

CITY OF MERCER ISLAND

KING COUNTY

WASHINGTON



Sub Basin 42 Watercourse Stabilization Project

PROJECT MANUAL

May 2021

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NOTICES

Advertisement for Bids City of Mercer Island

Project Title: Sub-Basin 42 Watercourse Stabilization Project

Project Number: 21-27

Engineer's Estimated Cost: \$264,000

Sealed bids will be received until 2:00 PM on June 3, 2021. Due to the COVID-19 Pandemic and the temporary closure of the City Hall building, all bidders shall submit their bids in PDF format via electronic transmission to the Public Works email address at: publicworks@mercerisland.gov. There will be no public bid opening for this project; bid results will be posted on the City's web page at: <https://www.mercerisland.gov/rfps>.

Pre-bid meeting with City representative:

An on-site, pre-bid conference will begin at 2:00 PM on Tuesday, May 18, 2021 by the shoulder of 6500 block East Mercer Way, Mercer Island. Safety vest and waterproof boots are advised for the site visit. Do not enter project site without prior permission as portion of the project site is privately owned - violation may result in disqualification. The City reserves the right to cancel this meeting at any time.

Work to be performed under this contract includes furnishing all labor, equipment, and materials necessary to stabilize approximately 1200 LF of reach where previously installed gabion baskets and sandbag check dams are eroding. The work includes, but is not limited to, invasive removal, dewatering, temporary erosion control, installing timber frame structures on the banks, bed control structures and stream cobbles in the channel, and re-vegetation with native plants.

A single contract will be awarded to the responsible bidder submitting the lowest responsive bid. The City reserves the right to reject any and all bids and to waive minor irregularities.

Plans, specifications, addenda, and bidders list are available on-line through Builders Exchange of Washington, Inc. at <http://www.bxwa.com>. Click on "Posted Projects", "Public Works", "City of Mercer Island", "Projects Bidding". Builders Exchange manages the official bidders list. Bidders are encouraged to register in order to receive automatic email notification of future addenda and to be placed on the official bidders list.

Plans and specifications are also available at the City of Mercer Island website <https://www.mercerisland.gov/rfps>. Addenda may not be available or updated on this website.

A bid deposit in the amount of five percent (5%) of the bid total price must accompany each bid.

Bidder questions are to be directed to Fred Gu, CIP Project Manager, by email at fred.gu@mercerisland.gov, or by phone at 206-771-0236.

Deborah Estrada, MMC, City Clerk

Published: Seattle Daily Journal of Commerce 5/10/2021, 5/14/2021

City of Mercer Island

Instructions to Bidders

1. ELIGIBILITY TO BID:

It is the intent of the City to award a contract to the low responsible bidder. Before award, the bidder must meet the following bidder responsibility criteria to be considered a responsible bidder. To be eligible to bid, each Bidder must:

- A. For specific experience requirements, refer to Technical Specifications, special provisions section 1-02.1(1) Supplemental Qualifications Criteria.
- B. At the time of bid submittal, have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW; and
- C. Have a current Washington Unified Business Identifier (UBI) number; and
- D. If applicable:
 - i. Have Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW; and
 - ii. Have a Washington Employment Security Department number, as required in Title 50 RCW; and
 - iii. Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW; and
- E. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3); and
- F. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48 or 49.52 RCW.

A contract shall only be awarded to a Bidder that demonstrates to the City's satisfaction that the Bidder is qualified to perform the Work and is, therefore, a responsible bidder.

2. SUBCONTRACTOR RESPONSIBILITY CRITERIA:

The Bidder must verify responsibility criteria for each first-tier subcontractor, and each subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Upon request of the City the Bidder shall promptly provide documentation to the City demonstrating that the subcontractor(s) meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.

At the time of subcontract execution, the Bidder shall verify that each of its first-tier subcontractors meets the following bidder responsibility criteria:

- A. Have a current certificate of registration in compliance with chapter 18.27 RCW; and
- B. Have a current Washington Unified Business Identifier (UBI) number; and
- C. If applicable:
 - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW; and
 - ii. Have a Washington Employment Security Department number, as required in Title 50 RCW; and
 - iii. Have a Washington Department of Revenue state excise tax registration number as required in Title 82 RCW; and
 - iv. Have an electrical contractor license, if required by Chapter 19.28 RCW; and
 - v. Have an elevator contractor license, if required by Chapter 70.87 RCW; and
- D. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3); and

3. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE:

Each bidder is instructed to examine the Plans, Specifications, Addenda, the site of the proposed improvements, and conduct any other examination and investigation which the bidder may desire to make as to the accuracy of the nature of the work and the difficulties to be encountered. The Bidder shall be responsible for all costs associated with these additional examinations including all restoration work and damages which may be a result of such investigation. Bidders shall consider Federal, State, and local laws and regulations that may affect cost, progress, or performance of the work.

4. ADDITIONAL INFORMATION:

All questions about the meaning or intent of the Contract Documents are to be directed to Fred Gu, CIP Project Manager, in writing by email at fred.gu@mercerisland.gov .

Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the Engineer or City as having received the Contract Documents. Questions received less than ten (10) days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

5. WAGES:

This Contract is subject to Chapters 39.12 and 49.28 RCW, amendments thereto and regulations issued thereunder, relating to prevailing wages, benefits and other requirements. Bidders shall examine and be familiar with such requirements. No claim for additional compensation will be allowed which is based upon a lack of knowledge or a misunderstanding of any such requirements by the Bidder or a failure to include in Bidder's price adequate increases in such wages during the performance of this Contract. A copy of the most recent prevailing wage schedule is in the Appendix of the specifications. Current prevailing wage rates for King County can be obtained from the Washington State Department of Labor and Industries at www.lni.wa.gov/TradesLicensing/PrevWage/.

6. PROGRESS AND COMPLETION:

Time is of the essence for this Project. Progress and completion of the Work shall comply with all requirements herein, and intermediate and final completion dates as may be set forth in the specifications. The submission of a bid constitutes the Bidder's acknowledgement that such progress and completion requirements have been taken into account in formulating a price for this Work.

7. PREVENTION OF ENVIRONMENTAL POLLUTION AND PRESERVATION OF PUBLIC NATURAL RESOURCES:

If awarded the Contract, the Bidder shall fully comply with all such environmental protection laws, ordinances and regulations dealing with prevention and environmental pollution and the preservation of public natural resources that may be applicable to this Project. The cost of such compliance shall be included in the bid prices.

8. BID FORM:

The Bid Form is included in the Contract Documents. The Bid Form must be completed in ink. Bids that contain omissions, erasures or irregularities of any kind may be rejected. Any qualification, addition, limitation or provision attached to or contained in a bid may render the bid non-responsive and not eligible for award. No oral, facsimile, telegraphic or telephonic bids or modifications will be considered.

All bids shall be signed by the Bidder, or the Bidder's authorized representative. If the bid is made:

- A. By an individual, the Bidder's name, signature, and address must be shown;
- B. By a partnership or joint venture, it shall contain the names of each partner, the mailing address of the partnership or joint venture and shall be signed in the firm name, followed by the signature of the person signing, indicating that person's position in the partnership or joint venture;
- C. By a corporation or limited liability company ("LLC"), the name of the state under the laws of which the corporation or LLC is chartered, the name and post office address of the corporation or LLC and the title of the person who signs on behalf of the corporation or LLC must be shown.

Upon the City's request, the Bidder shall provide copies of the articles of incorporation, bylaws, resolutions of board of directors, partnership papers, joint venture agreements, and any other documents evidencing the legal status of the Bidder and the authority of the Bidder's officer or representative who signed the bid on behalf of the Bidder.

The City is not responsible for any cost incurred in responding to this Call for Bids.

9. ACKNOWLEDGEMENT OF ADDENDA:

Each Bidder shall include on the Bid Form specific acknowledgment of receipt of each Addendum issued by the City during the bidding period. If the Bidder does not specifically acknowledge each addendum, the City may reject the bid as non-responsive unless the City determines from delivery records or from inclusion of information in the bid of information contained in the addenda that the Bidder received constructive notice of the addenda.

10. BID SECURITY:

The Bid shall be accompanied by a bid deposit in the amount equal to at least 5% of the Total Bid Price. The bid deposit shall be in one of the following formats and made payable to the City:

- A. A bid guaranty bond, in accordance with and using a form acceptable to the City which contains provisions substantially similar to those in the bid bond form included with the Contract Documents, duly completed by a guaranty company authorized to carry on business in the state of Washington; or
- B. A postal money order, a certified check, or cashier's check drawn upon a banking institution with a branch office in the state of Washington.

The surety signing the bid guaranty bond shall be registered with the Washington State Insurance Commissioner, and the surety's name shall appear in the current Authorized Insurance Company List in

the State of Washington published by the Office of the Insurance Commissioner. A Power of Attorney must accompany the bid guaranty bond and must appoint the surety's true and lawful attorney-in-fact to make, execute, seal and deliver the bid guarantee bond. Failure to submit the required bid security with the Bid shall render the bid non-responsive and the Bid shall be rejected.

11. NON-COLLUSION:

Each bid shall be accompanied by a signed Non-Collusion Declaration in accordance with, and using the form provided by the City. Failure to submit a signed Declaration with the Bid shall render the bid non-responsive and the Bid shall be rejected.

More than one Bid from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. If the City believes that any Bidder is interested in more than one Bid for the work contemplated, all Bids in which such Bidder is interested will be rejected. If the City believes that collusion exists among the Bidders, all Bids will be rejected.

12. DELIVERY OF BID:

Refer to Advertisement for Bids for submission procedure. The City will not consider bids received after the time fixed for submission.

The submission of a Bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of these instructions, that without exception the Bid is premised upon performing the work required by the Contract Documents and such means, methods, techniques, sequences, or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the work.

13. MODIFICATION OF BID:

A modification of a Bid will be considered only if the modification is received prior to the time announced for the opening of Bids. All modifications shall be made in writing executed and submitted in the same form and manner as the original Bid.

14. RETURN OF BID SECURITY:

After the bid prices have been compared, the City may return the bid security if, in the City's judgment, the Bidder would not be considered for award. All other Proposal Guarantees will be held until the Contract and the Performance Bond of the successful bidder have been executed.

15. EVALUATION OF BIDS AND BID ERRORS:

After opening the Bids, the City will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any bid item, the price per unit will control. The total of extensions, corrected where necessary, will be used by the City for award purposes.

Irregular Bids:

- A. A Bid will be considered irregular and will be rejected if:
 - i. The authorized Bid Form furnished by the City is not used or is materially altered;
 - ii. The completed Bid Form contains any unauthorized additions, deletions, alternate bids, or conditions;
 - iii. The bidder adds provisions reserving the right to reject or accept the Award, or enter into the Contract;
 - iv. A price per unit cannot be determined from the Bid Form;
 - v. The Bid Form is not properly executed;
 - vi. An executed non-collusion certificate is not provided; or
 - vii. Proper bid security does not accompany the Bid.

- B. A Bid may be considered irregular and may be rejected if:
 - i. The Bid Form does not include a unit price for every Bid item;
 - ii. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the City;
 - iii. Receipt of Addenda is not acknowledged;
 - iv. A member of a joint venture or partnership and the joint venture or partnership submit Bid Forms for the same project (in such an instance, both Bids may be rejected); or
 - v. If Bid Form entries are not made in ink.

Bids will be evaluated by the City to determine which bid is the apparent lowest, responsive bid.

Bid results will be posted on the City's website at <https://www.mercerisland.gov/rfps>.

The City, in its sole discretion, reserves the right to waive minor bid errors, informalities, and immaterial irregularities when it is in the City's best interest to do so.

16. EVALUATION OF BIDDER RESPONSIBILITY:

A Contract shall only be awarded to a Bidder that demonstrates to the City's satisfaction that the Bidder is qualified to perform the Work and is, therefore, a responsible bidder.

- A. Bidder Responsibility Criteria. To be determined responsible, the Bidder must, in addition to satisfying the bidder responsibility criteria listed in Section 1. ELIGIBILITY TO BID above:
- i. Have adequate financial resources to perform the contract, or the ability to obtain them;
 - ii. Have a satisfactory performance record;
 - iii. Have a satisfactory record of integrity and business ethics;
 - iv. Have the necessary production, construction, and technical equipment and facilities or the ability to obtain them;
 - v. Be otherwise qualified and eligible to receive an award under applicable laws and regulations;
 - vi. Be in compliance with training requirements in RCW 39.04.350(1)(f); and
 - vii. Provide a statement in accordance with RCW 9A.72.085 verifying compliance with responsible bidder criteria requirement of RCW 39.04.350(1)(g).
- B. Reference Checking. To assist the City in the review of the Bidder's qualifications, the Bidder shall, within five (5) days of being requested to do so by the City, provide the following information:
- i. Past Experience in Similar Projects. Provide a list of all construction contracts (whether completed or in progress) entered into or performed by the Bidder within the past five (5) years for projects similar in scope, time and complexity to the work called for under this Contract. Provide the names of the contracts, the contract price, and the names and phone numbers of the owners.
 - ii. References. Provide a list of five (5) references. References will be asked to rate performance on the following items: overall project performance; acceptable experience and technical knowledge; effective coordination of subcontractors; ability to coordinate and work with utility companies and governmental entities; responsiveness to owner requests; attention to safety; quality and timeliness of submittals, change order proposals, project schedule, schedule updates and other applicable paperwork.

If the Bidder is a joint venture, the Bidder shall submit information for the joint venture if the members have worked together in the past and also information about each member of the joint venture. The Joint Venture Agreement shall be included in the submission.

If the Bidder fails to supply information requested concerning responsibility within the time and the manner specified, the City may base its determination of responsibility upon any available information related to the responsibility criteria or may find the Bidder is not responsible.

The City reserves the right to inspect records, reports and other information which may be maintained by or for the Bidder to the extent necessary, as determined by the City to verify, clarify or otherwise consider the information provided by the Bidder.

17. DETERMINATION OF NON-RESPONSIBILITY:

If the City determines a Bidder to be not responsible, the City will provide, in writing, the reasons for the determination. The Bidder may appeal the determination within ten (10) days of its receipt of the City's determination of non-responsibility by presenting additional information to the City. The City shall consider the additional information before issuing its final determination. If the City's final determination affirms that the Bidder is not responsible, the City shall not execute a contract with any other bidder until two (2) business days after the Bidder determined to be not responsible has received the final determination.

18. CONTRACT AWARD:

If a Contract is awarded, the City will award the contract to the responsible bidder that submits the lowest total responsive bid for the schedule(s) selected by City after bid opening and prior to award.

If the Contract is to be awarded, City will give the successful Bidder a Notice of Award within sixty (60) days after the day of the Bid opening. No other act of the City or others will constitute acceptance of a Bid.

The City reserves the right to request bidders to extend the effective period of their bids.

19. REJECTION OF ALL BIDS:

The City reserves the right to reject any or all Bids at any time up to actual execution of the Public Works Contract, even if there has been an award of the Contract.

Any or all Bids will be rejected if the City has reason to believe that collusion exists among the Bidders.

20. EXECUTION OF PUBLIC WORKS CONTRACT:

The Bidder to whom award is made shall execute a written Public Works Contract with the City on the form provided, shall secure all insurance, and shall furnish all certificates, endorsements and bonds required by the Contract Documents within ten (10) calendar days after receipt of the forms from the City. Failure or refusal to execute the Public Works Contract as herein provided or to conform to any of the stipulated requirements in connection therewith shall be just cause for annulment of the award and forfeiture of the Bid security. If the lowest responsive, responsible Bidder refuses or fails to execute the Public Works Contract, the City may award the Contract to the second lowest responsive, responsible Bidder. If the second lowest responsive, responsible Bidder refuses or fails to execute the Public Works Contract, the City may award the contract to the third lowest responsive, responsible Bidder. On the failure or refusal of such second or third lowest Bidder to execute the Agreement, each such Bidder's Bid securities shall be likewise forfeited to the City.

21. BID PROTEST PROCEDURES:

- A. Form of Protest. In order to be considered, a Protest shall be in writing, addressed and delivered to the attention of the project manager at the City of Mercer Island, 9611 SE 36th Street, Mercer Island, Washington 98040. The Protest shall include the following:
- i. The name, address, and phone number of the Bidder protesting, or the authorized representative of the Bidder;
 - ii. A complete, detailed statement of all grounds for protest, supporting authority, and any supporting documentation. Supplemental information will not be considered unless the supplementation contains information not available at the time of protest;
 - iii. The specific ruling or relief requested; and
 - iv. Evidence that all persons with a financial interest in the procurement have been given notice of the Protest or if such persons are unknown, a statement to that effect.
- B. Who May Protest:
- i. Protests based on specifications: Any prospective Bidder.
 - ii. Protests following Bid opening: Any Bidder with a substantial financial interest in the award of a Contract.
- C. Time to Protest:
- i. Protests based on specifications or other terms in the Contract Documents must be received by the City no later than ten (10) calendar days prior to the date established for submittal of Bids.
 - ii. The City must receive protests based on other circumstances within five (5) calendar days after the bids are opened and publicly read.
 - iii. In no event shall a Protest be considered if all bids are rejected or after execution of the Contract.
- D. Determination of Protest. Upon receipt of a timely written Protest, the City shall investigate the Protest and shall respond in writing to the Protest prior to the award of Contract. If protest is submitted in accordance with the procedures set forth above, the City will not execute a contract any sooner than two (2) business days after the City's decision on the Protest.
- E. Failure to Comply. Failure to comply with the procedures set forth herein may render a Protest untimely or inadequate and may result in rejection thereof by the City.
- F. Exhaustion of Administrative Remedies. By submitting a bid, the Bidder agrees the Bidder's compliance with the protest procedures set forth herein are a mandatory condition precedent to the Bidder initiating a lawsuit against the City.

- G. Venue. By submitting a bid, the Bidder acknowledges and agrees that a lawsuit or action related to or arising out of this procurement shall be brought in the Superior Court of King County, Washington.

Bidder's Checklist

ALL BIDDERS must properly complete, execute and submit the following with their bids:

1. **NON-COLLUSION DECLARATION:** Failure to submit the certificate shall make the bid non-responsive and not eligible for award.
2. **BID FORM:** Bidders must bid on all items contained in the Bid Form and the Form must be signed. The omission or deletion of any bid item may render the bid non-responsive and result in the rejection of the bid. Bidders are reminded to comply with RCW 39.30.060.
3. **CONTRACTOR DECLARATION PURSUANT TO RCW 39.04.350(2):** Failure to submit the declaration shall make the bid non-responsive and not eligible for award.
4. **BID GUARANTY BOND:** Failure to furnish a bid deposit of a minimum of five percent (5%) shall make the bid non-responsive and not eligible for award.
5. **BIDDERS QUALIFICATION CERTIFICATE:** To be completed and signed. The City reserves the right to check all statements and to judge the adequacy of the bidder's qualifications.

To assist the City in the review of the responsible Bidder's qualifications, the Bidder(s) shall, within five (5) days of being requested to do so by the City, provide the information required in Evaluation of Bidder Responsibility of the Instructions to Bidders, including a statement in accordance with RCW 9A.72.085 verifying compliance with responsible bidder criteria requirement of RCW 39.04.350(1)(g).

The **SUCCESSFUL BIDDER** shall properly complete, execute (as required) and submit the following after receiving notice of the award of the Project.

1. Public Works Contract,
2. Performance Bond,
3. Payment Bond,
4. Certificate of Insurance,
5. Retainage Agreement,
6. Statement of Intent to Pay Prevailing Wages,
7. Other documents requested by City.

BIDDING REQUIREMENTS

Non-collusion Declaration

Project Name: Sub Basin 42 Watercourse Stabilization Project

Bidder/Contractor: _____

I, _____, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct:

1. I am the representative for the above-named bidder/contractor, and as its _____, I am authorized to make the declaration herein on its behalf.

2. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

Date and Place

Signature

Contractor Declaration Pursuant to RCW 39.04.350(2)

Project Name: Sub Basin 42 WATERCOURSE STABILIZATION PROJECT

Bidder/Contractor: _____

I, _____, declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

1. I am the representative for the above-named bidder/contractor, and as its _____, I am authorized to make the declaration herein on its behalf.

2. Within the three-year period immediately preceding the date of the bid solicitation for the above-named project, the above-named bidder/contractor has not been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

Date and Place

Signature

BID FORM

(NOTE TO BIDDER: This BID FORM shall be completed in ink or typewritten)

TO: City of Mercer Island (See Advertisement for Bids for submission procedure)

Email: Publicworks@mercerisland.gov

ADDRESS: (Due to the COVID-19 Pandemic, the City Hall building is closed)
9611 SE 36th Street
Mercer Island, Washington 98040

PROJECT TITLE: Sub Basin 42 Watercourse Stabilization Project

Bidder Declaration and Understanding

The undersigned Bidder hereby declares that they have carefully examined the Contract Documents for the construction of the project, that they have personally inspected the site, that they have satisfied themselves as to the quantities involved, including materials and equipment, and conditions of work involved, including the fact that the description of the quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal. The Bidder further declares that they have exercised their own judgment regarding the interpretation of subsurface information and has utilized all data, which they believe pertinent from the Engineer, Owner, and other sources and have made such independent investigations as the Bidder deems necessary in arriving at their conclusions.

The Bidder is hereby notified that no goal for disadvantaged business enterprise utilization has been established for this project. As part of the City's affirmative action effort, however, the City encourages participation of certified disadvantaged businesses and women business enterprises to act as prime contractors as well as subcontractors on this project.

The undersigned Bidder hereby declares that Bidder has carefully examined the Contract Documents including the following addenda, receipt of all is hereby acknowledged:

Addendum Number	_____	Date	_____
	_____		_____
	_____		_____
	_____		_____

Start of Construction and Contract Completion Time

The Bidder agrees to begin work within 10 calendar days of the "Notice to Proceed". Final Completion of the entire project will be achieved by the Final Completion Date (except for extensions of time granted in accordance with the General Terms and Conditions) All works within the wetted perimeter can only be conducted within the dates as per the Hydraulic Project Approval (see work limitation #2 below). For better chance of plants survival, revegetation work shall take place in mid to late October. The Bidder further agrees he/she will, if necessary, accelerate his work, provide additional workers and equipment, and expedite materials delivery to meet these dates, all at no additional expense to the OWNER.

By submitting this bid, the bidder agrees that, if award this contract, they will complete the work within wetted perimeter within forty (40) working days from the Notice to Proceed, and the Substantial Completion Date will be 5 calendar days prior to the Final Completion Date.

Contract award and work limitations on this project shall be as follows:

1. Construction activities shall be continuous and without gaps. Extension may be granted in accordance with the General Terms and Conditions and discretions of permitting agencies.
2. This project is to comply with Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA) #2021-4-263+01. All works within the wetted perimeter shall only be conducted between June 16, 2021 and September 30, 2021. See Appendix A.
3. The project is to comply with US Army Corps of Engineers' Nationwide Permits (NWP 3). The project number are NWS-2020-907. See Appendix B.
4. The City has drainage easements of the site.
5. The project is to comply with City of Mercer Island Utility permit and Right-of-way use permit.
6. Liquidated Damages is five hundred dollars (\$500) a day if Substantial Completion is not achieved by the said date.

Lump Sum or Unit Price Work

The Bidder proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on the following lump sum or unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities involved. The Contractor shall be compensated for the actual unit quantities performed in accordance with the General Terms and Conditions set forth in these Contract Documents. The Bidder agrees that the lump sum prices and the unit prices represent a true measure of the labor, services, and materials required to perform the work, including all allowances for Contractor-paid taxes, overhead, and profit for each type and unit of work, as well as any auxiliary costs associated with completing a unit of work called for in these Contract Documents. The City does not guarantee the quantities estimated for unit price items, nor does the City limit itself to the estimated number.

If any material, item, or service required by the Contract Documents has not been mentioned specifically, the same shall be furnished and placed with the understanding that the full cost to the Owner has been merged with the prices named in the Proposal.

To the extent possible, standard bid items have been utilized for the work listed in the Proposal. The Bidder is directed to review the Standard Specifications and the City of Mercer Island's Amendments (Special Provisions herein) for descriptions of bid item work, measurement, and payment.

CITY OF MERCER ISLAND- Sub Basin 42 Watercourse Stabilization Project

BID PROPOSAL

Item No.	Item Description	Quantity	Unit	Unit Price	Bid Item Total
1	Mobilization, 10% Max	1	LS		
2	Minor Changes	1	FA	\$ 5000	\$5000
3	Erosion/Water Pollution Control	1	LS		
4	Temporary Construction Access and Staging	1	LS		
5	Project Temporary Traffic Control	1	LS		
6	Wood Structure [Timber Frame Structure-Machine Placed]	7	EA		
7	Wood Structure [Bed Control Matrix Structure - Machine Placed]	15	EA		
8	Streambed Cobbles [Machine Placed]	325	TN		
9	Streambed Cobbles [Hand Placed]	58	TN		
10	Slash	157	TN		
11	Weed and Pest Control	1	LS		
12	Mulch	110	CY		
13	PSIPE GRAND FIR, D-40 CONTAINER	15	EA		
14	PSIPE VINE MAPLE, 18-36" BARE ROOT	234	EA		
15	PSIPE VINE MAPLE, 12-18" BARE ROOT	28	EA		
16	PSIPE BIG LEAF MAPLE, 18-36" BARE ROOT	41	EA		
17	PSIPE RED ALDER, 18-36" BARE ROOT	98	EA		
18	PSIPE COMMON LADY FERN, 10 CUBIC INCH PLUG	63	EA		
19	PSIPE SLOUGH SEDGE, 10 CUBIC INCH PLUG	133	EA		
20	'PSIPE REDOSIER DOGWOOD, 18-36" BARE ROOT	46	EA		
21	PSIPE BEAKED HAZELNUT, 18-36" BARE ROOT	93	EA		
22	PSIPE CASCARA BUCKTHORN, 18-36" BARE ROOT	26	EA		
23	PSIPE INDIAN PLUM, 18-36" BARE ROOT	130	EA		
24	PSIPE INDIAN PLUM, 12-18" BARE ROOT	28	EA		
25	PSIPE WESTERN SWORDFERN, 10 CUBIC INCH PLUG	868	EA		
26	PSIPE DOUGLAS FIR, D-40 CONTAINER	53	EA		
27	PSIPE DOUGLAS FIR, TP4 TREEPOT	7	EA		

28	PSIPE STINK CURRANT, 12-18" BARE ROOT	101	EA		
29	PSIPE THIMBLEBERRY, 18-36" BARE ROOT	284	EA		
30	PSIPE SALMONBERRY, 18-36" BARE ROOT	927	EA		
31	PSIPE SALMONBERRY 12-18" BARE ROOT	28	EA		
32	PSIPE RED ELDERBERRY, 18-36" BARE ROOT	12	EA		
33	PSIPE WESTERN RED CEDAR, D-40 CONTAINER	234	EA		
34	PSIPE WESTERN RED CEDAR, TP4 TREEPOT	13	EA		
35	PSIPE WESTERN HEMLOCK, D-40 CONTAINER	115	EA		
36	PSIPE WESTERN HEMLOCK, TP4 TREEPOT	4	EA		

Subtotal (items 1-36) = \$ _____

Sales tax at 10.1%= \$ _____

Grant Total = \$ _____

<p>TOTAL BID AMOUNT</p> <p>Grant Total (In writing) = _____ Dollars</p> <p>Grant Total (In figures) = \$ _____</p>

PROPOSAL SIGNATURE SHEET

If Sole Proprietor, Partnership or Joint Venture

IN WITNESS hereto the undersigned have set their hands this

_____ day of _____, 20 _____.

Name of Bidder (name each partner or joint venture partner) _____

Washington Contractor's Registration No. _____

Address _____

Authorized Signature _____

Position/Title _____

If Corporation or Limited Liability Company (LLC)

IN WITNESS WHEREOF the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this

_____ day of _____, 20 _____.

Name of Corporation or Limited Liability Company (LLC) _____

Washington Contractor's Registration No. _____

Address _____

State of Incorporation or Organization _____

Authorized Signature _____

Position/Title _____

BID GUARANTY BOND

KNOW ALL BY THESE PRESENTS: That we, _____,
as Principal, and _____, as Surety, are jointly and severally held
and firmly bound unto the City of Mercer Island, hereinafter called the Obligee, each in the penal sum of
five percent (5%) of the Principal's Total Bid Price for the work, this sum not to exceed
_____ DOLLARS (\$ _____)
(hereinafter referred to as "penal sum") of lawful money of the United States, for the payment whereof
unto the Obligee.

WHEREAS, the Principal is herewith submitting its bid proposal for the

Sub Basin 42 Watercourse Stabilization Project

NOW, THEREFORE, the condition of this obligation is such that if the Principal is awarded the Contract,
and if the Principal, within the time specified, fulfills all of the requirements of the Contract Documents
which are conditions precedent to the execution of the Agreement, enters into, executes and delivers to
the Obligee an agreement on the form provided herein complete with evidences of insurance, and if the
Principal, within the time specified, gives to the Obligee the performance and payment bond on the forms
provided herein, then this obligation shall be void; otherwise, the Principal and Surety shall pay unto the
Obligee the penal sum; provided however, in no event shall the Surety's liability exceed the penal sum.
Provided further, if the difference in money between the Principal's Total Bid Price and the amount for
which the Obligee legally contracts with another party to fulfill the Contract is greater than the penal sum,
the Principal shall pay unto the Obligee the difference between the penal sum and the amount the Obligee
pays another to fulfill the Contract.

AND IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable under this obligation as
Principal, and that nothing of any kind or nature whatsoever that will not discharge the Principal shall
operate as a discharge or a release of liability of the Surety.

IT IS HEREBY FURTHER DECLARED AND AGREED that this obligation shall be binding upon and inure
to the benefit of the Principal, the Surety and the Obligee and their respective heirs, executors,
administrators, successors and assigns.

SIGNED this _____ day of _____, 20 _____.

Principal: _____	Surety: _____
By: _____	By: _____
Title: _____	Title: _____
Address: _____	Address: _____
Telephone: () _____	Telephone: () _____

Note: A power of attorney must be provided which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal and deliver this bid guaranty bond.

Bidder's Qualification Certificate

The undersigned hereby certifies and submits the following:

Company Name _____
 Address _____

 Owner Name _____
 Contact Person _____
 Contact Person's Title _____
 Phone _____
 E-mail _____

Washington State Contractor Registration # _____
 Washington State Unified Business Identifier (UBI) # _____
 Federal Tax ID # _____
 City of Mercer Island Business License #
 (required prior to award of contract) _____

	Yes or No	Account / Registration Number (as applicable)
Does the contractor have industrial insurance coverage for its employees working in Washington as required by Title 51 RCW?	_____	_____
Does the contractor have a Washington State excise tax registration number as required by Title 82 RCW?	_____	_____
Does the contractor have a Washington State Employment Security Department number as required by Title 50 RCW?	_____	_____
Has the contractor been disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3)?	_____	_____
Within the three-year period immediately preceding the date of the bid solicitation, has the contractor been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of Chapters 49.46, 49.48, or 49.52 RCW?	_____	_____

By: _____

Signature/ Title	Print Name/ Date
-------------------------	-------------------------

Work Experience Form

Refer to Special Provisions to the Specification section 1-02.1(1) for Supplemental Qualification Criteria.

Please complete one form per Project and include the minimum number of Projects (and forms) as requested. You may include any additional work experience you deem relevant to determining bidder responsibility. Please be sure to provide a thorough description of the work in order to demonstrate how your firm meets any required experience detailed in the specifications. You may attach additional documentation if needed.

PAST PROJECT EXPERIENCE DETAIL			
BIDDER'S COMPANY NAME		BIDDER CONTACT NAME & PHONE NUMBER	
PROJECT NAME		PROJECT CONTRACT NUMBER	
PROJECT OWNER		PROJECT LOCATION	
PROJECT OWNER CONTACT NAME & TITLE		OWNER'S TELEPHONE NUMBER	
CONTRACT DAYS SPECIFIED AT BID:	ACTUAL CONTRACT DAYS:	AWARDED CONTRACT VALUE	FINAL CONTRACT VALUE
PRIME CONTRACTOR NAME (IF NOT BIDDER)		CONTRACTOR CONTACT NAME & PHONE NUMBER (IF NOT BIDDER)	
BRIEF PROJECT DESCRIPTION			

BRIEF SUMMARY OF TECHNICAL WORK COMPLETED BY BIDDER, INCLUDING ANY RELEVANT DETAILS TTD DEMONSTRATE SIMILAR EXPERIENCE AND ANY REQUIRED EXPERIENCE DETAILED IN THE SPEC.

Contractor's Stream Construction Supervisor Credentials
(To be submitted within 5 days of being requested)

-Refer to Special Provisions to the Specification section 1-02.1(1) for Supplemental Qualification Criteria.

1. Name of Supervisor _____

Year	Const. Amount	Type	Owner Name	Contact Info	Completed?

By: _____ Date: _____
 (Authorized Person's Name and Signature)

Title: _____

AGREEMENT FORMS

**PUBLIC WORKS CONTRACT
FOR
Sub Basin 42 Watercourse Stabilization Project**

THIS PUBLIC WORKS CONTRACT ("Contract") dated , 20 , is effective on the date the Contract is fully executed by the Parties. The Parties to this Contract are the CITY OF MERCER ISLAND, a Washington municipal corporation ("City" or "Owner"), and , a Washington Corporation ("Contractor").

A. The City desires to retain an independent contractor to furnish all labor and materials necessary to perform work at an watercourse in Basin 42, Mercer Island, Washington ("Property"); and

B. The Contractor has the requisite skill and experience to perform such work and has submitted a proposal dated , 20 to complete such work ("Proposal").

NOW, THEREFORE, the parties ("Parties") agree to the following terms and conditions:

1. SERVICES BY CONTRACTOR

1.1 Description of Work. Contractor shall perform all work and furnish all tools, materials, supplies, equipment, labor and other items incidental thereto necessary for the construction and completion of the work, more particularly described in the Contract Documents for the Sub Basin 42 Watercourse Stabilization Project, including this Public Works Contract, the Contractor's completed Bid Form, the City's General Terms and Conditions (May 2020 ed.), any Supplemental and/or Special Conditions, Technical Specifications, Drawings and Addenda, which documents are incorporated by this reference, ("Work"), which Work shall be completed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the City Manager or his or her designee.

1.2 Completion Date. The Work shall be commenced within ten (10) days of receipt by the Contractor of the City's Notice to Proceed and shall be Substantially Completed by , (the "Contract Time") as may be extended in accordance with the Contract Documents. In the event the Work is not completed within the time specified, Contractor agrees to pay to the City liquidated damages in the amount set forth in Section 1.3 of this Contract.

1.3 Liquidated Damages. TIME IS OF THE ESSENCE OF THIS CONTRACT. Delays inconvenience the residents of Mercer Island and cost taxpayers undue sums of money, adding time needed for administration, engineering, inspection and supervision. It is impractical for the City to calculate the actual cost of delays. Accordingly, the Contractor agrees to pay liquidated damages as follows: Liquidated damages for failure to achieve timely Substantial Completion shall be in the amount of \$ 500 per day.

1.4 Performance Standard. Contractor shall perform the Work in a manner consistent with accepted practices for highly skilled and competent contractors performing this type of work in this area.

1.5 Compliance with Laws. Contractor shall perform the Work in accordance with all applicable federal, state and City laws, including but not limited to all City ordinances, resolutions, standards or policies, as now existing or hereafter adopted or amended, and obtain all necessary permits and pay all permit, inspection or other fees, at its sole cost and expense.

1.6 Utility Location. Contractor is responsible for locating any underground utilities affected by the Work and is deemed to be an excavator for purposes of Chapter 19.122 RCW, as amended. Contractor shall be responsible for compliance with Chapter 19.122 RCW, including utilization of the "one call" locator system before commencing any excavation activities.

