority and Women’s Business Enterprise?
    c. Is your firm a DBE firm certified with the Washington State Office of Minority and Women’s Business Enterprises?
    d. Is your firm partnering with a DBE firm certified with the Washington State Office of Minority and Women’s Business Enterprise?
    e. Is your firm a SBE firm certified with the Washington State Office of Minority and Women’s Business Enterprise or City of Tacoma?
    f. Is your firm partnering with a SBE firm certified with the Washington State Office of Minority and Women’s Business Enterprise or City of Tacoma?
3. Management Proposal

1. Program Management
   a. Project Team Structure – Provide a description of the proposed project team structure to be used during the course of the project, including any subcontractors. Provide an organizational chart of the Firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the Firm. This chart must also show lines of authority to the next senior level of management. Include who within the Firm will have prime responsibility and final authority for the day to day management of the firm’s shared mobility fleet within Tacoma. Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each has worked for the firm or within the industry.
   b. Operations/Internal Controls/Customer Service— Discuss the Firm’s regular operating procedures including daily fleet deployment, fleet rebalancing and other related activities. Discuss the Firm’s internal controls, quality controls related to fleet maintenance, fleet inspection and repair. Discuss the Firm’s typical fleet maintenance activities and maintenance intervals. Provide standards for equipment serviceability and expected vehicle life in accordance with these fleet maintenance levels.

2. Experience of the Firm: Indicate the Firm’s experience by providing a list of municipalities, campuses or locations where their vehicles are currently or were recently deployed. Include the average number of vehicles in operation per day at each location.

3. References: List names, addresses, telephone numbers, and e-mail addresses of three (3) agency references for locations where the firm has deployed their vehicles. The Firm grants permission to the City to contact the references provided. Do not include current City of Tacoma staff as references. The City may evaluate references at the City’s discretion.

K. EVALUATION CRITERIA

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

The SAC may select one or more Respondents to provide the services required. Submittals will be evaluated on the following criteria:

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<td>Ability to comply with Draft Micromobility Operating</td>
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<td>Requirements and/or proposed remedies</td>
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<td>Proposed launch approach, hours, and pricing</td>
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<td>Data-sharing</td>
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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.

L. INTERVIEWS / ORAL PRESENTATIONS

An invitation to interview may be extended to Respondents based on Selection Advisory Committee 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 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 between the dates of April 13-17, 2020.

M. AWARD

After the Respondent(s) is selected by the SAC and prior to award, all other Respondents will be notified in writing 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.

N. EQUITY IN CONTRACTING (formerly SBE) PROGRAM INFORMATION

The City’s Equity in Contracting Program information is included in this specification. Participation in the program is encouraged and up to five points have been established in the Evaluation process.

O. Payment Method Acceptance

EPayables (Payment Plus)

This is payment made via a virtual, single use VISA card number provided by the City’s commercial card provider. This information is not a consideration in the evaluation. (Appendix B – See item 1.41 of the Standard Terms and Conditions).

Credit Card Acceptance

Provide a statement regarding your ability to meet the City’s credit card requirements.
as well as identifying your reporting capabilities (Level I, II, or III). This information is not a consideration in the evaluation. (Appendix B – See item 1.41 of the Standard Terms and Conditions).

**Electronic Funds Transfer (EFT) by Automated Clearing House (ACH) Acceptance**

Provide a statement regarding your ability to accept payment by electronic funds transfer (EFT) by Automated Clearing House (ACH). This information is not a consideration in the evaluation. (Appendix B – See item 1.41 of the Standard Terms and Conditions).
SECTION 2 – DRAFT MICROMOBILITY OPERATING REQUIREMENTS

A. OPERATING REQUIREMENTS

1. Equipment and Safety

Requirement S1: All micromobility vehicles shall be electric and/or human-powered and have a top speed of no more than 20 mph. In addition:

- Shared mobility vendors under this program shall comply with any micromobility standard or vehicle-specific (i.e. scooter, e-bike, etc.) regulation enacted or adopted by the State of Washington or federal agency during the course of the contract.
- All bicycles used by micromobility vendors shall meet the standards outlined in the Code of Federal Regulations (CFR) under Title 16, Chapter II, Subchapter C, Part 1512 – Requirements for Bicycles. Additionally, permitted systems shall meet the safety standards outlined in ISO 43.150 – Cycles, subsection 4210.
- The City reserves the right to terminate the use of micromobility vehicles under this program if the battery or motor on a micromobility vehicles is determined by the City to be unsafe for public use.
- All electric scooters used by shared mobility vendors shall be consistent with current industry standards for e-scooters.

Requirement S2: All vehicles shall include a front light that emits white light and a rear red reflector.

Requirement S3: Shared mobility vendors shall utilize geofencing to restrict and reduce speeds in special areas or zones as defined by the City. Examples of special speed zones may include but are not limited to: the Ruston Way waterfront and parts of downtown Tacoma.

Requirement S4: Shared mobility vendors shall utilize geofencing to create “no ride zones” and “no park zones” in special areas or zones, upon request of the City.

Requirement S5: Shared mobility vendors must allow private property owners to restrict speeds, create no ride zones, and create no park zones on their property and provide the City of Tacoma with the contact information for the vendor representative who will manage these requests.

Requirement S6: Shared mobility vendors shall provide a mechanism for customers to notify the company that there is a safety or maintenance issue with the micromobility vehicles.

Requirement S7: Shared mobility vendors shall actively promote proper and safe riding behavior for micromobility vehicles, including permitted and prohibited riding areas, and encourage and promote the use of bicycle helmets. Riding behavior education should include yielding to pedestrians, where to ride and the selection of appropriate parking places.

