

CITY OF MERCER ISLAND

KING COUNTY

WASHINGTON



East and West Mercer Way Trenchless Culvert Replacement Project

Bid No.: 22-13

PROJECT MANUAL

April 2022

This Page Intentionally Left Blank

TABLE OF CONTENTS

NOTICES

I. Advertisement for Bids	N-1
II. Instructions to Bidders	N-2
III. Bidder's Checklist	N-11

BIDDING REQUIREMENTS

I. Non-Collusion Declaration	A-1
II. Contractor Declaration	A-2
III. Bid Form	A-3
IV. Proposal Signature Sheet	A-7
V. Bid Guaranty Bond	A-8
VI. Bidder's Qualification Certificate	A-9
VII. Work Experience Form	A-10

AGREEMENT FORMS

I. Public Works Contract	B-1
II. Performance Bond	B-11
III. Payment Bond	B-12
IV. Retainage Agreement	B-13
V. Release of Lien Form	B-14

GENERAL TERMS AND CONDITIONS (May 2020 edition)	I, II, 1-48
---	-------------

TECHNICAL SPECIFICATIONS	TS-1 -TS-32
--------------------------	-------------

APPENDIX

- A. Hydraulic Project Approval (HPA)

PLANS (Bound Separately)

NOTICES

Advertisement for Bids City of Mercer Island

Project Title: East and West Mercer Way Trenchless Culvert Replacement Project

Project Number: 22-31

Engineer's Estimated Cost: \$120,000

Sealed bids will be received electronically by the City until 2:00 PM on April 26, 2022. 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>.

Work to be performed under this contract includes, but is not limited to, furnishing all labor, equipment, materials, and tools necessary to repair, replace five (5) existing stormwater pipes by way of Cured-in-place-pipe (CIPP) trenchless method. All associated removals, traffic control, and restoration are also part of the work. The combined length of pipes, in various diameters ranging in size from 12" to 24", is approximately 387 LF. Pipe locations, sizes, materials and length are as depicted in the plans.

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.

The City of Mercer Island, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Andrea Larson, City Clerk

Published: Seattle Daily Journal of Commerce 4/7/2022, 4/15/2022

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. At the time of bid submittal, have a current certificate of registration as a contractor 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 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
- D. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3); and
- E. 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
- E. Not be disqualified or debarred or ineligible to be awarded contracts for which Federal funds have been requested or received.

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, IP Project Manager, in writing or by email to 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 <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>. If this Contract is for a project that receives Federal funds, the labor and wage and benefits standards in 29 CFR part 5 may also apply, so Bidders shall examine and be familiar with such requirements.

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:

Each Bid shall be submitted in PDF format via electronic transmission to the Public Works email address at" publicworks@mercerisland.gov. The City will not consider bids received after the time fixed for opening bids in the Advertisement for Bids. A Bid is deemed submitted as evidenced by the receipt date and time shown in the source code of the email received by the City's computer system. Contractors accept all risk of late delivery, regardless of fault. Any submittal received after the due date and time shall be deemed non-responsive and will eliminate their Bid from any further consideration. All respondents will receive an email confirmation within the next business day indicating their submittal has been successfully received.

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, including any Addenda and any other Exhibits attached thereto, 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, including any Addenda and any other Exhibits attached thereto, 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, including any Addenda and any other Exhibits attached thereto, 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, including any Addenda and any other Exhibits attached thereto, 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, including any Addenda and any other Exhibits attached thereto, 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: East and West Mercer Way Trenchless Culvert Replacement

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: East and West Mercer Way Trenchless Culvert Replacement

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: East and West Mercer Way Trenchless Culvert Replacement

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 that they will begin work within 10 calendar days of the Notice to Proceed, and 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). The Bidder further agrees they will, if necessary, accelerate the 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 achieve Final Completion within twenty (20) 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. All works shall be staged and performed from within the City's Right-of-Way area.
3. This project is to comply with Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA) #2022-4-181+01. See Appendix A.
4. The project is to comply with City of Mercer Island Utility permit and Right-of-way use permit.
5. 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- East and West Mercer Way Trenchless Culvert Replacement 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	SPCC Plan	1	LS		
4	Erosion/Water Pollution Control	1	LS		
5	Project Temporary Traffic Control	1	LS		
6	Storm Sewer CIPP 12 In. Diam.	340	LF		
7	Storm Sewer CIPP 24 In Diam.	47	LF		
8	Reinforced Pre-Liner	47	LF		
9	CCTV Inspection	10	EA		
10	Temporary Stormwater System Bypass Pumping Plan	387	LF		

Subtotal (items 1-10) = \$ _____

Sales tax at 10.1%= \$ _____

Grand Total = \$ _____

TOTAL BID AMOUNT

Grand Total (In writing) = _____ Dollars

Grand Total (In figures) = \$ _____

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

East and West Mercer Way Trenchless Culvert Replacement

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)?	_____	_____
Has the contractor received training on the requirements related to public works contracts and prevailing wage requirements pursuant to RCW 39.04.350(f) and chapter 39.12 RCW, or is the contractor otherwise exempt from this requirement by the department of labor and industries?	_____	_____
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

To be submitted within five (5) days of being requested to do so.

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			

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

AGREEMENT FORMS

CITY OF MERCER ISLAND, WASHINGTON
PUBLIC WORKS CONTRACT
FOR
East and West Mercer Way Trenchless Culvert Replacement Project

THIS PUBLIC WORKS CONTRACT ("Contract") dated [insert date agreement drafted], 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 [INSERT FULL LEGAL NAME OF CONTRACTOR], a [insert state where formed] [choose type of person or entity] ("Contractor").