1.7 Air Environment. Contractor shall fully cover any and all loads of loose construction materials including without limitation, sand, dirt, gravel, asphalt, excavated materials, construction debris, etc., to protect said materials from air exposure and to minimize emission of airborne particles to the ambient air environment within the City of Mercer Island.

2. TERM

This Contract shall commence on the effective date of this Contract and continue until the Work is complete, and formally accepted by City, and all warranties have expired.

3. REQUISITE SKILL

The Contractor warrants that it has the requisite skill to complete the Work, and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Mercer Island by obtaining a City of Mercer Island business registration. Contractor represents that it has visited the site and is familiar with all of the plans and specifications in connection with the completion of the Work.

4. COMPENSATION

4.1 Total Compensation. In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount not to exceed Dollars (\$), based on the Proposal submitted by Contractor dated and as may be adjusted under the Contract Documents.

4.2 Contractor Responsible for Taxes. Except as otherwise stated in the Contract Documents, the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Contract.

4.3 Method of Payment. Payment by the City for the Work will only be made after the Work has been completed, a voucher or invoice is submitted in a form satisfactory to the City, and such invoice is approved by the appropriate City representative. Payment shall be made within thirty (30) days of receipt of such invoice or voucher unless otherwise set forth in the Bid Form. The Contractor's acceptance of such payment for the Work shall constitute full compensation for the performance of the Work. Invoices shall be submitted to:

City of Mercer Island
9611 S.E. 36th Street
Mercer Island, WA 98040
ATTN: Fred Gu, CIP Project Manager

4.4 Retainage. Pursuant to Chapter 60.28 RCW, five percent (5%) of the Total Compensation shall be retained by the City to assure payment of Contractor's state taxes as well as payment of subcontractors, suppliers and laborers. Upon execution of this Contract, Contractor shall complete, execute and deliver to the City the Contractor's Retainage Agreement set forth in the Contract Documents. No payments shall be made by the City from the retained percentage fund ("Fund") nor shall the City release any retained percentage escrow account to any person, until the City has received from the Department of Revenue a certificate that all taxes, increases, and penalties due from the Contractor and all taxes due and to become due with respect to the Contract have been paid in full or that they are, in the Department's opinion, readily collectible without recourse to the State's lien on the retained percentage. Upon non-payment by the general contractor, any supplier or subcontractor may file a lien against the retainage funds, pursuant to Chapter 60.28 RCW. Subcontractors or suppliers are required to give notice of any lien within thirty (30) days of the completion of the Work and in the manner provided in RCW 39.08.030. Within sixty (60) days after completion of all Work on this Contract, the City shall release and pay in full the money held in the Fund, unless the City becomes aware of outstanding claims made against this Fund.

5. EQUAL OPPORTUNITY EMPLOYER

In all Contractor services, programs or activities, and all Contractor hiring and employment made possible by or resulting from this Contract, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, sexual orientation, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Contract by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

6. INDEPENDENT CONTRACTOR/CONFLICT OF INTEREST

It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that the City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or any other insurance which is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Contract to an employment contract. It is recognized that Contractor may perform work during the Term of this Contract for other third parties; provided, however, that such performance of other work shall not conflict with or interfere with the Contractor's ability to perform the Work. Contractor agrees to resolve any such conflicts of interest in favor of the City.

7. INDEMNIFICATION

7.1 Indemnification and Hold Harmless.

A. The Contractor shall protect, defend, indemnify, and hold harmless City, its elected officials, officers, agents and employees, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of or in any way resulting from the Contractor's officers, employees, agents, and/or subcontractors of all tiers, acts or omissions, performance or failure to perform this Contract, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.

B. The Contractor's obligations under this section shall include, but not be limited to,

i. The duty to promptly accept tender of defense and provide defense to City at the Contractor's own expense.

ii. The duty to indemnify and defend City, its elected officials, officers, agents and employees, from any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects City with a full and complete indemnity and defense of claims made by the Contractor's employees. The parties acknowledge that these provisions were mutually negotiated upon by them.

iii. To the maximum extent permitted by law, the Contractor shall indemnify and defend City, its elected officials, officers, agents and employees, from and be liable for all damages and injury which shall be

caused to owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such injury or damage is caused by negligence of the Contractor or caused by the inherent nature of the work specified.

C. City may, in its sole discretion, (1) withhold amounts sufficient to pay the amount of any claim for injury, and/or (2) pay any claim for injury of which City may have knowledge, regardless of the formalities of notice of such claim, arising out of the performance of this Contract.

D. Any amount withheld will be held until the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim. In addition, the Contractor shall reimburse and otherwise be liable for claims costs incurred by City, including, without limitation, costs for claims adjusting services, attorneys, engineering, and administration.

E. In the event City incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.

F. This provision has been mutually negotiated by the City and the Contractor.

7.2 Survival. The provisions of this Section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

8. INSURANCE

The Contractor agrees to carry as a minimum, the following insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, employees or subcontractors with a carriers having a current A.M. Best rating of not less than A:VII:

8.1 Workers' Compensation and Employer's Liability Insurance in amounts sufficient pursuant to the laws of the State of Washington.

8.2 Commercial general liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured

under the Commercial General Liability insurance policy with respect to the Work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage with limits of no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

8.3 Automobile liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage with combined single limits for bodily injury and property damage of not less than \$1,000,000 per accident.

8.4 Asbestos Abatement or Hazardous Materials. If asbestos abatement or hazardous materials work is performed, Contractor shall review coverage with the City Attorney's office and provide scope and limits of coverage that are appropriate for the scope of Work and are satisfactory to the City. Contractor shall not commence any Work until its coverage has been approved by the City Attorney's office.

The City shall be named as additional insured on all such insurance policies, with the exception of workers' compensation coverages. Contractor shall provide certificates of insurance, concurrent with the execution of this Contract, evidencing such coverage and, at City's request, furnish the City with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance policies shall contain a clause of endorsement providing that they may not be terminated or materially amended during the Term of this Contract, except after thirty (30) days prior written notice to the City. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Contract.

The provisions of this Section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

9. PERFORMANCE/PAYMENT BOND OR ADDITIONAL RETAINAGE

Pursuant to RCW 39.08.010, Contractor shall provide Performance Bond and Payment Bond each in an amount equal to 100% of the amount of this Contract to cover the performance of all provisions of this Contract and the payment of all laborers and suppliers. The Contract bonds shall be in a form set forth in the Contract Documents. The Contract bond shall assure that the Contractor will faithfully perform all of the provisions of the Contract as well as pay all laborers, mechanic subcontractors, materialmen and suppliers. Contractor's obligations under this Contract shall not be limited to the bond amount.

Alternatively, pursuant to RCW 39.08.010, on contracts of Fifty-Five Thousand Dollars (\$55,000) or less, at the option of the Contractor, the City may, in lieu of a bond, retain ten

percent (10%) of the Contract amount for a period of thirty (30) days after the date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

10. SAFETY

Contractor shall take all necessary precautions for the safety of its employees on the work site and shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). Contractor shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the Work for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. Contractor shall protect from damage all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the execution of the Work. The Contractor shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same.

11. PREVAILING WAGES

11.1 Wages of Employees. This Contract is subject to the minimum wage requirements of Chapter 39.12 of the Revised Code of Washington, as now existing or hereafter amended or supplemented. In the payment of hourly wages and fringe benefits to be paid to any of Contractor's laborers, workpersons and/or mechanics, Contractor shall not pay less than the "prevailing rate of wage" for an hour's work in the same trade or occupation in the locality within the State of Washington where such labor is performed, as determined by the Industrial Statistician of the Department of Labor and Industries of the State of Washington. Prevailing wages paid pursuant to this Agreement shall be the prevailing wage rates which are in effect on the date when the bids, proposals, or quotes were required to be submitted to the City.

The State of Washington prevailing wage rates applicable for this public works project, which is located in King County, may be found at the following website address of the Department of Labor and Industries:

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. A copy of the applicable prevailing wage rates are also available for viewing at the office of the City located at 9611 SE 36th St, Mercer Island, WA 98040. Upon request, the City will mail a hard copy of the applicable prevailing wages for this project.

11.2 Reporting Requirements. Contractor shall comply with all reporting requirements of the Department of Labor and Industries of the State of Washington. Upon the execution of this Contract, Contractor shall complete and file a Statement of Intent to Pay Prevailing

Wages with the Department of Labor and Industries. If requested by the City, the Contractor shall provide certified payroll records for its employees and the employees of its subcontractors. Upon completion of the Work, Contractor shall complete and file an Affidavit of Wages Paid with the Department of Labor and Industries. Contractor shall deliver copies of both the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid, certified by the Department of Labor and Industries, to the City.

12. SUBCONTRACTOR RESPONSIBILITY

Contractor shall verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in the Instructions to Bidders and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every public works subcontract or every tier.

13. OWNERSHIP OF DOCUMENTS

All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files computer disks, magnetic media, all finished or unfinished documents or material which may be produced or modified by Contractor while performing the Work shall become the property of the City and shall be delivered to the City at its request.

14. CONFIDENTIALITY

If it is necessary to provide proprietary information, the Contractor shall clearly mark the information on each page of the document(s) as "Proprietary and Confidential". The City is subject to laws regarding the disclosure of public records and document. Proposals and other materials, submitted by the Contractor become public record and may be subject to public disclosure, in whole or in part, and may be released by the City in the event of a request for disclosure. In the event the City receives a public record request for information and the Contractor has marked the requested document as "Proprietary and Confidential", the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information; provided that the Contractor shall be solely responsible for all attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorneys fees or penalty assessments under Chapter 42.56 RCW for withholding or delaying public disclosure of such information.

15. BOOKS AND RECORDS

The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract and such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Contract. These records shall be

subject at all reasonable times to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Contract.

16. CLEAN UP

At any time ordered by the City and immediately after completion of the Work, the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. In the event the Contractor fails to perform the necessary clean up, the City may, but in no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Contractor to the City and/or the City may deduct its costs from any remaining payments due to the Contractor.

17. GENERAL PROVISIONS

This Contract, the Contract Documents and any supporting contract documents contain all of the agreements of the Parties with respect to any matter covered or mentioned in this Contract and no prior agreements or understandings shall be effective for any purpose. No provision of this Contract may be amended except by written agreement of the Parties. Any provision of this Contract which is declared invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect. The Contractor shall not transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the City. In the event the City consents to any such assignment or transfer, such consent shall in no way release the Contractor from any of its obligations or liabilities under this Contract. Subject to the preceding sentence, this Contract shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns. In the event the City or the Contractor defaults on the performance of any terms in this Contract, and the Contractor or City places the enforcement of the Contract or any part thereof, or the collection of any monies due, in the hands of an attorney, or files suit, each Party shall pay all its own attorneys' fees and expenses. The venue for any dispute related to this Contract shall be King County, Washington. Failure of the City to declare any breach or default immediately upon occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. This Contract shall be governed by and interpreted in accordance with the laws of the State of Washington. Each individual executing this Contract on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute this Contract. Time is of the essence of this Contract and each and all of its provisions in which performance is a factor. Adherence to completion dates is essential to the Contractor's performance of this Contract.

IN WITNESS WHEREOF, the Parties have executed this Contract the day of ,
20 .

CITY OF MERCER ISLAND

By: _____
Jessi Bon, City Manager

ATTEST:

Deborah A. Estrada, MMC, City Clerk

APPROVED AS TO FORM:

Bio Park, City Attorney

(Name of Contractor)

By: _____
(Signature)

(Signature Name and Title)

(Address)

(Phone)

**PERFORMANCE BOND
To City of Mercer Island, WA**

Bond No. _____

The City of Mercer Island, Washington has awarded to _____ (Principal), a contract for the construction of the project designated as Sub Basin 42 Watercourse Stabilization Project, Project No. 21-27, in Mercer Island, Washington (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City, in the sum of _____ US Dollars (\$ _____) Total Contract Amount, subject to the provisions herein.

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

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

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature Date

Surety Signature Date

Printed Name Date

Printed Name Date

Title

Title

Name, address, and telephone of local office/agent of Surety Company is:

PAYMENT BOND

To City of Mercer Island, WA

Bond No _____

The City of Mercer Island, Washington has awarded to _____ (Principal), a contract for the construction of the project designated as Sub Basin 42 Watercourse Stabilization Project, Project No. 21-27, in Mercer Island, Washington (Contract), and said Principal is required under the terms of that Contract to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and _____ (Surety), a corporation organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City, in the sum of _____ US Dollars (\$ _____) Total Contract Amount, subject to the provisions herein.

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

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

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature Date

Surety Signature Date

Printed Name Date

Printed Name Date

Title

Title

Name, address, and telephone of local office/agent of Surety Company is:

RETAINAGE AGREEMENT

Contract Title Sub Basin 42 Watercourse Stabilization Project

Contract Date _____
Contractor Name _____
Contractor Address _____
Contractor Phone _____
Contractor Federal ID # _____

State Law on How Contract Retainage Monies can be Reserved:

RCW 60.28.010 Retained percentage, labor and material Contracts for public improvements or work other than for professional services, provides that there shall be reserved by the city from the monies earned by the contractor on estimates during the progress of the improvement or work, a sum of five percent of such estimates, said sum to be retained by the city as a trust fund for the protection and payment of any persons performing work or supplying provisions or supplies during the work. The monies reserved for contract retainage may be reserved by the contractor choosing one of the following four options:

All investments selected below are subject to City approval.

Contractor Options (Contractor shall place an "x" in one of the boxes below.)

- [] (a) Retained in a non-interest bearing fund by the public body until released in accordance with applicable state statutes;
- [] (b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until released in accordance with applicable state statutes, provided that interest on such account shall be paid to the contractor;
- [] (c) Placed in escrow with a bank or trust company by the public body until released in accordance with applicable state statutes. The cost of the investment program and the risk thereof is to be borne entirely by the contractor.
- [] (d) Contractor may submit a Retainage Bond equal to 5% of the total awarded bid amount for all schedules to be held by the public body until released in accordance with applicable state statutes.

Contractor's Bank

If Contractor selects options (b) or (c) above, Contractor shall designate below the bank in which the retainage is to be deposited:

ACCOUNT NO. _____
BANK NAME _____
BANK ADDRESS _____
BANK PHONE # _____

Contractor and City agree that all or part of the monies in the account can only be approved for disbursement by Bank to Contractor upon written authorization of the City Finance Director, or his/her authorized designee.

By

City of Mercer Island

By

Contractor

Date

Date

**CITY OF MERCER ISLAND
GENERAL TERMS AND CONDITIONS
MAY 2020 EDITION
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ARTICLE 1: GENERAL PROVISIONS

1.1 DEFINITIONS

- A. **“Addendum”** or **“Addenda.”** Alteration or clarification of the plans or specifications provided to bidders by City prior to bid time, which becomes part of the Contract Documents when the Contract is executed.
- B. **“Claim.”** A written demand by the Contractor seeking (1) a change to Contract Price; (2) a change of Contract Time; (3) a payment of money or damages; and/or, (4) any other relief arising out of or relating to this Contract.
- C. **“Change Order.”** A written instrument designated to be a Change Order which alters the Contract, and identifies the following: (1) a change in the Work; (2) a change in Contract Price; and/or (3) a change in Contract Time.
- D. **“Change Proposal.”** A document prepared by the Contractor at the request of City, which proposes changes to the Work and/or changes to the Contract Price and/or Contract Time. City initiates all requests for Change Proposals.
- E. The **“Contract”** or **“Contract Documents.”** The entire integrated agreement between City and the Contractor for the performance of the Work in accordance with the Contract Documents. The Contract Documents include the following:
 - 1. The signed Agreement between City and Contractor (the “Public Works Contract”);
 - 2. The Contractor’s completed Bid Form;
 - 3. The City’s General Terms and Conditions (May 2020 ed.);
 - 4. Any Supplemental or Special Conditions.
 - 5. Technical Specifications;
 - 6. Drawings;
 - 7. Addenda; and
 - 8. Any Change Orders.
- F. **“Contract Execution.”** occurs when City Manager or his/her designee signs the Contract, which shall only occur after the Contractor signs the Contract.
- G. **“Contract Price”** means the total amount payable by City to the Contractor for performance of the Work in accordance with the Contract.
- H. **“Contract Time.”** The number of days or the specific date set forth in the Contract to achieve Substantial Completion of the Work.
- I. **“Contract Work”** or **“Work.”** The labor, supervision, materials, equipment, supplies, services, other items, and requirements of the Contract necessary for the execution, completion and performance of all requirements of the Contract by the Contractor to the satisfaction of City.
- J. **“Contractor.”** The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with City to do the Contract Work.

- K. **“Critical Path.”** The longest, continuous sequence of interrelated activities that begins at the start of the Project (Notice to Proceed) and extends to Substantial Completion of the Project. These activities are critical because delay to an activity on this path will extend Contract Time.
- L. **“Day.”** A calendar day, unless otherwise specified.
- M. **“Differing Site Conditions.”** (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents (Type I), or (2) Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the construction activities of the character provided for in the Contract (Type II).
- N. **“Engineer.”** The City representative who administers the Contract for the City.
- O. **“Final Acceptance.”** Written acceptance of the Project by City.
- P. **“Force Majeure.”** An event that is unforeseeable at the time of Contract Execution and that is beyond the reasonable control of the Contractor and City and includes:
1. Natural Disaster declared by Governor of Washington or President of the United States, including but not limited to earthquakes;
 2. Acts or omissions of any government entity acting within its governmental capacity;
 3. Fire and/or flood for which the Contractor or its Subcontractors is not responsible;
 4. Quarantine or epidemic;
 5. Strike or defensive lockout;
 6. Unusually Severe Weather Conditions; and
 7. Acts of terrorism.
- Q. **“Hazardous Material.”** Any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any and all federal, state, City, or municipal statutes or laws and regulations promulgated thereunder, now or at any time hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U. S. C. §§ 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U. S. C. §§ 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U. S. C. §§ 6901, *et seq.*), the Federal Water Pollution Control Act (33 U. S. C. §§ 1251, *et seq.*), the Clean Air Act (42 U. S. C. §§ 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U. S. C. §§ 2601, *et seq.*), the Occupational Safety and Health Act (29 U. S. C. §§ 651, *et seq.*, and the Model Toxics Control Act (RCW 70.105), or similar state or local statute or code), as the laws have been amended and supplemented.
- R. **“City”** or **“Owner”** may be used interchangeably and refer to the City of Mercer Island.

- S. **“Notice.”** A written document issued by the Engineer or Contractor’s Representative which is submitted to the other party and delivered by:
1. Depositing in the U. S. Mail (or other method of commercial express mail), which notice shall be effective on the date of receipt;
 2. Service on the Parties’ representative or at the Contractor’s home office or field office, which notice shall be effective on the date of service; or,
 3. Facsimile to the Parties’ representative or Contractor’s home office or field office, which notice shall be effective upon receipt.
- T. **“Notice To Proceed.”** A written directive issued by City authorizing the Contractor to perform some or all of the Work.
- U. **“Overhead.”** Charges that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the physical Contract construction activity. Overhead includes Site or Field Overhead and Home Office Overhead.
1. **Site or Field Office Overhead**
Site or Field Overhead costs are typically those costs that are related to, but are not limited to supervision, including general foremen and their supervisors, planners, schedulers, engineers, managers, etc. and the direct payroll costs of their project-related service, clerical salaries and their direct payroll costs, the costs of all vehicles, travel, meal and lodging costs associated with those personnel, Site or Field office and utility expense, expenses associated with all regulatory compliance, Hand and Other Small Tools provided by the Contractor for the use of its forces, all expendable supplies, and all other items incidental to or integral in supporting the physical completion of the Work.
 2. **Home Office Overhead**
Home office Overhead costs are typically those that include all general office expenses. Such costs include, but are not limited to those associated with officer and office salaries and related payroll taxes and benefits, costs of office occupancy and maintenance, all supporting services (such as utilities, office machines computers, and related items and support) related to the home office function, business taxes and licenses, and all such other costs necessary to operate the business entity. Home office overhead includes unabsorbed home office overhead.
 3. In addition to the above, whether treated as Site or Field Overhead or as Home Office Overhead, costs of any and all bonds, insurance(s), and taxes associated with this Contract are to be considered as Overhead. All items as those identified above are to be treated as Overhead for this purpose regardless of how the Contractor chooses to account for them in its books of account.
 4. Under no circumstances shall City pay the Contractor for direct or allocated costs or charges for officer bonus and profit sharing, project personnel bonuses, charitable contributions, income taxes, or any costs relating to illegal activity.
- V. **“Parties.”** The Contractor and City.
- W. **“Project.”** All activity relative to this Contract including activity of the Contractor, its Subcontractors, and City.

- X. **“Request for Change Order.”** A document, designated as a Request for a Change Order, prepared by the Contractor requesting either (1) a change in Contract Price; (2) a change in Contract Time; (3) a change in t Work; (4) a payment of money or damages; and/or, (5) any other relief arising out of or relating to this Contract.
- Y. **“Request for Information.”** A request from the Contractor to City seeking an interpretation or a clarification of some requirement of the Contract Documents.
- Z. **“Site” or “Project Site.”** The location, at which construction, equipment or services furnished by the Contractor under the Contract will be performed, completed and/or delivered.
- AA. **“Subcontractor.”** An individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Contract. When City refers to Subcontractor(s) in this document, for purposes of this document and unless otherwise stated herein, the term Subcontractor(s) includes, at every level and/or tier, all subcontractors and subconsultants.
- BB. **“Supplier(s).”** Any person or firm who is not performing work or supplying labor on Site and is engaged in the business of supplying a manufactured product or resource to City, Contractor, or Subcontractors. The term Suppliers includes materialmen, manufacturers, and fabricators.
- CC. **“Substantial Completion.”** That stage in the progress of the Work where:
 1. City has full and unrestricted use and benefit of the Project for the purpose intended;
 2. All the systems and parts of the Contract Work are functional;
 3. Utilities are connected and operate normally;
 4. Only minor incidental work or correction or repair remains to complete all Contract requirements; and
 5. The City has received all certificates of occupancy and any other permits, approvals, licenses and other documents from any governmental authority with jurisdiction necessary for beneficial occupancy of the project.

1.2 INTENT AND INTERPRETATION OF THE DOCUMENTS

- A. The Contract Documents constitute the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral.
- B. The Contract Documents shall not be construed to create a contractual relationship between any parties other than City and the Contractor. No contract between City and a third party shall be construed to create any duty on the part of City or such third party to the Contractor. The Contractor is not an intended or incidental beneficiary of any promises made in City’s contract with a third party, if any.
- C. The Contract Documents are intended to be complementary. What is required by one part of the Contract shall be as binding as if required by all. Should any conflict or inconsistency be found in the Contract Documents, the provision imposing the more expensive duty or obligation on the Contractor shall take precedence.

- D. The words “similar,” “typical” (or other equivalents) shall mean nearly corresponding or having a likeness. Such words shall not be construed to mean that all parts of the Work referred to are identical or substantially identical, or that such elements of the Work are connected identically or substantially identically to the rest of the Work. The Contractor has the responsibility to determine all details of the Work in relation to their location and connection to other parts of the Work. The singular includes the plural and vice versa. Male includes female and vice versa.
- E. The organization of the specifications into divisions, provisions and articles and the organization of the drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3 CLARIFICATION OF DRAWINGS AND DETAIL DRAWINGS

- A. Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn out parts shall apply also to other similar portions of the Work. Where ornament or other detail is indicated by starting only, such detail shall be continued throughout the courses or parts in which it occurs and shall apply to all other similar parts of the Work, unless otherwise indicated.
- B. With regard to drawings the following shall apply:
 - 1. Written dimensions shall be followed; drawings may not be to scale.
 - 2. Figure dimensions on drawings shall govern over scale dimensions; and detail drawings shall govern over general drawings.

ARTICLE 2: CITY

2.1 AUTHORITY

- A. Unless City, in writing, indicates otherwise, the authority to (1) commit to or bind City to any Change Orders or change in the Work, Contract Price and/or Contract Time; or (2) sign the Contract or Change Orders rests solely in the City Manager or his or her designee.
- B. The Engineer shall have the authority to administer the Contract. Administration of the Contract by the Engineer includes but is not limited to:
 - 1. Receiving all correspondence and information from the Contractor;
 - 2. Issuing request for Change Proposals;
 - 3. Responding to Requests For Information;
 - 4. Reviewing the schedule of values, project schedules, submittals, testing and inspection reports, substitution requests, and other documentation submitted by the Contractor;
 - 5. Negotiating Change Proposals and Change Orders;
 - 6. Recommending Change Orders for approval by the City Manager or its designee;
 - 7. Issuing decisions with respect to Requests for Change Orders and Claims;
 - 8. Processing payment requests submitted by the Contractor, and recommending payment;

9. Monitoring the quality of the Work, rejecting noncompliant Work, and recommending acceptance of the Work;
 10. Transmitting executed Change Orders, amendments, and other Contract correspondence to the Contractor; and
 11. Performing all other contract administrative functions.
- C. All correspondence, questions, and/or documentation shall be submitted to the Engineer.
- D. The Engineer may designate representatives to perform functions under the Contract, such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical or administrative nature.

2.2 INFORMATION SUPPLIED BY CITY

- A. Unless otherwise specifically provided in the Contract, surveys and site information provided by City are intended to describe the general physical characteristics of the Site. City does not represent that this information is complete or sufficient for the Contractor's performance of the Work.
- B. City shall furnish to the Contractor a copy of the Contract Documents. The Contractor shall pay City for any additional copies of Contract Documents.

2.3 WORK BY CITY OR SEPARATE CONTRACTORS

City reserves the right to perform work not included in the Contract or to let other contracts in connection with this Project. The Contractor shall coordinate its Work with City and other City contractors and, at City's request, participate in meetings for the purpose of coordinating the Contractor's construction schedule with those of other contractors at no additional cost to City.

ARTICLE 3: CONTRACTOR

3.1 CONTRACTOR REPRESENTATIONS

The Contractor makes the following representations to City:

- A. Before submission of its bid, the Contractor has:
1. Carefully reviewed the Contract Documents, and visited and examined the Site;
 2. Become familiar with the general and local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of Contract Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and reasonably ascertainable subsurface conditions and other matters that may be encountered at the Site or affect performance of the Work or the cost or difficulty thereof;
 3. Become familiar with and satisfied itself as to the conditions bearing upon transportation, disposal, handling, and storage of materials; and
 4. Become familiar with and satisfied itself as to the availability of labor, water, electric power, and roads; and the uncertainties of access, traffic, parking and weather. Any failure of the Contractor to take the action described in this provision (3.0) or elsewhere in the Contract Documents will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of

successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to City.

- B. The Contract Price is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work as represented by the Contract, site visit, and the general conditions (including but not limited to weather, site, soil) known or reasonably anticipated for the Site.

3.2 GENERAL DUTIES

- A. The Contractor shall give sufficient supervision to the Work, using its best skill and attention. The Contractor is on notice that City will be relying on the accuracy, competence and completeness of the Work. The Contractor shall supervise and be solely responsible for the proper performance of the Work in accordance with the Contract, including the construction means, methods, techniques, sequences, procedures, and for coordination of all portions of the Work.
- B. Unless specified elsewhere in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery, utilities, transportation, and other facilities and services (including federal and state tax, industrial insurance, social security liability and all other applicable taxes) necessary for the proper execution and completion of the Work.
- C. The Contractor shall also provide sufficient staffing and supervision to process Requests for Information, Change Proposals, Submittals, Change Orders, close out documentation, and to perform all other requirements of the Contract and all Work.
- D. The Contractor shall lay out its Work from baselines and benchmarks indicated in the Contract, if any, and shall be responsible for the accuracy of all field measurements and surveys used in the lay out.

3.3 DUTY TO INSPECT CONTRACT DOCUMENTS

- A. The Contractor shall carefully study and compare all Contract Documents and check the conditions, dimensions, and instructions as stated therein. Contractor will not be required to provide professional services which constitute the practice of architecture and engineering except to the extent provided for in the technical specifications and drawings.
- B. The Contractor shall immediately notify City in writing of any:
 - 1. Error, inconsistency, or omission in the Contract Documents that a reasonable contractor knew or through the exercise of reasonable diligence should have discovered under the same and similar circumstances;
 - 2. Requirement in the Contract Documents that conflict with any local, state, and federal laws, regulations and/or permits, licenses, and easement conditions that a reasonable contractor knew or through the exercise of reasonable diligence should have discovered under the same and similar circumstances.
- C. The Contractor should not proceed with the work in question until the Contractor receives written direction from the Engineer.
- D. If the Contractor proceeds with the work in question without written direction from the Engineer, the Contractor shall be responsible for any costs or damages associated with:

1. Fines or penalties;
2. Demolition, tear out, removal, cleanup, remediation, or fixing the work in question; and
3. Delay, disruption, and loss of productivity.

3.4 CONTRACTOR'S SUPERVISION AND EMPLOYEES

- A. Contractor shall provide qualified and competent people to administer the contract and perform all the Work.
- B. During performance of the Work the Contractor shall have supervisory personnel on-site and available to administer, manage and coordinate the Work. City shall not be responsible for the acts or omissions of the supervisory personnel or their assistants.
- C. The Contractor shall at all times enforce good order among all persons furnishing labor or materials on-site and shall only employ workers skilled in the work assigned. If requested by the Project Representative, Contractor shall provide the Project Representative with copies of licenses, registrations, and certifications.
 1. City shall have the right to require the Contractor to remove personnel from the Site that do not have the appropriate qualifications and experience to meet or uphold the requirements of the Contract. City shall also have the right to order the Contractor to replace personnel who demonstrate unprofessional behavior.
 2. Failure by City to require removal of any Contractor personnel shall not be deemed an admission that any such personnel are satisfactory, nor shall such failure relieve the Contractor from any contractual responsibility.

3.5 SUBCONTRACTORS AND SUPPLIERS

- A. This Contract is between City and the Contractor.
 1. The Contractor's subcontracting shall not create a contract between City and the Subcontractor and Suppliers. Subcontractors and Suppliers are not intended as incidental third party beneficiaries to the Contract. The Subcontractor and Suppliers shall have no rights against City by reason of their agreements with the Contractor.
 2. The Contractor is responsible for performing all work required by the Contract. The Contract has not been written with the intent of, and City shall not be a party to, defining the division of work between the Contractor and its Subcontractors and Suppliers.
- B. **Selection of Subcontractors and Suppliers**
 1. Subcontractors and Suppliers shall be properly licensed, registered or certified, as applicable, and capable to perform the assigned work.
 2. If requested by City, the Contractor shall provide documentation that the proposed Subcontractors and Suppliers have adequate experience and skill.
 3. The Contractor shall require each Subcontractor and Supplier to comply with all provisions of this Contract. At the request of Subcontractors or Suppliers, Contractor shall make available for copying all Contract Documents.

C. Responsibility for Work of Subcontractors and Suppliers

The Contractor shall be responsible for the acts and omissions of Subcontractors and Suppliers. The Contractor shall also be responsible for the suitability of any materials, components, equipment or supplies furnished by a Subcontractor and/or Supplier irrespective of whether such were designated or approved by City.

3.6 SCHEDULE OF WORKING HOURS

- A. As specified in the Contract, the Contractor shall submit a schedule of working hours, including overtime to City for acceptance. This schedule shall comply with all Contract requirements. Except as permitted elsewhere in the Contract Documents or in the case of an emergency, all Work at the Site shall be performed between the hours of 7am and 6 pm Monday through Friday.
- B. The schedule of working hours accepted by City shall be the only schedule used by the Contractor during performance of the Contract, unless amended to maintain Work progress.
- C. The Contractor shall provide 48 hours advance written Notice of any intent to work outside of approved working hours. Any work at the Site performed outside approved working hours shall be performed without additional expense to City, except as otherwise provided in the Contract Documents. Contractor shall comply with Mercer Island Code Section 8.24.020 (Q) which prohibits construction related noise outside designated hours except in cases of emergency or demonstrated necessity.

3.7 RECORD DOCUMENTS

- A. The Contractor shall maintain an accurate, readable, and orderly set of drawings and specifications, updated as the job progresses to show all approved changes, options, alternates, and all actual deviations from the original Contract Documents. This set of drawings and specifications shall be the Record Documents.
 - 1. The Record Documents shall be maintained in hard copy.
 - 2. In addition to all approved changes, options, alternates, and all actual deviations from the original Contract Documents, the Record Documents shall be marked as follows:
 - a. Record all materials used where options, alternates and/or change orders were indicated, specified and/or authorized;
 - b. Accurate measurements referenced as required by the technical specifications shall be recorded to show the exact location and changes in direction of all underground services and utilities, as well as their depth below finished grade; and
 - c. Record all other requirements as specified in the Technical Specifications.
- B. The Record Documents shall be kept up-to-date and be available for review by City at all times, including but not limited to at each job progress meeting. Failure to have the record set up-to-date shall be sufficient reason for City to withhold payment in accordance with paragraph 7.2, *Payments Withheld*, until all such information is recorded.

- C. Record Documents may be used to assist City to verify the appropriate progress payment.
- D. Neither Final Acceptance nor Final Payment will be issued until a complete set of Record Documents is submitted and the Engineer is satisfied as to its quality and accuracy.

3.8 COST RECORDS

- A. The Contractor, Subcontractors, and Suppliers shall maintain Project cost records by cost codes and shall segregate and separately record at the time incurred all costs (1) directly associated with each work activity and (2) directly or indirectly resulting from any event or condition for which the Contractor seeks an adjustment in the Contract Price, Contract Time, and/or damages.
 - 1. Any costs claimed to result from any such event or condition, including, but not limited to, delay and impact costs, acceleration costs, loss of productivity or efficiency, and increased or extended overhead shall be recorded at the time incurred and be fairly and reasonably allocated to each such event or condition and to other causes of such costs.
 - 2. City shall be provided with a detailed description of all such costs and the basis of allocation. The Contractor, Subcontractors, and Suppliers shall maintain a monthly summary of all costs and shall make all underlying cost records and monthly summary of costs available for review, inspection, and copying by City upon request.
 - 3. Any work performed for which the Contractor intends to seek an adjustment in Contract Price and/or Contract Time shall be recorded on the same day the work is performed and kept separate so as to distinguish it from Contract Work.
- B. In addition to the requirements set forth in Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*, the Contractor shall be entitled to extra compensation for an event or condition and/or the recovery of damages only to the extent that the Project cost records are kept in full compliance with all Contract requirements and the cost allocations support entitlement to such compensation.

3.9 MAINTENANCE AND INSPECTION OF DOCUMENTS

- A. All Contractor's, Subcontractors', and Suppliers' documents and records relating to the Contract shall be open to inspection, audit, and/or copying by City or its designee:
 - 1. During the Contract Time; and
 - 2. For a period of not less than six years after the date of Final Acceptance of the Contract ("Preservation Period"); or if any Claim, audit or litigation arising out of, in connection with, or related to this Contract is initiated, all documents shall be retained until such Claim, audit or litigation involving the records is resolved or completed, whichever occurs later.
- B. The Contractor shall also guarantee that all Subcontractor and Supplier documents shall be retained and open to similar inspection, audit and/or copying during the Contract Time and also the Preservation Period. The Contractor, Subcontractor, and Supplier shall use its best efforts to cooperate with the inspection, auditing, and/or copying.