2. Parking
**Requirement P1:** For dockless shared mobility systems, micromobility vehicles shall be parked in areas that do not impede pedestrian and ADA access; leaving a minimum 5-foot pedestrian clear zone, with a 7-foot clear zone required along arterials and in mixed use centers and downtown. In addition to the pedestrian clear zone, micromobility vehicles shall not be parked in areas that impede access to:

a) Transit; including bus stops, shelters, passenger waiting areas and bus layover and staging zones;

b) Loading zones;

c) ADA parking;

d) Street and park furniture that requires pedestrian access (for example - benches, drinking fountains, picnic tables, docks/piers, access gates, parking pay stations, bus shelters, transit information signs, etc.);

e) Curb ramps;

f) Pedestrian push buttons;

g) Building entryways; and

h) Driveways.

**Requirement P2:** For shared mobility stations that require the installation and maintenance of objects in the right-of-way (ROW), additional permits may be required. The City of Tacoma and Metro Parks Tacoma and/or other public entities, as applicable, will review and provide guidance on locating shared mobility stations, as well as determine additional permits and/or fees that may apply.

**Requirement P3:** Shared mobility vendors shall inform customers regarding appropriate parking behavior and locations.

**Requirement P4:** Shared mobility vendors must allow private property owners to restrict parking on their property and provide the City of Tacoma with the contact information for the vendor representative who will manage these requests.

**Requirement P5:** Additional micromobility parking zones may be established; for example, locations within parks, trails, publicly-accessible plazas, on street parking spaces (i.e. bike corrals), off-street parking lots/garages, or campuses. However, permission to do so shall require coordination with the appropriate department, agency, or property owner; and shall be communicated to the customer through signage approved by the respective entity and/or through the mobile and web application.

**Requirement P6:** All permitted operators shall provide, on every vehicle, contact information – including a phone number – for micromobility vehicles relocation requests.

**Requirement P7:** Micromobility vehicles shall be upright when parked.

**Requirement P8:** Any micromobility vehicle that is parked incorrectly shall be re-parked in a correct manner or shall be removed by the shared mobility vendor within the following timeframes:

- 6am to 6pm - within two hours of receiving notice,
- All other times – within 10 hours of receiving notice.

**Requirement P9:** If parking behavior becomes problematic, as deemed by the City, the City retains the right to require the vendor to incentivize proper parking etiquette. This would include the use of geofencing and appropriate signs/markings to highlight...
appropriate parking locations and promotional information distributed to users to offer discounted rates to be earned by prolonged good behavior.

**Requirement P10:** In areas where parking and/or deployment becomes problematic, as deemed by the City, the City may require micromobility vendors to drop-off/deploy vehicles in designated areas.

3. **Operations**

**Requirement O1:** All shared mobility vendors shall have a local manager(s). The vendor shall provide the contact info (cell phone number and e-mail) for the local manager(s) to the City of Tacoma program manager.

**Requirement O2:** All shared mobility vendors shall execute an indemnity agreement in the form provided by the City of Tacoma in favor of the City of Tacoma and Metro Parks Tacoma in advance of launch.

**Requirement O3:** 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. Contractors shall provide a certificate of liability insurance in the amount and form acceptable to the City and Metro Parks Tacoma’s Risk Manager in advance of launch.

**Requirement O4:** All shared mobility vendors shall have a 24-hour customer service phone number for customers to report safety concerns, complaints, or ask questions.

**Requirement O5:** All shared mobility vendors shall provide the City with a direct contact for vendor staff that are capable of rebalancing micromobility vehicles. All permitted vendors shall relocate or rebalance according to the following timeframes:
  • 6am to 6pm - within two hours of receiving notice,
  • All other times – within 10 hours of receiving notice.

**Requirement O6:** All shared mobility vendors shall deposit with the City of Tacoma $10,000 damage deposit to be held in escrow for City expenses associated with repair of damages or the costs associated with addressing or abating violations of these operating requirements. Additional payments (up to $50,000 total) will be required if the original funds are used, in order to maintain a $10,000 balance. Any fees arising from the need for City crews to relocate or remove micromobility vehicles from any location where they are prohibited under this permit shall equal the City crews’ hourly rate plus fifteen percent.

**Requirement O7:** Any inoperable vehicle, or any vehicle that is not safe to operate shall be removed from the right-of-way within 24 hours of notice by any means to the vendor by any individual or entity, and shall be repaired and safety inspected before putting the vehicle back into revenue service.

**Requirement O8:** All shared mobility vendor(s) shall have a minimum fleet of 250 vehicles; operators shall meet this fleet size within one calendar week of the initial
launch date. The maximum fleet size shall be 750 vehicles per mode, unless otherwise approved in writing by the City.

**Requirement O9:** Micromobility vehicles must be equitably distributed throughout the City, including all City Council Districts and every Business District. The service area must include the entire City of Tacoma. At least 50% of the fleet vehicles must be deployed outside of Downtown and Ruston Way. This rebalancing must occur at least once every 24 hours.

**Requirement O10:** The City may determine additional or altered permit conditions based on data received as part of the data sharing requirements specified below or to address compliance issues.

**Requirement O11:** Every micromobility vehicle shall have a single unique alphanumeric identification visible from a distance of five feet, which shall not be obfuscated by branding or other markings, which shall be used throughout the state, including by local authorities, to identify the micromobility vehicle.

**Requirement O12:** Shared mobility vendors shall have & implement a strong, proactive process to prevent property damage and address property damage claims and complaints related to operation of their shared mobility vehicles. Shared mobility vendors shall provide contact information to the City for the vendor staff responsible for addressing property damage issues.

**Requirement O13:** The City reserves the right to terminate a shared mobility vendor’s participation in the program at any time and require that the entire fleet of vehicles be removed from Tacoma streets. The decommissioning shall be completed within 5 days unless a different time period is determined by the City.