A. The City desires to retain an independent contractor to furnish all labor and materials necessary to perform work at [insert address], Mercer Island, Washington ("Property"); and

B. The Contractor has the requisite skill and experience to perform such work and has submitted a proposal dated [insert date proposal received] 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 East and West Mercer Way Trenchless Culvert Replacement 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 [insert maximum value of contract in words] Dollars (\$[insert \$ amount in figures]), based on the Proposal submitted by Contractor dated [insert date proposal received] 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
ATTN: Fred Gu, CIP Project Manager
9611 SE 36th Street
Mercer Island, WA 98040

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, volunteers, and employees, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever, including attorneys' fees (hereinafter "claims"), arising out of or in connection with the performance of this Contract except for injuries and damages caused by the sole negligence of the City. However, should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.
- 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 7 shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

8. **INSURANCE**

8.1 The Contractor agrees to carry without interruption from commencement of the Contractors work through the term of the contract and for thirty (30) days after Physical Completion, unless otherwise indicated herein, 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. The City, at its discretion, may require additional types and greater limits of insurance coverage commensurate with the risk associated with the performance of the Work.

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

B. Commercial general liability insurance shall be written on a form at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations for three years following substantial completion of the Work, 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 05 09. There shall be no exclusion 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 coverage at least as broad, with limits of no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit.

C. 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.

D. 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.

- E. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until the City has granted substantial completion of the project. An installation floater may be acceptable in lieu of Builders Risk for renovation projects only if approved in writing by the City. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

- 8.2 The City shall be named as additional insured on all such insurance policies, with the exception of workers' compensation coverages. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespectively of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor. Contractor shall provide certificates of insurance and amendatory endorsements, 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. The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.
- 8.3 The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except that the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General Liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.
- 8.4 Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be

repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

8.5 Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents, and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

8.6 The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

8.7 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://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>. A copy of the applicable prevailing wage rates is 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 .

CONTRACTOR:

[INSERT FULL LEGAL NAME OF CONTRACTOR]

By: _____

[insert full legal name and title of signator]

Address:

Phone, Email:

CITY:

CITY OF MERCER ISLAND

By: _____

Jessi Bon, City Manager

Attest:

By: _____

Andrea Larson, City Clerk

Approved as to form:

By: _____

Bio Park, City Attorney

**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 _____, Project No. _____, 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 performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

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

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# _____

Agreement

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
Date _____

By _____
Contractor
Date _____

CITY OF MERCER ISLAND
9611 SE 36th Street
Mercer Island, Washington 98040

RELEASE OF LIEN FORM

PROJECT: _____

CONTRACTOR: _____

This is to certify that all debts for labor, material, equipment and other obligations arising out of the above project contract, have been fully paid and that if any lien, debt, or other obligations remain unsatisfied after all payments are made, the contractor shall refund to the owner such amounts as the owner may be compelled to pay on discharge of such liens, debts or other obligations, including all costs and reasonable engineers and attorneys fees.

Contractor's Signature

Company Name

Address

City/State/Zip

STATE OF WASHINGTON)

County of King) ss.
)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument, and acknowledged it as the _____ (position/title) of _____ (entity name) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument

Dated: _____

Signature

Printed Name

Notary Public in and for the State of

Washington residing in _____.

My commission expires: _____.

GENERAL TERMS AND CONDITIONS

**CITY OF MERCER ISLAND
GENERAL TERMS AND CONDITIONS
MAY 2020 EDITION
TABLE OF CONTENTS**

Article 1: GENERAL PROVISIONS	1
1.1 Definitions	1
1.2 Intent and Interpretation of the Documents	4
1.3 Clarification of Drawings and Detail Drawings.....	5
Article 2: CITY	5
2.1 Authority.....	5
2.2 Information Supplied by City	6
2.3 Work by City or Separate Contractors	6
Article 3: CONTRACTOR	6
3.1 Contractor Representations	6
3.2 General Duties	7
3.3 Duty to Inspect Contract Documents	7
3.4 Contractor’s Supervision and Employees	8
3.5 Subcontractors and Suppliers	8
3.6 Schedule of Working Hours	9
3.7 Record Documents	9
3.8 Cost Records	10
3.9 Maintenance and Inspection of Documents	10
3.10 Maintenance and Site Cleanup	12
3.11 Protection of Existing Structures, Equipment, Vegetation, Utilities, and Improvements	13
3.12 Permits, Laws, Regulations and Taxes	13
3.13 Patents and Royalties	14
3.14 Contractor’s Certification.....	14
3.15 Deviation from Contract	15
3.16 Operations, Material Handling, and Storage Areas	15
3.17 Contractor’s Overall Responsibility For Protection of Work, Property, and Persons	15
3.18 Protection of Persons.....	16
3.19 Safety Program	16
3.20 Archaeological and Historical Preservation	17
3.21 Water Pollution Control Requirements.....	17
3.22 Easements	17
3.23 Title VI Compliance and Assurance.....	17
Article 4: ADMINISTRATION OF THE CONTRACT	18
4.1 Time of Essence.....	18
4.2 Work Progress.....	18
4.3 Schedule of Values	18
4.4 Project Schedule.....	19
4.5 Submittals	20
4.6 Requests for Information	21
4.7 Tests, Inspections, and Access to the Work.....	22
4.8 Correction of Work or Damaged Property	23
4.9 Substitution of Products & Processes	23
4.10 Increased or Decreased Quantities	24
Article 5: CHANGES TO THE CONTRACT	25
5.1 General.....	25
5.2 Contractor’s Request for a Change Order	26
5.3 Differing Site Conditions	27
5.4 Suspension of Work.....	28
5.5 Force Majeure.....	29
5.6 Change Orders	29