- C. Inspection, audit, and/or copying of all documents described herein, may be performed by City or its designee at any time with not less than seven (7) days' Notice. Provided however, if an audit or inspection is to be commenced more than sixty (60) days after the Final Acceptance date of the Contract, the Contractor will be given twenty (20) days' Notice of the date of the audit.
- D. The Contractor, Subcontractors, and Suppliers shall provide adequate facilities, acceptable to City, for inspection, auditing, and/or copying during normal business hours.
- E. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it shall immediately notify City and preserve such records, at its expense, as directed by City.
- F. The Contractor, Subcontractor, and Supplier, shall be subject to audit at any time with respect to this Contract. Failure to maintain and retain sufficient records to allow City to verify all costs or damages or failure to permit City access to the books and records shall constitute a waiver of the rights of the Contractor Subcontractor and Supplier to Claim or be compensated for any damages, additional time or money under this Contract.
- G. At a minimum, the following documents, including the machine readable electronic versions, shall be available for inspection, audits, and/or copying:
 - 1. Daily time sheets and all daily reports, Supervisor's reports, and inspection reports;
 - 2. Collective bargaining agreements;
 - 3. Insurance, welfare, and benefits records;
 - 4. Payroll registers;
 - 5. Earnings records;
 - 6. All tax forms, including payroll taxes;
 - 7. Material invoices and requisitions;
 - 8. Material cost distribution worksheet;
 - 9. Equipment records (list of Contractor's, Subcontractors', and Suppliers' equipment, rates, etc.);
 - 10. Contracts, purchase orders and agreements between the Contractor and each Subcontractor and Supplier;
 - 11. Subcontractors' and Suppliers' payment certificates;
 - 12. Correspondence, including email, with Subcontractors and/or Suppliers;
 - 13. All meeting notes by and between Contractor, Subcontractors, Suppliers and/or any third parties related to the Project;
 - 14. Canceled checks (payroll and vendors);
 - 15. Job cost reports, including monthly totals;
 - 16. Job payroll ledger;
 - 17. Certified payrolls;

18. General ledger;
 19. Cash disbursements journal;
 20. Take off sheets, and calculations used to prepare the bid and/or quotes;
 21. Take off sheets, calculations, quotes, other financial data to support change proposals, request for change order and/or claims;
 22. Financial statements for all years during the Contract Time. In addition, City may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 6 years following Final Acceptance of the Contract;
 23. Depreciation records on all Contractor's, Subcontractor's, and Supplier's equipment, whether these records are maintained by the Contractor, Subcontractors, and Suppliers involved, its accountant, or others;
 24. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
 25. All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;
 26. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, Suppliers, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
 27. Worksheets, software, and all other documents used (a) by the Contractor to prepare its bid and schedule(s) and/or (b) to prepare quotes and bids to the Contractor;
 28. All schedule documents, including electronic versions, planned resource codes, or schedules and summaries;
 29. All submittals; and
 30. All other documents, including email, related to the Project, Claims, or Change Orders.
- H. The Contractor shall mark any documentation it considers proprietary or confidential accordingly. Such information will be treated as such by City; however, City cannot ensure that this information will not be subject to release pursuant to a public records request. In the event City receives a request for such information, City will advise the Contractor and will not release the requested information for a period of not less than ten (10) days in order to give the Contractor an opportunity to obtain a court order prohibiting the release of the information in response to the public records request.

3.10 MAINTENANCE AND SITE CLEANUP

- A. The Contractor shall at all times keep the Site, access points, and public rights-of-way free from accumulation of dirt, mud, waste materials or rubbish caused by the Contractor or Subcontractors. At the completion of the Contract Work, the Contractor shall remove and lawfully dispose of all its dirt, mud, waste materials,

rubbish, tools, scaffolding and surplus or partly used materials from the Site and shall leave the Site broom clean unless some stricter standard is specified in the Contract.

- B. The Contractor shall obey all applicable laws and regulations relating to the storage, use, and disposal of Hazardous Materials. The Contractor shall promptly notify City of all Contractor or Subcontractor caused spills or releases of Hazardous Materials, and pay the cost to promptly clean up all such spills or releases and any associated fines or penalties. The Contractor shall maintain documentation of the clean up and disposal all Contractor or Subcontractor caused spills or releases of Hazardous Materials.
- C. If the Contractor fails to adequately maintain or cleanup the Site, City may, after written Notice to the Contractor, sweep surfaces or remove the dirt, mud, waste materials, rubbish, or hazardous materials and charge all reasonable costs of such work to the Contractor.

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

- A. Contractor shall protect from damage all existing structures, curbs, gutters, sidewalks, equipment, improvements, utilities, trees, and vegetation not shown in the Contract Documents to be removed or modified at or near the Site. Contractor shall repair, at no cost to City, any such damage resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, City may have the necessary work performed and deduct or charge the cost to Contractor or exercise its rights under the Performance and Payment Bond. If there are insufficient funds remaining, excluding retention, the Contractor shall pay City for the costs associated with protection and repairing the damages.

3.12 PERMITS, LAWS, REGULATIONS AND TAXES

- A. Except those permits, easements, and variances specified in the Contract as having been previously obtained by City, all permits, licenses, easements and variances necessary for the execution of the Work shall be secured and paid for by the Contractor. The Contractor shall identify, apply for, and pay for such permits and licenses at the earliest possible time so as to avoid any delay to the Work arising from the permitting and/or licensing process. No actions taken by City to aid the Contractor in securing any permit or license shall relieve the Contractor of any obligations to secure any such permit or license.
- B. The Contractor shall maintain all stamped permit sets of documents at the Site during construction, in good condition and as required by local ordinances.
- C. The Contractor shall perform the Work in full compliance with local, state and federal laws, ordinances, resolutions and regulations, and with permit, license, easement, and variance conditions pertaining to the conduct of the Work. The Contractor shall defend, indemnify, and hold City, its elected officials, officers, agents and employees harmless from any assessment of fines, penalties, or damages arising from violations of the same by the Contractor or Subcontractors. The Contractor shall pay and provide proof of payment for any assessments of fines, penalties or damages. The Contractor shall cooperate with all governmental entities regarding inspection of the Work and compliance with such requirements.

- D. The bid form may include a line item for sales tax on the whole amount, or on items which are not exempt from tax under Washington State Department of Revenue rules, including WAC 458-20-170 and WAC 458-20-171. Unless there are separate line items in the bid form for Washington State sales tax, Contractor shall include all sales tax in its lump sum bid or unit prices. The Contractor should contact the Washington State Department of Revenue for answers to questions in this area. The City will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability. Except as provided above, the Contractor is required to pay all applicable taxes. No adjustment will be made in the amount to be paid by City under the Contract because of any change in law or regulations covering any applicable taxes, or because of any misunderstanding by the Contractor as to its liability for or the amount of any taxes.

3.13 PATENTS AND ROYALTIES

- A. The Contractor shall assume all costs or fees relating to royalties or claims for any patented invention, article, process or method that may be used upon or in a manner connected with the Work under this Contract or with the use of completed Work by City.

3.14 CONTRACTOR'S CERTIFICATION

A. Conflict of Interest

The Contractor certifies (and shall require each Subcontractor to certify) that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives acquires such a conflict of interest, the Contractor shall immediately disclose such interest to City and take action immediately to eliminate the conflict or to withdraw from this Contract, as City may require.

B. Contingent Fees and Gratuities

The Contractor, by entering into this Contract with City to perform or provide work, services or materials, has thereby covenanted:

1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee may be paid; and
2. That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives, to any official member or employee of City or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending thereof, or the making of any determination with respect to the performance of this Contract. The Contractor certifies that it has not made any contributions to any person or entity as a condition of doing business with City and it has disclosed to City all attempts by any person to solicit such payments.

3.15 DEVIATION FROM CONTRACT

- A. The Contractor shall not make an alteration, variation, addition, deviation, or omission from the requirements of the Contract Documents without the prior written consent of the Engineer.
- B. Any alteration, variation, addition, deviation, or omission by the Contractor shall not result in any extra compensation or extension of time.

3.16 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS

A. Temporary Buildings and Utilities

Temporary buildings (including storage sheds, shops, and offices) and utilities may be erected by Contractor on the Site only with the consent of City and without expense to City. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by the Contractor at its expense upon completion of the Work.

B. Disposal/Removal of Materials

The Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal of all materials and components. The Contractor shall provide City with a copy of all manifests and receipts evidencing proper disposal when required by City or applicable law.

C. Protection and Care of Contractor's Materials and Equipment

The Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Site. Materials and equipment may be stored on the Site at the Contractor's own risk and with prior written approval from City. When the Contractor uses any portion of the Site as a shop, the Contractor shall be responsible for any repairs, patching, or cleaning arising from such use and for obtaining any necessary permits to establish such shop or temporary storage facilities.

3.17 CONTRACTOR'S OVERALL RESPONSIBILITY FOR PROTECTION OF WORK, PROPERTY, AND PERSONS

- A. The Contractor shall be responsible for conditions of the Site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Site and perform the Work in a manner which meets all statutory and common law requirements or other specific contractual requirements for the provision of a safe place to work and which adequately protects the safety of all persons and property on or near the Site. This obligation shall apply continuously and shall not be limited to normal working hours. City's inspection of the Work or presence at the Site does not and shall not be construed to include review of the adequacy of the Contractor's safety measures in, on or near the site of the Work.
- B. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including adequate safety training, in connection with the Work. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- C. The Contractor shall protect and be responsible for any damage or loss to the Work or to the materials and equipment associated with the Work until the date of

Substantial Completion. The Contractor remains responsible for any damage or loss caused directly or indirectly by the acts or omissions of the Contractor, Subcontractors, Suppliers, or third parties authorized or allowed on the Site by the Contractor until Final Acceptance.

- D. The Contractor shall also be solely and completely responsible for damages arising from the Work that affect property adjacent to the Site.
- E. The Contractor shall repair or replace without cost to City any damage or loss that may occur, except damages or loss caused by the acts or omissions of City.
- F. The Contractor shall erect and maintain adequate steel plates, signs, fencing, barricades, lights or security measures and persons to protect the Work until the Engineer authorizes in writing the removal of signs, fencing, barricades, lights or security measures.
- G. The Contractor shall conduct all operations with the least possible obstruction and inconvenience to the public. To disrupt public traffic as little as possible, the Contractor shall permit traffic to pass through the Project Site with the least possible inconvenience or delay. The Contractor shall maintain existing roads, streets, sidewalks and paths within the Project Site, keeping them open and in good, clean, safe condition at all times.

3.18 PROTECTION OF PERSONS

- A. The Contractor shall take all reasonable precautions for the safety of all employees working on this Contract and all other persons who may be affected by such Work. The Contractor shall designate a responsible member of its organization at the Site whose duty shall be to manage and coordinate the safety programs and to prevent accidents of the Contractor and Subcontractors.
- B. Except as otherwise stated in the Contract, if the Contractor encounters, on the Site, material reasonably believed to be Hazardous Material that Contractor shall immediately stop work in the area affected and give Notice of the condition to City. Work in the affected area shall not be resumed without written direction by City.
- C. To protect the lives and health of persons performing work under this Contract, the Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries including, without limitation, all excavation, tunneling, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply. There is no acceptable deviation from these safety requirements, regardless of practice in the construction industry. Any violation of OSHA, WISHA or other safety requirements applicable to the Work may be considered a breach of this Contract.

3.19 SAFETY PROGRAM

The Contractor shall prepare and maintain a written site specific "Safety Program" demonstrating the methods by which all applicable safety requirements of this Contract will be met. The Contractor shall ensure its Subcontractors and Suppliers have a written "Safety Program" or formally adopt the Contractor's site specific "Safety Program." The

Contractor shall conduct a weekly safety meeting with all Subcontractors and others on the Site to discuss general and specific safety matters.

3.20 ARCHAEOLOGICAL AND HISTORICAL PRESERVATION

The Contractor shall comply fully with the requirements set forth in Chapter 27.53 RCW entitled Archaeological Sites and Resources. The Contractor shall immediately notify the City if any artifacts, skeletal remains or other archaeological resources (as defined under RCW 27.53.040 now and as hereinafter amended) are unearthed during excavation or otherwise discovered on the Site.

3.21 WATER POLLUTION CONTROL REQUIREMENTS

The Contractor shall comply with and be liable for all penalties, damages and violations under Chapter 90.48 RCW including any regulations issued pursuant thereto in the performance of the Work.

3.22 EASEMENTS

If the Contractor makes arrangements for use of additional public and/or private property, the Contractor, prior to using such property, shall provide the Engineer with written permission of the landowner, or duly authorized agent of such landowner, for such use.

3.23 TITLE VI / NONDISCRIMINATION ASSURANCES

During the performance of this contract, the contractor/consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations

The contractor shall comply with the Regulations relative to non-discrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Non-discrimination

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Sub-contracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records,

accounts, other sources of information, and its facilities as may be determined by the contracting agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to WSDOT or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Non-compliance

In the event of the contractor's non-compliance with the non-discrimination provisions of this contract, the contracting agency shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- Withholding of payments to the contractor under the contract until the contractor complies, and/or,
- Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions

The contractor shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contractor or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request WSDOT enter into such litigation to protect the interests of the state and, in addition, the contractor may request the USDOT enter into such litigation to protect the interests of the United States.

ARTICLE 4: ADMINISTRATION OF THE CONTRACT

4.1 TIME OF ESSENCE

All time requirements set forth in the Contract Documents are of the essence.

4.2 WORK PROGRESS

A. The Contractor shall be required to:

1. Prosecute the Work diligently with adequate forces;
2. Plan, coordinate, and layout the Work in advance so as to avoid delay; and
3. Achieve Substantial Completion of the Work and Final Acceptance in accordance with the requirements of Contract Documents.

4.3 SCHEDULE OF VALUES

A. Unless otherwise specified, within fourteen (14) days after the date of Contract Execution, the Contractor shall submit to City a detailed Schedule of Values that identifies the various activities of the Work and their values and quantities, including the overhead and profit for each activity. The Contractor warrants that the values identified in its Schedule of Values accurately reflect the value of each work activity. The Schedule of Values shall be used as a basis for calculating all Progress Payments. Payment for Contract Work shall be made only for and in accordance with those activities identified in the Schedule of Values.

- B. The Contractor shall not be entitled to, nor shall City be required to make, payment for any Contract Work until the Schedule of Values has been accepted by City. Such acceptance shall not be unreasonably withheld.
- C. City shall review and accept the Schedule of Values or provide the Contractor with a written explanation of why the Schedule of Values was not acceptable. City shall use reasonable efforts to review the Schedule of Values within thirty (30) days of City's receipt of the Contractor's submittal of its Schedule of Values. City's acceptance of the Schedule of Values shall not relieve the Contractor from its sole responsibility for the accuracy of the Schedule of Values and its compliance with all Contract requirements. The Contractor shall revise the Schedule of Values as necessary to accurately reflect Change Orders.
- D. Each Application for Payment shall include a current status of the Schedule of Values. No Application for Payment will be considered until the current status of the Schedule of Values has been submitted and accepted.
- E. The activities, which the Contractor identifies within its Schedule of Values, shall be specifically referenced within, and conform and be consistent with the activities set forth within the Project Schedule.

4.4 PROJECT SCHEDULE

- A. Unless otherwise specified, within fourteen (14) days after the date of Contract Execution, the Contractor shall submit to City a Project Schedule. The Project Schedule shall show the sequence in which the Contractor proposes to perform the Work, indicate the Critical Path, identify the dates on which the Contractor proposes to start and finish the scheduled activities of the Contract Work, indicate Substantial Completion within the Contract Time, indicate a date for Final Acceptance, and meet all the requirements as may be set forth in the Contract Documents.
- B. Within thirty (30) days of City's receipt of the Contractor's submittal of its Project Schedule or unless stated elsewhere in the Contract, City shall review the Project Schedule and provide the Contractor with written comments. City will review the Project Schedule only to determine whether the Project Schedule meets the requirements in the Technical Specifications on Project Schedule. To the extent the Project Schedule does not meet such Technical Specifications, the Contractor shall revise the Project Schedule to make it compliant.
- C. By reviewing the Project Schedule and providing written comments, City is not approving or adopting the Contractor's plan, schedule, means, methods, techniques, sequences, or procedures required to perform the Work. Review and comment by City of the Project Schedule shall not relieve the Contractor from the sole responsibility for the accuracy of a Project Schedule, and its compliance with all Contract requirements, and its responsibility to meet all required Contract completion dates. Failure by City to indicate items on the Project Schedule that do not conform with the Contract requirements shall not alter or waive the Contract requirements or relieve the Contractor from complying with all Contract requirements.
- D. The Contractor shall not be entitled to, nor shall City be required to make payment for any Contract Work until the Project Schedule complies with all Contract requirements.
- E. The Contractor shall schedule the Contract Work so that the Contract Work is completed within the Contract Time. Float in the project Schedule shall be defined as the period of time measured by the number of days each non-critical path

activity may be delayed before it and its succeeding activities become part of the Critical Path. Contractor and Owner may both utilize float to offset delays to the Work.

- F. The Contractor shall regularly enter the actual progress of the Work and Contract Time extensions, if any, approved by City on the Project Schedule. Updated Project Schedules shall reflect actual progress and completion within the Contract Time and shall be provided to City with each Application for Payment in format(s) as required by the Contract. Applications for Progress Payments will not be considered by City and the Contractor will not be paid until the Contractor complies with these requirements. The updated Project Schedule shall be used to assist City in verifying the appropriate payment.
- G. If, in the opinion of City, the Contractor falls behind in its progress of the Work due to acts or omissions of the Contractor, Subcontractors, and Suppliers, the Contractor shall take all necessary steps to improve its progress and bring its progress back in-line with the accepted Project Schedule, without additional cost to City. In this circumstance the Contractor shall, as necessary, increase the number of shifts, overtime operations, and/or days of work, both on and off the Site, and submit for acceptance any supplementary schedule or schedules as City deems necessary to demonstrate how the accepted rate of progress will be regained. Failure of the Contractor to comply with the requirements under these provisions shall be grounds for a determination by City that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, City may pursue any right it has under the law or the Contract, including but not limited to default termination.

4.5 SUBMITTALS

- A. Submittals include shop drawings, setting and erection drawings, schedules of materials, product data, samples, certificates and other information prepared for the Work by the Contractor or a Subcontractor as set forth in the Technical Specifications ("Submittals"). The Contractor shall perform no portion of the Work requiring Submittals until the Submittals have been reviewed and returned by City with one of the following annotations: (1) no exceptions taken, or (2) note markings.
- B. When submitting information, the Contractor shall identify and state reasons for any alteration, variation, addition, deviation, or omission from the Contract. The Contractor shall not perform work that alters, varies, adds to, deviates from, or omits any requirement of the Contract Documents without prior specific written acceptance by City.
- C. The Contractor shall provide Submittals with reasonable promptness and in such sequence as to facilitate the timely completion of the Contract.
- D. City shall review the Contractor's Submittals and respond in writing with reasonable promptness so as not to unreasonably delay the progress of the Work. Unless otherwise agreed, no delay to the Work shall be attributable to the failure by City to respond to a Submittal until thirty (30) days after the Submittal is received by City, and then only if failure by City to respond is unreasonable and affects the Contract completion date.
- E. If the Contractor is required to resubmit a Submittal, any revisions on resubmittals shall be specifically identified in writing and the resubmitted Submittal shall be sequentially alpha denoted (for example: 22A followed by 22B, etc.) and note revisions in numerical order. The cost of the review of the initial Submittal and the first revised submittal shall be borne by City. The costs of all

additional revised Submittals shall be charged to the Contractor. The cost of review shall include, without limitation, administrative, design, and engineering activities directly related to review of Submittals. City may deduct these costs from any amounts due the Contractor.

- F. City shall review the Contractor's Submittals only for conformance with the design of the Work and compliance with the Contract. Review of the Submittals are not conducted to verify the accuracy of dimensions, quantities, or calculations, the performance of materials, systems, or equipment, or construction means, methods, techniques, sequences, or procedures, all of which remain the Contractor's responsibility. Failure by City to take exception to a Submittal shall not relieve the Contractor from any duty, including its responsibility for errors or omissions in Submittals, its duty to make Submittals and duty to perform the Work according to the requirements of the Contract. City's review of a Submittal shall not alter or waive the requirements of the Contract unless City has issued prior written approval of such change or alteration of the Contract requirements.
- G. The Contractor's failure to identify any error, deviation, or omission and subsequent acceptance of the Submittal by City shall not relieve the Contractor from complying with the Contract requirements.

4.6 REQUESTS FOR INFORMATION

- A. If the Contractor determines that some portion of the drawings, specifications or other Contract Documents require clarification or interpretation by City because of an apparent error, inconsistency, omission, or lack of clarity in the Contract, the Contractor shall promptly submit a Request For Information ("RFI") and, unless otherwise directed, shall not proceed with the affected work until City has responded to the RFI. The Contractor shall plan its work in an efficient manner so as to allow for timely responses to RFIs.
- B. City shall respond in writing with reasonable promptness to Contractor's RFI.
 - 1. At the request of the Engineer, the Contractor shall prioritize its RFIs, identify a date by which the Contractor prefers the RFI be answered, and reasons for such priority.
 - 2. If the Contractor submits a RFI on an activity less than thirty (30) days prior to the commencement of that activity, the Contractor shall not be entitled to any time extension or adjustment in Contract Price due to the time it takes City to respond to the RFI provided that City responds within fifteen (15) days. No delay to the Work or damages to the Contractor shall be attributable to the failure by City to respond to the RFI until fifteen (15) days after City's receipt of the RFI, and then only if the failure by City to respond is unreasonable and affects the Contract completion date.
- C. City's response to a RFI shall not be considered a change to the Contract requirements unless it is accompanied by a Request for Change Proposal. If the Contractor believes that City's response to the RFI constitutes changed work impacting Contract Price or Contract Time, the Contractor shall submit a Notice of Claim, Supplemental Information and a Request for Change Order to City in accordance with Articles 5, *Changes to the Contract*.

4.7 TESTS, INSPECTIONS, AND ACCESS TO THE WORK

- A. Contractor shall be responsible for inspection and quality assurance of all the Work including all work performed by any Subcontractor. The Contractor shall document and maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract. The Contractor shall maintain all documentation related to testing and inspection and make such documentation available to City at its request. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to City, or with the appropriate public authority. If any governmental, regulatory, or permitting authority requires any portion of the Work to be inspected, tested, or approved, the Contractor shall make all arrangements for and cooperate with such inspections, tests, and approvals so as not to delay completion of the Work. The Contractor shall bear all related costs of tests, inspections, and approvals. The Contractor shall give City at least three (3) days' Notice of: (1) when the work is ready to be tested and inspected and (2) when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to City upon request.
- B. The Contractor shall cooperate with City in the performance of any tests and inspections of the Work. The Contractor has the duty to coordinate all tests and inspections in a manner, which does not negatively impact Contractor's compliance with the Contract.
- C. If any Work required to be inspected, tested, or approved is covered without such inspection, testing or approval being obtained, it must, if requested by City, be uncovered for observation, and such uncovering shall be at Contractor's expense.
- D. City may, at any reasonable time and at its own cost, conduct inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract. City shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract. City inspection and tests are for the sole benefit of City and do not:
 - 1. Constitute or imply acceptance;
 - 2. Relieve Contractor of responsibility for providing adequate quality control measures;
 - 3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
 - 4. Relieve Contractor of its responsibility to comply with the requirements of the Contract; or
 - 5. Impair City's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- E. Neither observations by an inspector retained by City, the presence or absence of such inspector on the Site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract. Inspectors are not authorized to change any term or condition of the Contract.
- F. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by City. City may charge

Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. City shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

4.8 CORRECTION OF WORK OR DAMAGED PROPERTY

- A. If material, equipment, workmanship, or work proposed for, or incorporated into the Work, does not meet the Contract requirements or fails to perform satisfactorily, City shall have the right to reject such work by giving the Contractor written notice and may require the Contractor to promptly repair, replace or correct it at no cost to the City.
- B. If the Contractor does not repair, replace or correct and/or remove defective or non-conforming Work or repair damaged property as required by City, in manner and/or schedule, City or City's designee may repair, replace or correct and/or remove it and deduct the cost of such effort from any payment due the Contractor.
 - 1. If the remaining payments due the Contractor are not sufficient to cover City's cost of remedying the defective or non-conforming Work, the Contractor shall pay the difference to City.
- C. The Contractor shall be liable for all damages and costs incurred by City caused by defective or non-conforming work or workmanship, including but not limited to all special, incidental, or consequential damages incurred by City.

4.9 SUBSTITUTION OF PRODUCTS & PROCESSES

- A. Substitutions requested by the Contractor will be subject to City's prior written acceptance and at City's sole discretion.
- B. Requests for substitution must specifically identify:
 - 1. Material, equipment, and labor costs included in the Contractor's bid associated with the original item to be substituted;
 - 2. All costs for material, equipment, labor associated with the proposed substitution, including any impact costs;
 - 3. Proposed change to the Contract Price and/or Contract Time; and
 - 4. Compatibility with or modification to other systems, parts, equipment or components of the Project and Contract Work.
- C. Contractor shall provide all documentation supporting its request as requested by City.
- D. All costs of any redesign or modification to other systems, parts, equipment or components of the Project or Contract Work, which result from the substitution, shall be borne by the Contractor.
- E. When City approves a substitution proposed by the Contractor, the Contractor shall guarantee the substituted article or materials to be equal to, or better than, those originally specified and shall be compatible with all other systems, parts, equipment or components of the Project and Contract Work. City has the right to order an unaccepted, substituted article removed and replaced without additional cost to City.

- F. City has a right to a deductive Change Order if the substituted product or process is less costly than the contractually required product or process.
- G. If City does not accept the substitution proposal the Contractor shall proceed, without delay or cost to City, with the Contract Work as originally specified.

4.10 INCREASED OR DECREASED QUANTITIES

- A. Payment to the Contractor will be made only for the actual quantities of work performed and accepted in conformance with the contract. When the accepted quantity of work performed under a unit item varies from the original proposal quantity, payment will be at the unit contract price for all work unless the total accepted quantity of any contract item, adjusted to exclude added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25 percent from the original proposal quantity. In that case, payment for contract work may be adjusted as described herein:
 - 1. The adjusted final quantity shall be determined by starting with the final accepted quantity measured after all work under an item has been completed. From this amount, subtract any quantities included in additive change orders accepted by both parties. Then, to the resulting amount, add any quantities included in deductive change orders accepted by both parties. The final result of this calculation shall become the adjusted final quantity and the basis for comparison to the original proposal quantity.
 - a. Increased Quantities: Either party to the contract will be entitled to renegotiate the price for that portion of the adjusted final quantity in excess of 1.25 times the original proposal quantity. The price for excessive quantities will be determined by agreement of the parties, or, where the parties cannot agree, the price will be determined by the City based upon the actual costs to perform the work, including markup for overhead and profit in accordance with Paragraph 6.3, *Allowable Costs*.
 - b. Decreased Quantities: Either party to the contract will be entitled to an equitable adjustment if the adjusted final quantity of work performed is less than 75 percent of the original bid quantity. The equitable adjustment shall be based upon and limited to three factors:
 - i. Any increase or decrease in unit costs of labor, materials or equipment, utilized for work actually performed, resulting solely from the reduction in quantity;
 - ii. Changes in production rates or methods of performing work actually done to the extent that the nature of the work actually performed differs from the nature of the work included in the original plan; and
 - iii. An adjustment for the anticipated contribution to unavoidable fixed cost and overhead from the units representing the difference between the adjusted final quantity and 75% of the original plan quantity.
- B. The following limitations shall apply to renegotiated prices for increases and/or equitable adjustments for decreases:
 - 1. Labor, materials and equipment rates shall be actual costs but shall not exceed the rates set forth in Paragraph 6.3, *Allowable Costs* nor shall overhead and profit exceed the rates set forth in Paragraph 6.3, *Allowable Costs*.

2. No payment for consequential damages or loss of anticipated profits will be allowed because of any variance in quantities from those originally shown in the proposal form, contract provisions, and contract plans.
 3. The total payment (including the adjustment amount and unit prices for work performed) for any item which experiences an equitable adjustment for decreased quantity shall not exceed 75% of the amount original bid for the item.
- C. If the adjusted final quantity of any item does not vary from the quantity shown in the proposal by more than 25% then the Contractor and the City agree that all work under that item will be performed at the original contract unit price and within the original time for completion.
 - D. When ordered by the Engineer, the Contractor shall proceed with the work pending determination of the cost or time adjustment for the variation in quantities.
 - E. The Contractor and the City agree that there will be no cost adjustment for decreases if the City has entered the amount for the item in the proposal form only to provide a common proposal for bidders.

ARTICLE 5: CHANGES TO THE CONTRACT

5.1 GENERAL

- A. No provisions of the Contract may be amended or modified except by written agreement signed by the City.
- B. All Change Order work shall be performed in accordance with the original Contract requirements unless modified in writing by City.
- C. Any response to a Request For Information, or other directive, direction, instruction, interpretation, or determination (hereinafter referred to as "Direction" for the purposes of Article 5), provided by City is not considered a Change Order, a change to Contract requirements, and shall not constitute, in and of itself, entitlement to an adjustment in Contract Price and/or Contract Time.
- D. The Contractor shall not be entitled to any change in the Contract Price and/or Contract Time under the following conditions or events:
 1. They were reasonably foreseeable at the time the Contractor submitted its bid;
 2. They were caused by the acts of the Contractor, Subcontractor and/or Supplier, including but not limited to the choice of means, methods, techniques, sequences, or procedures for the Work, failure to provide labor, materials or equipment in a timely manner, and failure to take reasonable steps to mitigate delays, disruptions, or conditions encountered.
- E. The Contract requirements for time and price impacts related to Change Orders are set forth in Article 6, *Time and Price Adjustments*.
- F. If there is a bid item for "Minor Changes," payments or credits for changes that cost \$5,000 or less and do not affect time, may, at the discretion of the City, be made under that bid item in lieu of the procedures set forth in Sections 5.1 – 5.6. A Minor Change will be documented by a written Order for a Minor Change or by a notation confirming an oral agreement.

5.2 CONTRACTOR'S REQUEST FOR A CHANGE ORDER

- A. Notice of Claim and Supplemental Information. If the Contractor believes that it is entitled to additional compensation and/or time for any reason (other than for a differing site condition under Section 5.2), or if the Contractor disagrees with any written or oral direction, instruction, interpretation or determination from the City, the Contractor shall
- (1) Provide the Engineer with a written Notice of Protest before doing any work or incurring any costs for which it may seek additional compensation or time from the City.
 - (2) Supplement the written Notice of Protest within 14 days with a written statement that includes the following:
 - a. The date, circumstances, and basis of entitlement to additional compensation and/or time;
 - b. The estimated dollar cost of the protested work and a detailed breakdown showing how that estimate was determined;
 - c. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption;
 - d. Substantive basis of the Request;
 - e. If the protest is continuing, the information required above shall be supplemented upon request by the Engineer until the protest is resolved; and
 - f. The Contractor waives all claims for additional compensation and time if it fails to provide both a timely Notice of Claim and Supplemental Information with the information required by this Section.
- B. Request for Change Order.
1. A Request for a Change Order must be submitted in writing to the Engineer no later than thirty-five (35) days after the Contractor submitted its supplemental information pursuant to Paragraph 5.1(A)(2).
 2. The Request for a Change Order shall include:
 - a. Specific dollar amount covering all costs associated calculated in accordance with Article 6, *Time and Price Adjustments*;
 - b. Specific request for time extension (number of days) calculated in accordance with Article 6, *Time and Price Adjustments*;
 - c. A copy of the written Notice of intent, including all attachments;
 - d. All documentation supporting the Request for a Change Order, including but not limited to a cost proposal prepared using the forms provided by City, all cost records, schedule analysis, and the documents identified in §00700, ¶3.10, *Maintenance and Inspection of Documents*, that are in any way relevant to the Contractor's Request for Change Order; and
 - e. The Contractor waives all claims for additional compensation and time if it fails to provide a timely Request for Change Order with the information required by this Section.
- C. City's Response to Contractor's Request for Change Order.

1. City will make a written determination with respect to the Contractor's Request for Change Order within thirty (30) days of receipt of said Request, unless one of the following activities occurs.
 - a. City may request additional information and specify a time period for receipt of the information. The Contractor shall comply with City's request for additional information.
 - b. City may inform the Contractor that additional time is needed to review the Contractor's Request for Change Order and identify a date certain when a decision will be rendered.
 2. If City requests additional information, City will make a written determination within thirty (30) days receipt of Contractor's additional information.
 3. If City does not make a determination within the applicable time period, the Request For Change Order is deemed denied.
- D. Approval of Request for Change Order and Execution of Change Order. If City determines that a Change Order is necessary, the parties may negotiate acceptable terms and conditions and execute a Bilateral Change Order or City may issue a Unilateral Change Order.
- E. Contractor Procedure upon Denial or Deemed Denial of a Request for a Change Order. If the Contractor disagrees with the denial, the Contractor's sole remedy shall be to file a fully documented Claim within thirty (30) days of deemed denial or the Contractor's receipt of the denial in accordance with Article 9, *Claims and Litigation*.
- F. Contractor's Obligation to Continue to Work. Pending resolution of the Contractor's Request for a Change Order, the Contractor shall continue to perform all Work including, at the written request of City that work associated with the pending Request for Change Order. The Contractor shall maintain its progress with the Work.
- G. Waiver. Failure to follow the provisions set forth herein shall constitute a waiver of the Contractor's right to receive any additional time or money as a result of any alleged direction, instruction, interpretation, determination by City and/or the event or impact to the Project.

5.3 DIFFERING SITE CONDITIONS

- A. Immediate Written Notice to City. If the Contractor encounters a Differing Site Condition as defined in Article 1.0 the Contractor shall immediately, and before the conditions are disturbed, give written Notice to City of Differing Site Conditions.
- B. Request for Change Order based on Differing Site Condition. Unless otherwise agreed upon in writing by the Engineer, within forty-five (45) days of the Contractor's initial written notification of the Differing Site Condition to City, the Contractor shall provide a Request for Change Order that includes all elements required for such a request, including:
 1. A detailed description of the Differing Site Condition; and
 2. Substantive, contractual, and technical basis supporting the existence of the Differing Site Condition and its impacts.
- C. Waiver.

1. If the Contractor's actions disturb the Site such that City or City's designee cannot adequately and fully investigate the alleged differing site condition, the Contractor waives its right to receive any additional time or money as a result of the Differing Site Condition.
 2. Failure by the Contractor to provide either (a) immediate Notice or (b) Request for Change Order shall constitute a waiver of the Contractor's right to receive any additional time or money as a result of the Differing Site Condition.
 3. The Contractor shall be responsible for any and all costs or damages incurred by City resulting from the Contractor's failure to provide appropriate notice and/or the Detailed Description and Request for Change Order.
- D. City's Response to the Differing Site Condition Request for Change Order. City shall investigate the alleged Differing Site Conditions and respond to the Differing Site Condition in accordance with the Request for Change Order procedures set forth above.
- E. Contractor's Obligation to Continue to Work. The Contractor shall not disturb the condition until receipt of written authorization from the Engineer that work can resume at the location of the alleged Differing Site Condition. The Contractor shall continue with performance of all other Work.

5.4 SUSPENSION OF WORK

A. City Issues Directive Suspending Work

1. City may order the Contractor, in writing, to suspend all or any part of the Work of this Contract for the period of time that City determines appropriate for the convenience of City. The Contractor shall not suspend the Work without written direction from City specifically authorizing the Suspension of Work.
2. Upon receipt of a written Notice suspending the Work, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize costs attributable to such suspension. Within a period up to 120 days after the suspension notice is received by the Contractor, or within any extension of that period which City requires, City shall either:
 - a. Cancel the written notice suspending the Work; or
 - b. Terminate the Work for either default or convenience.
3. If a written notice suspending the Work is canceled or the period of the Suspension or any extension thereof expires, the Contractor shall resume Work as required by City.
4. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended by the written direction of City, the Contractor may be entitled to an adjustment in the Contract Time, or Contract Price, or both, for increases in the time or cost of performance directly attributable to the suspension and provided that the Contractor sufficiently documents all costs and time impacts attributable to the suspension. No adjustments to Contract Price and/or Contract Time shall be allowed unless the Contractor can demonstrate that the period of suspension caused by City impacted Critical Path and delayed the Contractor from completing the Work on time.