**Requirement O14:** Shared mobility vendors shall have & implement a plan to address dumping of their vehicles (i.e. in water, hillsides, forested areas, etc.) including a proactive approach to identify vehicles that have likely been dumped and retrieval plans to minimize environmental impacts.

**Requirement O15:** Shared mobility vendors shall have a plan in place to suspend the accounts of users with non-compliant behavior, including property damage & parking violations.

**Requirement O16:** Shared mobility vendors shall include the written disclosure outlined RCW 46.61.715(2) in a contract offered to a prospective micromobility contractor:

> WHILE YOU ARE LOCATING AND RETURNING SCOOTERS, PROVIDING TRANSPORT, BATTERY CHARGE, OR REPAIR SERVICES, YOU MAY BE ENGAGED IN COMMERCIAL ACTIVITY. YOUR PRIVATE PASSENGER AUTOMOBILE, HOMEOWNERS, CONDOMINIUM, OR RENTERS INSURANCE POLICIES MIGHT NOT PROVIDE COVERAGE FOR YOU, DEPENDING ON THE TERMS OF YOUR POLICY.

## 4. Special Events and Severe Weather/Emergencies
**Requirement SE1:** All permitted shared mobility vendors shall coordinate and cooperate with City and Metro Parks Tacoma staff regarding operations during special events. Special events may include but are not limited to: Downtown to Defiance, T-Town Family 4th, and Taste of Tacoma. During special events, shared mobility vendors may be requested to rebalance fleet to increase active transportation access to the event. In addition, vehicle placement, parking and use may be prohibited or restricted within or near the location of the special event as defined by the City and Metro Parks Tacoma. Shared mobility vendors shall provide adequate staffing during the special events to comply with the restrictions, rebalancing or removing vehicles as needed. When feasible, shared mobility vendors may be required to establish special geofenced boundaries that make the vehicles inoperable or operate at reduced speeds within or near the defined special event zone. Shared mobility vendors shall coordinate with City and Metro Parks staff and special event organizers to identify and establish designated parking locations outside of the event zone for the parking of shared mobility vehicles.

**Requirement SE2:** In case of a severe weather event or an emergency, the City of Tacoma may require removal of all micromobility vehicles. If notified of such an emergency, shared mobility vendors shall remove all vehicles from the public right-of-way within 4 hours.

5. **Data Sharing**

**Requirement DS1:** The shared mobility vendor shall make data available to the City that is compliant with the Mobility Data Specification (MDS) format for GBFS. The data shall be made available to the City, at a minimum, on a weekly basis.

**Requirement DS2:** The shared mobility vendor shall make available to City staff a ‘data dashboard’ that provides access to data that is updated on a daily basis. The minimum basic data provided and available for viewing should include:
- Quantity of vehicles deployed
- Location of where vehicles have been deployed
- Locations of trips
- Number of rides/trips
- Average trip length
- Average trip distance
- Number of unique users

**Requirement DS3:** All shared mobility vendors shall cooperate with the City in the distribution of customer surveys related to shared mobility through notifications and links on the vendor’s application and through e-mail notification of vendor’s customers.

**Requirement DS4:** All shared mobility vendors shall keep a record of maintenance activities, including but not limited to the number of vehicles are suspected/confirmed to be dumped, the micromobility vehicle identification number, maintenance performed, location of suspected/confirmed dumping, and plans for retrieval. These records shall be sent to the City monthly.

**Requirement DS5:** All shared mobility vendors shall keep a record of property damage complaints & how they were resolved. These records will be sent to the City monthly.
Requirement DS6: All shared mobility vendors shall keep a record of reported collisions. These records will be sent to the City monthly.

Requirement DS7: All shared mobility vendors shall provide monthly reports showing daily deployment numbers broken down by Tacoma City Council District; in addition to the following break-down:
- Downtown
- Ruston Way
- Rest of the City of Tacoma

Requirement DS8: All shared mobility vendors shall submit quarterly summaries to the City outlining performance related to equity, including:
- Number of local users who accessed the fleet without a smart phone
- Number of local users who accessed the fleet using a cash payment option
- Number of local users who signed up for the low-income discount programs
- Work done to publicize and promote your equity programs

Requirement DS9: All shared mobility vendors agree to the City using a third-party consultant or researcher for evaluation of shared mobility.

6. Equity

Requirement E1: Shared mobility vendors shall implement a program that allows for use of its fleet without a smart phone.

Requirement E2: Shared mobility vendors shall implement a program that allows for cash payment to use their micromobility fleet.

Requirement E3: Shared mobility vendors shall publicize materials outlining their sign-up process, safety information, and equity/access programs and offer options for customer support in English, Spanish, Korean, Khmer, Vietnamese and Russian.

Requirement E4: Shared mobility vendors shall implement programs to increase the affordability & accessibility of their fleet for low-income users.

Requirement E5: Shared mobility vendors shall seek opportunities to partner with public transit providers and promote connections to transit.

Requirement E6: Shared mobility vendors shall ensure that their application(s) and website(s) are compliant with ADA standards and screen reader compatible and offer TTY options for customer service.

Requirement E7: Shared mobility vendors shall offer access programs for individuals without a driver’s license.

Requirement E8: Shared mobility vendors shall publicize and promote available equity programs.

7. Fees
**Requirement F1:** Shared mobility vendors shall pay applicable fees as noted in the City’s shared mobility contract and associated fee schedule.

### B. FUNDING AND FEES

The City will not compensate shared mobility companies.

In consideration for operating within the City’s right-of-way, shared mobility vendors shall pay fees as defined in the fee schedule included as an attachment to this RFP and according to the terms of the contract.

These fees will cover the City’s program management costs and support projects and programs that increase active transportation access & safety.