5.7	City Request for a Change Proposal.....	30
Article 6: TIME AND PRICE ADJUSTMENTS		30
6.1	Change in the Contract Time	30
6.2	Change in the Contract Price	31
6.3	Method to Calculate Adjustments to Contract Price	33
6.4	Allowable Costs	35
Article 7: PAYMENT AND COMPLETION		37
7.1	Applications for Payment	37
7.2	Payments	38
7.3	Payment Withheld.....	38
7.4	Title	39
7.5	Substantial Completion	39
7.6	Final Inspection.....	40
7.7	Requirements for Final Application For Payment.....	40
7.8	Completion/Final Acceptance	40
7.9	Warranty and Guaranty	41
7.10	Prior Occupation	41
Article 8: TERMINATION		42
8.1	City's Right to Terminate Contract	42
8.2	City's Right to Stop the Work for Cause	44
Article 9: CLAIMS AND LITIGATION		44
9.1	Contractor Claims	44
9.2	Contractor's Burden of Proof on Claim	46
9.3	Litigation.....	46
Article 10: MISCELLANEOUS.....		46
10.1	Compensation, Wages, Benefits and Taxes.....	46
10.2	Prevailing Wages	47
10.3	Successors and Assigns.....	47
10.4	Third Party Agreements	47
10.5	Nonwaiver of Breach.....	47
10.6	Notice to City of Labor Disputes.....	47
10.7	Headings.....	47
10.8	Choice of Law	47
10.9	Severability	48

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.

SPECIAL PROVISIONS/TECHNICAL SPECIFICATIONS

SPECIAL PROVISIONS

Contents

INTRODUCTION TO THE TECHNICAL SPECIFICATIONS	1
HEADINGS	1
TECHNICAL SPECIFICATIONS STRUCTURE	1
DESCRIPTION OF WORK	2
DIVISION 1	4
1-01 DEFINITIONS AND TERMS	4
1-10 TEMPORARY TRAFFIC CONTROL	5
DIVISION 2	7
2-01 CLEARING, GRUBBING, AND ROADSIDE CLEANUP	7
2-11 TRIMMING AND CLEANUP	7
DIVISION 7	9
DIVISION 8	30
8-01 EROSION CONTROL AND WATER POLLUTION CONTROL	30
8-02 ROADSIDE RESTORATION	31

SPECIAL PROVISIONS

1 INTRODUCTION TO THE TECHNICAL SPECIFICATIONS

2 (August 22, 2021 WSDOT GSP)

3
4 The accompanying Plans and these Specifications and any Addenda thereto show and
5 describe the location and type of work to be performed for the City of Mercer Island
6 East and West Mercer Way Trenchless Culvert Replacement.

7
8 These Technical Specifications are intended to supplement Division 2 through Division
9 9 of the 2021 Standard Specifications for Road, Bridge, and Municipal Construction,
10 prepared by the Washington State Department of Transportation (WSDOT). Section
11 1-01 to Section 1-09 of Division 1 are deleted and replaced by the “General Terms and
12 Control” included in the project document. The entire “Temporary Traffic Control”
13 remains in effect, along with revisions and supplements provided within this Section.
14 In case of conflict, these Technical Specifications shall take precedence over the
15 Standard Specifications.

16
17 These Special Provisions are made up of both General Special Provisions (GSPs) from
18 Washington State Department of Transportation (WSDOT) and General Terms and
19 Conditions (GT&C) from the City of Mercer Island (COM), which may have project-
20 specific fill-ins; and project-specific Special Provisions. Each Provision either
21 supplements, modifies, or replaces the comparable Standard Specification, or is a new
22 Provision. The deletion, amendment, alteration, or addition to any subsection or
23 portion of the Standard Specifications is meant to pertain only to that particular portion
24 of the section, and in no way should it be interpreted that the balance of the section
25 does not apply.

26
27 The project-specific Special Provisions are not labeled as such. The GSPs and GT&Cs
28 are labeled under the headers of each GSP and GT&C, with the effective date of the
29 document and its source. For example:

30
31 *(August 2021 WSDOT GSP)*

32 *(May 2020 COM GT&C)*

33
34 Contractor shall obtain copies of these publications, at the Contractor’s own expense.
35

36 HEADINGS

37 Headings to parts, sections, forms, articles, and sub-articles are inserted for
38 convenience or reference only and shall not affect the interpretation of the contract
39 documents.

40 TECHNICAL SPECIFICATIONS STRUCTURE

SPECIAL PROVISIONS

1 The specifications noted herein are in addition to, or as a replacement for, the Standard
2 Specifications. Where sections are marked “Revised Section,” the specifications herein
3 are intended to be a revision or partial revision to the Standard Specifications section
4 noted. Where sections are marked as “New Section,” the specifications herein will be
5 an addition to the Standard Specifications section noted. Where sections are marked
6 “Supplement,” the specifications herein are to be a supplement to the Standard
7 Specifications section noted. Sections of the Standard Specifications that are not
8 modified or replaced as addressed in these Technical Specifications shall remain as
9 described in the Standard Specifications.

10 DESCRIPTION OF WORK

11 *(May 2020 COM GT&C)*

12

13 Work for this project consists of repair and replacement of existing stormwater pipes
14 and associated removals and restoration.

15

16 The work to be performed under this Contract consists of the furnishing of materials,
17 equipment, tools, labor, and other work or items included thereto (excepting any
18 materials, equipment, utilities, or service, if any specified herein to be furnished by
19 Owner or others), and performing all work as required by the Contract in accordance
20 with the Contract Plans, these Contract Provisions, and the Standard Specifications,
21 all of which are made a part hereof.

22

23 If no bid item is specified for work or work has no payment section identified, said work
24 shall be included in the various bid items.