B. Constructive Suspension of Work

1. If the Contractor believes that some action or omission on the part of City constitutes constructive suspension of Work, the Contractor shall immediately notify City in writing that the Contractor considers the actions or omission a constructive suspension of Work.
- C. To the extent the Contractor believes it is entitled to any additional money or time as a result of the suspension of Work or constructive suspension, Contractor shall submit a Notice of Protest, Supplemental Information and Request for Change Order to City in accordance with Article 5, *Changes to the Contract*.
- D. Failure to comply with these requirements shall constitute a waiver of Contractor rights to any adjustment in Contract Time and/or Contract Price.
- E. No adjustment shall be made under this provision for any suspension to the extent that Contractor's performance would have been suspended, delayed, or interrupted as a result of actions, omissions, fault or negligence caused, in whole or in part, by the Contractor or any of its Subcontractors.

5.5 FORCE MAJEURE

- A. To the extent the Contractor believes it is entitled to any additional time as a result of Force Majeure, Contractor shall submit a Notice of Protest, Supplemental Information and Request for Change Order to City in accordance with Article 5, *Changes to the Contract*.
- B. Contractor shall not be entitled to a change in Contract Price resulting from an act of Force Majeure.
- C. Contractor is not entitled to an adjustment in Contract Time if the act of Force Majeure did not impact progress of the Work on the Critical Path and delay the Contractor from completing the Work within the Contract Time.
- D. When a Contractor experiences concurrent delay caused by either City or Contractor and an act of Force Majeure, the Contractor shall only be entitled to an change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.

5.6 CHANGE ORDERS

A. Bilateral Change Orders

1. If City and Contractor reach agreement on the terms and conditions of any change in the Work, including any adjustment in the Contract Price and Contract Time, such agreement shall be incorporated into a Change Order and signed by both Parties. Such Bilateral Change Orders shall represent full and complete payment and final settlement of all changes, Claims, damages or costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, stand-by, and any other costs or damages related to any work either covered or affected by the Change Order, or related to the events giving rise to the Bilateral Change Order.

B. Unilateral Change Order

1. City's Right to Issue Unilateral Change Order.

- a. City may unilaterally issue a Change Order at any time, without invalidating the Contract and without notice to the sureties, making changes within the general scope of this Contract.
- b. If any such Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Work, City may make an adjustment in the Contract Price, Contract Time, or both, in accordance with Articles 5, *Changes to the Contract*, and 6, *Time and Price Adjustments*.

2. Contractor Disagreement with Unilateral Change Order. If the Contractor disagrees with the adjustment to the Contract Price and/or Time as indicated in the Unilateral Change Order, the Contractor must submit a Notice of Protest, Supplemental Information and Request for Change Order to City in accordance with Article 5, *Changes to the Contract*.

3. Contractor's Obligation to Continue to Work. The Contractor is required to continue with performance of all Work, including work associated with the Unilateral Change Order.

5.7 CITY REQUEST FOR A CHANGE PROPOSAL

A. Request. City may request a written Change Proposal from the Contractor for a change in the Work.

B. Contractor's Proposal. Contractor shall submit its written Change Proposal within the time specified in City's request with the costs shown in a form acceptable to the City. The Change Proposal shall represent the Contractor's offer to perform the requested work, and the pricing set forth within the proposal shall represent full, complete, and final compensation for the proposed change and any impacts to any other Work, including any adjustments in the Contract Time.

C. City's Acceptance of Contractor Proposal. If City accepts the Change Proposal as submitted by the Contractor or as negotiated by the parties, City shall notify the Contractor in writing of its acceptance of the Proposal and direct that the change in the Work be performed.

D. Execution of a Bilateral Change Order. After acceptance of the Change Proposal or acceptance of the negotiated Change Proposal, City shall direct the Contractor to perform the work in accordance with the agreed upon terms; thereafter, the Parties shall execute a bilateral Change Order in accordance with the terms of the Change Proposal or negotiated Change Proposal.

E. Execution of Unilateral Change Order. If City does not accept the Change Proposal or the Parties cannot agree upon the appropriate price or terms for the Change Proposal, City may issue a unilateral Change Order.

ARTICLE 6: TIME AND PRICE ADJUSTMENTS

6.1 CHANGE IN THE CONTRACT TIME

A. The Contract Time shall only be changed by a Change Order.

- B. No change in the Contract Time shall be allowed to the extent the time of performance is changed due to the fault, act, or omission of Contractor, or anyone for whose acts or omissions the Contractor is responsible.
- C. Contractor is not entitled to a change in Contract Time unless the progress of the Work on the Critical Path is delayed and completion of the Contract Work within Contract Time is delayed.
- D. When a Contractor experiences concurrent delays which impact the Critical Path and are caused by (1) City and the Contractor; (2) City and an act of Force Majeure; or, (3) the Contractor and an act of Force Majeure, the Contractor shall only be entitled to a change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.
- E. A Request for Change Order that includes a request for an adjustment in the Contract Time shall:
 - 1. Be in writing and delivered to City within the appropriate time period specified in Article 5, *Changes in the Contract*.
 - 2. Include a clear explanation of how the event or conditions specifically impacted the Critical Path and overall Project Schedule and the amount of the adjustment in Contract Time requested.
 - 3. Be limited to the change in the Critical Path of a Contractor's Project Schedule, and any updates, attributable to the event or conditions, which caused the request for adjustment. No extension of time or compensation for damages resulting from delay will be granted unless the delay affects the timely completion of all Work under the Contract or timely completion of a portion of the Work for which time of completion is specific. Contractor shall be responsible for showing clearly on the Project Schedule, and any updates, that the event or conditions:
 - a. Had a specific impact on the Critical Path and was the sole cause of such impact;
 - b. Could not have been avoided by resequencing of the Work or other reasonable alternatives; and
 - c. Will prevent the Contractor from completing the Project within the current Contract completion date.
- F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

6.2 CHANGE IN THE CONTRACT PRICE

- A. The Contract Price shall only be changed by a Change Order.
- B. No change in the Contract Price shall be allowed when:
 - 1. Contractor's changed cost of performance is due to the fault, acts, or omissions of Contractor, or anyone for whose acts or omissions Contractor is responsible, including its subcontractors and suppliers;
 - 2. The change is concurrently caused by Contractor and City; or
 - 3. The change is caused by an act of a third party or Force Majeure.

- C. City shall not be responsible for, and the Contractor shall not be entitled to any compensation for unallowable costs. Unallowable costs include, but are not limited to:
1. Interest or attorney's fees of any type other than those mandated by Washington state statute;
 2. Claim preparation or filing costs;
 3. The cost of preparing or reviewing Change Proposals or Requests for Change Orders;
 4. Lost profits, lost income or earnings;
 5. Costs for idle equipment when such equipment is not at the Site, has not been employed in the Work, or is not scheduled to be used at the Site;
 6. Lost earnings or interest on unpaid retainage;
 7. Claims consulting costs;
 8. The costs of corporate officers or staff visiting the Site or participating in meetings with City;
 9. Loss of other business; and/or
 10. Any other special, consequential, or incidental damages incurred by the Contractor, Subcontractor, or Suppliers.
- D. A Request for Change Order that includes a request for an adjustment in Contract Price shall:
1. Be in writing and delivered to City within the applicable time period specified in Article 5, *Changes to the Contract*.
 2. Identify the following information:
 - a. The event or condition which caused the Contractor to submit its request for an adjustment in the Contract Price;
 - b. The nature of the impacts to Contractor and its Subcontractors, if any; and
 - c. The amount of the adjustment in Contract Price requested calculated in accordance with Paragraph 6.3, *Allowable Costs*, and using forms provided by City.
 3. Any requests by Contractor for an adjustment in the Contract Price and in the Contract Time that arise out of the same event or conditions shall be submitted together.
- E. The adjustments to the Contract Price provided for in this Article represent full, final, and complete compensation for all work done in connection with the request for an adjustment in Contract Price and all costs related to, resulting from, or affected by such change in Work including, but not limited to, all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any work either covered or affected by the change in the Work, or related to the events giving rise to the change.

6.3 METHOD TO CALCULATE ADJUSTMENTS TO CONTRACT PRICE

- A. One of the following methods shall be used to calculate damages and/or adjustments to the Contract Price that result from or relate to Change Proposal, Request for Change Order, and/or Claim.
- B. Determination of the method to be used to calculate adjustments in the Contract Price shall be at the sole discretion of City.
- C. One of the following methods shall be used:
 - 1. Unit Price Method;
 - 2. Firm Fixed Price Method (also known as Lump Sum); or
 - 3. Time and Materials Method.
- D. **Unit Price Method**
 - 1. The City may direct the Contractor to perform extra work on a Unit Price basis. Such authorization shall clearly state the:
 - a. Scope of work to be performed;
 - b. Applicable Unit Price; and
 - c. Not to exceed amount of reimbursement as established by City.
 - 2. The applicable unit price shall include reimbursement for all direct and indirect costs of the work, including Overhead and profit, as limited by paragraph 6.3, *Allowable Costs*.
 - 3. Contractor shall only be paid under this method for the actual quantity of materials incorporated in or removed from the Work and such quantities must be supported by field measurement statements verified by City.
- E. **Firm Fixed Price Method**
 - 1. The Contractor and City may mutually agree on a fixed amount as the total compensation for the performance of changed work.
 - 2. The Contractor shall provide a detailed cost breakdown supporting the Contractor's requested adjustment to Contract Price and any other financial documentation requested by the Engineer, as limited by paragraph 6.3, *Allowable Costs*.
 - 3. Any adjustments to the Contract Price using the Firm Fixed Price Method shall include, when appropriate all reasonable costs for labor, equipment, material, Overhead and profit. Such labor, equipment, material, Overhead and profit shall be calculated in accordance with paragraph 6.3, *Allowable Costs*.
 - 4. Whenever City authorizes Contractor to perform changed work on a Firm Fixed Price Method, City's authorization shall clearly state:
 - a. Scope of work to be performed; and
 - b. Total Fixed Price payment for performing such work.
- F. **Time and Materials Method**
 - 1. Whenever City authorizes the Contractor to perform work on a Time and Material basis, City's authorization shall clearly state:

- a. Scope of work to be performed; and
 - b. A not to exceed amount of reimbursement as established by City.
2. Contractor shall:
- a. Cooperate with City and assist in monitoring the work being performed;
 - b. Substantiate the labor hours, materials and equipment charged to work under the Time and Materials Method by detailed time cards or logs completed on a daily basis before the close of business each working day;
 - c. Present the time card and/or log at the close of business each day to the Engineer so that City may review and initial each time card/log;
 - d. Perform all work in accordance with this provision as efficiently as possible;
 - e. Not exceed any cost limit(s) without City's prior written approval; and
 - f. Maintain all records of the work, including all records of the Subcontractor, Supplier, and Materialmen, and make such records available for inspection as required in paragraphs 3.8, *Record Documents*, 3.9, *Cost Records*, and 3.10, *Maintenance and Inspection of Document*.
3. Contractor shall submit costs and any additional information requested by City to support Contractor's requested price adjustment.
4. The Contractor shall only be entitled to be paid for reasonable costs actually incurred by the Contractor. The Contractor has a duty to control costs. If City determines that the Contractor's costs are excessive or unreasonable, City, at its discretion, shall determine the reasonable amount for payment.

G. Deductive Changes to the Contract Price

1. A deductive change to the Contract Price may be determined by taking into account:
- a. Costs incurred and saved by the Contractor as a result of the change, if any;
 - b. The costs of labor, material, equipment, and overhead saved and profit unearned by the deleted work. These costs shall be calculated following as closely as possible with the provisions identified in Article 6, Time and Price Adjustments; and/or,
 - c. At the discretion of City, costs set forth in the documents used by the Contractor to develop its bid.
2. Where City has elected not to correct incomplete or defective Work, the adjustment in the Contract Price shall take into account:
- a. The costs the City would have to expend to correct the Work;
 - b. The decreased value to City resulting from the incomplete or defective Work; and,
 - c. The increased future costs which City may incur by reason of the incomplete or defective Work.

H. Full Compensation

An adjustment calculated in accordance with the provisions of this Article shall be full and complete payment and final settlement of all changes, claims, damages and costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, standby, and/or any other costs or damages related to any Work either covered or affected by the changed Work, or related to the events giving rise to the change.

6.4 ALLOWABLE COSTS

- A. Any adjustments to the Contract Price shall be based on the following categories and shall incorporate markups for Overhead and profit as provided herein.
1. **Labor.** For all labor, including foreman supervision but excluding superintendents and other project management and consultants, the Contractor shall be reimbursed for labor costs provided herein. The labor cost of an event or condition shall be calculated as the sum of the following:
 - a. **Labor Rate.** The Labor Rate is the actual reasonable wage paid to the individual plus the actual reasonable costs incurred by the Contractor to cover costs associated with Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUCA), industrial insurance, fringe benefits, and benefits paid on behalf of labor by the Contractor. The applicable Labor Rates shall be multiplied by the number of hours reasonably expended in each labor classification because of the event or condition to arrive at a total cost of labor.
 - b. **Travel Allowance and/or Subsistence.** The labor calculation shall include the actual costs of travel and/or subsistence paid to the Contractor's employees engaged upon the Work when said payments are required by a labor agreement.
 2. **Materials.** The cost of materials resulting from an event or condition shall be calculated in one or more of the following methods, at City's election:
 - a. **Invoice Cost.** The Contractor may be paid the actual invoice cost of materials including actual freight and express charges and applicable taxes less all available discounts, rebates, and back-charges,. This method shall be considered only to the extent the Contractor's invoice costs are reasonable and the Contractor provides copies of vendor invoices, freight and express bills, and other evidence of cost accounting and payment satisfactory to City. As to materials furnished from the Contractor's stocks for which an invoice is not available, the Contractor shall furnish an affidavit certifying its actual cost of such materials and such other information as City may reasonably require;
 - b. **Wholesale Price.** The Contractor may be paid the lowest current wholesale price for which the materials are available in the quantities required, including customary costs of delivery and all applicable taxes less all available discounts, rebates, and back-charges; or

- c. **City Furnished Material.** City reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no Claim for any costs, Overhead or profit on such materials. However, should the Contractor be required to pick up, transport and/or unload such materials the Contractor will be reimbursed for reasonable costs thereof.
- 3. **Equipment.** The additional cost, if any, of machine-power tools and equipment usage shall be calculated in accordance with the following rules:
 - a. **Equipment Rates.** The Contractor's own charge rates may be used if verified and approved by City and based on the Contractor's actual ownership and operating cost experience. Rental rates contained in published rate guides may be used if their cost formulas and rate factors are identifiable, reflect the Contractor's historical acquisition costs, utilization, and useful life, and do not include replacement cost, escalation contingency reserves, general and administrative expense, or profit. Rates shall be based on the Contractor's actual allowable costs incurred or the rates established according to the Rental Rate Blue Book for Construction Equipment, published by Equipment Watch, PRIMEDIA, whichever is less. The Rental Rate Blue Book established hourly equipment rate shall be the monthly rental rate for the equipment plus the monthly rental rate for required attachments, divided by 176 work hours per month, multiplied by the appropriate regional adjustment factor, plus the hourly operating cost. The established equipment rate shall apply for actual equipment usage up to eight hours per day. For all hours in excess of eight hours per day or 176 hours per month, the established equipment rate shall be the monthly rental rate plus the monthly rental rate for required attachments, divided by 352, multiplied by the regional adjustment factor, plus the hourly operating cost.
 - b. **Transportation.** If the necessary equipment is not already at the Site and it is not anticipated that it would be required for the performance of other work under the terms of the Contract, the calculation shall include a reasonable amount for the costs of the necessary transportation of such equipment.
 - c. **Standby.** The Contractor shall only be entitled to standby equipment costs if (a) the equipment is ready, able, and available to do the Work at a moment's notice; (b) Contractor is required to have equipment standby because of an event or condition solely caused by City and (c) the Contractor can demonstrate that it could have and intended to use the equipment on other projects/jobs. The Contractor shall be compensated at 50% of the monthly rental rate for the equipment, divided by 176, and multiplied by the appropriate regional adjustment factor, as identified in the Rental Rate Blue Book for Construction Equipment, published by Machinery Information Division of PRIMEDIA Information Inc. Standby shall not be paid during periods of Contractor-caused delay, concurrent delay, Force Majeure, during any seasonal shutdown, routine maintenance, down-time or broken equipment, late delivery of equipment or supplies, or other anticipated occurrence specified in the Contract Documents. No payment shall be made for standby on any piece of equipment, which has been used on the Project in any 24 hour period. Standby costs shall not be paid for weekends, holidays, and any time the equipment was not intended to be used on the Project as demonstrated by the Project Schedule.

4. **Subcontractor & Supplier.** Direct costs associated with Subcontractors and Suppliers shall exclude Overhead and Profit markups and shall be calculated and itemized in the same manner as prescribed herein for Contractor. Contractor shall provide detailed breakdown of Subcontractor and Supplier invoices.
5. **Overhead and Profit Markup.**
 - a. On a change to the Contract Price or any other claim for money by the Contractor, City will only pay Overhead, including Home Office Overhead, Site or Field Office Overhead, and unabsorbed home office overhead, and Profit pursuant to the Overhead and Profit Markups set forth herein. The Overhead and Profit Markups cover all overhead regardless of how the Contractor chooses to account for various costs in its books of account.
 - b. Overhead and Profit markups shall not be applied to freight, delivery charges, express charges, and sales tax.
 - c. The allowed Overhead and Profit markup shall not exceed the following:
 - i. If the Contractor is self-performing work: 18% combined Overhead and Profit markup on the Contractor's Direct Costs;
 - ii. If a Subcontractor or Supplier is performing work: 18% for the Subcontractor's Direct Cost for performing the work and 7% on the Direct Costs of the Subcontractors' or Suppliers'; provided that the 7% is to be divided among upper tier Subcontractors and the Contractor when a Subcontractor or Supplier is performing the work;
 - iii. If the value of material and equipment is greater than 50% of the total value of the change, the Overhead and Profit Markup shall only be 10% for material and equipment; and
 - iv. In no event shall the total combined Overhead and Profit markup for the Contractor and all Subcontractors and Suppliers of any tier exceed 25% of the Direct Cost to perform the Change Order work.

ARTICLE 7: PAYMENT AND COMPLETION

7.1 APPLICATIONS FOR PAYMENT

- A. On or about the first day of each month, the Contractor shall submit to City an Application for Payment. Each application shall be completed on a form acceptable to City and designated as an "Application for Payment."
- B. The Contractor is not entitled to payment for any work unless the Application for Payment includes all required documentation. City reserves the right to withhold payment pursuant to paragraph 7.2, *Payments Withheld* if it is subsequently determined that all required documentation was not provided by the Contractor or is in error.
- C. The application shall correlate the amount requested with the Schedule of Values and with the state of completion of the Work.
- D. The Contractor shall submit a breakdown of the cost of lump sum items to enable the Engineer to determine the Work performed on a monthly basis. Lump sum breakdowns shall be submitted prior to the first progress payment that includes

payment for the Bid Item. Absent a lump sum breakdown, the Engineer will make a determination based on information available.

7.2 PAYMENTS

- A. City shall comply with RCW 39.76, as amended, and promptly review each Application for Payment and identify in writing any cause for disapproval within 8 working days. In addition to withholding payment for unsatisfactory performance or failure to comply with Contract requirements, if the Contractor's Application for Payment fails to recognize any back-charges, off-sets, credits, change orders, or deductions in payment made in accordance with paragraph 7.2, *Payments Withheld*, City shall have the right to revise or disapprove Contractor's Application For Payment because the Application for Payment is not considered a properly completed invoice.
- B. The City shall withhold retainage from each Application for Payment as required by RCW 60.28, as amended.
- C. If an Application for Payment is accepted by City, it shall be paid within thirty (30) days of City's receipt of the properly prepared invoice (Application for Payment).

7.3 PAYMENT WITHHELD

- A. In addition to retainage withheld pursuant to RCW 60.28 and without waiver of any other available remedies, City has the right to withhold, nullify, or back-charge, in whole or in part, any payment or payments due or that have been paid to the Contractor as may be necessary to cover City's costs or to protect City from loss or damage for reasons including but not limited to:
 - 1. Failure of the Contractor to submit or obtain acceptance of a Progress Schedule, Schedule of Values, and any updated Schedules;
 - 2. Defective or non-conforming Work;
 - 3. Costs incurred by City to correct, repair or replace defective or non-conforming Work, or to complete the Work;
 - 4. A reasonable doubt that the Contract can be completed for the balance then unpaid;
 - 5. A reasonable concern by City that the materials, equipment or component parts are not in proper operating condition;
 - 6. Assessment of Liquidated Damages;
 - 7. Failure to perform in accordance with the Contract;
 - 8. Cost or liability that may occur to City as the result of the Contractor's or Subcontractor's acts, omissions, fault, or negligence;
 - 9. Deduction in the Work;
 - 10. Failure of Contractor to repair damaged materials, equipment, property, or Work;
 - 11. Failure of the Contractor to obtain approval of Submittals pertinent to the work accomplished;
 - 12. Failure to pay Subcontractors, Suppliers, employees or other obligations arising out of the Work;

13. Failure to keep Record Documents up to date;
 14. Failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
 15. Failure to obtain and maintain applicable permits, insurance, and bonds; and
 16. Failure to provide Statement of intent to Pay Prevailing Wage and/or Affidavits of Wages Paid and, if requested, Certified Payroll Records for the Contractor and for Subcontractors of any tier.
- B. The withholding, nullification, or back-charge of any payment(s) by City shall in no way relieve the Contractor of any of its obligations under this Contract.

7.4 TITLE

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

7.5 SUBSTANTIAL COMPLETION

- A. When the Contractor has achieved Substantial Completion (as defined in Section 1 above), the Contractor shall give written Notice to City.
1. City shall promptly inspect the Work and prepare a Punch List (list of items to be completed or corrected).
 - a. City reserves the right to add to, modify, or change the Punch List.
 - b. Failure by City to include any items on such list does not alter the responsibility of the Contractor to complete or correct the Work in accordance with the Contract.
- B. At the Contractor's request, City may identify those Punch List items that must be completed or corrected in order for the Contractor to achieve Substantial Completion.
1. When City determines that those Punch List items have been completed or corrected by the Contractor, City shall make a determination that the Work is Substantially Complete.
 2. A Certificate of Substantial Completion will be issued by City, which shall establish the date of Substantial Completion.
 3. This Certificate of Substantial Completion shall state the responsibilities of City and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance.
- C. City shall assess liquidated damages for the Contractor's failure to Substantially Complete the Work within the Contract Time. The liquidated damage amounts, set forth elsewhere in the Contract Documents, will be assessed for Contractor's failure to achieve Substantial Completion within the Contract Time. These Liquidated Damages are not a penalty, but will be assessed against the Contractor for failure to achieve these Contract requirements. These Liquidated Damage amounts are

fixed and agreed upon by and between the Contractor and City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages City would in such events sustain. These amounts shall be construed as the actual amount of damages sustained by City, and may be retained by City and deducted from payments to the Contractor. Assessment of Liquidated Damages shall not release the Contractor from any further obligations or duties pursuant to the Work.

- D. As provided in the Contract Documents, City may grant Substantial Completion to specific subsystems or portions of the Work. The dates of Substantial Completion shall be determined, in writing, by City.

7.6 FINAL INSPECTION

- A. The Contractor shall correct all remaining Punch List items and complete all remaining Work within the time period stated in the Certificate of Substantial Completion or within 30 days, whichever is less. When all Punch List items have been successfully corrected and the work is complete the Contractor's shall give written notice to the City that the Work ready for final inspection. After verification by City that such completion was satisfactory, the Contractor shall submit a Final Application for Payment.

7.7 REQUIREMENTS FOR FINAL APPLICATION FOR PAYMENT

- A. In addition to any other requirement identified in the Contract Documents, the Final Application for Payment shall include the following documents:
 - 1. Affidavit of Wages Paid for Contractor and all Subcontractors in accordance with state law;
 - 2. Contractor's release of claims against City, except for Claims specifically described in the release document and submitted in accordance with Article 9, *Claims and Litigation*; and
 - 3. Contractor certification that all Subcontractors and Suppliers have been paid and there are no outstanding liens.

7.8 COMPLETION/FINAL ACCEPTANCE

- A. Completion/Final Acceptance shall be achieved when all the obligations of the Contract have been successfully performed by the Contractor in accordance with the Contract and accepted by City. Should Contractor fail to achieve Final Acceptance within the required time the City may assess actual damages caused by its failure to do so.
- B. Neither Final Acceptance, nor Final Payment, shall release Contractor or its sureties from any obligations under this Contract or the Performance and Payment Bonds, or constitute a waiver of any claims by City arising from or related to Contractor's performance or failure to perform the Work and to meet all Contractual obligations in accordance with the Contract, including but not limited to:
 - 1. Unsettled liens, security interests or encumbrances;
 - 2. Damaged, non-conforming, or defective Work discovered by City;
 - 3. Terms of any warranties or guarantees required by the Contract; and
 - 4. Payments made in error.

- C. Except for any Claims properly submitted in accordance with Article 9, *Claims and Litigation*, acceptance of Payment on the Final Application for Payment by the Contractor shall, on behalf of itself and its Subcontractors or Sureties, forever and unconditionally release and discharge City, its officers, agents, employees, from:
 - 1. Any and all disputes or claims, including but not limited to claims for damages, fines, interest, taxes, attorney fees, or costs, demands, rights, actions or causes of actions, known or unknown, arising out of or in any way related to the parties' performance under the Contract and/or Project; and
 - 2. Any and all known and/or unknown liabilities, obligations, demands, actions, suits, debts, charges, causes of action, requests for money and/or payment under the Contract, outstanding invoices, or claims directly or indirectly arising out of or related to the Contract and/or Project.

7.9 WARRANTY AND GUARANTY

- A. In addition to any special warranties provided elsewhere in the Contract, Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors and Suppliers.
- B. The warranty period shall be for the longer period of: one year from the date of Final Acceptance of the entire Project or the duration of any special extended warranty offered by a supplier or common to the trade.
- C. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract, Contractor shall:
 - 1. Obtain all warranties that would be given in normal commercial practice from the supplier and/or manufacturer;
 - 2. Prior to Final Acceptance require all warranties be executed, in writing, for the benefit of City;
 - 3. Enforce all warranties for the benefit of City; and
 - 4. Be responsible to enforce any warranty of a Subcontractor, manufacturer, or Supplier, should they extend beyond the period specified in the Contract.
- D. If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written Notice from City to do so. In the event City determines that Contractor corrective action is not satisfactory and/or timely performed, then City has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from third parties. All damages incurred by City and all costs for City's remedy shall be reimbursed by the Contractor.
- E. The warranty provided in this provision shall be in addition to any other rights or remedies provided elsewhere in the Contract or by applicable law.

7.10 PRIOR OCCUPATION

City shall have the right to occupy such part or parts of the Project in or upon which the Work is being done, as it may see fit, and such occupation shall not be construed as acceptance by City of the Work or constitute Substantial Completion of the Work.

ARTICLE 8: TERMINATION

8.1 CITY'S RIGHT TO TERMINATE CONTRACT

A. Termination for Default

1. City may terminate, without prejudice to any right or remedy of City the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
 - a. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
 - b. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Final Acceptance of the Work in a timely manner;
 - c. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
 - d. Contractor fails in a material way to repair, replace or correct Work not in conformance with the Contract;
 - e. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
 - f. Contractor repeatedly fails to make prompt payment to its employees or Subcontractors;
 - g. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, permits, easements or orders of any public authority having jurisdiction;
 - h. Contractor fails to comply with all Contract safety requirements; or
 - i. Contractor is otherwise in material breach of any provision of the Contract, including but not limited to quality control, environmental requirements, administrative requirements, coordination and supervision.
2. If City reasonably believes that one of the aforementioned events has occurred, City will provide the Contractor with written Notice of its intent to terminate the Contractor for default, specifying within such notice the ground(s) for such termination. City, at its option, shall require the Contractor to either promptly correct the deficiencies noted in City's intent to terminate or provide City with a corrective action plan as to how such deficiencies will be remedied or cured in a timely fashion. However, if after receipt of the proposed remedy, City has a reasonable basis for concluding that the Contractor has (a) failed or is unwilling to repair, replace or correct the deficiencies, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, City shall thereafter have the right to terminate this Contract for default.
3. Upon termination, City may at its option:
 - a. Take possession of the Site and possession of or use of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and/or

- b. Finish the Work by whatever other reasonable method it deems expedient; or
 - c. Call upon the surety to perform its obligations under the performance and payment bonds, if applicable.
4. The Contractor and its sureties shall be liable for all damages and costs, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; (2) any other costs or damages incurred by City in completing and/or correcting the Work; and (3) any other special, incidental or consequential damages incurred by City which results or arises from the breach or termination for default.
 5. In the event of termination for default City shall only pay the Contractor for Work successfully completed and accepted by City prior to the date of termination. City shall not be responsible for any other Contractor costs, expenses, or damages including any consequential, special, or incidental damages or lost profits associated with this Contract. In no event shall City reimburse the Contractor for any costs directly or indirectly related to the cause of this termination for default.
 6. If, after termination for default, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of City.
 7. The rights and remedies of City in this provision are in addition to any other rights and remedies provided by law or under this contract.

B. Termination for Convenience

1. Upon written Notice City may terminate the Work, or any part of it, without prejudice to any right or remedy of City, for the convenience of City.
2. If City terminates the Work or any portion thereof for convenience, Contractor shall recover as its sole remedy:
 - a. Reasonable costs for all Work completed prior to the effective date of the termination and not previously paid for by City; and
 - b. A reasonable allowance for Overhead and profit for Work actually performed prior to the date of termination and accepted by City, at a rate not to exceed the percentage amount set forth in the Contract and in paragraph 6.3, *Allowable Costs*, subparagraph A.5, *Overhead and Profit*. The Contractor waives all other claims for payment and damages including without limitation, anticipated profit and overhead on work not performed and accepted by City.
3. The Contractor shall not be entitled to any other costs or damages, whatsoever. The total sum payable upon termination shall not exceed the Contract Price reduced by prior payments. Contractor shall be required to make its request for adjustment in accordance with Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*.
4. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, City shall not reimburse Contractor any profit for the Work completed and shall reduce the settlement to reflect the indicated rate of loss.

C. Contractor's Obligations During Termination

Unless City directs otherwise, after receipt of a written Notice of termination for default or termination for convenience, Contractor shall promptly:

1. Stop performing Work on the date and as specified in the Notice of termination;
2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work not terminated;
3. Cancel all orders and subcontracts, upon terms acceptable to City, to the extent that they relate to the performance of Work terminated;
4. Assign as specifically requested by City all of the rights, title, and interest of Contractor in all orders and subcontracts;
5. Take such action as may be necessary or as directed by City to preserve and protect the Work, Site, and any other property related to this Project in the possession of Contractor in which City has an interest;
6. Continue performance of Work only to the extent not terminated; and
7. Take any other steps required by City with respect to this Project.

8.2 CITY'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract, City may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to any adjustment in the Contract Time and/or Contract Price for any increased cost or time of performance attributable to Contractor's failure or refusal to perform its obligations under the Contract.

ARTICLE 9: CLAIMS AND LITIGATION

9.1 CONTRACTOR CLAIMS

A. Condition Precedent to Filing a Claim.

1. The following actions are a condition precedent to filing a Claim:
 - a. The Contractor submitted a timely Notice of Protest, Supplemental Information and Request for Change Order as required by paragraph 5.1;
 - b. The Request for Change Order has been denied or deemed denied by City;
or
 - c. A Unilateral Change Order is issued by City.

B. Failure to file a Timely Claim.

1. At least seven (7) days prior to appropriate time to file a Claim, the Contractor may request an extension of time for filing its Claim. The Contractor shall state the reasons for the request and identify a date certain when the Contractor shall provide a fully documented Claim. Unless otherwise agreed to in writing by the Engineer, a fully documented Claim shall be received by the City within thirty (30) days after:
 - a. Denial or deemed denial of a Request for Change Order; or

- b. Contractor's receipt of an Executed Unilateral Change Order.
- 2. Failure to comply with the time requirements set for filing a Claim shall constitute acceptance by the Contractor, on behalf of itself and its Subcontractors and Suppliers, of the Unilateral Change Order and/or City's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Change Order and/or Unilateral Change Order.
- C. Contractor's Obligation to Continue to Work. Pending final decision of a Claim hereunder, the Contractor shall proceed diligently with the performance of the Contract Work, including that work associated with the Claim, and maintain its progress with the Work.
- D. Information required in a Fully Documented Claim. Every Claim must be submitted by the Contractor, in writing and clearly designated by the Contractor as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:
 - 1. A detailed factual statement of the Claim providing all necessary details, locations, and items of Contract Work affected;
 - 2. The date on which facts arose that gave rise to the Claim;
 - 3. The name of each person employed or associated with the Contractor, Subcontractor, Supplier, and/or City with knowledge about the event or condition which gave rise to the Claim;
 - 4. Copies of documents and a written description of the substance of any oral communications that concern or relate to the Claim;
 - 5. The specific provisions of the Contract Documents on which the Claim is based;
 - 6. If an adjustment in the Contract Price is sought, the exact amount sought, calculated in accordance with the Contract including paragraph 6.3, *Allowable Cost* and accompanied by (a) all records supporting the Claim and (b) all records meeting the requirements of paragraph 3.10, *Cost Records*;
 - 7. If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reason the Contractor believes an adjustment in the Contract Time should be granted; and the Contractor's analyses of its Progress Schedule, any specific Schedule analysis as required by the Contract Documents, and all updates to demonstrate the reason for the adjustment in Contract Time; and
 - 8. A statement certifying, under penalty of perjury, that after the exercise or reasonable diligence and investigation the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Price or Contract Time for which the Contractor believes City is liable.
- E. Contractor's Duty to Cooperate. The Contractor shall cooperate with City or its designee in the evaluation of its Claim and provide all information and documentation requested by City, its auditors or its designee.

F. City's Evaluation of the Claim.

1. To assist City in the review of the Contractor's Claim, City or its designee may visit the Site, request additional information and/or documentation in order to fully evaluate the issues raised in the Claim and/or audit the Claim.
2. After the Contractor has submitted a fully documented Claim that complies with this provision, City shall respond, in writing, to the Contractor within sixty (60) days from the date the fully documented Claim is received with either:
 - a. A decision regarding the Claim; or
 - b. Written Notice extending for another thirty (30) days City's time to respond to the Claim.
3. Absent a thirty (30) day extension, the Claim shall be deemed denied upon the sixty-first (61st) day following receipt of the Claim by City. If City had a thirty (30) day extension, the Claim shall be deemed denied upon the ninety-first (91st) day following receipt of the Claim by City.

9.2 CONTRACTOR'S BURDEN OF PROOF ON CLAIM

- A. The Contractor shall have the burden of proof to demonstrate entitlement and damages.
- B. If the Contractor, on behalf of itself or its Subcontractors and Suppliers seeks an adjustment in the Contract Price or Contract Time not supported by Project cost records meeting the requirements of ¶3.10, *Cost Records*, the Claim is waived.
- C. Compliance with the record keeping requirements set forth in this Contract is a condition precedent to recovery of any costs or damages related to or arising from performance of the Contract Work. If City establishes non-compliance of the record-keeping requirement set forth in ¶ 3.10, *Cost Records*, no adjustment shall be made to the Contract Price and/or Contract Time with respect to that Claim.