Operational fees may be reduced (though not eliminated) based on incentives outlined in the fee schedule.

### C. FEE STRUCTURE

**Annual Fee:** $10,000  
**Annual Per Vehicle Fee:** $100

**Incentives**  
The City of Tacoma may elect to reduce the per vehicle fee by up to 25% for shared mobility companies that go above and beyond the minimum requirements. These may include:

- Shared mobility companies that offer strong in-person education programs and helmet giveaway programs with a key focus on communities of color, low-income communities, non-English speaking individuals, and people with disabilities.
- Shared mobility companies that offer strong equity programs that go beyond minimum requirements – including enhanced geographic equity.
- Shared mobility companies that have non-marking wheels that do not create marks on light-colored pavement through normal use and cannot be used to intentionally create lines or images.
- Fleet vehicles that make a consistent, low-volume noise when in operation to help pedestrians, particularly visually impaired pedestrians, detect scooters.
- Shared mobility companies that have developed a strong local hiring plan focused on W2 employees (rather than independent contractors) – with a commitment to hiring a percentage of workforce who are people of color, low-income, women, LGBTQ+, people with disabilities.

The City of Tacoma also has an interest in encouraging micromobility vehicle types that are accessible to a wide variety of residents. For shared mobility companies that offer bicycles and/or adaptive vehicles the City of Tacoma may elect to:

- Reduce the annual fee by up to 75%, and/or
- Reduce the per vehicle fee for the bikes/adaptive vehicles by up to 75% (maximum 100% per trip fee reduction total if combined with incentives above), and/or
- Increase the cap on the number of scooters for companies offering both scooters and bikes/adaptive vehicles.
For the purposes of these incentives, adaptive vehicles may include tricycles, tandem cycles, recumbent cycles, hand cycles, side-by-side cycles, or trishaws. Seated, two-wheel scooters are not eligible for these discounts.

*Shared mobility vendors requesting discounted fees based on these incentives should include a specific outline of their commitments (i.e. # of new rider events, # of helmets to be given away) and their proposed discount as part of their proposal. If a discount is granted based on commitments that are not met, repayment of discount will be required.*
Appendix A

- Signature Page
- City of Tacoma Insurance Requirements
- Standard Terms and Conditions
- TMC 1.07
- Sample Contract
- Draft Indemnity Agreement
SIGNATURE PAGE

CITY OF TACOMA
PUBLIC WORKS

All submittals must be in ink or typewritten and must be executed by a duly authorized officer or representative of the bidding/proposing entity. If the bidder/proposer is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.

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

REQUEST FOR PROPOSALS SPECIFICATION NO. PW20-0099F Micromobility

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 into Contracts for Bidder/Proposer Date

Address

City, State, Zip

E-Mail Address


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

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

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

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.
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
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.
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. 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
4.3.1 Contractor shall comply with Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states. The Contractor must comply with their domicile State Industrial Insurance laws if it is outside the State of Washington.

4.4  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  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.

4.6  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.
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](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/](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
A. 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. Supplies. The City reserves the right to terminate a Contract 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.

B. Services. The City may terminate a Contract 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.

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.

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.
1.29 SCOPE OF SERVICES
Supplier agrees to diligently and completely perform the services required by a Contract.

1.30 SERVICES DO NOT INCLUDE PUBLIC WORK
Unless otherwise stated, the services and/or work contracted for herein exclude public work and improvements as defined in RCW 39.04, as that statute may hereafter be amended.

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 for the locality or localities where the Contract will be performed is attached and made part of the Contract by this reference. If prevailing wages do apply to the Contract, Supplier and its subcontractors shall:
   1. Be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits,
   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
   3. Immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages 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 must be received or verified by the City prior to final Contract payment.

1.32 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.

1.33 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.

1.34 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.

1.35 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.

1.36 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 accounts payable@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.

1.37 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.

1.38 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.

1.39 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.

1.40 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.

1.41 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.

1.42 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.

1.43 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.

1.44 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.

1.45 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.

1.46 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.

1.47 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.

1.48 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.

1.49 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.

1.50 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.

1.51 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.

1.52 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.

1.53 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.

1.54 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.
1.55 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.

1.56 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.

1.57 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.

1.58 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.

1.59 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.
CHAPTER 1.07
EQUITY IN CONTRACTING

Sections:
1.07.010 Policy and purpose.
1.07.020 Definitions.
1.07.030 Discrimination prohibited.
1.07.040 Program administration.
1.07.050 Certification.
1.07.060 Program requirements.
1.07.070 Evaluation of submittals.
1.07.080 Contract compliance.
1.07.090 Program monitoring.
1.07.100 Enforcement.
1.07.110 Remedies.
1.07.120 Unlawful acts.
1.07.130 Severability.
1.07.140 Review of program.

1.07.010 Policy and purpose.

It is the policy of the City of Tacoma that citizens be afforded an opportunity for full participation in our free enterprise system and that historically underutilized business enterprises shall have an equitable opportunity to participate in the performance of City contracts. The City finds that in its contracting for supplies, services and public works, there has been historical underutilization of small and minority-owned businesses located in certain geographically and economically disfavored locations and that this underutilization has had a deleterious impact on the economic well-being of the City. The purpose of this chapter is to remedy the effects of such underutilization through use of narrowly tailored contracting requirements to increase opportunities for historically underutilized businesses to participate in City contracts. It is the goal of this chapter to facilitate a substantial procurement, education, and mentorship program designed to promote equitable participation by historically underutilized businesses in the provision of supplies, services, and public works to the City. It is not the purpose of this chapter to provide any person or entity with any right, privilege, or claim, not shared by the public, generally, and this chapter shall not be construed to do so. This chapter is adopted in accordance with Chapter 35.22 RCW and RCW 49.60.400.

(Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 27867 Ex. A; passed Dec. 15, 2009)

1.07.020 Definitions.

Terms used in this chapter shall have the following meanings unless defined elsewhere in the Tacoma Municipal Code (“TMC”), or unless the context in which they are used clearly indicates a different meaning.

A. “Bid” means an offer submitted by a Respondent to furnish Supplies, Services, and/or Public Works in conformity with the Specifications and any other written terms and conditions included in a City request for such offer.

B. “Bidder” means an entity or individual who submits a Bid, Proposal or Quote. See also “Respondent.”

C. “City” means all Departments, Divisions and agencies of the City of Tacoma.

D. “Contract” means any type of legally binding agreement regardless of form or title that governs the terms and conditions for procurement of Public Works and Improvements and/or Non-Public Works and Improvements Supplies and Services. Contracts include the terms and conditions found in Specifications, Bidder or Respondent Submittals, and purchase orders issued by the City. A “Contract” as used in this chapter shall include an agreement between the City and a non-profit entity to perform construction-related services for Public Works. A “Contract” does not include: (1) awards made by the City with federal/state grant or City general funds monies to a non-profit entity where the City offers assistance, guidance, or supervision on a project or program, and the recipient of the grant awards uses the grant moneys to provide services to the community; (2) sales transactions where the City sells its personal or real property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease, franchise; (5) agreements to use City real property (such as Licenses, Permits and Easements) and, (6) banking and other financial or investment services.

E. “Contractor” means any Person that presents a Submittal to the City, enters into a Contract with the City, and/or performs all or any part of a Contract awarded by the City, for the provision of Public Works, or Non-Public Works and Improvements, Supplies or Services.
F. “Goals” means the annual level of participation by MWBEs and SBEs in City Contracts as established in this chapter, the Program Regulations, or as necessary to comply with applicable federal and state nondiscrimination laws and regulations. Goals for individual Contracts may be adjusted as provided for in this chapter and shall not be construed as a minimum for any particular Contract or for any particular geographical area.

G. “MWBE Certified business” (or “MWBEs”) means a business that meets the criteria set forth in Section 1.07.050 of this chapter and has been certified as meeting that criteria by the Community and Economic Development Department Program Manager.

H. “SBE Certified Business” (or “SBEs”) means a business that meets the criteria set forth in Section 1.07.050 of this chapter and has been certified as meeting that criteria by the Community and Economic Development Department-SBE Program Manager.

I. “SBE Program Manager” means the individual appointed, from time to time, by the City’s Community and Economic Development Director to administer the Program Regulations.

J. “Program Regulations” shall mean the written regulations and procedures adopted pursuant to this chapter for procurement of Supplies, Services and Public Works.

K. “Non-Public Works and Improvements” means all competitively solicited procurement of Supplies and/or Services by the City not solicited as Public Works.

L. “Person” means individuals, companies, corporations, partnerships, associations, cooperatives, any other legally recognized business entity, legal representative, trustee, or receivers.

M. “Proposal” means a written offer to furnish Supplies or Services in response to a Request for Proposals. This term may be further defined in the Purchasing Policy Manual and/or in competitive solicitations issued by the City.

N. “Public Works (or “Public Works and Improvements)” means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the City, or that is by law a lien or charge on any property therein. This term includes all Supplies, materials, tools, and equipment to be furnished in accordance with the Contract for such work, construction, alteration, repair, or improvement.

O. “Quote” means a competitively solicited written offer to furnish Supplies or Services by a method of procurement that is less formalized than a Bid or a Proposal. This term may be further defined in the Purchasing Policy Manual.

P. “Respondent” means any entity or Person, other than a City employee, that provides a Submittal in response to a request for Bids, Request for Proposals, Request for Qualifications, request for quotes or other request for information, as such terms are defined in Section 1.06.251 TMC. This term includes any such entity or Person whether designated as a supplier, seller, vendor, proposer, Bidder, Contractor, consultant, merchant, or service provider that: (1) assumes a contractual responsibility to the City for provision of Supplies, Services, and/or Public Works; (2) is recognized by its industry as a provider of such Supplies, Services, and/or Public Works; (3) has facilities similar to those commonly used by Persons engaged in the same or similar business; and/or (4) distributes, delivers, sells, or services a product or performs a Commercially Useful Function.

Q. “Services” means non-Public Works and Improvements services and includes professional services, personal services, and purchased services, as such terms are defined in Section 1.06.251 TMC and/or the City’s Purchasing Policy Manual.

R. “Submittal” means Bids, Proposals, Quotes, qualifications or other information submitted in response to requests for Bids, Requests for Proposals, Requests for Qualifications, requests for Quotations, or other City requests for information, as such terms are defined in Section 1.06.251 TMC.

S. “Supplies” means materials, Supplies, and other products that are procured by the City through a competitive process for either Public Works procurement or Non-Public Works and Improvements procurement unless an approved waiver has been granted by the appropriate authority.

T. “Tacoma Public Utilities Service Area” means any ZIP code in which Tacoma Public Utilities maintains infrastructure or provides retail services.


1.07.030  Discrimination prohibited.

A. No person that is engaged in the construction of public works for the City, engaged in the furnishing of laborers or craftspeople for public works of the City, or is engaged for compensation in the provision of non-public works and improvements supplies and/or services to the City, shall discriminate against any other person on the basis 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 disability in employment. Such discrimination includes the unfair treatment or denial of normal privileges to a person as manifested in employment upgrades, demotions, transfers, layoffs, termination, rates of pay, recruitment of employees, or advertisement for employment.