25

26 *** * IMPORTANT - PLEASE READ * ***

27

28 These Special Provisions *supplement, add new, replace, revise, or delete* the
29 combined WSDOT Standard Specifications and Amendments. For clarification of the
30 purpose of the sections provided, these Special Provisions have the following added
31 section descriptors:

32

33 *Supplement:* Adds language to the identified section of the Standard
34 Specifications.

35 *New:* Specification section/subsection is unique to this project and
36 will not be found in the Standard Specifications.

37 *Replace:* A replacement of the entire identified section or subsection of
38 the Standard Specifications.

39 *Revise:* A revision of the identified sentence, paragraph, or table of the
40 Standard Specifications.

41 *Delete:* A deletion of an entire section or subsection of the Standard
42 Specifications

43 *{Date} WSDOT GSP:* A WSDOT General Special Provision

44 *{Date} APWA GSP:* An APWA General Special Provision.

45 *{Date} COM GT&C:* A City of Mercer Island General Terms and Conditions.

SPECIAL PROVISIONS

1 (*****): A project special provision

SPECIAL PROVISIONS

**DIVISION 1
GENERAL REQUIREMENTS**

1-01 DEFINITIONS AND TERMS

1-1 Definitions
(MAY, 2020 COM GSP)

SUPPLEMENT this Section with the following:

DD. Dates

1. Bid Opening Date

The date on which the Contracting Agency publicly opens and reads the Bids.

2. Award Date

The date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive Bidder for the Work.

3. Contract Execution Date

The date the Contracting Agency officially binds the Agency to the Contract.

4. Notice to Proceed Date

The date stated in the Notice to Proceed on which the Contract time begins.

5. Substantial Completion Date

The day the Engineer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, any remaining traffic disruptions will be rare and brief, and only minor incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains for the Physical Completion of the total Contract.

6. Physical Completion Date

The day all of the Work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date.

7. Completion Date

The day all the Work specified in the Contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the Contract and required by law must be furnished by the Contractor before establishment of this date.

8. Final Acceptance Date

The date on which the Contracting Agency accepts the Work as complete.

SPECIAL PROVISIONS

1
2
3
4
5
6

EE. "Utility." Public or private fixed improvement for the transportation of fluids, gases, power, signals, or communications and shall be understood to include tracks, overhead and underground wires, cables, pipelines, conduits, ducts, sewers, or storm drains.

7 **1-10 TEMPORARY TRAFFIC CONTROL**

8

9 **1-10.2 Traffic Control Management**

10

11 **1-10.2(1) General**

12 *(Aug 2021 WSDOT GSP)*

13

14 SUPPLEMENT this Section with the following:

15

16 Only training with WSDOT TCS card and WSDOT training curriculum is recognized
17 in the State of Washington. The Traffic Control Supervisor shall be certified by one
18 of the following:

19

20 The Northwest Laborers-Employers Training Trust
21 27055 Ohio Ave.
22 Kingston, WA 98346
23 (360) 297-3035

24

25 Evergreen Safety Council
26 401 Pontius Ave. N.
27 Seattle, WA 98109
28 1-800-521-0778 or
29 (206) 382-4090

30

31 The American Traffic Safety Services Association
32 15 Riverside Parkway, Suite 100
33 Fredericksburg, Virginia 22406-1022
34 Training Dept. Toll Free (877) 642-4637
35 Phone: (540) 368-1701

36

37 **1-10.2(2) Traffic Control Plans**

38 *(Aug 2021 WSDOT GSP)*

39

40 SUPPLEMENT this Section with the following:

41

42 The Contractor shall submit site specific traffic control plans for approval by
43 Engineer. Traffic control plans shall include pedestrian access pathways as
44 needed. Traffic control plans require a minimum of 10 working days for review.

SPECIAL PROVISIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Road closures are not allowed within this project but the City will consider contractor requested road closures under certain unforeseeable circumstances. For requested road closures, road closure plan including detours shall be submitted to the Engineer 10 working days prior to the required agency notification. If approved, 72 hour notification shall be given to the agencies noted on the City’s Road Closure Notice prior to closure of any road. For closures on residential streets longer than an 8-hr period or on arterial streets, notice shall be placed in the local newspaper 72 hours prior to the closure and shall list the location, dates, and detour route. Approval for any road closure will be at the City’s sole discretion.

During periods of work suspension, a traffic control plan shall be reviewed by the Engineer to keep the existing traveled lanes and pedestrian access open.

Lane closures will not be allowed between the hours of 7:00am and 9:00am and between 3:00pm and 6:00pm on the following streets:

East Mercer Way and West Mercer Way

1-10.4 Measurement

1-10.4(1) Lump Sum Bid for Project (No Unit Items)
(August 2, 2004 WSDOT GSP)

SUPPLEMENT this Section with the following:

The proposal contains the item “Project Temporary Traffic Control”, lump sum. The provisions of Section 1-10.4(1) shall apply.

END OF DIVISION 1

SPECIAL PROVISIONS

**DIVISION 2
EARTHWORK**

2-01 CLEARING, GRUBBING, AND ROADSIDE CLEANUP

2-01.1 Description
(August, 2021 WSDOT GSP)

SUPPLEMENT this Section with the following:

Clearing and grubbing on this project shall be performed within the following limits:

No Clearing and Grubbing this Project

2-01.2 Disposal of Usable Material and Debris

2-01.2(1) Disposal Method No. 1 - Open Burning
(August 2021 WSDOT GSP)

REPLACE this Section with the following:

Open burning will not be permitted on this project.

2-11 TRIMMING AND CLEANUP

2-11.1 Description
(August 2021 WSDOT GSP)

SUPPLEMENT this Section with the following:

Paved street surfaces, existing and new shall be thoroughly cleaned with a vacuum street sweeper upon completion of work and shall require daily cleaning as necessary to remove construction debris/materials. Contractor shall also be required to inspect daily, haul routes and, if necessary, street sweep to remove debris. Upon completion of the work, all haul routes shall be street swept.