9.3 LITIGATION

- A. As a mandatory condition precedent to the initiation of litigation by the Contractor against City, Contractor shall comply with all provisions set forth in this Contract including those stated in Article 5 and Article 9.
- B. Any litigation brought against City shall be filed and served on City within 365 days from either the issuance of the Certificate of Substantial Completion for the entire Contract or Final Acceptance if no Certificate of Substantial Completion of the entire Contract is issued.
- C. Venue and jurisdiction shall vest solely in the King County Superior Court.
- D. Failure to comply with these mandatory condition time requirements shall constitute a waiver of the Contractor's right to pursue judicial relief from or against the City.

ARTICLE 10: MISCELLANEOUS

10.1 COMPENSATION, WAGES, BENEFITS AND TAXES

City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold City, its elected officials, officers, agents and employees, harmless

against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

10.2 PREVAILING WAGES

The Contractor shall comply with the minimum wage requirements of RCW 39.12, as amended, including the obligation to pay at least the hourly minimum wage and fringe benefits to workers as required by RCW 39.12. The Contractor shall also post all notices required by the Washington Department of Labor & Industries on forms provided by the Department of Labor & Industries. The Contractor shall timely provide a "Statement of Intent to Pay Prevailing Wages" and timely provide an "Affidavit of Prevailing Wages Paid."

10.3 SUCCESSORS AND ASSIGNS

City and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other with respect to all covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of City.

10.4 THIRD PARTY AGREEMENTS

Except as otherwise may be provided, the Contract shall not be construed to create a contractual relationship of any kind between: any architect, engineer, construction manager, Subcontractor, Supplier, or any persons other than City and Contractor.

10.5 NONWAIVER OF BREACH

No action or failure to act by City shall constitute a waiver of any right or duty afforded to City under the Contract; nor shall any such action or failure to act by City constitute an approval of or acquiescence in any breach hereunder, except as may be specifically stated by City in writing.

10.6 NOTICE TO CITY OF LABOR DISPUTES

- A. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract, Contractor shall immediately give Notice, including all relevant information, to City.
- B. Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by any actual or potential labor dispute, all Subcontractor or lower-tiered Subcontractor shall immediately notify the next higher tier Subcontractor. Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

10.7 HEADINGS

The headings used in the Contract are for convenience only and shall not be considered a part of or affect the construction or interpretation of any contractual provision therein.

10.8 CHOICE OF LAW

In the event that either party shall bring a lawsuit or action related to or arising out of this Contract, such lawsuit or action shall be brought in the Superior Court, King County,

Washington. This Contract shall be governed by, and construed and enforced in accordance with the laws of the State of Washington.

10.9 SEVERABILITY

The provisions of this Contract shall be effective in all cases unless otherwise prohibited by Washington State Law or applicable Federal Law. The provisions of this Contract are separate and severable. The invalidity of any sentence, paragraph, provision, section, Article, or portion of this Contract shall not affect the validity of the remainder of this Contract.

Subbasin 42

Watercourse Stabilization Project

City of Mercer Island

TECHNICAL SPECIFICATIONS

Project Manager

Fred Gu

CIP Project Manager

City of Mercer Island

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INTRODUCTION TO THE SPECIAL PROVISIONS

The work on this project shall be accomplished in accordance with the *Standard Specifications for Road, Bridge and Municipal Construction*, 2021 edition, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereafter “Standard Specifications”). The Standard Specifications, as modified or supplemented by the Amendments to the Standard Specifications and these Special Provisions, all of which are made a part of the Contract Documents, shall govern all of the Work.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The project-specific Special Provisions are not labeled as such. The GSPs are labeled under the headers of each GSP, with the effective date of the GSP and its source. For example:

(March 8, 2013 APWA GSP)
(April 1, 2021 WSDOT GSP)

Also incorporated into the Contract Documents by reference are:

- *Manual on Uniform Traffic Control Devices for Streets and Highways*, currently adopted edition, with Washington State modifications, if any
- *Standard Plans for Road, Bridge and Municipal Construction*, WSDOT/APWA, current edition
- *2019 Department of Ecology Stormwater Management Manual for Western Washington*

Contractor shall obtain copies of these publications, at Contractor’s own expense.

Appendices include:

Appendix 1 – Permits

Appendix 2 – Attachment to Supplemental Bidder Responsibility Criteria

**DIVISION 1
GENERAL REQUIREMENTS**

DESCRIPTION OF WORK

(2021 WSDOT GSP)

This Contract provides for the improvement of the Subbasin 42 Watercourse Stabilization and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.

Submittal	Schedule
Traffic Control Plan	5 business days before mobilization
Temporary Construction Access and Staging Plan, Draft and Final	Draft: 10 business days before mobilization Final: 5 business days before mobilization
Temporary Erosion and Sediment Control (TESC) Plan (Including Stream Diversion Plan)	5 business days before mobilization
Roadside Work Plan	5 business days before mobilization
Stream Construction Plan	5 business days before initiating stream construction
Permanent Ground Anchor Material and Installation Submittal	3 business days before installing material
Streambed Cobble Gradation and Source Submittal	3 business days before installing material
Topsoil Type A Submittal	3 business days before installing material
Arborist Wood Chip Mulch Submittal	3 business days before installing material

1-02 BID PROCEDURES AND CONDITIONS

1-02.1 Prequalification of Bidders

Delete this section and replace it with the following:

1-02.1 Qualifications of Bidder

(2013 APWA GSP)

Before award of a public works contract, a bidder must meet at least the minimum qualifications of RCW 39.04.350(1) to be considered a responsible bidder and qualified to be awarded a public works project.

Add the following new section:

1-02.1(1) Supplemental Qualifications Criteria

In addition, the Contracting Agency has established Contracting Agency-specific and/or project-specific supplemental criteria, in accordance with RCW 39.04.350(2), for determining Bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a Bidder is not responsible.

Supplement this section with the following:

Contractor's attention is directed to the Contractor Performance Evaluation included as an appendix to this Project Manual. Comments will be added by the Project Engineer throughout the project duration, and then the Contractor Performance Evaluation will be completed by the Project Engineer and Project Manager. The results of this evaluation will be used to rate the Contractor's performance in each performance category, and overall, and may be used to determine whether a Bidder is responsible on future projects.

Add the following new section:

Supplement this section with the following:

Basis for Evaluation.

- A. Work Completed. Provide a list of at least two (2) construction contracts completed in the last five (5) years which are similar in type, size, and scope of work to this project as required by the attached Work Experience Form. The Owner will evaluate it based on the criteria listed on the Form and in the specification. For the purposes of meeting this criterion, the Owner has determined that "similar size and scope to this project" means projects that have the following characteristics:
 - a. Stream enhancement / stabilization project with an initial construction contract value of at least \$75,000 and consisting of at least the following elements:
 - i. Installation of at least 20 pieces of large woody material as habitat or bank stabilization in a stream or river
 - ii. 24/7 erosion control for stream systems, including stream bypass and erosion control on exposed soils

- iii. Operation of heavy equipment in sensitive areas such as streams, wetlands, rivers and / or steep slopes
- B. Personnel. For the purposes of meeting this criterion, the Owner has determined that “similar size and scope to this project” means that personnel have the following experience:
 - a. The Project Manager or Superintendent shall have supervised three (3) completed projects in the last five (5) years of similar size and scope as described in paragraph A-a above. By submitting the information required on the Form regarding Bidder’s personnel, the Bidder certifies that it shall assign such personnel to the Project and that person shall be in control of and responsible for the daily operation of the site and present on site no less than 16 hrs./week once material deliveries commence. In the event it becomes necessary for the Bidder to substitute personnel during the life of the Contract, the following provisions apply:
 - i. Prior to substituting a new Project Manager or Superintendent, the Contractor must submit qualifications for the new personnel which meet the criteria provided in the supplemental bidders qualifications specifications for the Engineer’s or Owner’s approval
 - ii. The Engineer or Owner may suspend the project if the Contractor substitutes a Supervisor or Project Manager without the Engineer’s or Owner’s approval. The Contractor shall be fully liable for the additional costs resulting from the suspension of work and no adjustments in Contract tie resulting from the suspension of work will be allowed.

Bidders deemed not responsible based on the Supplemental Qualifications Criteria contained in 1-02.1(1) shall appeal the determination in writing to the City Project Manager within 2 working days following the determination date.

1-10 TEMPORARY TRAFFIC CONTROL

1-10.2(2) Traffic Control Plans

(2021 WSDOT GSP)

Supplement this section with the following:

The Contractor shall prepare site specific Traffic Control Plans for all phases of the work and submit them for approval to the Engineer. The Contractor’s proposed Traffic Control Plans shall show the necessary lane closures, lane shifts, construction signs, flaggers, spotters, staff to protect pedestrian and bicycle traffic on East Mercer Way, and other traffic control devices required to support each phase of the construction. The Contractor-provided plans shall be prepared by the Contractor’s Traffic Control Supervisor or an engineer licensed in the State of Washington and shall conform to the requirements contained in the latest version of the Manual on Uniform Traffic Control Devices (MUTCD) and the latest version of the Work Zone Traffic Control Guidelines published by the Washington State Department of Transportation.

Traffic Control Plans shall also specify how, if, and which accessible pedestrian and other pedestrian routes shall be maintained through the project site as discussed in Section 1-07.23.

Traffic Control Plans shall provide detail on how existing driveway access will be maintained throughout the duration of construction. Plans should indicate the method(s) by which access will be maintained to prevent vehicle bumpers dragging on the existing roadway during operations.

Prior to submitting the initial Traffic Control Plans for review by the Engineer, the Contractor shall meet with the Engineer and provide a detailed explanation of the Contractor's proposed construction schedule, construction phasing and associated temporary traffic control implementation. The plan must be acceptable to the Engineer prior to the Contractor submitting the initial set of Traffic Control Plans. No construction will be allowed until the Traffic Control Plans are acceptable to the Engineer.

Payment for developing an approved Traffic Control Plan, including pedestrian-related elements, shall be considered incidental to the lump sum price in the Proposal for "Project Temporary Traffic Control" and no additional compensation will be made.

1-10.3 Traffic Control Labor, Procedures, and Devices

1-10.3(1) Traffic Control Labor

1-10.3(1)B Other Traffic Control Labor

(2021 WSDOT GSP) Supplement this section with the following:

Off Duty Police

When construction activities occur before dawn and after dusk or within 100 feet of a signalized intersection, the Contractor shall provide an off-duty uniformed police officer to control the flow of traffic through the intersection. It is the Contractor's responsibility to coordinate the scheduling of the Uniformed Police Officer.

1-10.3(3)I Traffic Control Devices

(2021 WSDOT GSP) Supplement this section with the following:

The Contractor shall provide, install, and maintain traffic safety drums with Type C steady burn warning lights at all locations to divide opposing lanes of traffic.

1-10.4 Measurement

1-10.4(3) Reinstating Unit Items with Lump Sum Traffic Control

(2021 WSDOT GSP) Supplement this section with the following:

"Other Traffic Control Labor, Off Duty Police" will be by measured by the hour for each hour a uniform police officer is actually performing the work. Portions of an hour will be rounded up to a whole hour.

1-10.5 Payment

1-10.5(3) Reinstating Unit Items with Lump Sum Traffic Control

"Project Temporary Traffic Control", lump sum.

Costs for layout, installation, removal, and transport of project signage shall be included with the Contract lump sum price for "Project Temporary Traffic Control." This Bid item shall also constitute full compensation for all labor, tools, equipment, and materials necessary and incidental to providing traffic and pedestrian control as required throughout the project duration in compliance with the

MUTCD including, but not limited to, reflective signage, barricades, lights, traffic cones, and temporary pavement markings. Providing Class A signs, Class B signs, flaggers, and a Traffic Control Supervisor during all periods of construction activities within the public streets shall be included in the lump sum Bid item "Project Temporary Traffic Control".

Developing, updating, and implementing an approved Traffic Control or Detour Plan shall be considered incidental to the "Project Temporary Traffic Control" lump sum cost and will not be measured for separate payment.

No separate payment will be made for materials used to maintain temporary traffic that are not incorporated into the final improvements. Such materials shall be included in and considered incidental to "Project Temporary Traffic Control".

All costs for minimizing drop-offs and maintaining access to existing streets and driveways including, but not limited to, steel sheeting, and channelization devices, shall be included by the Contractor in the lump sum Bid price for "Project Temporary Traffic Control". No additional or separate compensation will be allowed.

The Lump Sum bid item for "Project Temporary Traffic Control" shall cover the cost to provide temporary traffic control for each working day (the entire contract duration) allowed as defined in Section 1-10 of these Special Provisions. The total allowable working days defined for this contract includes sufficient time to complete all work associated with items allocated to "Minor Change" and Force Account items. Should the Contractor complete the work in fewer working days than allowed the Contract Lump Sum item will be paid in full and shall be consider an incentive to the Contractor for early completion. For additional working days approved via a change order for work that is not identified to be paid by force account or "Minor Change", the daily cost for Project Temporary Traffic Control shall be determined by dividing the lump sum Contract price for "Project Temporary Traffic Control" by the originally allowed contract working days as defined in Section 1-10 of these Special Provisions to arrive at a daily cost for temporary traffic control.

END OF DIVISION 1

DIVISION 2 EARTHWORK

2-01 CLEARING, GRUBBING, AND ROADSIDE CLEANUP

2-01.1 Description

(*****)

Replace the first paragraph of Section 2-01.1 with the following:

The Work consists of furnishing all materials, labor, and equipment necessary to locate, install, maintain, and remove the project limits flagging; provide site clearing and disposal; protect vegetation larger than 6" diameter; and incorporate vegetation into adjacent structures. The Contractor shall limit clearing and grubbing to the minimum area required for construction. The Contractor shall not clear and/or grub areas beyond the staging areas and access paths shown on the Contract Plans unless approved by the Engineer. Access paths shall be a maximum of 10 feet in width.

The Contractor shall be responsible for the protection and preservation of all existing native vegetation including trees, shrubs, and other objects outside of the limits of the staging areas and access paths. Work within the dripline of trees will be minimized to the greatest extent possible.

Any existing tree or shrub located outside of the staging areas and access paths that are damaged or destroyed during construction shall be replaced by the Contractor in like type and size as indicated by the Engineer at no cost to the City of Mercer Island (the City). The minimum required replacement ratio shall be 3 new trees : 1 damaged tree (3:1) unless otherwise required by the Engineer. Conditions during which a greater replacement ratio may be required include damage to coniferous trees > 18" DBH.

Tree replacement will be at 3:1 ratio and is a PSIFE item that will be paid by the contractor. Replacement tree size should be 18" to 36" in height.

Damaged shrubs shall be replaced at a ratio of 1 new shrub : 1 damaged shrub (1:1) unless otherwise required by the Engineer.

2-01.2 Disposal of Usable Materials and Debris

2-01.2(1) Disposal Method No. 1 – Open Burning

(*****)

Section 2-01.2(1) is deleted in its entirety and replaced with the following:

Open burning will not be used to dispose of the debris resulting from the clearing and grubbing.

2-01.2(3) Disposal Method No. 3 – Chipping

(*****)

Section 2-01.2(3) is deleted in its entirety and replaced with the following:

Wood chips generated from trees cleared from the site and meeting the requirements of Section 9-14.5(3) may be used as wood chip mulch. Chipping shall be done by machines that can grind debris into wood chips. Prioritize placement of chips on bare soils.

2-01.3 Construction Requirements

2-01.3(1) Clearing

(*****)

Section 2-01.3(1) is supplemented with the following:

Contractor shall minimize clearing to the minimum needed to access and stage for construction activities. The Contractor shall stake and flag all proposed areas of clearing within the Project Limits at least 3 days prior to mobilization of equipment to the site and construction.

Flagging of proposed clearing areas shall be high-visibility orange survey tape installed along the perimeter of the area to be cleared on 3 ft tall wood lathe staked at 20 foot maximum spacing. Contractor shall inform Engineer when the flagging is installed. Engineer will inspect and approve proposed clearing areas. Contractor shall not clear any areas until approval given by Engineer. The Engineer will review and approve (or not approve) the proposed clearing areas within 3 days of receiving the plan.

Contractor shall not disturb the area outside of the project limits, access, and staging areas unless approved by the Engineer.

Contractor shall not clear vegetation greater than 6" in diameter without prior Engineer approval (inside the project limits). Cleared vegetation from project construction including access and staging areas may include slash and trees and shall be temporarily stockpiled and incorporated into log structures, channel construction, or placed as downed wood in the riparian buffer as approved by Engineer. There is limited space along the stream channel for stockpiling materials. Cleared trees and fallen wood pieces shall not be cut shorter than 20-foot pieces and used in channel construction or as upland habitat features as approved by engineer. Pieces with rootwads attached shall maintain a minimum 20% roots intact. Any trees that are felled or cleared shall be placed above/outside of the Ordinary High Water Elevation, except for the four rootwad/logs spanning the channel that will be dropped into the channel as identified on the Contract Plans.

Contractor shall prioritize tree species for preservation in the following order from highest to lowest priority: conifers > 6", maples > 12", cottonwoods > 24", and alders. Hazard trees and conifers greater than 6" may only be removed on a case-by-case basis as approved by Engineer. Hazard trees are defined as trees that pose a safety risk to channel construction. Tree replacement for conifers >6" will be required per ratios described in Section 2-01.1. Tree protection shall be installed for all trees in the staging area and as specified by the engineer within the Project Limits.

Flag all trees to remain with white plastic ribbon tied completely around the trunk of each tree. Obtain Engineer approval of all trees to remain prior to start of tree and shrub removal. Prior to any construction activity at the site including utility work, grading, storage of materials, or installation of temporary construction facilities, install all tree protection, tree protection signs, and slash as shown in the Contract Plans.

Flag all trees greater than 6" in diameter to be removed by wrapping orange plastic ribbon around the trunk and obtain the Engineer's approval for all trees to be removed prior to the start of clearing activities. After approval, mark all trees and tree-like shrubs to be removed with orange paint in a band completely around the base of the tree 4.5 feet above the ground.

Contractor shall clear all weed and pest species (non-native vegetation including, but not limited to, Himalayan blackberry, English ivy, English holly, cherry laurel, and knotweed) located within the access and staging areas shown on the Contract Plans as specified by Engineer. Machine/mechanical methods of removal shall be permitted only within the access and staging areas, and all removed weed and pest species plant material shall be disposed of at a legal off-site disposal site. All other weed and pest species present within the project limit (outside of the construction access and staging areas) shall be cleared using manual methods per section 8-02.3(3).

(*****)

Add the following new sections:

2-01.3(5) Temporary Construction Access and Staging

This work shall consist of developing a draft and final Temporary Construction Access and Staging Plan, identifying, and installing staging areas and equipment and materials delivery access routes (excluding Material Delivery) within the project with minimal disturbance to existing vegetation and soils. Contractor shall install access and staging areas as specified in the Contract Plans and as approved by Engineer. This work includes furnishing all materials, labor, and equipment necessary to locate, install, maintain, and remove the access route(s) and staging areas.

Contractor shall develop a Temporary Construction Access and Staging Plan which complies with the overall intent of the Contract Plans. The Contractor may propose alternate access and staging areas and/or alternate material delivery routes for review and approval by Engineer. Contractor shall not be allowed to begin mobilization until a final Temporary Access and Staging Plan has been submitted that has been approved by the Engineer. Potential chute delivery route locations shown on the Plans are preliminary and may be adjusted by contractor. The Temporary Construction Access and Staging Plan shall include the equipment to be used on the project including those used for Material Delivery (below) and contain at least a brief (1-2 page) written narrative on the sequencing and associated equipment and provide attached graphics showing the proposed actual locations of delivery routes, and, if needed, changes to location of access paths for the project. Contractor shall comply with the equipment limitations specified on the Contract Plans and discussed herein.

The Contractor shall keep the premises clean, free of excess soils, and other materials, including refuse and debris, resulting from work throughout the operation for all phases of construction, including planting. The Contractor shall not stockpile materials or equipment in any manner that may create hazards or obstacles to adjacent roadways. Paved surfaces off of and including East Mercer Way shall be kept free of dirt and debris at all times. Trucks and equipment leaving the site shall be brushed of loose soils prior to entering roadway. Street sweeping with broom, sweeper or vacuum sweeper shall be performed as needed to keep the street clean – washing of the paved surfaces shall not be allowed.

At a minimum, all access into and through the Project Limits shall be closed with orange high visibility fence and laminated, orange-colored signs at least 27" x 36" stating "DANGER – CONSTRUCTION AREA". Contractor may propose alternate signage for review and approval by Engineer. Engineer may require additional fencing. Protection of public safety is paramount.

Not all existing utilities are shown on the Contract Plans. On-site utilities exist within the project area include, but are not limited to, overhead and underground electrical lines and underground stormwater lines. The Contractor shall install protection methods to ensure the existing utilities are not damaged.

Access to the project site is provided off of East Mercer Way as shown on the Contract Plans. Material unloading and primary staging shall occur at the staging areas via the stabilized construction entrance.

Numerous pieces of large and small wood exist within the stream channels that are not shown on the Plans and shall be temporarily dropped in the channel or moved aside to establish access and reset within structures and/or within the channel bed as directed by the Engineer.

When trees are identified and proposed for removal by the contractor, the engineer [with a licensed arborist] will review for approval or not. The tree being removed will be logged for size and species.

The Contractor shall restore the areas used for temporary access and staging at the conclusion of the work. All access route(s) into the site and staging areas including removal of the stabilized construction entrance and surfaces shall be restored as specified in the Contract Plans. This work shall include excavation and removal of any materials used for the stabilized construction entrance, access road and access path(s), removing surplus soils, materials, flagging, fencing, signage, stakes, wood planks, geotextile, and debris from the construction site and leaving the project in a clean condition and soils fully stabilized using erosion control measures.

De-compact the top 12" of all upland areas disturbed by equipment prior to planting/seeding or application of mulch. Apply mulch to bare soils in areas specified in the Contract Plans.

Any disturbed areas along East Mercer Way shall be restored and seeded per section 8-02.3(9). The seeding area will be prepped per 8-02.3(5)A with weed and pest species (including but not limited to English ivy) removed as directed by Engineer. The area will then be hydroseeded with the "Low-Growing Turf Seed Mix" from the Department of Ecology Stormwater Management Manual for Western Washington (BMP C120: Temporary and Permanent Seeding), or similar as approved by Engineer, per standard specification 9-14.3. White dutch clover shall not be permitted in the seed mix.

Additional areas disturbed beyond those shown in the Contract Plans shall be restored and replanted at the Contractor's sole expense. Any existing trees >6" DBH exist in close proximity to the staging area and access routes and shall be protected from damage per the tree protection details shown on the Contract Plans to prevent equipment from coming in contact with the trees; vehicles and/or heavy equipment may not travel within the dripline. Any removal of limbs required to establish and maintain access shall be flagged for review and approval by Engineer or Representative before any limbs are removed.

2-01.3(6) Material Delivery

This work shall consist of materials delivery (including delivery of cobbles through a chute or other method) within the project with minimal disturbance to existing vegetation and soils. This work includes furnishing all materials, labor, and equipment necessary to move the materials from the access routes into the channel bottom of Subbasin 42. To protect the highly-erodible soils within this site, equipment size and number within the channel bottoms is restricted as shown on the Plans and materials shall be delivered into the channel as follows.

Logs, cobbles, and slash shall be delivered by ground-based equipment on the access paths shown in the contract plans. Streambed Cobble may also be delivered using alternative methods approved by Engineer,

such as chutes, and shall be contained (e.g., within bulk bags or similar) to minimize/eliminate spillage during delivery. Alternate methods may be proposed that prevent the cobble from coming in contact with the soils and fully protect the valley slopes from damage during delivery and must be included/proposed as part of the Temporary Construction Access and Staging Plan. Containment method shall be approved by Engineer. Description of any alternate methods proposed by the contractor shall be included in the Temporary Construction Access and Staging Plan. If a new method is to be proposed following the Final Temporary Construction Access and Staging Plan, then this may be approved by the Engineer or Representative on site at that time. If containment method is determined to be insufficient at any point during construction by the Engineer, the Contractor shall cease material delivery activities and identify an alternate method for materials containment for approval by Engineer.

2-01.4 Measurement

(*****)

Section 2-01.4 is supplemented with the following:

No unit of measurement shall apply to the lump sum price for Temporary Construction Access and Staging.

No unit of measurement shall apply to Material Delivery.

2-01.5 Payment

(*****)

Replace paragraphs 1, 2, and 3 of Section 2-01.5 with the following:

Payment will be made in accordance with General Terms and Conditions for each of the following bid items that are included in the proposal:

“Temporary Construction Access and Staging”, lump sum.

The lump sum contract price for “Temporary Construction Access and Staging” shall constitute full payment for: all materials, labor, and equipment necessary to develop and submit a draft and final Temporary Construction Access and Staging Plan; install and remove all high-visibility fence; maintain pedestrian control and safety of trails and areas within the project limits; locate, install, maintain, remove, and restore the staging areas and access route(s) for equipment; identification and staking of Project Limits; identification and staking of access routes; and identification and staking of staging areas; flagging; site clearing, including weed and pest species removal within access and staging areas and off-site disposal; protection of trees greater than 6” diameter; removal of trees greater than 6” diameter (as identified by the contractor and approved by the Engineer and Arborist), temporary stockpiling of cleared vegetation; resetting and/or removal/temporary stockpiling of fallen wood in channel; incorporation of cleared trees and fallen wood into log structures or channel construction; and site access and staging area restoration including upland soil decompaction.

All work specified in material delivery will be incidental to the bid items for “Wood Structure [Type]”, “Streambed Cobbles”, “Slash [Type]”, “Bark or Wood Chip Mulch” and any other structures included in the proposal and no separate measurement or payment will be made.

2-02 REMOVAL OF STRUCTURES AND OBSTRUCTIONS

2-02.3 Construction Requirements

(*****)

Section 2-02.3 is supplemented with the following:

Miscellaneous existing man-made debris within the construction, access, and staging areas shall be removed and disposed of at a permitted disposal site. Materials to be removed include, but are not limited to, fencing, trash, and household debris. Disposal of man-made debris, recyclables, or hazardous materials shall be in accordance with current law. The total amount of materials to be removed will not exceed 15 CY.

2-02.5 Payment

(*****)

Replace Section 2-02.5 with the following:

All work specified in this section will be incidental to the bid items included in the proposal and no separate measurement or payment will be made.

END OF DIVISION 2

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DIVISION 6 STRUCTURES

6-17 PERMANENT GROUND ANCHORS

6-17.1 Description

(*****)

Section 6-17.1 is supplemented with the following:

This work consists of furnishing, constructing, installing, and conducting performance tests of permanent ground anchors per Section 6-17.3(8).

6-17.2 Materials

(*****)

Section 6-17.2 is supplemented with the following:

The permanent ground anchor shall consist of all hardware to construct the permanent ground anchor and permanently attach it to the Timber Frame Structures with chain lashing as specified on the Contract Plans. All chain connecting components to the permanent ground anchors shall be stainless steel with dimensions shown in the Plans. All exposed metals and any metal within the OHWM cannot be galvanized.

Permanent Ground Anchors

9-06.21

6-17.3(2) Contractor Experience Requirements

(*****)

Section 6-17.3(2) including its title is deleted in its entirety.

6-17.3(3) Submittals

(*****)

Section 6-17.3(3) is deleted in its entirety and replaced with the following:

Contractor shall submit material specifications and installation instructions on the proposed permanent ground anchor and sketches of connections between permanent ground anchor and Timber Frame Structures for Engineer review and approval 3 working days prior to delivering materials to the site. Submittal shall include manufacturer information on material strengths to demonstrate that the breaking strength of the connection is at least 3 times the holding capacity of the anchor as noted in Section 6-17.3(8), Testing and Stressing.

6-17.3(4) Preconstruction Conference

(*****)

Section 6-17.3(4) including its title is deleted in its entirety.

6-17.3(7) Installing Permanent Ground Anchors

(*****)

Section 6-17.3(7) is deleted in its entirety and replaced with the following:

Contractor shall install per manufacturer's standard specifications.

6-17.3(8) Testing and Stressing

(*****)

Section 6-17.3(8) is supplemented with the following:

The ground anchor must be installed using the manufacturer's recommendations, with tension applied until the anchor is seen to load-lock into place.

Load testing of permanent ground anchors shall be completed for at least one ground anchor per structure, installed using the manufacturer's recommendations. Load testing shall occur after tension, or the load lock is applied.

Permanent ground anchors shall have a minimum holding capacity of 9,000 lbs. in medium dense coarse sand and sandy gravel; stiff to very stiff silts and clays. To pass the load testing, a load of 2,000 lbs. sustained over at least 60 seconds, or as suggested by manufacturer's recommended testing methodology, will be applied and the anchor must remain in place. Anchors which fail in testing may be driven more deeply or removed and relocated to a different adjacent location and re-tested. All ground anchors shall be installed and pulled until activated per manufacturers requirements prior to testing. At any point where ground conditions change, the next consecutive four anchors shall be tested. The Engineer may request testing of all ground anchors at any point.

The contractor shall follow all procedures for installation and testing as identified by the product supplier.

6-17.4 Measurement

(*****)

Section 6-17.4 is deleted in its entirety and replaced with the following:

There will be no separate measurement of unit items for Work defined by Section 6-17. This work will be incidental to the bid item "Wood Structure- [Timber Frame Structure – Machine Placed]" defined in Section 8-30.

6-17.5 Payment

(*****)

Section 6-17.5 is deleted in its entirety and replaced with the following:

All work specified in this Section including all testing, driving more deeply, relocated and/or replacing with new anchors will be incidental to the bid item "Wood Structure - [Timber Frame Structure- Machine Placed]" defined in Section 8-30 and no separate measurement or payment will be made.

END OF DIVISION 6

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DIVISION 8 MISCELLANIOUS CONSTRUCTION

8-01 EROSION CONTROL AND WATER POLLUTION CONTROL

8-01.3 Construction Requirements

8-01.3(1) General

(*****)

Section 8-01.3(1) is supplemented with the following:

The erosion and sediment control measures selected for use on this project were selected based on construction occurring during the “dry season” of May 1 to September 30. If the construction extends outside of the dry season, the Contractor shall prepare a wet season erosion and sediment control plan to meet local, state, and federal requirements for construction in the “wet season”. The wet season erosion and sediment control plan shall be submitted to the Engineer for review and approval prior to September 15. The wet season erosion and sediment control plan shall be prepared at the Contractor’s sole expense.

Erosion and sediment control measures shall be used within the construction area, which includes staging areas, access paths and the channel. No construction or access within the stream corridor shall occur until the active work area is fully dewatered and dry conditions exist throughout the active work area. Stream bypass and dewatering shall be maintained on a continuous basis during construction in active work areas where there are disturbed/erodible soils. A minimum of one dewatering sump and discharge pump shall be maintained within the site at all times to manage site groundwater and maintain dry working conditions within the project site. Additional dewatering sumps and discharge pumps may be required. When reintroducing flows to the watercourse, a temporary pulse of water will be released at the upstream end of the project and then captured at the downstream end of the project and pumped upland to flush the system and minimize turbidity.

Material stockpiles shall have perimeter sediment control best management practices (BMPs) installed, such as silt fences or straw wattles along any downhill perimeter of the construction staging area where water carrying sediment might leave the construction staging area. Temporary cover shall be installed on all material stockpile areas that will not be worked in again for 7 days or more. Temporary cover for stockpiles shall consist of temporary mulch or plastic covering. If rain is forecast, temporary erosion control measures shall be installed to prevent discharge of sediment from the construction area. These may include temporary mulching, straw wattles, plastic, sandbags, or other materials deemed necessary by the Engineer. The intent is to prevent discharge of turbid water from the site, and work stoppage may be required to fulfill this intent.

Divert stream flow around construction area as necessary to construct project. Diversion shall be in accordance with the Contract Plans, these Special Provisions, and the requirements of the permits. The temporary stream diversion system shall include, at a minimum, a sandbag diversion dam, a diversion pipe, and the discharge from the diversion pipe back into the channel at the downstream end of the project. A diversion bypass pump may be required. The temporary diversion system shall be designed to prevent erosion of the channel at the downstream end of the temporary diversion. The Contractor shall provide the stream bypass around the construction area for the duration of in-stream work. This activity

shall conform to the requirements of the Hydraulic Project Approval (HPA). The temporary stream bypass shall be appropriately sized to manage the daily flow, plus sufficient additional capacity to bypass flow from small rainfall events. The maximum flow encountered is estimated not to exceed 4 cfs. The contractor is responsible for properly sizing the pump. The Contractor shall be prepared and have materials on site to secure the area from impacts of heavy rainfall with appropriate BMPs (such as plastic sheeting) to prevent flows greater than the stream bypass from contacting disturbed soils within the channel. The temporary diversion system shall be completely removed when no longer required.

No test pits or borings were done for this project. Groundwater may be encountered during post driving and structure installation. Dewater by installing dewatering wells and pumps to ensure a fully dry construction area. Dispose of dewatering water in accordance with Section 8-01.3(1)C. All costs for dewatering will be included in the bid item "Erosion/Water Pollution Control".

8-01.3(1)A Submittals

(*****)

Section 8-01.3(1)A is supplemented with the following:

The Contractor shall prepare a temporary erosion and sediment control (TESC) plan which includes all project areas. The TESC plan shall indicate the proposed access route(s) and staging areas, indicating the amount and type of different materials staged on-site during the project. The method of maintaining dry working conditions throughout the project shall be fully described, as well as approach to protecting the site and water quality in the case of a rainstorm. The TESC plan shall be submitted to the Engineer for review and approval, 5 working days prior to mobilization. No materials shall be brought into the staging area(s) or construction area until the TESC plan has been approved.

The contractor shall submit, as part of the TESC plan, a Stream Diversion Plan. The Stream Diversion Plan shall detail the locations, sizes of, and materials for the facilities and shall include the calculations done to size those facilities. The Plan shall conform to the Washington Department of Ecology water quality standards, Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA), and The City of Mercer Island Noise ordinances.

8-01.3(3) Placing Erosion Control Blanket

(*****)

Section 8-01.3(3) is supplemented with the following:

Contractor shall place COIR-900 incorporated into structures and in any restoration areas as specified on the Contract Plans. COIR must be placed on all bare/disturbed slopes that are 1:1 or steeper. Where COIR-900 will be placed on the ground, the COIR-900 shall be staked with Wood Stakes – 1"x2"x12" installed 2 ft on center to hold COIR-900 in place. Where plants are to be installed through COIR-900, the Contractor shall cut an "X" in the coconut fiber blanket at each planting hole. COIR shall be installed as directed in the WSDOT Standard Plans.

8-01.3(8) Street Cleaning

(*****)

Section 8-01.3(8) is supplemented with the following:

At the end of each day throughout the duration of the contract when sediment is deposited by construction vehicles on pavement, street sweepers shall be used to clean the pavement; smaller areas,

less than 300 sf, hand sweeping may be utilized. This applies to cleaning sediment left from vehicles entering/leaving the construction area. Cleaning by flushing into storm drains and/or sewers will not be allowed. The costs to keep the right of way clean as specified will be incidental to other bid items of work included in the proposal.

8-01.4 Measurement

(*****)

Section 8-01.4 is supplemented with the following:

No unit of measurement shall apply to the lump sum price for Erosion/Water Pollution Control.

8-01.5 Payment

(*****)

Replace the first paragraph of Section 8-01.5 with the following:

Payment will be made in accordance with Section 1-09 for each of the following bid items that are included in the Proposal:

(*****)

Section 8-01.5 is supplemented with the following:

“Erosion/Water Pollution Control”, per lump sum.