B. The violation of the terms of RCW 49.60 or Chapter 1.29 TMC by any person that is engaged in the construction of public works for the City, is engaged in the furnishing of laborers or craftsmen for public works of the City, or is engaged for compensation in the provision of non-public works and improvements supplies and/or services shall result in the rebuttable presumption that the terms of this chapter have also been violated. Such violation may result in termination of any City contract the violator may have with the City and/or the violator’s ineligibility for further City Contracts.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

1.07.040 Program administration.

A. The Community and Economic Development Director, or their designated Program Manager, shall be responsible for administering this chapter and obtaining compliance with respect to contracts entered into by the City and/or its contractors. It shall be the duty of the Director to pursue the objectives of this chapter by conference, conciliation, persuasion, investigation, or enforcement action, as may be necessary under the circumstances. The Director is authorized to implement an administrative and compliance program to meet these responsibilities and objectives.

B. The Director is hereby authorized to adopt and to amend administrative rules and regulations known as the Program Regulations, to properly implement and administer the provisions of this chapter. The Program Regulations shall be in conformance with City of Tacoma policies and state and federal laws and be designed to encourage achievement of the MWBE and SBE goals set forth herein. The Program Regulations shall become effective following public notice and an opportunity to comment by the public.

C. The Program Regulations adopted pursuant to this section are for the administrative and procedural guidance of the officers and employees of the City and are further expressions of the public policy of the City. The Program Regulations, when adopted, shall not confer an independent cause of action or claim for relief cognizable in the courts of the State of Washington or the United States of America to any third parties, and such provisions shall not be used as the basis for a lawsuit in any court of competent jurisdiction challenging the award of any contract by the City.


1.07.050 Certification.

A. The Program Manager shall approve a business as a Certified Business if all of the following criteria are satisfied:

1. The business is certified as a SBE, MBE, WBE, or MWBE through the state of Washington’s Office of Minority & Women Business Enterprises; and

2. The company can demonstrate that it also meets at least one of the following additional requirements:

a. The personal residence of the owner is located within the City of Tacoma or Tacoma Public Utilities Service Area, or

b. The company’s business offices are located in any county of the Tacoma Public Utilities Service Area or any county adjacent to Pierce County, or

c. When the work is performed outside of Pierce County, the company’s business offices may be located in an adjacent county in which the work is performed, or

d. Such additional information as the Program Manager or designee may require.

When another governmental entity has an equivalent business classification process, the City may enter into an interlocal cooperative agreement for mutual recognition of certifications.

B. Appeals. The applicant may appeal any certification determination by the Program Manager under this chapter to the Director. The appeal must be made in writing and must set forth the specific reasons for the appeal. The Director shall make a decision on the appeal request within a reasonable time, which decision shall be final unless further appeal is made to the Hearing Examiner. In that event, the Hearing Examiner Rules of Procedure for Hearings, Chapter 1.23 TMC, shall be applicable to that appeal proceeding.

1.07.060  Program requirements.

A. The program shall meet the following requirements:

1. Establishment of Annual Goals. The Program Regulations adopted pursuant to this chapter shall state reasonably achievable cumulative annual goals for utilization of MWBEs and SBEs in the provision of supplies, services, and public works procured by the City. Cumulative annual goals for the participation of MWBEs and SBEs in City contracts shall be based on the number of qualified MWBEs and SBEs operating within the Tacoma Public Utilities Service Area. The dollar value of all contracts awarded by the City to MWBEs and SBEs in the procurement of supplies, services, and public works shall be counted toward the accomplishment of the applicable goal.

2. Application of Annual Goals to Contracts. The Program Manager shall consult with City departments/divisions to establish department/division specific goals for competitively solicited contracts in accordance with this chapter and the Program Regulations.

B. Waivers. City departments/divisions or the Program Manager may request to waive one or more of the requirements of this chapter as they apply to a particular contract or contracts. Waivers may be granted in any one or more of the following circumstances:

1. Emergency: The supplies, services and/or public works must be provided with such immediacy that neither the City nor the contractor can comply with the requirements herein. Such emergency and waiver must be documented by the department/division awarding the contract.

2. Not Practicable: Compliance with the requirements of this chapter would impose an unwarranted economic burden or risk to the City after consideration of existing budgetary approvals.

3. Sole source: The supplies, services, and/or public works are available from only one source, and subcontracting possibilities do not reasonably exist as determined by the finance purchasing manager.

4. Government purchasing. The City is a party to or included in a federal, state or inter-local government purchasing agreement as approved by the finance purchasing manager.

5. Lack of certified contractors: An insufficient number of qualified contractors exist to create utilization opportunities.

6. Best interests of the City: Waiver of goals is in the best interests of the City due to unforeseen circumstances, provided that said circumstances are set forth in writing by the requestor.

C. Review of Waivers. A waiver determination by the finance purchasing manager may be reviewed by the Board of Contracts and Awards (C&A Board). The C&A Board may also review a request to reduce or waive the utilization requirements based on Not Practicable or Best Interests of the City circumstances. The C&A Board shall determine whether compliance with such requirements would impose unwarranted economic burden on, or risk to, the City of Tacoma as compared with the degree to which the purposes and policies of this chapter would be furthered by requiring compliance. If the determination of the C&A Board does not resolve the matter, a final determination shall be made by the City Council or Public Utility Board, as the case may be.


1.07.070  Evaluation of submittals.

A. All submittals for a supplies, services, or public works and improvements contracts shall be evaluated for attainment of the MWBE and SBE requirements established for that contract in accordance with this chapter and the Program Regulations.

B. The determination of MWBE and SBE usage and the calculation of MWBE or SBE requirements per this section shall include the following considerations:

1. General. The dollar value of the contract awarded by the City to a MWBE or SBE in the procurement of supplies, services, or public works shall be counted toward achievement of the respective goal.