2-11.4 Measurement
(August 2021 WSDOT GSP)

REPLACE this Section with the following:

No specific unit of measurement will be made for Trimming and Cleanup.

SPECIAL PROVISIONS

1 **2-11.5 Payment**
2 *(August 2021 WSDOT GSP)*

3
4 REPLACE this Section with the following:

5
6 Payment for Trimming and Cleanup, work shall be considered included in the Storm
7 Sewer CIPP bid item.

8
9 **END OF DIVISION 2**

10

SPECIAL PROVISIONS

**DIVISION 7
DRAINAGE STRUCTURES, STORM SEWERS, SANITARY SEWERS,
WATER MAINS, AND CONDUITS**

**7-20 CURED IN PLACE PIPE (CIPP) NEW SECTION
(*****)**

7-20.1 General

7-20.1(1) Description

This Section specifies rehabilitation of pipelines by the installation of resin-impregnated fabric liner. Contractor shall coordinate rehabilitation of mainlines, lateral interfaces, and laterals with product installers. Contractor shall ensure that resin systems are compatible with all rehabilitation products that they will contact.

CIPP installation shall be in accordance with the latest version of ASTM F1216 for Resin-Impregnated Flexible Tube (Felt Lining with Steam or Water Curing) or ASTM F2019 for Glass Reinforced Plastic (GRP) Thermosetting Resin Pipe (Fiberglass Lining with Ultraviolet Light Curing), with Supplier’s recommendations and as described below.

Neither the CIPP system, nor its installation will cause adverse effects to any of the Owner’s processes or facilities. The use of the product will not result in the formation or production of any detrimental compounds or by-products discharge to the storm sewer. The Contractor shall notify the Engineer and identify any by-products produced as a result of the installation operations, test and monitor the levels, and comply with any and all local waste discharge requirements. The Contractor will cleanup, restore existing surface conditions and structures, and repair any of the CIPP system determined to be defective. The Contractor will conduct installation operations and schedule cleanup in a manner to cause the least possible obstruction and inconvenience to traffic, pedestrians, businesses, and property owners or tenants.

7-20.1(2) Contractor Submittals

All procedures or material descriptions requiring the Engineer's approval shall be submitted not less than 10 working days prior to mobilizing or commencing any CIPP activities at the site of the work and shall include the following information:

CIPP Design - shall include:

SPECIAL PROVISIONS

- 1 1. Engineering design calculations for the thickness of lining and the
2 quantity of resin used for the CIPP needed to provide the required pipe
3 strength. These calculations shall be performed and certified by a
4 professional engineer registered in the State of Washington.
- 5 2. Pipe sizing calculations that demonstrate that the liner has been properly
6 sized to avoid the creation of wrinkles or folds.
- 7 3. Details on all lining materials and resins including:
 - 8 1. Contractor's description of all equipment and materials to be used
9 during the rehabilitation.
 - 10 2. Contractor's description of the proposed rehabilitation lining
11 methodology.
 - 12 3. Material Test reports.
 - 13 4. Felt and Fabric Tube Data
 - 14 (1) Specific Gravity (Density) of the felt fiber
 - 15 (2) Nominal void volume content in the felt
 - 16 (3) Nominal thickness of the flexible membrane material(s)
 - 17 (4) Specific Gravity (Density) of the flexible membrane
18 material(s)
 - 19 5. Resin Solution and Cured Resin Data
 - 20 1) Baseline IR Spectrum on 8 1/2 " x 11" format
 - 21 2) Specific Gravity (Density) of the liquid resin solution.
 - 22 3) Specific Gravity (Density) of the cured neat resin.
 - 23 4) Resin and catalyst ratios or proportions.
 - 24 5) A list of all other admixtures added to the resin and/or
25 catalyst.
 - 26 6) Nominal resin polymerization shrinkage.
 - 27 6. Resin/Felt Composite
 - 28 (1) Specific Gravity (Density) of the cured composite that has
29 all of the voids in the felt filled with resin.
 - 30 (2) The proper quantity (volume or weight plus the specific
31 gravity of the resin) needed to fill all of the felt voids plus
32 the targeted additional resin quantity to compensate for
33 polymerization shrinkage and migration, in a unit length of
34 each diameter and thickness of installed and cured CIPP
35 to be supplied on this project.
 - 36 (3) At time of relining, a signed copy of the wet-out sheet
37 (batch ticket) for each liner delivered to the site and
38 installed. The wet-out sheets shall certify that for each
39 length of a diameter and thickness, the information is
40 truthful and accurate. The information on the wet-out sheet
41 shall include, but is not limited to, resin identification, the
42 quantity of resin placed and retained in the felt, a nominal
43 yield calculation, catalyst and promoters used, and their
44 proportions, Fabric tube identifier, fabric tube length wet-
45 out, and the roller gap dimension.