The unit contract price per lump sum for “Erosion/Water Pollution Control” shall constitute full payment for all costs incurred to furnish, install, maintain, and remove the erosion control measures, stream diversion, dewatering methods employed to maintain dry working conditions within the project site, erosion control at staging area, and street sweeping for the duration of the project as well as rehabilitation of soil disturbed by these activities including installing COIR 900, stakes and staples outside of the wood structures; the materials, delivery, installation, and removal of the Temporary Stream Bypass (Diversion) for each construction area; and preparation of TESC plan for construction activities, including Stream Diversion Plan as well as monitoring, reporting, spill response preparation and materials. All work specified for managing on-site groundwater and/or seeps will be incidental to the bid items included in the Proposal and no separate measurement or payment will be made.

8-02 ROADSIDE RESTORATION

8-02.3 Construction Requirements

8-02.3(1) Responsibility During Construction

(*****)

Section 8-02.3(1) is supplemented with the following:

The Contractor shall keep the premises clean, free of excess soils, plants, and other materials, including refuse and debris, resulting from work. The Contractor shall remove surplus soils, materials, and debris from the construction site and shall leave the project in a clean condition at the conclusion of the work. The Contractor shall notify the Engineer to request a walkthrough to complete a punch list of final items to be completed per Section 1-05.11. Contractor shall not fully demobilize from the premises until all final punch list items are completed and cleanup / site restoration activities have been finished and approved

by the Engineer. Contractor may demobilize all stream construction material, equipment, and machinery upon completion of the stream work.

8-02.3(2) Work Plans

8-02.3(2)A Roadside Work Plan

Number 2.a. of Section 8-02.3(2)A is replaced with the following:

2. Roadside Restoration

a. Plan for procurement, and source, of all plant material (nursery stock of plugs, bare root, TP4 and D-40 material types) specified in the plant schedules for all planting areas. Plan for ground preparation for planting. Plan and schedule for installation of plants.

Any disturbed areas along East Mercer Way shall be restored to pre-construction grading, with weeds removed, and seeded appropriately per standard specification 9-14.

8-02.3(3) Weed and Pest Control

*(*****)*

Section 8-02.3(3) is supplemented with the following:

All weed and pest species (including, but not limited to, Himalayan blackberry, English ivy, English holly, and cherry laurel) located within the Project Limits shall be removed. Mechanical removal is permitted only for the access and staging areas per section 2-01.3(1). All other weed and pest species within the Project Limits shall be removed using manual methods per the King County Noxious Weed Control Best Management Practices (BMPs), with one exception for English holly or cherry laurel with >2.5" trunk diameter in which chemical control shall be used in accordance with section 8-02.3(3)A if local regulations permit.

- Blackberry – follow instructions for “manual” control:
<https://your.kingcounty.gov/dnrp/library/water-and-land/weeds/BMPs/blackberry-control.pdf>
- Ivy – follow the instructions for “manual” control:
<https://your.kingcounty.gov/dnrp/library/water-and-land/weeds/BMPs/English-ivy-control-Rev2020.pdf>
- English holly and cherry laurel – for small plants with trunks <2.5" follow the instructions for “manual control” in the English holly control BMP; and for larger plants with trunks >2.5", “chemical control” with imazapyr using EZ-Ject stem injection method to be used:
<https://your.kingcounty.gov/dnrp/library/water-and-land/weeds/BMPs/English-holly-control.pdf>

If no fruit are present plant material may be piled and composted on site per BMPs. Any weed and pest plant material containing fruit or seeds shall be disposed of at a legal off-site disposal site. Roots of cherry laurel and English holly that are treated with herbicide injection may stay intact and in the ground. This work is included in the bid item for weed and pest control.

8-02.3(7) Layout of Planting, Lawn and Seeding Areas

(*****)

Section 8-02.3(7) is deleted in its entirety and replaced with the following:

The Contractor shall notify the Engineer three (3) working days prior to scheduled planting for approval of a sample plant layout of each planting area type indicated in the Plant Schedules prior to site wide layout and/or installation.

Planting Types:

- Area 1 - Staging Area
- Area 2 - Lower Access Path
- Area 3 - Lower Riparian Buffer
- Area 4 – Timber Frames
- Area 5 - Upper Riparian Buffer
- Area 6 – Upper Access Path
- Area 7 - Landslide

8-02.3(8) Planting

(*****)

The first paragraph of section 8-02.3(8) is replaced with the following:

The Contracting Agency will inspect plant material at the source when requested by the Engineer. However, such preliminary approval shall not be considered as final acceptance for payment. After plant material has been delivered to the contract site, the Engineer reserves the right to inspect and reject any or all plant material at any time until final inspection on the Physical Completion Date. The Contractor shall notify the Engineer, not less than three (3) working days in advance, of plant material delivery to the project.

(*****)

Section 8-02.3(8) is supplemented with the following:

A laminated copy of the site restoration plan, plant schedules, and site restoration details sheets from the Contract Plans, as well as all relevant specifications shall be on site and accessible to planting crews. Crews shall be able to identify weed and pest species present in the Project area, as well as species specified in the plant schedules and shall be familiar with installation techniques in the details for all plant material prior to installation. Plant materials shall meet the requirements in section 9-14.7.

8-02.3(8)B Plant Installation

(*****)

The last paragraph of section 8-02.3(8)B is replaced with the following:

When installing plants, the Contractor shall dig planting holes two (2) times the diameter of the container or root ball size. Any glazed surface of the planting hole shall be roughened prior to planting.

8-02.3(11) Mulch

(*****)

Section 8-02.3(11) is deleted in its entirety and replaced with the following:

Mulches associated with seeding and planting areas shall be Bark or Woodchip Mulch per Section 9-14.5(3) and shall be applied as indicated on the Contract Plans. Mulches shall not be placed below the anticipated water level of ditch slopes, pond bank slopes, and stream banks, or in areas of standing or flowing water. Prior to use during planting, Contractor shall stage/stockpile the mulch in locations approved by Engineer.

8-02.3(11)C Bark or Woodchip Mulch Rings

(*****)

Section 8-02.3(11)C is deleted in its entirety and replaced with the following:

Bark or Woodchip Mulch per Section 9-14.5(3) shall be placed in rings as shown on the Contract Plans for plantings associated with all Planting areas. Bark or wood chip mulch shall be placed to a uniform non-compacted depth of 3.5 - 4 inches to a diameter of 2 feet around all plants. The species Lady fern and slough sedge shall not receive a mulch ring.

8-02.3(12) Completion of Initial Planting

(*****)

The first paragraph of Section 8-02.3(12) is replaced with the following:

For all planting areas listed in 8-02.3(7), upon completion of the initial planting Contractor shall notify the Engineer that the area is ready for inspection, and Engineer will inspect the area. Engineer will notify the Contractor, in writing, of any replacements or corrective action necessary to meet the plant installation requirements. The Contractor shall replace all materials rejected or missing and correct unsatisfactory conditions. Contractor shall notify the Engineer once replacements or corrective actions are complete. Engineer will review corrective actions and provide written acceptance of initial planting completion.

8-02.4 Measurement

(*****)

Section 8-02.4 is supplemented with the following:

“Weed and Pest Control” will be measured per lump sum.

“Mulch” used for plantings shall be measured by the cubic yard as measured at the point of delivery. In addition, a random check of vehicle volumes will be made during material delivery.

“PSIPE [Type]”, will be measured per each.

8-02.5 Payment

(*****)

Section 8-02.5 is supplemented with the following:

Payment will be made in accordance with Section 1-04.1 for each of the following bid items that are included in the Proposal:

“Weed and Pest Control”, per lump sum.

The unit price per lump sum for “Weed and Pest Control” shall constitute full payment for the control of weed and pest species within the Project Limit using manual methods outlined in King County BMPs, and proper disposal of plant material, per section 8-02.3(3). Removal of weed and pest species within the construction access and staging areas within the Project Limit is considered incidental to the bid item “Temporary Construction Access and Staging”.

“Mulch”, per cubic yard.

The unit price per cubic yard for “Mulch” shall constitute full payment for furnishing, hauling, and staging/stockpiling of the material for all plantings in locations approved by Engineer.

“PSIPE [Type]”, per each.

The unit price for “PSIPE [Type]” shall constitute full payment for submitting, furnishing, hauling, staging, and installing of all plant materials listed in the Contract Plans; installation of mulch rings per 8-02.3(11)C; and a 1 year plant establishment period per 8-02.3(13).

(*****)

Add the following new sections:

8-30 CHANNEL CONSTRUCTION

8-30.1 Description

This work shall consist of Material Delivery and installing all proposed structures indicated in the Contract Plans. The work includes providing, hauling, delivering, and placing all materials needed to construct the structures as required by Contract Plans, Specifications, and the Engineer.

The location of logs, log structures, and streambed cobbles are shown on the Contract Plans. Their final locations, orientation, and degree of burial may be adjusted to suit field conditions at time of construction as approved by the Engineer.

Each wood structure shall be identified as “Wood Structure [Type]” and shall be either a “Wood Structure [Bed Control Matrix Structure – Machine Placed]” or a “Wood Structure [Timber Frame Structure – Machine Placed]”, as shown in the Contract Plans.

The streambed cobble placement shall be identified as “Streambed Cobbles [Type]” and shall be either “Streambed Cobbles [Machine Placed]” or “Streambed Cobbles [Hand Placed]. The gradation of both mixes is identical, 12” Streambed Cobbles. The hand placed cobbles are for installation at the upper 100 feet of the project site, between station 16+86 and 17+86, and the machine placed cobbles refer to the cobbles that are part of the “Wood Structure [Bed Control Matrix Structure – Machine Placed]”.

The construction of the stream channel may be monitored by regulatory agencies. Although they will not have direct contact with the Contractor, they will advise the Engineer when the intent of the Contract Plans and/or the permit conditions are not being implemented. The agencies that may be monitoring the work includes but is not limited to the City of Mercer Island, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, and the US Army Corps of Engineers.

8-30.2 Materials

Materials shall meet the requirements of the following sections:

Streambed Cobbles	9-03.11(2)
Permanent Ground Anchors	9-06.21
Topsoil Type A	9-14.2(1)
Fertilizer	9-14.4
Bark or Wood Chip Mulch	9-14.5(3)
Biodegradable Erosion Control Blanket	9-14.6(2)
Logs for Stream Construction	9-37.1
Slash	9-37.2

The Contractor shall provide submittals showing the proposed gradation for the streambed cobbles to be used for the stream construction, including source of material. In addition to submittals showing the actual gradation, prepare and deliver to the on-site staging area a 3 - 5 cubic yard sample of material that is proposed for the Streambed Cobbles. The Contractor shall provide a 5-gallon bucket sample each of the Bark or Wood Chip Mulch and the Topsoil Type A and a 3 - 5 CY pile of slash for inspection by the Engineer. Notify the Engineer when samples of the materials are available for inspection. Do not begin production processing of the material until each material is approved by the Engineer in writing.

8-30.3 Construction Requirements

Contractor shall construct all structures to the quantities and/or in the dimensions as shown on the Contract Plans and as approved by the Engineer in the field.

Contractor is responsible for staking stream channel stationing (25 to 50 -foot increments) and location of each of the proposed structures. See Contract Plans for control point locations. Inform the Engineer that the stream channel stationing and proposed structure location stakes are installed. Within 3 working days, the Engineer will review the stakes and shall indicate changes if deemed necessary.

8-30.3(1) Permit Requirements

The Contractor shall comply with all applicable requirements of all permits obtained for this project and with all applicable requirements of local, state, and federal agencies.

8-30.3(2) Experience Requirement for Stream Construction Supervisor

The Contractor shall refer to 1-02.1(1) Supplemental Qualifications Criteria and the “Call for Bids” for specific requirements for stream construction supervisor. The stream construction supervisor whose credentials were submitted as “Contractor’s Stream Construction Supervisor Credentials” shall act as construction supervisor for the duration of the project.

8-30.3(3) Stream Construction Plan

The Contractor shall prepare a Stream Construction Plan describing the planned construction sequence for the stream. Contractor shall submit the Stream Construction plan to the Engineer for review and approval.

The following presents an example general stream construction sequence, it does not address all work required for the project. The Contractor is not bound to follow this specific sequence, but shall provide a construction sequence plan that demonstrates, at a minimum, equivalent safeguards for protecting the environment and completing the project.

1. Develop and submit schedule of construction activities for the entire project duration, including stakeout, clearing, installation of temporary erosion control materials, construction of access path(s), installation of chutes, installation of temporary stream diversion system, material staging, channel construction, and final site closure. This schedule shall identify type, duration and schedule of traffic control measures required to satisfy requirements in Section 1-10.2(2).
2. Stake out and flag Project Limits, limits of high visibility fence, temporary access routes, staging area, tree protection, and trees > 6” requested for removal. Review with Engineer, then install these elements.
3. Install temporary access routes within the project area.
4. Stake stream channel stationing and location of each of the proposed structures. Set and maintain offset (reference) stakes at each point. Set offset stakes beyond the limits of work for reference and control of construction. Maintain offset stakes until the work is completed.
5. Inform the Engineer that the stream channel stationing (25 ft increments) and proposed structure location stakes are installed. Within 3 working days, the Engineer will review the stakes and shall indicate changes if deemed necessary.
6. Install temporary stream diversion (bypass) system per the Contract Plans, Specifications, and as approved by the Engineer.
7. Install temporary erosion control measures according to TESC plan in accordance with the Contract Plans, Specifications, and as approved by the Engineer.
8. Begin staging construction materials – identify sequence of material staging through project.
9. Construct the in-stream structures in accordance with the Contract Plans, Specifications, and the Engineer.
10. Remove temporary stream diversion system. Introduce water into new stream channel. Remove un-needed temporary erosion control measures around stockpile areas.
11. Remove access paths and restore slopes and vegetation.
12. Remove temporary erosion control measures.
13. Install permanent erosion control measures including arborist wood chip mulch and COIR-900 as appropriate during construction.
14. Remove all construction flagging.

15. Repair any damage to roadway surfaces or staging and access areas caused by construction activities.

The stream construction shall occur within the permitted construction time period. Do not perform any work in the existing stream until the required diversion system is in place as approved by the Engineer.

Contractor shall install and maintain erosion and sediment control facilities as shown in the Contract Plans, in accordance with Section 8-01, and in compliance with permit conditions issued by pertinent regulatory agencies.

8-30.3(4) Wood Structures

Contractor shall construct all structures to the quantities and/or in the dimensions as shown on the Contract Plans and as approved by the Engineer in the field. Deliver Materials and place structures at the locations as shown in the Contract Plans and as approved by the Engineer. Locations and minor installation details may be field modified by the Engineer to accommodate site conditions. Any changes to locations and/or installation details shall be considered incidental to the unit costs for each structure.

Work under this item shall consist of furnishing all labor, tools, equipment, material, and verification testing necessary to install the structures as specified on the Contract Plans and in these Specifications.

8-30.4 Measurement

“Wood Structure [Type]”, shall be measured on a unit basis for each structure installed and approved by the Engineer.

“Streambed Cobbles [Type]”, shall be measured on a per ton basis, based on contractor-provided scale tickets.

“Slash”, shall be measured on a per ton basis. Contractor shall be responsible for weighing the slash through use of contractor-provided scale operations such as on-board truck scales or portable scales or via third-party scales and scale tickets.

8-30.5 Payment

Payment will be made in accordance with Section 1-04.1 for each of the following bid items that are included in the Proposal:

“Wood Structure [Type]”, per each

The unit contract price per each for “Wood Structure [Type]”, shall constitute full payment for all costs incurred for staking stream channel stationing and structure locations as well as furnishing, hauling, delivering, and installing the material shown on the Contract Plans. Material includes logs, chain, rebar, ground anchors and appurtenances, manila rope lashing, posts, bark or wood chip mulch, Topsoil Type A, 900-COIR fabric, wood stakes or steel staples, and any other materials referenced in the Contract Plans not included in other bid tab items.

“Streambed Cobbles [Type]”, per ton.

The unit contract price per ton for “Streambed Cobbles [Type]” shall constitute full payment for all costs incurred for furnishing, hauling, delivering, placing, and compacting the material including embedment of streambed cobbles in locations indicated on the Contract Plans designated for machine placement.

“Slash”, per ton.

The unit contract price per ton for “Slash” shall constitute full payment for all costs incurred for furnishing, hauling, weighing, delivering, placing, and compacting the material including embedment of the slash in locations indicated on the Contract Plans designated for machine placement.

END OF DIVISION 8

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DIVISION 9 MATERIALS

9-03 AGGREGATES

9-03.11(2) Streambed Cobbles

(*****)

Section 9-03.11(2) is deleted in its entirety and replaced with the following:

Streambed Cobbles shall meet the following requirements for grading when placed in hauling vehicles for delivery to the project and during manufacture and placement into temporary stockpile. Size and gradation shall be approved by the Engineer using the methodology in the Standard Specifications and per Section 8-30.2.

The Engineer shall be notified when the cobbles are available for approval. The Engineer can travel to the selected quarry to approve the Streambed Cobbles, or a sample size > 1 CY will be provided to the site for approval. If approval occurs at the quarry, the selected aggregate will be prepared in a pile for the Engineer. All aggregate must be rounded and non-angular. A gradation from the quarry will be provided.

12" Streambed Cobbles shall meet the following gradations:

Material Type	Sieve Size	Percent Finer by Weight
SMALL BOULDER (1-MAN)	12 IN	100
LARGE COBBLE	10 IN	84
LARGE COBBLE	8 IN	50
LARGE COBBLE	6 IN	35
SMALL COBBLE	4 IN	16
VERY COARSE GRAVEL	2 IN	5

Note 1: Approximate size can be determined by taking the average dimension of the three axes of the rock; length, width, and thickness by use of the following calculation:

Length + Width + Thickness = Approximate Size

3

Length is the longest axis, width is the second longest axis, and thickness is the shortest axis.

9-06 STRUCTURAL STEEL AND RELATED MATERIALS

(*****)

Add the following new section:

9-06.21 Permanent Ground Anchors

Permanent ground anchors with a bearing plate of approximately 3.5" wide x 14" long shall be "Manta Ray MR-2" or approved equal and shall have a minimum holding capacity of 9,000 lbs. in medium-dense coarse sand and sandy gravel.

9-14 EROSION CONTROL AND ROADSIDE PLANTING

9-14.2(1) Topsoil Type A

(*****)

Section 9-14.2(1) is supplemented with the following:

Topsoil Type A must consist of a mix of 2- to 3-parts Sandy loam soil and 1-part compost by volume, otherwise known as 3-Way Topsoil. The resulting mix must contain approximately 8 to 15 percent organic matter by weight, tested by the loss on ignition method. Sandy loam must be imported and must be as defined by the United States Department of Agriculture Classification System and documented by a particle size analysis performed by an accredited laboratory. The sandy loam fraction of mix must be screened through a 1/2-inch mesh, to remove all rocks, plant parts, and other debris. Compost used must be as specified in Section 9-14.4(8). Sandy loam must be free from materials toxic to plant growth; visible seeds, rhizomes, or roots; and any King County listed noxious weeds or invasive root-propagating plants including horsetail, ivy, clematis, and knotweed.

Submittals.

At the Engineer's request, prior to delivery, the Contractor shall provide the following:

- a. The source of the product;
- b. Manufacturer product specifications OR a sieve analysis verifying the product meets the above requirements;
- c. 5 gallon sample of the product, for the Engineer's approval.

9-14.5(3) Bark or Wood Chip Mulch

(*****)

Section 9-14.5(3) is deleted in its entirety and replaced with the following:

The Mulch shall be Arborist Wood Chip Mulch (AWCM) and shall be coarse ground wood chips (approximately 1/2" to 6" along the longest dimension) derived from the mechanical grinding or shredding of the above-ground portions of trees. It may contain wood, wood fiber, bark, branches, and leaves; but may not contain visible amounts of soil. The arborist wood chip mulch shall not contain more than 20% bark. It shall be free of shrubs and vines, weed and pest species, and weed seeds including, but not limited to, plants on the Washington State Noxious Weed List. It may not contain more than 0.5% by weight of manufactured inert material (plastic, concrete, ceramics, metal, etc.).

Gradation. Arborist Wood Chip Mulch, when tested, shall meet the following loose volume gradation:

Sieve Size	Percent Passing	
	Minimum	Maximum
2"	95	100
1"	70	100
5/8"	0	50
1/4"	0	40

No particles may be longer than eight inches.

Submittals. At the Engineer's request, prior to delivery, the Contractor shall provide the following:

- a. The source of the product and species of trees included in it;
- b. A sieve analysis verifying the product meets the above size gradation requirement;
- c. A 5 gallon sample of the product, for the Engineer's approval.

9-14.6(2) Biodegradable Erosion Control Blanket

(*****)

Section 9-14.6(2) is supplemented with the following:

Biodegradable Erosion Control Blanket shall be Coir 900 series, made of coconut fibers with a material weight of 900 grams/square meter of material, be manufactured by the following approved vendors in minimum roll widths of 3 meters (10 ft):

1. Geocoir/Dekowe 900, manufactured by Belton Industries, Inc.
Local Distributor: Northwest Linings
21000 - 77th Ave. S.
Kent, WA 98032
206-872-0223
2. Koir Mat 900, manufactured by Nedra Enterprises
1-888-NEDIA 02
718-740-5171
Local Warehouse: SeaTac, WA

Other biodegradable erosion control blankets will be considered provided their properties meet or exceed those of the approved products.

Biodegradable erosion control blankets shall be held in place with wood stakes – 1" x 2" x 12" and the flaps at plant installation locations shall be additionally held in place with 8-gauge steel U-staples, min. 10" length per Section 8-01.3(3).

9-14.7 Plant Materials

9-14.7(1) Description

(*****)

Section 9-14.7(1) is supplemented with the following:

All plants shall be of documented regional genetic provenance/origin (Puget Trough lowland), and documentation from grower/propagator shall be provided at initial plant inspection. All plants shall be nursery or field grown under climate conditions similar to, or hardier than, that of project site.

All planting shall occur in the fall, between October 1, 2021 and December 30, 2021.

(*****)

Add the following new sections:

9-37 MISCELLANEOUS STREAM CONSTRUCTION MATERIALS

9-37.1 Logs for Stream Construction

All logs shall be untreated, sound, not rotten, and shall not be infested with wood boring insects. Rot shall not be more than 5% of volume for any log. Logs shall be No. 4 sawmill grade or better in accordance with the Official Rules of the Pacific Rim Log Scaling and Grading Bureau, Inc, Lacey WA. Certification of log grades will not be required but may be done if poor quality logs are encountered. Split trunks are not allowed. Waterlogged logs will also be accepted.

Logs shall be Western Red Cedar or Douglas fir - listed in the order of species preference. Logs may be with or without bark and may have branches/stubs remaining. Diameter of each log shall be as indicated in the Contract Plans and shall be diameter at breast height (DBH) of the log when delivered to the site as measured without bark. If the diameter is not indicated in the Contract Plans, minimum diameter shall be 8 inches DBH. Length of each log shall be as shown in the Contract Plans. The logs shall be free of breaks. Logs shall be cleaned of loose soil along the bole length prior to installation. Roots do not have to be cleaned of loose soil prior to installation. However, inorganic material shall not exceed 10% of the log by weight or volume and shall contain minimal silt or clay, which causes turbidity when placed in water.

Length of each log shall be as shown in the Contract Plans and such that the minimum length of burial will be achieved. Logs shall taper no more than 1" diameter per 10 ft of length. Any logs found to be defective or varying from these specifications shall be removed from the site and replaced at no cost to the Owner.

9-37.2 Slash

Slash shall consist of dense vegetative debris from conifer tree species including, but not limited to, small trees, blasted or pushed-out stumps, chunks, broken tops, limbs, branches, brush, or saplings. Slash shall be any native conifer species. Length of individual pieces of slash may vary between 5-10 ft, with 50% of the material at a length of 6 ft or longer. Thickness of slash pieces as measured at the butt (larger) end may vary from 3/4" – 4" diameter, with 55% of the pieces between 2" – 3" diameter as noted in the table below. Slash shall be compacted during installation to ensure that voids no larger than 3 cubic inches exist within the compacted slash layer. A compacted cubic yard of slash must weigh approximately 570lbs per CY.

Slash Distribution Breakdown:

Distribution	Diameter
30%	$\frac{3}{4}$ " – 2"
55%	2" – 3"
15%	3" – 4"

Photo of acceptable slash:



END OF DIVISION 9

APPENDIX A

Hydraulic Project Approval



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: April 23, 2021
Project End Date: April 22, 2026

Permit Number: 2021-4-263+01
FPA/Public Notice Number: N/A
Application ID: 24782

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
City of Mercer Island ATTENTION: Fred Gu 9611 SE 36th St Mercer Island, WA 98040-3732	

Project Name: Sub Basin 42 Watercourse Stabilization Project

Project Description: The project will provide a solution that will stabilize approximately 1200 LF of the reach. Previous stabilization work performed at the site within the past decade installed approximately 14 sandbags and geotextile check dams at regular intervals throughout the reach. The goal of the dams was to stabilize the channel bed and reduce the transport of sediment downstream to the sediment facility at the downstream extent of the ravine. Bank erosion is also occurring at multiple locations throughout the reach. The sandbag dams are failing and pose a risk to the system; and in the event of a failure, a large amount of sediment would be released into the ravine watercourse, downstream pipe, and Lake Washington.

To meet the project goals, the design calls for of a series of sediment trapping structures to be installed along the banks and within the channels and embedded into the stream bed.

Structures are:

- 15 Bed Control Structures: bed stability & sediment capture, consist of embedded posts, logs, cobble and slash
- 7 Timber Frame structures: vegetated bank stability & sediment capture. Made of logs, coir, and native plants and located on the banks
- 100' of Streambed Cobbles: Rounded cobble material, larger in diameter, installed at the upstream-most extents of the project to stabilize the adjacent existing gabion baskets and protect the channel against further incising.

PROVISIONS

1. **TIMING LIMITATION:** You may begin the project immediately, and you must complete the project by April 22, 2026, provided work within the wetted perimeter must occur only between June 16 and September 30.
2. **APPROVED PLANS:** You must accomplish the work per plans and specifications submitted with the application and approved by the Washington Department of Fish and Wildlife (WDFW) entitled, "SUBBASIN 42 WATERCOURSE STABILIZATION PROJECT", dated December 21, 2020, except as modified by this Hydraulic Project Approval (HPA). You must have a copy of these plans and this HPA available on site during all phases of the project proposal.
3. **INVASIVE SPECIES CONTROL:** Follow Method 1 for low risk locations (i.e. clean/drain/dry). Thoroughly remove visible dirt and debris from all equipment and gear (including drive mechanisms, wheels, tires, tracks, buckets, and undercarriage) before arriving and leaving the job site to prevent the transport and introduction of invasive species. For contaminated or high risk sites please refer to the Method 2 Decontamination protocol. Properly dispose of any water and chemicals used to clean gear and equipment. You can find this and additional information in the Washington Department of Fish and Wildlife's "Invasive Species Management Protocols", available online at <https://wdfw.wa.gov/species-habitats/invasive/prevention>.



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NOTIFICATION REQUIREMENTS

4. **PRE- AND POST-CONSTRUCTION NOTIFICATION:** You, your agent, or contractor must contact WDFW by e-mail to larry.fisher@dfw.wa.gov and to HPAapplications@dfw.wa.gov; mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946 at least three business days before starting work, and again within seven days after completing the work. The notification must include the permittee's name, project location, starting date for work or date the work was completed, and the permit number. WDFW may conduct inspections during and after construction; however, WDFW will notify you or your agent before conducting the inspection.

5. **PHOTOGRAPHS:** You, your agent, or contractor must take photographs of the job site before the work begins and after the work is completed. You must upload the photographs to the post-permit requirement page in the Aquatic Protection Permitting System (APPS) or mail them to WDFW at Post Office Box 43234, Olympia, Washington 98504-3234 within 30-days after the work is completed.

6. **FISH KILL/ WATER QUALITY PROBLEM NOTIFICATION:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify WDFW Habitat Biologist at 425-449-6790 of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington Military Department Emergency Management Division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until WDFW gives approval. WDFW may require additional measures to mitigate impacts.

STAGING, JOB SITE ACCESS, AND EQUIPMENT

7. Establish staging areas (used for equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

8. Design and locate new temporary construction access to prevent erosion and sediment delivery to waters of the state.

9. Clearly mark boundaries to establish the limit of work associated with site access and construction.

10. Limit the removal of native bankline vegetation to the minimum amount needed to construct the project.

11. Retain all natural habitat features on the bed or banks including large woody material and boulders. You may move these natural habitat features during construction but you must place them near the preproject location before leaving the job site.

12. Confine the use of equipment to the specific access and work corridor shown in the approved plans.

CONSTRUCTION-RELATED SEDIMENT, EROSION AND POLLUTION CONTAINMENT

13. Work in the dry watercourse (when no natural flow is occurring in the channel, or when flow is diverted around the job site).

14. Protect all disturbed areas from erosion. Maintain erosion and sediment control until all work and cleanup of the job site is complete.

15. All erosion control materials that will remain onsite must be composed of 100% biodegradable materials.

16. Straw used for erosion and sediment control, must be certified free of noxious weeds and their seeds.



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17. Stop all hydraulic project activities except those needed to control erosion and siltation, if flow conditions arise that will result in erosion or siltation of waters of the state.

18. Prevent project contaminants, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.

19. Route construction water (wastewater) from the project to an upland area above the limits of anticipated floodwater. Remove fine sediment and other contaminants before discharging the construction water to waters of the state.

20. Deposit waste material from the project, such as construction debris, silt, excess dirt, or overburden, in an upland area above the limits of anticipated floodwater unless the material is approved by the Washington Department of Fish and Wildlife for reuse in the project.

21. Deposit all trash from the project at an appropriate upland disposal location.

CONSTRUCTION MATERIALS

22. Store all construction and deconstruction material in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

23. Do not stockpile construction material waterward of the OHWL.

24. Use only clean, suitable material as fill material (no trash, debris, car bodies, tires, asphalt, concrete, etc.).

STREAM WORK

25. The length of the in-stream work shall not exceed that shown in the approved plans.

26. The in-stream stabilization materials must withstand the 100-year peak flow.

27. Do not release overburden material into the waters of the state when resloping the bed and banks.

DEMOBILIZATION AND CLEANUP

28. Seed areas disturbed by construction activities with a native seed mix suitable for the site that has at least one quick-establishing plant species.

29. Complete restoration of any damaged riparian vegetation with native woody species before the end of the first dormant season (late fall through mid winter) after completion of in-stream work. Maintain plantings for at least three years to ensure at least eighty percent of the plantings survive. Failure to achieve the eighty percent survival in year three will require you to submit a plan with follow-up measures to achieve requirements or reasons to modify requirements.

30. Upon completion of the project, remove all materials or equipment from the site and dispose of all excess spoils and waste materials in an upland area above the limits of anticipated floodwater.

LOCATION #1:	Site Name: Sub Basin 42 6614 East Merce Way, Mercer Island, WA 98040		
WORK START:	April 23, 2021	WORK END:	April 22, 2026



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<u>WRIA</u>		<u>Waterbody:</u>			<u>Tributary to:</u>	
08 - Cedar - Sammamish		Unknown Stream Number			Unknown	
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
NE 1/4	30	24 N	05 E	47.543612	-122.210996	King
<u>Location #1 Driving Directions</u>						
I-90, take E. Mercer Way exit, go south, turn east on to an unnamed private road at 6450 block E. Mercer Way. Drive toward east until arriving at the address.						

APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person (s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.



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MINOR MODIFICATIONS TO THIS HPA: You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

MAJOR MODIFICATIONS TO THIS HPA: You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

A. INFORMAL APPEALS: WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.



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A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.

Habitat Biologist Larry.Fisher@dfw.wa.gov
Larry Fisher 425-449-6790

for Director
WDFW

APPENDIX B

US Army Corps of Engineers' Project approval under Nationwide Permit (NWP 3)



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SEATTLE DISTRICT
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

December 1, 2020

Mr. Fred Gu
City of Mercer Island
9611 Southeast 36th Street
Mercer Island, Washington 98040

Reference: NWS-2020-907
(City of Mercer Island Sub
Basin 42 Bank Maintenance
and Stabilization)

Dear Mr. Gu:

We have reviewed your application to place fill waterward of the ordinary high-water mark for maintenance and bank stabilization of an unnamed watercourse in Sub Basin 42, a tributary to Lake Washington, in Mercer Island, King County, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 3, *Maintenance* (Federal Register January 6, 2017, Vol. 82, No. 4), authorizes your proposal as depicted on the enclosed drawings dated April 29, 2020.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 3, Terms and Conditions* and the following special conditions:

- a. You must implement and abide by the Endangered Species Act (ESA) requirements and/or agreements set forth in the Best Management Practices as outlined in the Joint Aquatic Resources Permit Application (JARPA) Form, dated September 20, 2020, in its entirety. The U.S. Army Corps of Engineers (Corps) made a determination of No Effect for all species and critical habitat based on this document. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your Corps permit.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic

Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

The authorized work complies with the Washington State Department of Ecology's (Ecology) Water Quality Certification (WQC) requirements and Coastal Zone Management (CZM) consistency determination response for this NWP. No further coordination with Ecology for WQC and CZM is required.

You have not requested a jurisdictional determination for this proposed project. If you believe the U.S. Army Corps of Engineers does not have jurisdiction over all or portions of your project you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this NWP authorization is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. These documents and information about our program are available on our website at www.nws.usace.army.mil, select "Regulatory Branch, Permit Information" and then "Contact Us." If you have any questions, please contact me at nicole.t.evans@usace.army.mil or (360) 545-2361.

Sincerely,



Nicole T. Evans, Project Manager
Regulatory Branch

Enclosures



US Army Corps
of Engineers ®
Seattle District

NATIONWIDE PERMIT 3

Terms and Conditions

Effective Date: March 19, 2017



-
- A. Description of Authorized Activities
 - B. U.S. Army Corps of Engineers (Corps) National General Conditions for all NWPs
 - C. Corps Seattle District Regional General Conditions
 - D. Corps Regional Specific Conditions for this NWP
 - E. Washington Department of Ecology (Ecology) Section 401 Water Quality Certification (401 Certification): General Conditions
 - F. Ecology 401 Certification: Specific Conditions for this NWP
 - G. Coastal Zone Management Consistency Response for this NWP
-

In addition to any special condition that may be required on a case-by-case basis by the District Engineer, the following terms and conditions must be met, as applicable, for a Nationwide Permit (NWP) authorization to be valid in Washington State.

A. DESCRIPTION OF AUTHORIZED ACTIVITIES

Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays. (b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction

sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. (d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects. Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act (Sections 10 and 404)) Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act section 404(f) exemption for maintenance.

B. CORPS NATIONAL GENERAL CONDITIONS FOR ALL NWPs

To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. (b) If a proposed NWP

activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status. (c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs. (e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word

“harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required. (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity

has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. (d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment. (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)). (e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses. (f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation. (2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)). (3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation. (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer

before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided. (6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs. (h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management. (i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: “When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include: (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions; (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and (c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will

request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is

large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals. (d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal. (2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes. (3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse

environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision: 1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or

for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer. 4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information: 1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP. 2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. 3. NWPs do not grant any property rights or exclusive privileges. 4. NWPs do not authorize any injury to the property or rights of others. 5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

C. CORPS SEATTLE DISTRICT REGIONAL GENERAL CONDITIONS: The following conditions apply to all NWPs for the Seattle District in Washington State, unless specified.