2. Supplies. A public works and improvements contractor may receive credit toward attainment of the MWBE and/or SBE requirement(s) for expenditures for supplies obtained from an MWBE or SBE; provided such MWBE or SBE assumes the actual and contractual responsibility for delivering the supplies with its resources. The contractor may also receive credit toward attainment of the MWBE or SBE goal for the amount of the commission paid to a MWBE or SBE resulting from a supplies contract with the City; provided the MWBE or SBE performs a commercially useful function in the process.

3. Services and Public Works subcontracts. Any bid by a certified MWBE and/or SBE or a bidder that utilizes a certified MWBE and/or SBE shall receive credit toward requirement attainment based on the percentage of MWBE and/or SBE usage demonstrated in the bid. A contractor that utilizes an MWBE and/or SBE subcontractor to provide services or public works...
shall receive a credit toward the contractor’s attainment of the respective requirement based on the value of the subcontract with that firm.

4. Brokers, Fronts, or Similar Pass-Through Arrangements. MWBEs and/or SBEs acting as brokers, fronts, or similar pass-through arrangements (as such terms are defined in the Program Regulations) shall not count toward the requirement attainment unless the activity reflects normal industry practices and the broker performs a commercially useful function.

C. Evaluation of competitively solicited submittals for public works and improvements and for services when a requirement has been established for the contract to be awarded shall be as follows:

1. When contract award is based on price. The lowest priced bid submitted by a responsive and responsible bidder will be reviewed to determine if it meets the requirement. An MWBE and/or SBE firm may self-count utilization on such bids if they will perform the work for the scope the requirement is based upon.
   a. If the low bidder meets the requirements, the bid shall be presumed the lowest and best responsible bid for contract award.
   b. any bidder that does not meet the MWBE and/or SBE requirements shall be considered a non-responsible bidder unless the bidder receives a waiver from the Program Manager or C&A Board.

2. When contract award is based on qualifications or other performance criteria in addition to price. Solicitations shall utilize a scoring system that promotes participation by certified contractors. The Program Regulations may establish further requirements and procedures for final selection and contract award, including:
   a. Evaluation of solicitations for Architectural and Engineering (A&E) services;
   b. Evaluation and selection of submittals in response to requests for proposals; and
   c. Selection of contractors from pre-qualified roster(s).


1.07.080 Contract compliance.

A. The contractor awarded a contract based on MWBE or SBE participation shall, during the term of the contract, comply with the requirements established in said contract. To ensure compliance with this requirement following contract award, the following provisions apply:

1. Any substitutions for or failure to utilize MWBE or SBEs projected to be used must be approved in advance by the Program Manager. Substitution of one MWBE or SBE with another shall be allowed where there has been a refusal to execute necessary agreements by the original MWBE or SBE, a default on agreements previously made or other reasonable excuse; provided that the substitution does not increase the dollar amount of the bid.

2. Where it is shown that no other MWBE or SBE is available as a substitute and that failure to secure participation by the MWBE or SBE identified in the solicitation is not the fault of the respondent, substitution with a non-MWBE or non-SBE shall be allowed; provided, that, the substitution does not increase the dollar amount of the bid.

3. If the Program Manager determines that the contractor has not reasonably and actively pursued the use of replacement MWBEs or SBEs, such contractor shall be deemed to be in non-compliance.

B. Record Keeping. All contracts shall require contractors to maintain relevant records and information necessary to document compliance with this chapter and the contractor’s utilization of MWBEs or SBEs, and shall include the right of the City to inspect such records.


1.07.090 Program monitoring.

A. An Advisory Committee shall monitor compliance with all provisions of this chapter and the related Regulations. The Program Manager shall establish procedures to collect data and monitor the effect of the provisions of this chapter to assure, insofar as is practical, that the remedies set forth herein do not disproportionately favor one or more racial, gender, ethnic, or other protected groups, and that the remedies do not remain in effect beyond the point that they are required to eliminate the effects of under utilization in City contracting, unless such provisions are supported by a Disparity Study. The Program Manager shall have the authority to obtain from City departments/divisions, respondents, and contractors such relevant records, documents, and other information as is reasonably necessary to determine compliance.

B. The Program Manager shall submit an annual report to the Community and Economic Development Director, Director of Utilities, and the City Manager detailing performance of the program. The report shall document MWBE and SBE utilization
levels, waivers, proposed modifications to the program, and such other matters as may be specified in the Program Regulations.


1.07.100 Enforcement.

The Director, or designee, may investigate the employment practices of contractors to determine whether or not the requirements of this chapter have been violated. Such investigation shall be conducted in accordance with the procedures established in the Program Regulations.


1.07.110 Remedies.

A. Upon receipt of a determination of contractor violation by the Program Manager, the City Manager or Director of Utilities, as appropriate, may take the following actions, singly or together, as appropriate:

1. Forfeit the contractor’s bid bond and/or performance bond;
2. Publish notice of the contractor’s noncompliance;
3. Cancel, terminate, or suspend the contractor’s contract, or portion thereof;
4. Withhold funds due contractor until compliance is achieved; and/or
5. Recommend appropriate action including, but not limited to, disqualification of eligibility for future contract awards by the City (debarment) per Section 1.06.279 TMC;

B. Prior to exercise of any of the foregoing remedies, the City shall provide written notice to the contractor specifying the violation and the City’s intent to exercise such remedy or remedies. The notice shall provide that each specified remedy becomes effective within ten business days of receipt unless the contractor appeals said action to the Hearing Examiner pursuant to Chapter 1.23 TMC.

C. When non-compliance with this chapter or the Program Regulations has occurred, the Program Manager and the department/division responsible for enforcement of the contract may allow continuation of the contract upon the contractor’s development of a plan for compliance acceptable to the Director.