SPECIAL PROVISIONS

- 1 4. Lubricant, provide information and data sheet proving the lubricant to be non
2 toxic and approved for use within stormwater systems.
- 3 5. Manufacturers' shipping, storage and handling recommendations for:
4 a. Fabric Tubes
5 b. Resin
6 c. Catalysts
7 d. Promoters
8 e. End Seal Materials
- 9 6. Roller Gap Dimension Calculation for each Diameter, Thickness, Flexible
10 Membrane Perimeter and Additional Resin Targeted Amount showing the
11 proper quantity of resin as submitted above in Submittal Package.
- 12 7. The Manufacturer's recommended cure schedule, showing estimated ground
13 temperatures, soil moisture content and thermal conductivity of the soil and
14 their effect on the interface temperature, and the cure schedule adjusted
15 accordingly.
- 16 8. Curing circulation system listing information such as pump size(s), hose
17 diameter(s) and number(s), flow rates, heating source information, and an
18 engineering calculation that shows that the resulting system flow rate and
19 heat source are sufficient to heat distribution from top to bottom and from end
20 to end.
- 21 9. Certified copies of all cure logs submitted with the CIPP field samples
- 22 10. Flat Plate or Restrained CIPP samples for testing
- 23 11. Manufacturer's and Assembler's certification that the installed liner materials
24 and system are in compliance with the specifications, codes, and standards
25 referenced herein.
- 26 12. Material Safety Data Sheets for resins, hardeners, catalysts, solvents, and all
27 other compounds or chemicals to be used on the job site.
- 28 13. Detailed procedures for repairing the product in the event of failure or future
29 damage. These procedures should not require specialized training and/or
30 equipment for the Owner's maintenance crews.
- 31 14. Detailed procedures for future tapping of service connections into the
32 product.

33
34 Installers Qualifications - the product Installer shall submit the following:

- 35
- 36 1. Certification showing that the installer is currently licensed by the appropriate
37 licensor to perform CIPP installation;
- 38 2. Certification of the installer's wet-out crews and field installation crews.
- 39 3. Resume of, at a minimum, their last 5 CIPP installations (Project name,
40 owner contact information, project cost and length of CIPP);
- 41 4. Letter(s) of qualification by the felt-liner manufacturer(s) and the resin
42 supplier(s) certifying the fitness of their products for use in the CIPP process,
43 stating the history of successful application of these products in the CIPP
44 process, and stating that these products have been supplied to and
45 successfully used by the installer;

SPECIAL PROVISIONS

- 1 5. Examples of the installer's forms and quality records used throughout their
2 process to demonstrate effective application of quality control methods and
3 verification checks. These forms and quality records are subject to approval
4 by the Contracting Agency.
- 5 6. Installer's Superintendent/Foreman shall submit a list of a minimum of
6 3 previous completed CIPP projects including contact names, phone
7 numbers, and year installed for storm drain and/or sewer rehabilitation
8 projects.

7-20.1(3) *Quality Assurance*

13 The Manufacturer or Assembler shall provide the following:

- 14 1. List of inspection items that should be observed and recorded. Inspection items
15 include pre-installation activities, product identification, installation procedures,
16 equipment operations, and post-installation activities.
- 17 2. Review all post-installation CCTV video inspections of the installed liner.
18 Following this review the Manufacturer's or Assembler's representative shall
19 provide certification to the Engineer ensuring that the Contractor's installation
20 meets the Manufacturer's or Assembler's requirements and will not void the
21 warranty.
22

23 The finished CIPP shall be smooth and continuous over the entire length of an
24 insertion run between two manholes/catch basins or access points and shall be free
25 from visual defects such as foreign inclusions, dry spots, pinholes, and delamination
26 and shall be free from the defects as defined in the NASSCO PACP manual 2020 or
27 latest addition including:

- 28 1. Deformations (not identified in the contractor's pre-installation CCTV)>1/2
29 inch in height.
- 30 2. Collapse.
- 31 3. Annular space between liner and host pipe.
- 32 4. Blistered lining
- 33 5. Detached liner from host pipe
- 34 6. Discolored lining
- 35 7. Defective ends of the liner
- 36 8. Delamination of the liner
- 37 9. Resin Slugs in liner
- 38 10. Wrinkled or folds in the finished liner greater than 5 percent of the pipe
39 diameter
- 40 11. Surface Damage, including but not limited to gouges, tears etc
- 41 12. Holes, including but not limited to pinholes, gouges etc
- 42 13. Other discontinuities in the CIPP liner which exceed 1/2 inch in height
- 43 14. Indications that the liner might not be fully cured
- 44
- 45
- 46

SPECIAL PROVISIONS

1 If a defect in the lining is found in post-installation CCTV that the Contractor disputes,
2 the Contractor shall reinspect the pipe with a method agreeable to both parties to
3 measure the lining defect at the contractor's cost.
4

5 All repair work for identified defects will be at the Contractor's expense. All Methods
6 of repair shall be proposed by Contractor and submitted to the Engineer for review.
7

8 **7-20.1(4) Warranty**

9

10 The Contractor shall warrant each storm sewer lined with the specified product
11 against defects in materials, surface preparation, lining application, and
12 workmanship for a period of 12 months from the date of final acceptance of the
13 project. The Contractor shall, within one month of written notice thereof, repair
14 defects in materials or workmanship that may develop during said 12-month period.
15 Defects shall be defined as: visible leakage of groundwater through the CIPP
16 system, delamination of any portion of the CIPP system as visible from CCTV
17 inspection, or separation of any part of the CIPP system from the host pipe to the
18 extent that the CIPP system inside diameter in the separated area is 90 percent or
19 less of the completed CIPP system inside diameter. The Contractor shall also repair
20 any damage to other work; damage to storm system components, damages to
21 buildings, houses or environmental damage caused by the backup of the storm
22 sewer because of the failure of the lining system; or repairing of the same; at the
23 expense of Contractor; and without cost to the Owner.
24

25 Repairs shall include removal of the existing liner and re-lining if possible, or
26 excavation and replacement of the section of pipe where the defect occurs.
27

28 **7-20.1(5) Repair Plan**

29

30 The Contractor shall submit a Repair Plan to the Engineer for approval prior to
31 starting construction. The Repair Plan shall outline the specific repair or replacement
32 procedure for potential defects that may occur in newly installed CIPP. Repair and
33 replacement procedures shall be in accordance with the recommendations of the CIPP
34 system manufacturer.
35

36 **7-20.2 Materials**

37

38 **7-20.2(1) Cured in Place Pipe Liner**

39

40 The CIPP shall consist of one or more layers of flexible needled felt or an equivalent
41 non-woven material, or a combination of non-woven and woven materials capable
42 of carrying resin, withstanding installation pressures.
43

- 44 1. The CIPP will be continuous in length and the wall thickness shall be
45 uniform. No overlapping sections shall be allowed in the circumference or
46 the length of the liner. Except for CIPP spot repairs.