1. Project Drawings: Drawings must be submitted with pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the U.S. will be affected. Drawings must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

2. Aquatic Resources Requiring Special Protection: Activities resulting in a loss of waters of the United States in mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, wetlands in coastal lagoons, and wetlands in dunal systems along the Washington coast cannot be authorized by a NWP, except by the following NWPs:

- NWP 3 – Maintenance
- NWP 20 – Response Operations for Oil and Hazardous Substances
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous and Toxic Waste

In order to use one of the above-referenced NWPs in any of the aquatic resources requiring special protection, prospective permittees must submit a PCN to the Corps of Engineers (see NWP general condition 32) and obtain written authorization before commencing work.

3. New Bank Stabilization in Tidal Waters of Puget Sound: Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11 and 12 (within the areas identified on Figures 1a through 1e on Corps website) cannot be authorized by NWP.

4. Commencement Bay: The following NWPs may not be used to authorize activities located in the Commencement Bay Study Area (see Figure 2 on Corps website):

- NWP 12 – Utility Line Activities (substations)
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 23 – Approved Categorical Exclusions
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater and Wastewater Management Facilities

5. Bank Stabilization: All projects including new or maintenance bank stabilization activities require PCN to the Corps of Engineers (see NWP general condition 32). For new bank stabilization projects only, the following must be submitted to the Corps of Engineers:

- a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.
- b. The type and length of existing bank stabilization within 300 feet of the proposed project.
- c. A description of current conditions and expected post-project conditions in the waterbody.
- d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

In addition to a. through d., the results from any relevant geotechnical investigations can be submitted with the PCN if it describes current or expected conditions in the waterbody.

6. Crossings of Waters of the United States: Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the Corps of Engineers (see NWP general condition 32). If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design Guidelines* (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied

for a culvert where salmonid species are present or could be present, the project proponent must provide a rationale in the PCN sufficient to establish one of the following:

- a. The existence of extraordinary site conditions.
- b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, project proponents must provide a monitoring plan with the PCN that specifies how the proposed culvert will be assessed over a five-year period from the time of construction completion to ensure its effectiveness in providing passage at all life stages at all flows where the salmonid species would naturally seek passage. Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

7. Stream Loss: A PCN is required for all activities that result in the loss of any linear feet of stream beds. No activity shall result in the loss of any linear feet of perennial stream beds or the loss of greater than 300 linear feet of intermittent and/or ephemeral stream beds. A stream may be rerouted if it is designed in a manner that maintains or restores hydrologic, ecologic, and geomorphic stream processes, provided there is not a reduction in the linear feet of stream bed. Streams include brooks, creeks, rivers, and historical waters of the U.S. that have been channelized into ditches. This condition does not apply to ditches constructed in uplands. Stream loss restrictions may be waived by the district engineer on a case-by-case basis provided the activities result in net increases of aquatic resource functions and services.

8. Mitigation: Pre-construction notification is required for any project that will result in permanent wetland losses that exceed 1,000 square feet. In addition to the requirements of General Condition 23 (Mitigation), compensatory mitigation at a minimum one-to-one ratio will be required for all permanent wetland losses that exceed 1,000 square feet. When a PCN is required for wetland losses less than 1,000 square feet, the Corps of Engineers may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation for impacts to marine waters, lakes, and streams will be determined on a case-by-case basis. If temporary impacts to waters of the U.S. exceed six months, the Corps of Engineers may require compensatory mitigation for temporal effects.

9. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat Essential Fish Habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. If EFH may be adversely affected by a proposed activity, the prospective permittee must provide a written EFH assessment with an analysis of the effects of the proposed action on EFH. The assessment must identify the type(s) of essential fish habitat (i.e., Pacific salmon, groundfish, and/or coastal-pelagic species) that may be affected. If the Corps of Engineers determines the project will adversely affect EFH, consultation with NOAA Fisheries will be required. Federal agencies should follow their own procedures for complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. If PCN is required for the proposed activity, Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

10. Forage Fish: For projects in forage fish spawning habitat, in-water work must occur within designated forage fish work windows, or when forage fish are not spawning. If working outside of a designated work window, or if forage fish work windows are closed year round, work may occur if the work window restriction is released for a period of time after a forage fish spawning survey has been conducted by a biologist approved by the Washington State Department of Fish and Wildlife (WDFW). Forage fish species with designated in-water work windows include Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasii*), and surf smelt (*Hypomesus pretiosus*). This RGC does not

apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

11. Notification of Permit Requirements: The permittee must provide a copy of the nationwide permit authorization letter, conditions, and permit drawings to all contractors and any other parties performing the authorized work prior to the commencement of any work in waters of the U.S. The permittee must ensure all appropriate contractors and any other parties performing the authorized work at the project site have read and understand relevant NWP conditions as well as plans, approvals, and documents referenced in the NWP letter. A copy of these documents must be maintained onsite throughout the duration of construction.

12. Construction Boundaries: Permittees must clearly mark all construction area boundaries before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

13. Temporary Impacts and Site Restoration

- a. Temporary impacts to waters of the U.S. must not exceed six months unless the prospective permittee requests and receives a waiver by the district engineer. Temporary impacts to waters of the U.S. must be identified in the PCN.
- b. No more than 1/2 acre of waters of the U.S. may be temporarily filled unless the prospective permittee requests and receives a waiver from the district engineer (temporary fills do not affect specified limits for loss of waters associated with specific nationwide permits).
- c. Native soils removed from waters of the U.S. for project construction should be stockpiled and used for site restoration. Restoration of temporarily disturbed areas must include returning the area to pre-project ground surface contours. If native soil is not available from the project site for restoration, suitable clean soil of the same textural class may be used. Other soils may be used only if identified in the PCN.
- d. The permittee must revegetate disturbed areas with native plant species sufficient in number, spacing, and diversity to restore affected functions. A maintenance and monitoring plan commensurate with the impacts, may be required. Revegetation must begin as soon as site conditions allow within the same growing season as the disturbance unless the schedule is approved by the Corps of Engineers. Native plants removed from waters of the U.S. for project construction should be stockpiled and used for revegetation when feasible. Temporary Erosion and Sediment Control measures must be removed as soon as the area has established vegetation sufficient to control erosion and sediment.
- e. If the Corps determines the project will result in temporary impacts of submerged aquatic vegetation (SAV) that are more than minimal, a monitoring plan must be submitted. If recovery is not achieved by the end of the monitoring period, contingencies must be implemented, and additional monitoring will be required.

This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

D. CORPS REGIONAL SPECIFIC CONDITIONS FOR THIS NWP: none

E. ECOLOGY 401 CERTIFICATION: GENERAL CONDITIONS

In addition to all the Corps National and Seattle Districts' Regional permit conditions, the following State General Section 401 Water Quality Certification (Section 401) conditions apply to all Nationwide Permits whether **certified** or **partially certified** in the State of Washington.

1. **For in-water construction activities.** Ecology Section 401 review is required for projects or

activities authorized under NWP that will cause, or may be likely to cause or contribute to an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC). State water quality standards and sediment management standards are available on Ecology's website. Note: In-water activities include any activity within a wetland and/or activities below the ordinary high water mark (OHWM).

2. Projects or Activities Discharging to Impaired Waters. Ecology Section 401 review is required for projects or activities authorized under NWP if the project or activity will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may result in further exceedances of the specific listed parameter. To determine if your project or activity is in a 303(d) listed segment of a waterbody, visit Ecology's Water Quality Assessment webpage for maps and search tools.

3. Application. For projects or activities that will require Ecology Section 401 review, applicants must provide Ecology with a Joint Aquatic Resources Permit Application (JARPA) along with the documentation provided to the Corps, as described in National General Condition 32, Pre-Construction Notification, including, when applicable: (a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, best management practices (BMPs), and any other Department of the Army or federal agency permits used or intended to be used to authorize any part of the proposed project or any related activity. (b) Drawings indicating the Ordinary High Water Mark (OHWM), delineation of special aquatic sites and other waters of the state. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form. Wetland rating forms are subject to review and verification by Ecology staff. Guidance for determining the OHWM is available on Ecology's website. (c) A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted. See State General Condition 5 for details on mitigation requirements. (d) Other applicable requirements of Corps Nationwide Permit General Condition 32, Corps Regional Conditions, or notification conditions of the applicable NWP. (e) Within 180 calendar days from receipt of applicable documents noted above **and** a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program Ecology will provide the applicant notice of whether an individual Section 401 will be required for the project. If Ecology fails to act within a year after receipt of **both** of these documents, Section 401 is presumed waived.

4. Aquatic resources requiring special protection. Certain aquatic resources are unique, difficult-to-replace components of the aquatic environment in Washington State. Activities that would affect these resources must be avoided to the greatest extent possible. Compensating for adverse impacts to high value aquatic resources is typically difficult, prohibitively expensive, and may not be possible in some landscape settings. Ecology Section 401 review is required for activities in or affecting the following aquatic resources (and not prohibited by Seattle District Regional General Condition): (a) Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):

- Estuarine wetlands.
- Wetlands of High Conservation Value.
- Bogs.
- Old-growth and mature forested wetlands.
- Wetlands in coastal lagoons.
- Interdunal wetlands.
- Vernal pools.
- Alkali wetlands.

(b) Fens, aspen-dominated wetlands, camas prairie wetlands. (c) Marine water with eelgrass (*Zostera marina*) beds (except for NWP 48). (d) Category I wetlands. (e) Category II wetlands with a habitat score ≥ 8 points. This State General Condition does not apply to the following Nationwide Permits:

5. Mitigation. Applicants are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resources wherever practicable. For projects requiring Ecology Section 401 review with unavoidable impacts to aquatic resources, adequate compensatory mitigation must be provided.

(a) Wetland mitigation plans submitted for Ecology review and approval shall be based on the most current guidance provided in *Wetland Mitigation in Washington State, Parts 1 and 2* (available on Ecology’s website) and shall, at a minimum, include the following:

i. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.

ii. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded).

iii. The rationale for the mitigation site that was selected.

iv. The goals and objectives of the compensatory mitigation project.

v. How the mitigation project will be accomplished, including construction sequencing, best management practices to protect water quality, proposed performance standards for measuring success and the proposed buffer widths.

vi. How it will be maintained and monitored to assess progress towards goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.

vii. How the compensatory mitigation site will be legally protected for the long term. Refer to *Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans* (Ecology Publication #06-06-011b) and *Selecting Wetland Mitigation Sites Using a Watershed Approach* (Ecology Publications #09-06-032 (Western Washington) and #10-06-007 (Eastern Washington)) for guidance on selecting suitable mitigation sites and developing mitigation plans. Ecology encourages the use of alternative mitigation approaches, including credit/debit methodology, advance mitigation, and other programmatic approach such as mitigation banks and in-lieu fee programs. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person. Information on alternative mitigation approaches is available on Ecology’s website.

(b) Mitigation for other aquatic resource impacts will be determined on a case-by-case basis.

6. Temporary Fills. Ecology Section 401 review is required for any project or activity with temporary fill in wetlands or other waters of the state for more than 90 days, unless the applicant has received written approval from Ecology. Note: This State General Condition does not apply to projects or activities authorized under NWP 33, *Temporary Construction, Access, and Dewatering*

7. Stormwater pollution prevention: All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the State.

(a) For land disturbances during construction, the applicant must obtain and implement permits (e.g., Construction Stormwater General Permit) where required and follow Ecology’s current stormwater manual.

(b) Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces shall be provided.

Ecology’s Stormwater Management and Design Manuals and stormwater permit information are available on Ecology’s website.

8. State Section 401 Review for PCNs not receiving 45-day response from the Seattle District. In the event the Seattle District Corps does not issue a NWP authorization letter within 45 calendar days of receipt of a **complete** pre-construction notification, the applicant must contact Ecology for Section 401 review prior to commencing work.

F. ECOLOGY 401 CERTIFICATION: SPECIFIC CONDITIONS FOR THIS NWP:

Certified subject to conditions. Ecology Section 401 review is required for projects or activities authorized under this NWP if:

1. The project or activities are below the Ordinary High Water Mark (OHWM) with new work being proposed outside the original footprint.
2. The proposed project or activity increases the original footprint of the structure by more than 1/10th acre in wetlands.
3. The project or activity includes adding a new structure, such as a weir, flap gate/tide gate, or culvert to the site.

G. COASTAL ZONE MANAGEMENT CONSISTENCY RESPONSE FOR THIS NWP:

(Note: This only applies in the following counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum and Whatcom)

Response: Ecology concurs that this NWP is consistent with the CZMP, subject to the following condition: An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

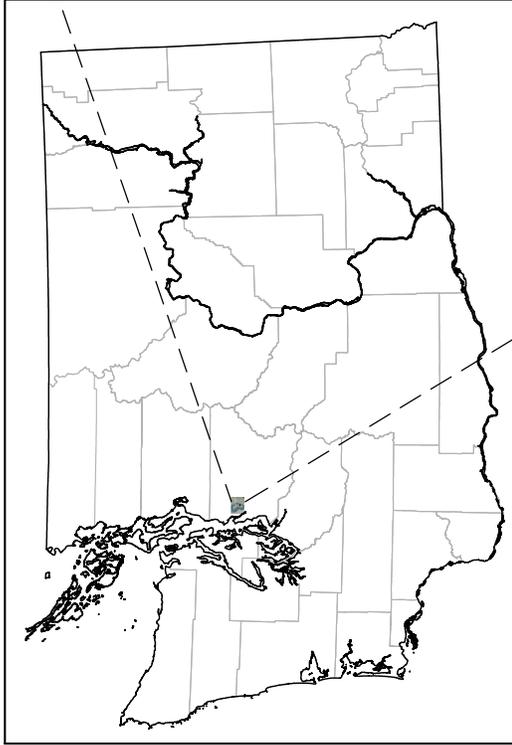
General Conditions: For Non-Federal Permittees

1. Necessary Data and Information. A Coastal Zone Management Program “Certification of Consistency” form is required for projects located within a coastal county. “Certification of Consistency” forms are available on Ecology’s website. The form shall include a description of the proposed project or activity and evidence of compliance with the applicable enforceable policies of the Washington Coastal Zone Management Program (CZMP). Also, a map of the site location is required.
2. Timing. Within 6 months from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 6 month period, concurrence with the CZMP is presumed.

General Conditions: For Federal Permittees (Agencies)

1. Necessary Data and Information. Federal agencies shall submit the determination, information, and analysis required by 15 CFR 930.39 to obtain a federal consistency determination.
2. Timing. Within 60 days from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 60 day period, concurrence with the CZMP is presumed.

SUBBASIN 42 WATERCOURSE STABILIZATION PROJECT CITY OF MERCER ISLAND



WASHINGTON STATE

SCALE: 1" = 50 MILES

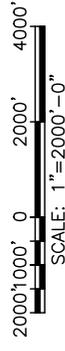


PROJECT LOCATION



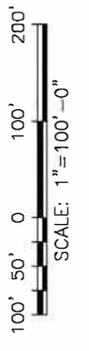
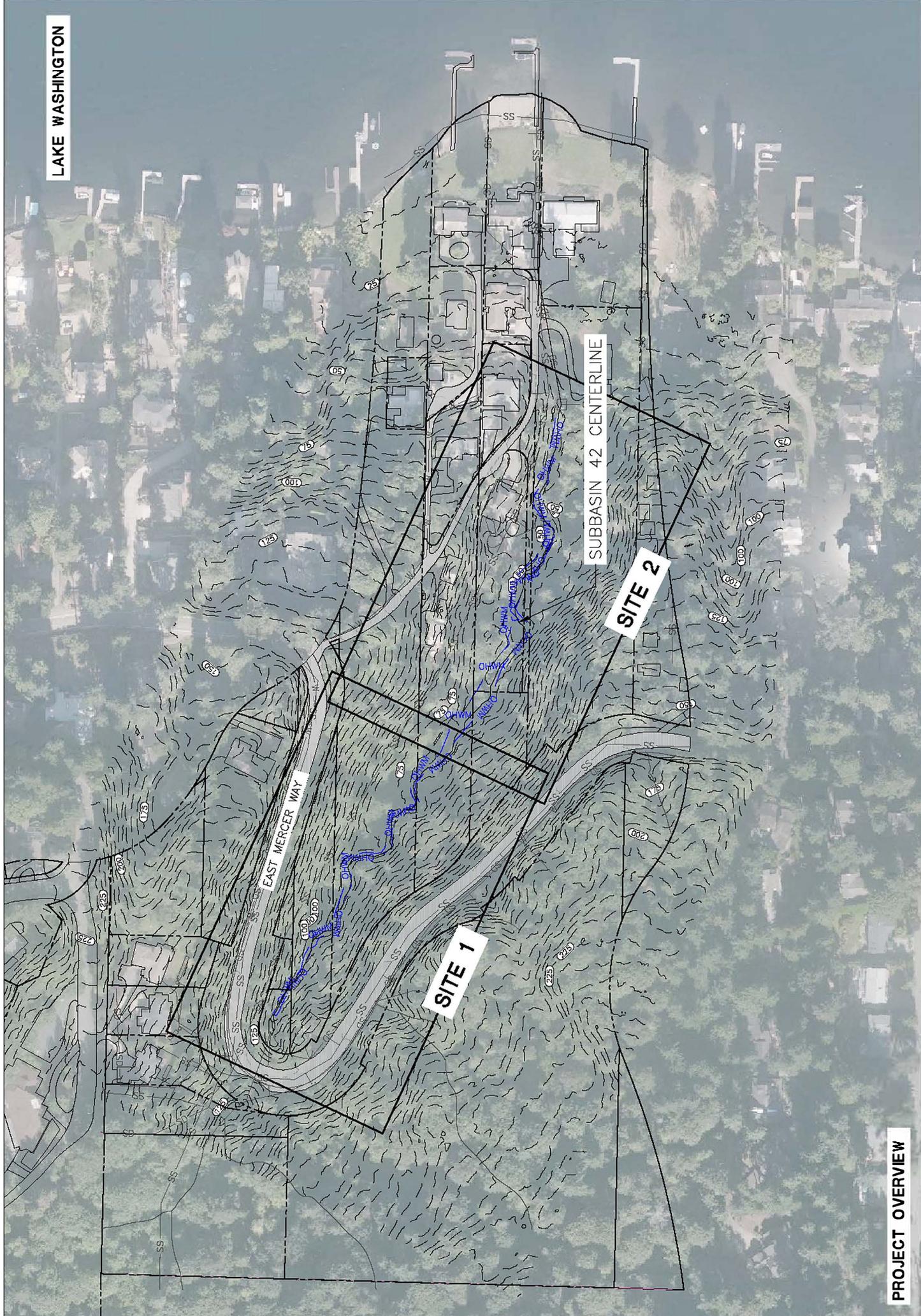
VICINITY MAP

SCALE: 1" = 2000'



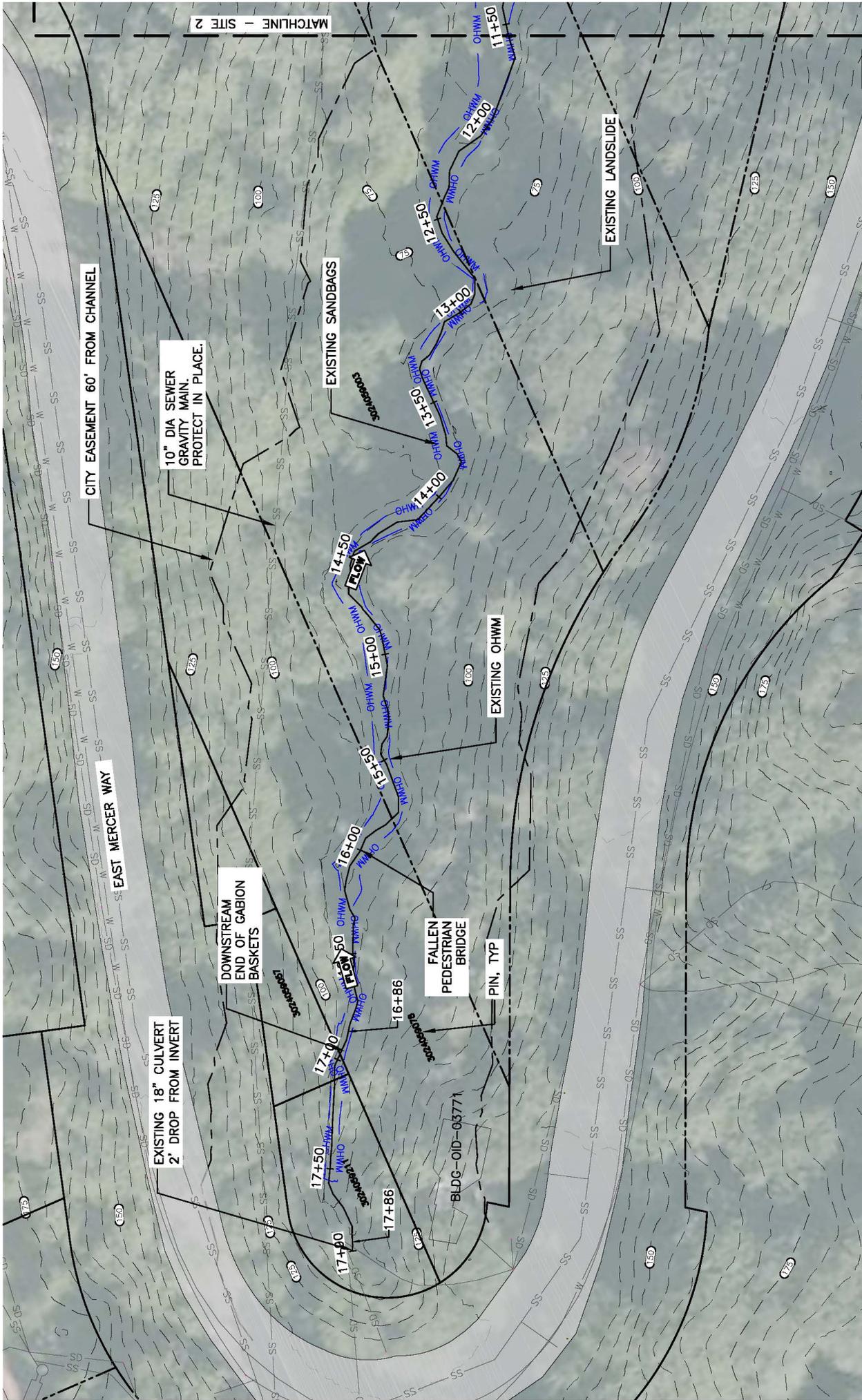
Sheet Number	Sheet Title
1	COVER
2	PROJECT OVERVIEW
3	EXISTING CONDITIONS SITE 1
4	EXISTING CONDITIONS SITE 2
5	PROPOSED CONDITIONS SITE 1
6	PROPOSED CONDITIONS SITE 2
7	PROFILE AND CROSS-SECTION
8	LOG STRUCTURE DETAILS
9	LOG STRUCTURE DETAILS 2
10	SITE RESTORATION PLAN
11	PLANT SCHEDULES

LAT/LONG: 47°32'38"N/122°12'43"W ADJACENT PROPERTY OWNERS: See JARPA PARCEL: See pages 3 & 4 for Property ID Numbers (PIN) IN: Subbasin 42 AI: City of Mercer Island COUNTY: King STATE: WA	REFERENCE NUMBER: NWS-2020-907 APPLICANT: City of Mercer Island PROPOSED PROJECT: Subbasin 42 Watercourse Stabilization Project LOCATION: Mercer Island, East Mercer Way PAGE 1 OF 11 DATE: 04/29/2020
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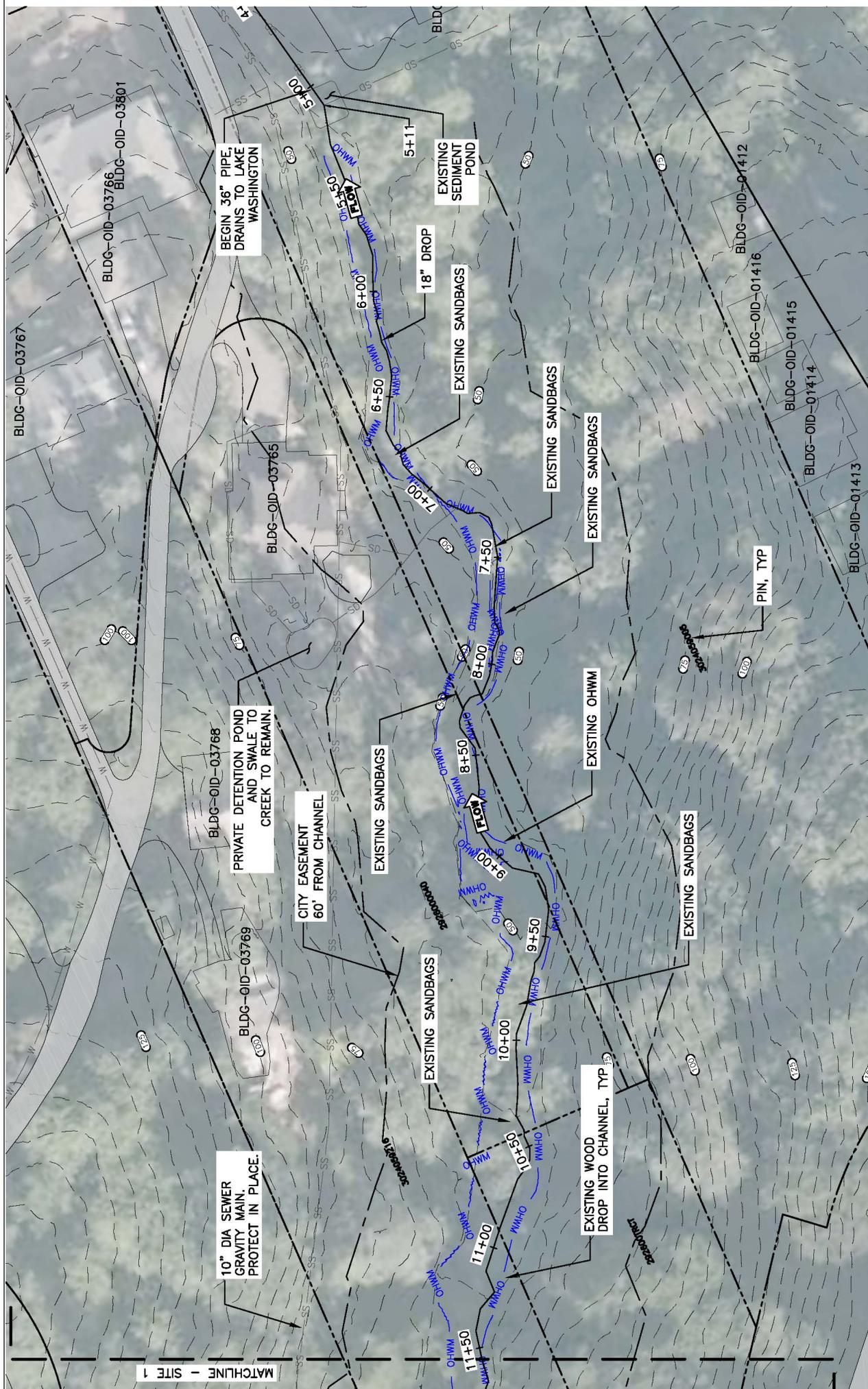
PROJECT OVERVIEW

REFERENCE NUMBER: NWS-2020-907
APPLICANT: City of Mercer Island
PROPOSED PROJECT: Subbasin 42
Watercourse Stabilization Project
LOCATION: Mercer Island, East Mercer Way
PAGE 2 OF 11 DATE: 04/29/2020



EXISTING CONDITIONS SITE 1

REFERENCE NUMBER: NWS-2020-907
 APPLICANT: City of Mercer Island
 PROPOSED PROJECT: Subbasin 42
 Watercourse Stabilization Project
 LOCATION: Mercer Island, East Mercer Way
 PAGE 3 OF 11 DATE: 04/29/2020

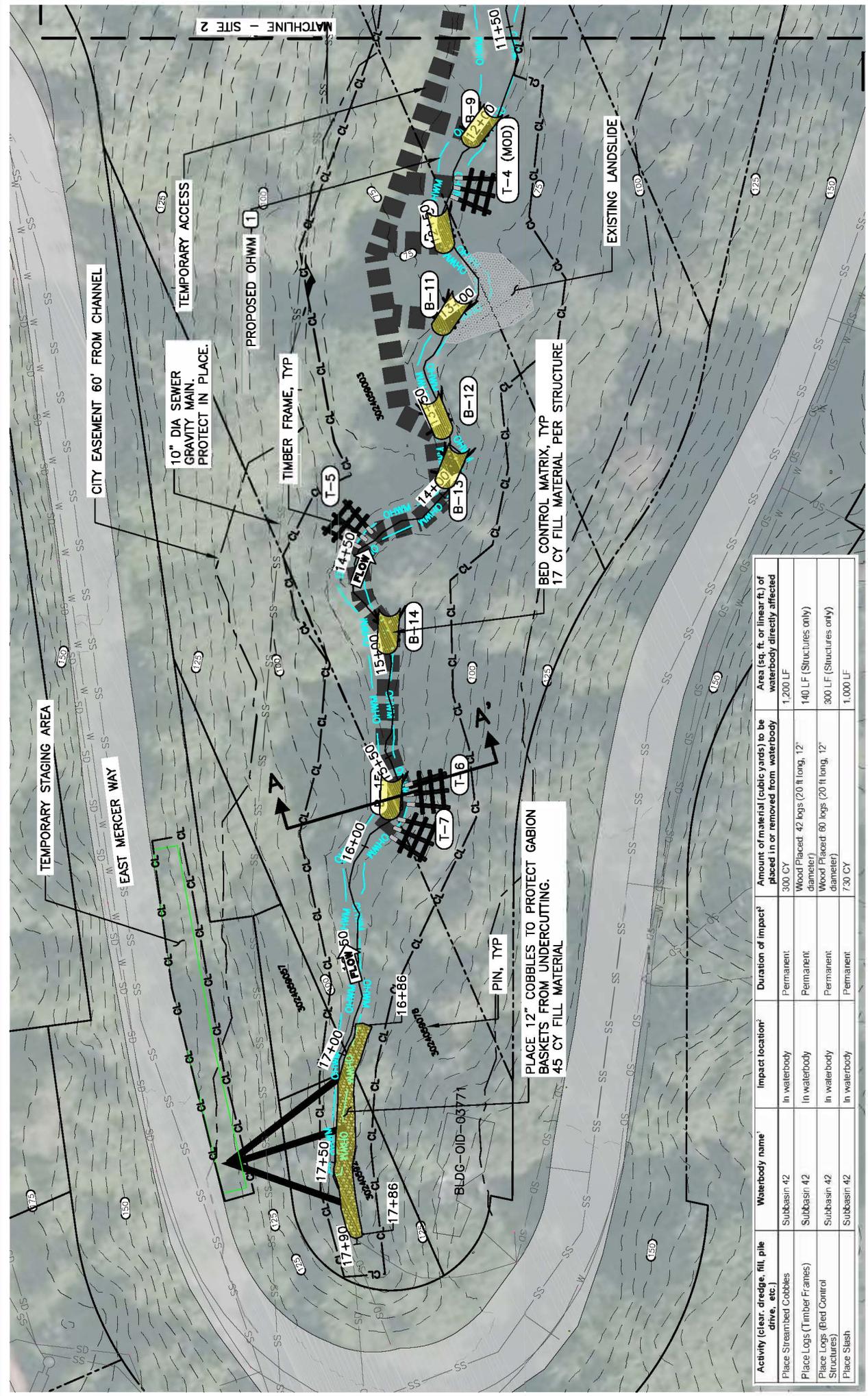


MATCHLINE - SITE 1



EXISTING CONDITIONS SITE 2

REFERENCE NUMBER: NWS-2020-907
 APPLICANT: City of Mercer Island
 PROPOSED PROJECT: Subbasin 42
 Watersource Stabilization Project
 LOCATION: Mercer Island, East Mercer Way
 PAGE 4 OF 11 DATE: 04/29/2020



MATCHLINE - SITE 2

CITY EASEMENT 60' FROM CHANNEL

10" DIA SEWER GRAVITY MAIN PROTECT IN PLACE.

TEMPORARY ACCESS

PROPOSED OHWM

TIMBER FRAME, TYP

BED CONTROL MATRIX, TYP
17 CY FILL MATERIAL PER STRUCTURE

EXISTING LANDSLIDE

TEMPORARY STAGING AREA

EAST MERCER WAY

PLACE 12" COBBLES TO PROTECT GABION BASKETS FROM UNDERCUTTING.
45 CY FILL MATERIAL

PIN, TYP



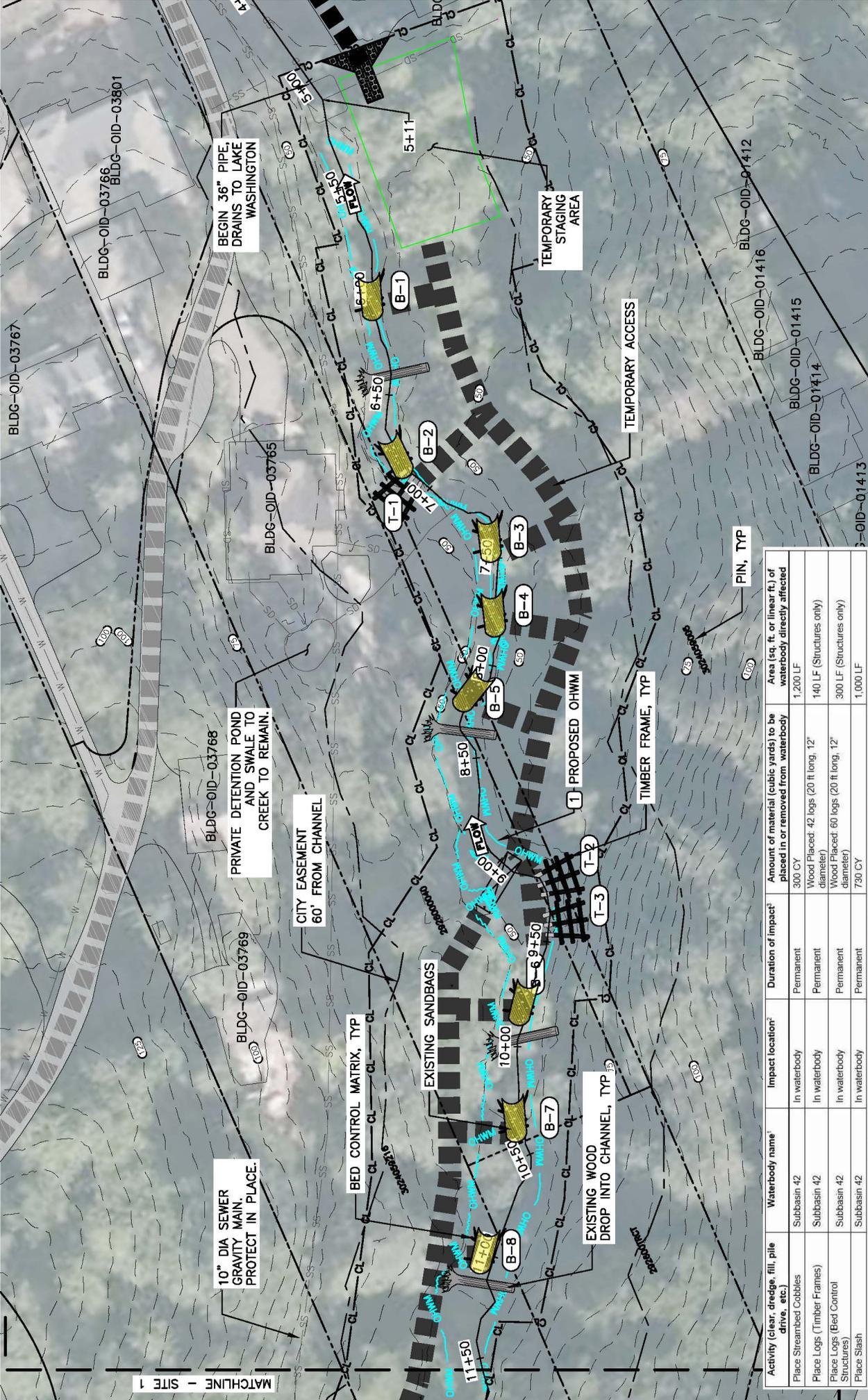
Activity (clear, dredge, fill, pile drive, etc.)	Waterbody name'	Impact location'	Duration of impact'	Amount of material (cubic yards) to be placed in or removed from waterbody	Area (sq. ft. or linear ft.) of waterbody directly affected
Place Streambed Cobbles	Subbasin 42	In waterbody	Permanent	300 CY	1,200 LF
Place Logs (Timber Frames)	Subbasin 42	In waterbody	Permanent	Wood Placed: 42 logs (20 ft long, 12" diameter)	140 LF (Structures only)
Place Logs (Bed Control Structures)	Subbasin 42	In waterbody	Permanent	Wood Placed: 60 logs (20 ft long, 12" diameter)	300 LF (Structures only)
Place Slash	Subbasin 42	In waterbody	Permanent	730 CY	1,000 LF

NOTES

1. PROPOSED OHWM MODELED FROM BANKFUL FLOW.
2. STRUCTURE LOCATIONS SHOWN ARE APPROXIMATE AND WILL BE STAKED BY THE ENGINEER PRIOR TO CONSTRUCTION.
3. VEGETATION CLEARED DURING CONSTRUCTION FOR ACCESS WILL BE INCORPORATED INTO THE STRUCTURES AS DIRECTED BY ENGINEER.
4. PROTECT EXISTING INFRASTRUCTURE IN PLACE.
5. 12" COBBLES PLACED BETWEEN STATIONS 17+86 AND 16+86 SHALL BE PLACED BY HAND. ALL OTHER STRUCTURES AND MATERIALS WILL BE INSTALLED BY MACHINE.