1.07.120 Unlawful acts.

It shall be unlawful for any Person to willfully prevent or attempt to prevent, by intimidation, threats, coercion, or otherwise, any Person from complying with the provisions of this chapter.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

1.07.130 Severability.

If any section of this chapter or its application to any Person or circumstance is held invalid by a court of competent jurisdiction, then the remaining sections of this chapter, or the application of the provisions to other Persons or circumstances, shall not be affected.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

1.07.140 Review of program.

This chapter shall be in effect through and until December 31, 2024, unless the City Council shall determine at an earlier date that the requirements of this chapter are no longer necessary. If this chapter has not been repealed by July 1, 2024, the City Council shall determine by the end of that year whether substantial effects or lack of opportunity of MWBEs and/or SBEs remain true in the relevant market and whether, and for how long, some or all of the requirements of this chapter should remain in effect.

SERVICES CONTRACT

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. 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.

5. 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.

6. 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.

7. 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.]

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Reliance on CITY Provided Data or Information

CONTRACTOR is not entitled to rely on any information or data supplied by the CITY and is obligated to independently verify any information or data supplied by the CITY.

14. 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.

15. 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.

16. Right to Audit

Upon CITY’s request, CONTRACTOR shall make available to CITY all accounts, records and documents related to the performance of this Contract for CITY’s inspection, auditing or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance and quality assurance under this Contract or in satisfaction of City's public disclosure obligation, as applicable.

17. 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.

18. 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:

<table>
<thead>
<tr>
<th>CITY:</th>
<th>CONTRACTOR:</th>
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<tbody>
<tr>
<td>Name:</td>
<td>Name:</td>
</tr>
<tr>
<td>Title:</td>
<td>Title:</td>
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<tr>
<td>Address:</td>
<td>Address:</td>
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<td>Telephone No.:</td>
<td>Telephone No.:</td>
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<tr>
<td>E-mail:</td>
<td>E-mail:</td>
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19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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).

30. 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.
31. 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.

32. 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:                      CONTRACTOR:
By:                                   By:

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

<table>
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<th>Director of Finance:</th>
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<td>City Attorney (approved as to form):</td>
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<td>Approved By:</td>
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This Indemnity Agreement ("Agreement") is made and granted by [COMPANY NAME] and its successors, heirs, and assigns (collectively the "Grantor") in favor of the City of Tacoma ("City") and Metro Parks Tacoma ("Metro Parks").

RECITALS

The Grantor has applied to the City for permission to use or occupy public right-of-way for the Grantor’s benefit.

The City’s permission for allowing the use or occupancy is conditioned on the Grantor and its successors, heirs, and assigns complying with all of the requirements outlined in RFP [ ] and Contract [ ]; and all applicable federal, state, and City law, including but not limited to the conditions in the Micromobility Operating Requirements that requires this Agreement.

AGREEMENT

In consideration for the City’s permission to use or occupy the public right-of-way that permits a [COMPANY]'s deployment of [type of micromobility vehicle(s)] throughout Tacoma beginning June 1, 2020, according to Contract [ ] the Grantor agrees as follows:

1. The Grantor, and its successors, heirs, and assigns shall forever defend, indemnify, and hold harmless; the City of Tacoma, Metro Parks Tacoma, and their officials, officers, employees, and agents; from and against all liabilities, claims, causes of action, suits, loss, costs, expenses, judgments, attorney fees and necessary litigation expenses, and damages of every kind and description including but not limited to actual or alleged bodily injury including death, or actual and alleged damage to property; resulting directly or indirectly from any act or omission of the permittee, its subcontractors, anyone directly or indirectly employed by them, and anyone for whose acts or omissions they may be liable for; arising out of or in connection with the permittee using or occupying the public right-of-way or any person operating the permittee’s [type of micromobility vehicle(s)] or other device with or without wearing a helmet.

2. The Grantor’s, successors’, heirs’, and assigns’ indemnification obligations under this Agreement do not apply to any liabilities, claims, causes of action, judgments, or expenses resulting from bodily injury or property damage caused by the sole negligence of the City, Metro Parks Tacoma, or their officers, employees, elected officials, agents, or subcontractors.

3. The Grantor, successors, heirs, and assigns acknowledge that permission to use or occupy the public right-of-way is of a temporary nature and vests no permanent rights in the Grantor or the Grantor’s successors, heirs, or assigns to use or occupy the public right-of-way.

4. The Grantor, on behalf of the Grantor and Grantor’s successors, heirs, and assigns, specifically and expressly agrees to waive Grantor’s and Grantor’s successors’, heirs’, and assigns’ immunity under
industrial insurance, Title 51 of the Revised Code of Washington, to the extent necessary to provide the City and Metro Parks with a full and complete indemnity from claims for which the City and Metro Parks are entitled to indemnity under this Indemnity Agreement. Grantor, on behalf of Grantor and Grantor’s successors, heirs, and assigns, specifically and expressly agrees this provision was mutually negotiated by the parties.

5. The Grantor and its successors, heirs, and assigns acknowledge that if the City revokes the permission to use or occupy the public right-of-way; the Grantor and its successors, heirs, and assigns shall at its sole expense, remove the use or occupancy and restore the public place to at least as good a condition as required by current applicable standards.

6. The Grantor makes this Agreement on behalf of the Grantor and Grantor’s heirs, successors, and assigns for the benefit of the City and its successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this Agreement on the day and year indicated below.

________________________________    ______________________________
Grantor’s Signature      Print Name and Title

State of Washington
County of __________

This is to certify that on this ________ day of _______________ 2020, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared __________________ to me known to be the _______________ (title) of the corporation of limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be their free and voluntary act and deed of said corporation or limited liability company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal, the day and year first above written.

__________________________________
Notary Public in and for the State of Washington