SPECIAL PROVISIONS

7-20.2(2) Resin

The resin shall be a general purpose, unsaturated thermosetting, polyester, vinylester, or epoxy resin compatible with the fabric liner material, host pipe material, and other rehabilitation products that the resin may contact.

The resin shall be able to cure in the presence or absence of water, and a catalyst system compatible with the insertion process.

Resin shall form no excessive bubbling or wrinkling during lining.

Resin shall be manufactured with materials from a consistent supplier. All materials of similar type shall be from a single source for the entire project.

The resin shall have no fillers added for the sole purpose of increasing the resin volume.

The resin shall not contain styrene or other regulated chemicals not allowed to be discharged into the storm sewer.

Resin shall be approved by manufacturer for use within stormwater systems.

Resin for Ultraviolet Curing Application: The resin system for the cure-in-place pipe process using ultraviolet curing will be manufactured in accordance with ASTM F2019. Resin will have the following characteristics:

- a) The resin will be chemically resistant polyester or vinyl ester thermoset (and catalyst system compatible with UV curing installation process. A photo-inhibitor system must be added to the resin prior to impregnation. The initiator system of the resin will be optimized to the output of the ultraviolet curing lights.
- b) When cured, the resin will have a flexural strength of not less than 6,500 psi (ASTM D790).
- c) When cured, the resin will have a flexural modulus (short term) of not less than 725,000 psi (ASTM D790).
- d) When cured, the resin will have a tensile strength of not less than 9,000 psi (ASTM D3039, D368)
- e) The CIPP resin will be compatible with the liner fabric, foils, and host pipe materials.
- f) The resin will form no excessive bubbling or wrinkling during lining.
- g) The resin will be manufactured with materials from a consistent supplier. All materials of similar type will be from a single source for the entire project.
- h) The resin will have no fillers added for the sole purpose of increasing the resin volume. Resin will include no more than 5% filler by volume for the purpose of modifying resin viscosity, heat transfer characteristics, or flexural modulus of a cured liner.

SPECIAL PROVISIONS

1
2 Resin for Steam or Water Curing Application: The resin system for the cure-in-
3 place pipe process using steam or water curing shall be manufactured in
4 accordance with ASTM F1216. Resin will have the following characteristics:
5 a) The resin shall be thermosetting, and either polyester, vinyl ester, or epoxy
6 based.
7 b) When cured, the resin shall have a flexural strength of not less than 4,500
8 psi (ASTM D790).
9 c) When cured, the resin shall have a flexural modulus (short term) of not less
10 than 250,000 psi (ASTM D790).
11 d) When cured, the resin shall have a tensile strength of not less than 3,000
12 psi (ASTM D638).
13 e) The resin shall be able to cure in the presence of water.
14 f) The resin initiation temperature for curing should be less than 180 degrees
15 F.
16 g) The resin color shall be in contrast to the color of the liner fabric to assist in
17 visual inspection.
18 h) The CIPP resin shall be compatible with the liner fabric, liner coating, other
19 rehabilitation systems it may contact, and the host pipe materials.
20 i) The resin shall form no excessive bubbling or wrinkling during lining.
21 j) The resin shall be manufactured with materials from a consistent supplier.
22 All materials of a similar type shall be from a single source for the entire
23 project.
24 k) The resin shall have no fillers added for the sole purpose of increasing the
25 resin volume. Resin shall include no more than 5% filler by volume for the
26 purpose of modifying resin viscosity, heat transfer characteristics, or flexural
27 modulus of a cured liner.

31 7-20.3 Construction Requirements

33 7-20.3(1) Preparation

34
35 Make all necessary provisions to ensure service conditions and structural conditions
36 of the host pipe are suitable for installation and warranty of the liner. Provisions shall
37 include, but are not limited to temporary bypassing, cleaning, removal of
38 obstructions, CCTV inspection and correction of structural defects.
39

40 Temporary Stormwater System Bypass Pumping: Shall meet the requirements of
41 section 7-23.
42

43 Pipe Verification: Prior to ordering the materials for CIPP, the Contractor shall
44 confirm the length and inside minimum and maximum diameter of the pipe. The
45 contractor shall also confirm that there is adequate access to the pipe to be lined
46 and adequate staging area.

SPECIAL PROVISIONS

1
2 Cleaning: Clean and prepare pipe per Manufacturer's or Assembler's requirements.
3 At a minimum, the Contractor shall remove all sediment, debris, and other materials
4 from the host pipe, including roots, mineral deposits, protruding laterals, rolled
5 gaskets, or other objects protruding into the pipe, accessible internally with a remote
6 controlled cutter. Precautions shall be taken to ensure that the cleaning operations
7 will not cause any: 1) damage to the host pipe, 2) damage or flooding to public and/or
8 private property or 3) debris and roots flushed downstream. All debris shall be
9 properly disposed off-site. If cleaning cannot be completed from one manhole/catch
10 basin the equipment shall be moved and set up at the other manhole, with the
11 exception of Culvert B where only upstream CB is accessible due to rights of way
12 limitation, and cleaning shall be re-attempted. If three (3) attempted cleaning passes
13 fail to clear the entire pipeline section, it shall be considered that a pipe obstruction
14 exists. Efforts to clean the lines shall be temporarily suspended and the Contractor
15 shall notify the Engineer. Removal of the Pipe Obstruction, when authorized by the
16 Engineer, shall be by Minor Changes.