PROPOSED CONDITIONS SITE 1

REFERENCE NUMBER: NWS-2020-907
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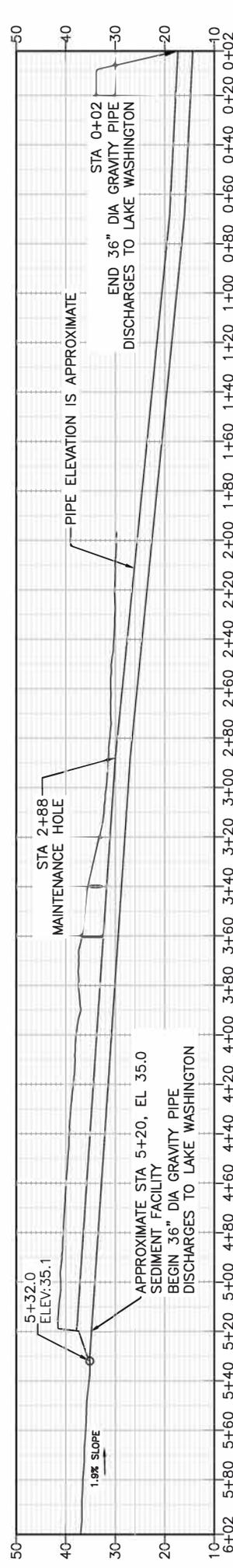
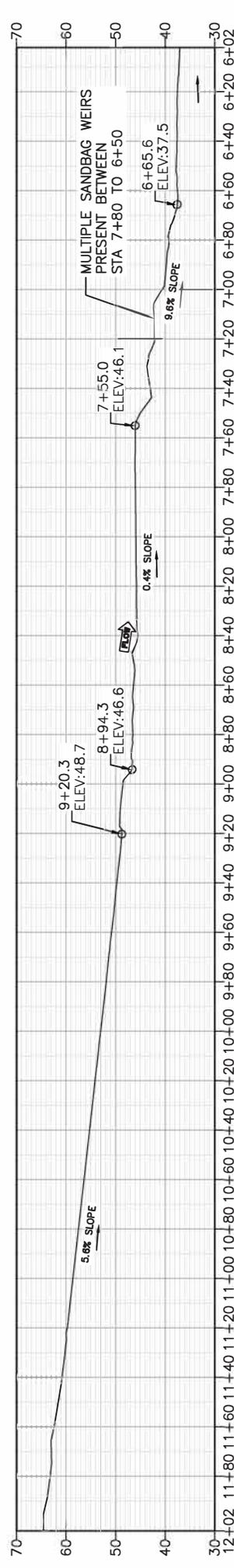
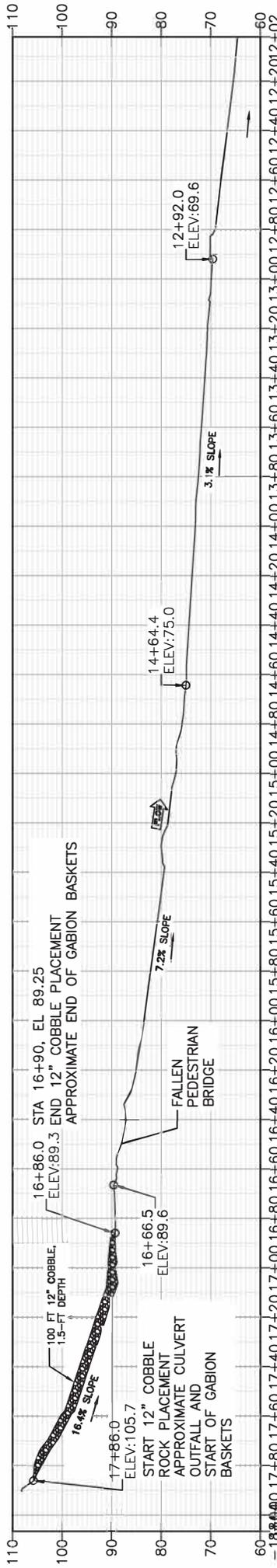
NOTES

1. PROPOSED OHWM MODELED FROM BANKFUL FLOW.
2. STRUCTURE LOCATIONS SHOWN ARE APPROXIMATE AND WILL BE STAKED BY THE ENGINEER PRIOR TO CONSTRUCTION.
3. VEGETATION CLEARED DURING CONSTRUCTION FOR ACCESS WILL BE INCORPORATED INTO THE STRUCTURES AS DIRECTED BY ENGINEER.
4. PROTECT EXISTING INFRASTRUCTURE IN PLACE.

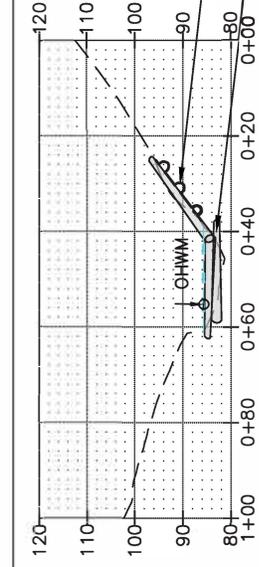
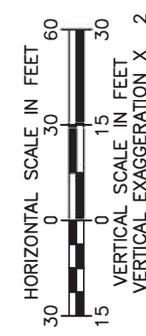
PROPOSED CONDITIONS SITE 2

REFERENCE NUMBER: NWS-2020-907
 APPLICANT: City of Mercer Island
 PROPOSED PROJECT: Subbasin 42
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Activity (clear, dredge, fill, pile drive, etc.)	Waterbody name	Impact location	Duration of impact	Amount of material (cubic yards) to be placed in or removed from waterbody	Area (sq. ft. or linear ft.) of waterbody directly affected
Place Streambed Cobbles	Subbasin 42	In waterbody	Permanent	300 CY	1,200 LF
Place Logs (Timber Frames)	Subbasin 42	In waterbody	Permanent	Wood Placed: 42 logs (20 ft long, 12" diameter)	140 LF (Structures only)
Place Logs (Bed Control Structures)	Subbasin 42	In waterbody	Permanent	Wood Placed: 60 logs (20 ft long, 12" diameter)	300 LF (Structures only)
Place Slash	Subbasin 42	In waterbody	Permanent	730 CY	1,000 LF



SUBBASIN 42 PROFILE



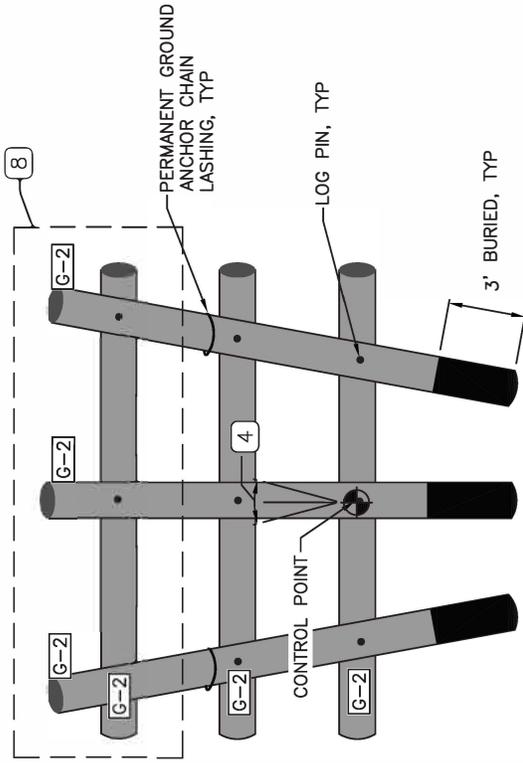
SUBBASIN 42 PROFILE AND CROSS-SECTION

REFERENCE NUMBER: NWS-2020-907
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CROSS-SECTION A-A' (STA 15+67)

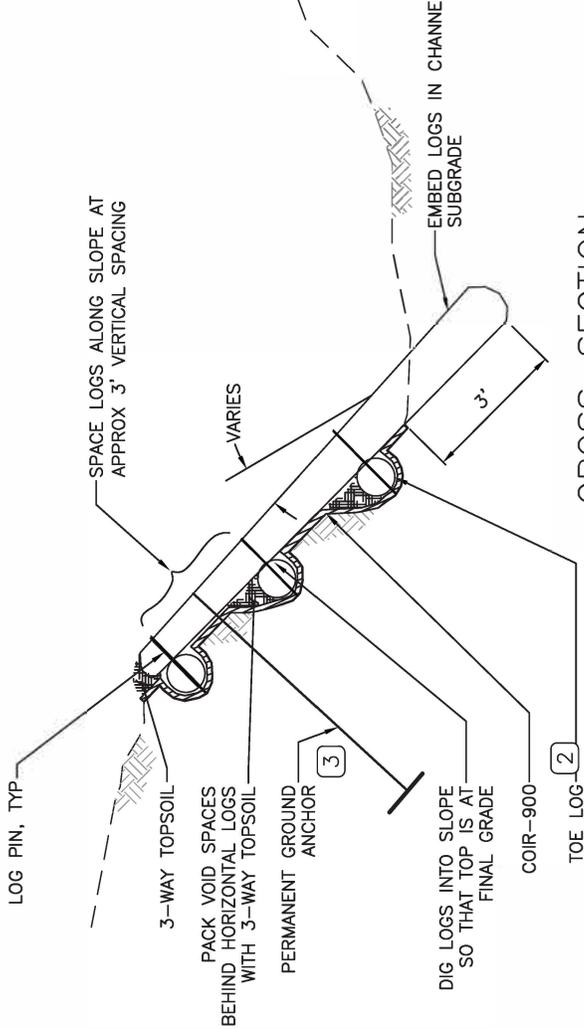
SCALE: 1" = 20'

TIMBER FRAME STRUCTURE. SEE PAGE 8 FOR DETAIL.
 BED CONTROL STRUCTURE. SEE PAGE 9 FOR DETAIL.



NOTES

1. PLACEMENT OF ALL ELEMENTS ARE APPROXIMATE AND WILL VARY AS APPROVED BY ENGINEER.
2. COVER BARE SOILS WITH 2 LAYERS OF COIR-900 FABRIC.
3. PERMANENT GROUND ANCHOR DEPTH IS MINIMUM 6" BELOW GROUND SURFACE. LOGS SHALL BE LASHED TO ANCHOR AS SHOWN IN DETAIL
4. LOGS CAN BE STAGGERED 5'-15' FROM VERTICAL AS APPROVED BY ENGINEER.
5. TIMBER FRAME STRUCTURES THAT ARE INSTALLED ADJACENT TO EACH OTHER SHALL HAVE HORIZONTAL LOGS OVERLAP 6" MIN.
6. SPREAD 6" LAYER OF ARBORIST WOOD MULCH ON COIR AFTER INSTALLATION.
8. EXCAVATION SPOILS TO BE INCORPORATED INTO STRUCTURES OR PLACED ON-SITE AT DIRECTION OF ENGINEER.
8. FOR MODIFIED TIMBER FRAME (MOD) REMOVE TOP LOG AND TOP 1/4 OF VERTICAL LOGS. DISTRIBUTE IN RIPARIAN UPLAND OR WHERE DIRECTED BY ENGINEER. MOVE PERMANENT GROUND ANCHORS TO BE POSITIONED BETWEEN THE TWO REMAINING HORIZONTAL LOGS.



CROSS-SECTION

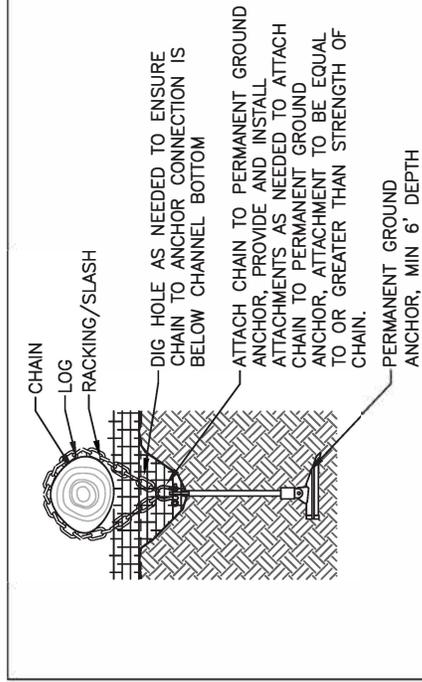
LOG ID	MATERIAL	QUANTITY	UNITS
G-2	12" DIAM x20' LOG	6	EA
	COIR-900	71	SY
	PERMANENT GROUND ANCHOR	2	EA
LOG PIN	#5 REBAR, 3.5'	9	EA
	ARBORIST WOOD CHIP MULCH	4.4	CY



PHOTO EXAMPLE COMPLETE TIMBER FRAME

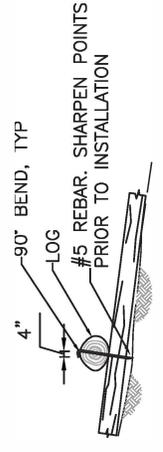
TIMBER FRAME STRUCTURE

NOT TO SCALE



PERMANENT GROUND ANCHOR

NOT TO SCALE

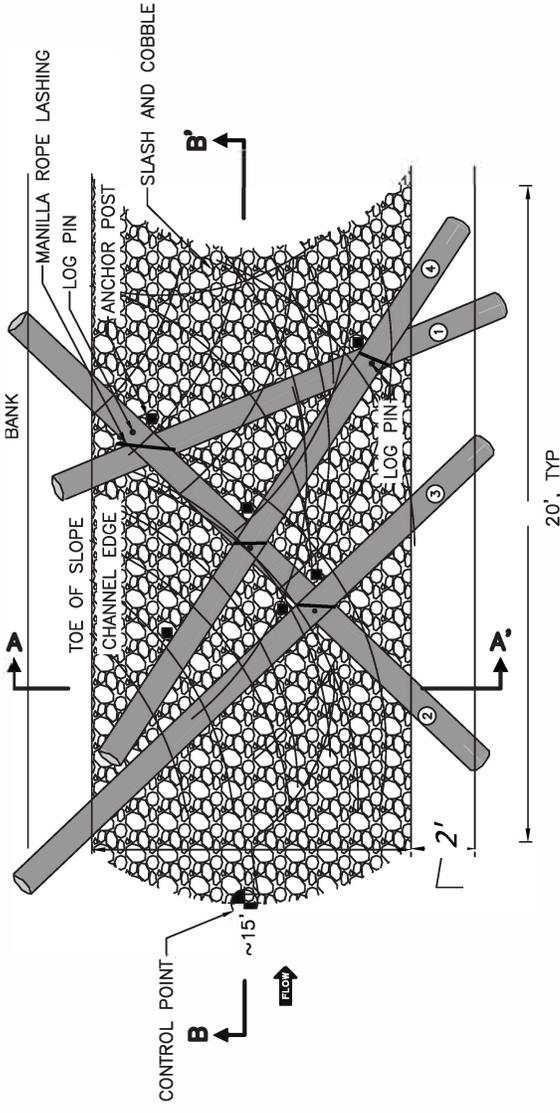


LOG PIN

NOT TO SCALE

LOG STRUCTURE DETAILS 1

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PLAN VIEW

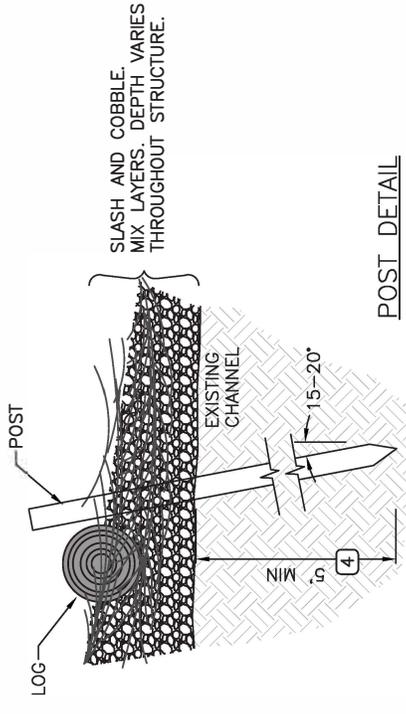
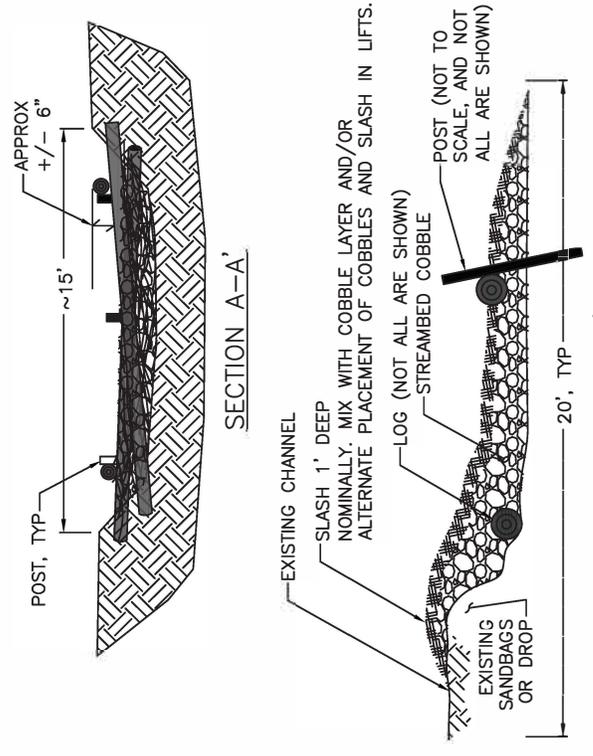
NOTES

1. CONSTRUCTION SEQUENCE
 - LAY 1" COBBLE AND SLASH LAYER ON CHANNEL BED (20' X 15' NOM.)
 - INSTALL LOGS IN SEQUENCE (1-4) ADJUSTING ORIENTATION AS DIRECTED BY ENGINEER TO ACCOMMODATE SITE CONDITIONS.
 - INSTALL LOG POSTS AND LASH TO LOGS
 - FILL VOID SPACE WITH SLASH AND COBBLE
 - INSTALL LOG PINS TO TIGHTLY ANCHOR LOGS AND BOUGHS.
2. PLACEMENT AND NUMBER OF ALL ELEMENTS ARE APPROXIMATE AND MAY VARY AS DIRECTED BY ENGINEER.
3. FINAL STRUCTURE LENGTH WILL VARY.
4. DOUGLAS FIR 4" X 4" X 72" STAKE EMBEDDED MIN 5" IN BED.
5. EXCAVATION SPOILS TO BE INCORPORATED INTO STRUCTURES OR PLACED ON-SITE AT DIRECTION OF ENGINEER.
6. MATCH EXISTING CHANNEL SLOPE (VARIES).
7. FINISH BED ELEVATION VARIES +/- 4" FROM NOMINAL 2' DEPTH OF FILL THROUGH CENTER OF CHANNEL.
8. EDGE OF FILL TO EXTEND APPROX 12" ABOVE THALWEG.
9. AGGREGATE SIZE VARIES 1" - 24" PER PROJECT MANUAL.
10. DO NOT REMOVE EXISTING LOGS, WOODY MATERIAL, GEO TEXTILES, OR SANDBAGS.



PHOTO EXAMPLE OF BED CONTROL MATRIX

NOTE: POSTS, LASHING, AND SLASH NOT YET INSTALLED/SHOWN.



POST DETAIL

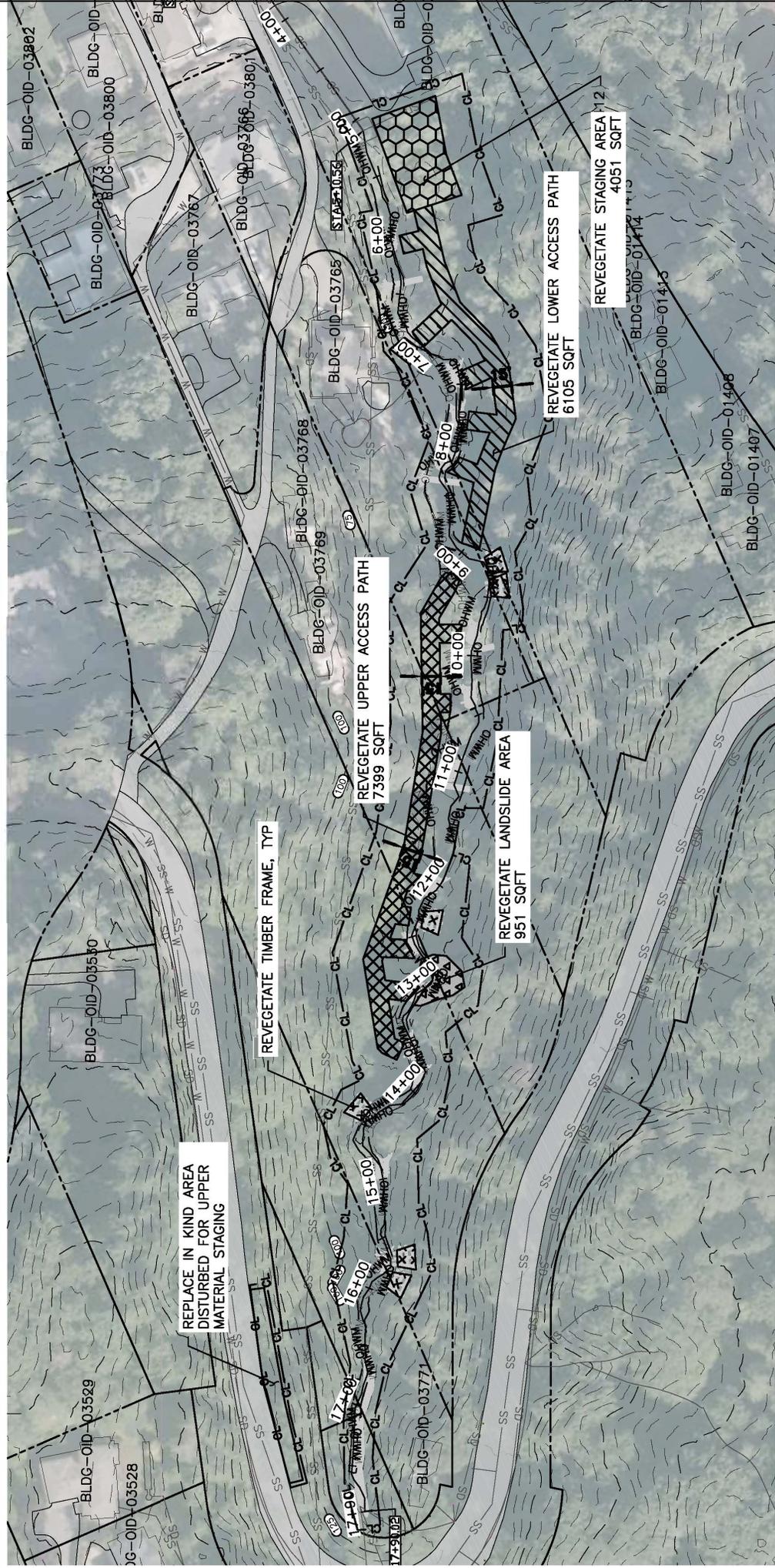
LOG ID	MATERIAL	QUANTITY	UNITS
E-2	12"x20' LOG	4	EA
	STREAMBED COBBLE	17	CY
	SLASH	20	CY
	4" X 4" X 6' ANCHOR POST	6	EA
LOG PIN	#5 REBAR, 3.5'	4	EA
	1" MANILLA ROPE LASHING	40 LF (4 10-FT SEGMENTS)	LF

LOG STRUCTURE DETAILS 2

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BED CONTROL STRUCTURE

SCALE: NOT TO SCALE



NOTES

1. RESTORATION ACTIVITIES IN THE VICINITY OF ACCESS AND STAGING AREAS WITHIN THE CONSTRUCTION LIMIT SHALL INCLUDE: REMOVAL OF NON-NATIVE VEGETATION (INVASIVE SPECIES) PRIOR TO PLANTING AND THE PLACEMENT OF SLASH.
2. SEE PAGE 11 FOR PLANT SCHEDULES.

PLANTING KEY

-  STAGING AREA PLANTING
-  LOWER ACCESS PATH PLANTING
-  UPPER ACCESS PATH PLANTING
-  LANDSLIDE PLANTING
-  UPPER STAGING AREA PLANTING



SITE RESTORATION PLAN

REFERENCE NUMBER: NWS-2020-907
 APPLICANT: City of Mercer Island
 PROPOSED PROJECT: Subbasin 42
 Watercourse Stabilization Project
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PLANT COMMUNITY	LAYER	SPECIES	COMMON NAME	PLANT SIZE AND MATERIAL TYPE	AVG. SPACING (ON-CENTER, FT.)	QTY.	NOTES
UPPER ACCESS PATHS & STAGING AREA 7,399 SQ FT	TREE	ABIES GRANDIS	GRAND FIR	TP4 (4" DIAMETER TREEPOT)	18	2	
		ACER MACROPHYLLUM	BIGLEAF MAPLE	TP4 (4" DIAMETER TREEPOT)	18	2	
		ALNUS RUBRA	RED ALDER	TP4 (4" DIAMETER TREEPOT)	18	2	
		PRUNUS ENARGINATA	BITTER CHERRY	TP4 (4" DIAMETER TREEPOT)	18	2	PLANT IN WETTER AREAS
		THUJA PLICATA	WESTERN RED CEDAR	TP4 (4" DIAMETER TREEPOT)	18	5	PLANT IN DRIER AREAS
		TSUGA HETEROPHYLLA	WESTERN HEMLOCK	TP4 (4" DIAMETER TREEPOT)	18	9	
				SUBTOTALS		22	
	SHRUB	ACER CIRCINATUM	VINE MAPLE	12-18" BARE ROOT	8	25	
		CEVALLERIA CEFASIFORMIS	INDIAN PLUM	12-18" BARE ROOT	8	33	
		RED-FLOWERING CURRANT	RED-FLOWERING CURRANT	12-18" BARE ROOT	8	12	PLANT IN CLUSTERS OF 3
		RIBES SANGUINUM	THIMBLEBERRY	12-18" BARE ROOT	8	23	PLANT IN CLUSTERS OF 3
		RUBUS PARVIFLORUS	RED ELDERBERRY	12-18" BARE ROOT	8	12	PLANT IN CLUSTERS OF 3
		SAMBUCUS RACEMOSA	SNOWBERRY	12-18" BARE ROOT	8	12	PLANT IN CLUSTERS OF 3
		SYMPHORICARPOS ALBUS	PACIFIC BLEEDING HEART	10 CUBIC INCH PLUG	4	46	PLANT IN CLUSTERS OF 5
	GROUND	DICENTRA FORMOSA	LARGELEAF AVENS	10 CUBIC INCH PLUG	4	69	PLANT IN CLUSTERS OF 5
		GEUM MACROPHYLLUM	PACIFIC WATERLEAF	10 CUBIC INCH PLUG	4	69	PLANT IN CLUSTERS OF 5
		HYDROPHYLLUM	YOUTH ON AGE	10 CUBIC INCH PLUG	4	139	PLANT IN CLUSTERS OF 5
		POLYSTICHUM MUNITUM	WESTERN SWORDFERN	10 CUBIC INCH PLUG	4	92	PLANT IN CLUSTERS OF 5
		TELLIMA GRANDIFLORA	FRINGECUP	10 CUBIC INCH PLUG	4	46	PLANT IN CLUSTERS OF 5
		TOLMIEA MENZIESII	YOUTH ON AGE	10 CUBIC INCH PLUG	4	461	PLANT IN CLUSTERS OF 5
				SUBTOTALS		600	
				TOTAL		600	

PLANT COMMUNITY	LAYER	SPECIES	COMMON NAME	PLANT SIZE AND MATERIAL TYPE	AVG. SPACING (ON-CENTER, FT)	QTY.	NOTES
LANDSLIDE	TREE	FRANGULIA PURSHIANA	CASCARA BUCKTHORN	TP4 (4" DIAMETER TREEPOT)	18	3	
951 SQ FT		ACER CIRCINATUM	VINE MAPLE	12-18" BARE ROOT	8	3	
	SHRUB	CORNUS SERICEA	REDOSIER DOGWOOD	12-18" BARE ROOT	8	5	PLANT IN CLUSTERS OF 3
		RUBUS SPECTABILIS	SALMONBERRY	12-18" BARE ROOT	8	15	PLANT IN CLUSTERS OF 3
				SUBTOTALS		18	
				TOTAL		18	

PLANT COMMUNITY	LAYER	SPECIES	COMMON NAME	PLANT SIZE AND MATERIAL TYPE	AVG. SPACING (ON-CENTER, FT)	QTY.	NOTES
TIMBER FRAMES	TREE	THUJA PLICATA	WESTERN RED CEDAR	TP4 (4" DIAMETER TREEPOT)	REFER TO PLANTING DETAIL	6	
8		TSUGA HETEROPHYLLA	WESTERN HEMLOCK	TP4 (4" DIAMETER TREEPOT)	REFER TO PLANTING DETAIL	6	
EACH		ACER CIRCINATUM	VINE MAPLE	TP4 (4" DIAMETER TREEPOT)	REFER TO PLANTING DETAIL	10	
				SUBTOTALS		22	
	SHRUB	RUBUS SPECTABILIS	SALMONBERRY	12-18" BARE ROOT	REFER TO PLANTING DETAIL	6	PLANT IN CLUSTERS OF 3
		ODONTEGMA CERASIFORMIS	INDIAN PLUM	12-18" BARE ROOT	REFER TO PLANTING DETAIL	8	PLANT IN CLUSTERS OF 3
				SUBTOTALS		14	
	GROUND	POLYSTICHUM MUNITUM	WESTERN SWORDFERN	10 CUBIC INCH PLUG	REFER TO PLANTING DETAIL	10	
				SUBTOTALS		10	
				TOTAL PER TIMBER FRAME		46	
				TOTAL		368	

PLANT COMMUNITY	LAYER	SPECIES	COMMON NAME	PLANT SIZE AND MATERIAL TYPE	AVG. SPACING (ON-CENTER, FT)	QTY.	NOTES
LOWER ACCESS PATHS & STAGING AREA	TREE	ALNUS RUBRA	RED ALDER	TP4 (4" DIAMETER TREEPOT)	18	4	
6,105 SQ FT		FRANGULIA PURSHIANA	CASCARA BUCKTHORN	TP4 (4" DIAMETER TREEPOT)	18	5	
		THUJA PLICATA	WESTERN RED CEDAR	TP4 (4" DIAMETER TREEPOT)	18	10	
				SUBTOTALS		19	
	SHRUB	ACER CIRCINATUM	VINE MAPLE	12-18" BARE ROOT	8	29	
		CORNUS SERICEA	REDOSIER DOGWOOD	12-18" BARE ROOT	8	24	PLANT IN CLUSTERS OF 3
		LONICERA INVOLUCRATA	TWINBERRY	12-18" BARE ROOT	8	19	PLANT IN CLUSTERS OF 3
		RUBUS SPECTABILIS	SALMONBERRY	12-18" BARE ROOT	8	24	PLANT IN CLUSTERS OF 3
				SUBTOTALS		96	
	GROUND	ATHYRIUM FILIX-FEMINA	COMMON LADYFERN	10 CUBIC INCH PLUG	4	95	PLANT IN CLUSTERS OF 5
		GEUM MACROPHYLLUM	LARGELEAF AVENS	10 CUBIC INCH PLUG	4	95	PLANT IN CLUSTERS OF 5
		TENUPIES	PACIFIC WATERLEAF	10 CUBIC INCH PLUG	4	95	PLANT IN CLUSTERS OF 5
		TOLMIEA MENZIESII	YOUTH ON AGE	10 CUBIC INCH PLUG	4	95	PLANT IN CLUSTERS OF 5
				SUBTOTALS		380	
				TOTAL		495	

PLANT COMMUNITY	LAYER	SPECIES	COMMON NAME	PLANT SIZE AND MATERIAL TYPE	AVG. SPACING (ON-CENTER, FT)	QTY.	NOTES
STAGING AREA	TREE	ALNUS RUBRA	RED ALDER	TP4 (4" DIAMETER TREEPOT)	18	3	
4,051 SQ FT		FRANGULIA PURSHIANA	CASCARA BUCKTHORN	TP4 (4" DIAMETER TREEPOT)	18	3	
		THUJA PLICATA	WESTERN RED CEDAR	TP4 (4" DIAMETER TREEPOT)	18	7	
				SUBTOTALS		13	
	SHRUB	ACER CIRCINATUM	VINE MAPLE	12-18" BARE ROOT	8	19	
		CORNUS SERICEA	REDOSIER DOGWOOD	12-18" BARE ROOT	8	16	PLANT IN CLUSTERS OF 3
		LONICERA INVOLUCRATA	TWINBERRY	12-18" BARE ROOT	8	13	PLANT IN CLUSTERS OF 3
		RUBUS SPECTABILIS	SALMONBERRY	12-18" BARE ROOT	8	16	PLANT IN CLUSTERS OF 3
				SUBTOTALS		64	
	GROUND	ATHYRIUM FILIX-FEMINA	COMMON LADYFERN	10 CUBIC INCH PLUG	4	63	PLANT IN CLUSTERS OF 5
		GEUM MACROPHYLLUM	LARGELEAF AVENS	10 CUBIC INCH PLUG	4	63	PLANT IN CLUSTERS OF 5
		HYDROPHYLLUM	PACIFIC WATERLEAF	10 CUBIC INCH PLUG	4	63	PLANT IN CLUSTERS OF 5
		TENUPIES	YOUTH ON AGE	10 CUBIC INCH PLUG	4	63	PLANT IN CLUSTERS OF 5
		TOLMIEA MENZIESII	YOUTH ON AGE	10 CUBIC INCH PLUG	4	63	PLANT IN CLUSTERS OF 5
				SUBTOTALS		252	
				TOTAL		329	

NOTES

- SEE PAGE 10 FOR SITE RESTORATION PLAN.