17
18 Lateral Pipe Cleaning: The Contractor shall remove all sediment, debris and other
19 materials from the lateral pipe of Site G, including roots, mineral deposits, rolled
20 gaskets, or other objects in the lateral pipe, accessible internally with a remote
21 controlled cutter. Precautions shall be taken to ensure that the cleaning operations
22 will not cause any: 1) damage to the lateral and host pipe, 2) damage or flooding to
23 public and/or private property or 3) debris and roots flushed downstream. All debris
24 and roots shall be properly disposed off-site. The cost of the lateral pipe cleaning for
25 Site G will be included in the cost of CIPP installation from Section 7-20.3(2).

26
27 Pre-CCTV Inspection: After cleaning and prior to liner installation, the contractor
28 shall conduct a closed circuit television (CCTV) inspection that shall meet the
29 requirements of section 7-22 of the entire pipeline length to assure that the pipe is
30 clean, and existing pipe conditions are acceptable for lining. The interior of the pipe
31 shall be carefully inspected to determine the location of any conditions that may
32 prevent proper installation of the liner, and it shall be noted so that the condition(s)
33 can be corrected.

34
35 Removal of Obstructions to Access: At the contractor's option, obstructions that limit
36 access to the pipe to be lined can be removed. These obstructions can be storm
37 drain pipe ends protruding within the catch basin, frames/risers that are offset or
38 rotated in relation to the pipe, or any portion of a structure or other existing features
39 requiring removal for CIPP access. Protruding storm drains to be removed shall be
40 cut/ground the minimum amount needed to allow CIPP access to the targeted pipe
41 and then grouted between the pipe wall and structure to prevent groundwater
42 infiltration. The contractor shall be responsible to restore any facilities (storm
43 structures, paving, curb and gutter, sidewalk, landscaping etc) removed or damaged
44 during removal of obstructions to access.

45

SPECIAL PROVISIONS

1 Manholes and Catch basins: Protect all manholes and catch basins to withstand
2 forces generated by the equipment while installing the liner.

3
4 Resin Loss: Contractor shall implement measures to prevent any uncured resin from
5 entering the downstream storm drain system. These measures shall be reviewed
6 and approved by the Engineer prior to installation of the CIPP liner. At a minimum
7 these measures shall include placing an impermeable sheet immediately upstream
8 and downstream of the pipe to be lined prior to liner insertion to capture any possible
9 raw resin spillage during installation and shall remove and properly dispose of any
10 waste materials.

11 12 13 **7-20.3(2) Installation**

14
15 Pre-Liner Installation:

16 The Contractor shall install a pre-liner prior to the liner installation in the locations
17 specified in the construction plan. Pre-liner installations will be paid using the bid
18 item "Reinforced Pre-Liner".

19
20 The pre-liner tube shall be a fiber reinforced polyethylene sheet formed into a tube,
21 be continuous throughout the host pipe, from maintenance hole to maintenance
22 hole, and sized to fit the host pipe. The diameter of the pre-liner shall not exceed the
23 host pipe diameter by more than 10%. The installed pre-liner shall not shift or move
24 during liner installation.

25
26 Resin Impregnation:

- 27
28 1. Vacuum impregnate the liner fabric with resin under controlled conditions.
29
30 2. Use a volume of resin sufficient to fill all voids in the tube material at nominal
31 thickness and diameter. Volume should be adjusted for the change in resin due
32 to polymerization and to allow for any migration of resin into the cracks and
33 joints of the host pipe, per Manufacturer's or Assembler's recommendations.
34
35 3. The resin impregnated tube shall be stored in such a manner that it will not be
36 damaged, exposed to direct sunlight, exposed to any curing environment, or
37 result in a public safety hazard. All materials shall be subject to inspection and
38 review prior to installation.
39
40 4. Resins that exceed shelf life shall not be used and shall be disposed of in
41 compliance with local, state, and Federal law.

42
43 Liner Installation:

- 44
45 1. Inversion Method
46

SPECIAL PROVISIONS

- 1 • The impregnated tube shall be inserted through an existing manhole or other
2 access point by means of the Manufacturer's or Assembler's recommended
3 installation process. The application of a hydrostatic head, compressed air,
4 or other means shall fully extend the liner to the next designated manhole or
5 termination point and inflate and firmly adhere the liner to the pipe wall.
- 6 • The liner shall be installed at a rate less than 10 feet per minute at all times.
- 7 • Liner shall not be installed through intermediate manholes unless specifically
8 requested in advance in writing and approved by the Engineer.
- 9 • Liner installation shall be in accordance with ASTM F1216.
- 10 • When inversion is by hydrostatic head, the Contractor shall use methods
11 that control the installation rate, accounting for the increase in hydrostatic
12 head in pipes that have significant elevation change.
- 13 • Inversion method shall be used for sites that have been indicated for blind
14 shot. Site B by 6230 E Mercer Way is the ONLY site that requires blind shot.
 - 15 ○ For blind shot site, the product shall be inserted through an existing
16 maintenance hole or other access point by means of the Supplier's
17 recommended installation process and in accordance with ASTM F1216.
18 The application of a hydrostatic head or compressed air shall fully invert
19 the liner to the next designated termination point, fully inflate the liner,
20 and firmly hold the liner tight to the host pipe wall in accordance with
21 ASTM F1216, Section 7.4.
 - 22 ○ The rate of the product installation shall not exceed the maximum rate
23 recommended by the Supplier and/or Manufacturer.

2. Pull/Winch Method

- 26 • The impregnated tube shall be pulled into place within the host pipe with the
27 aid of a power winch that is equipped with a device to monitor the force and
28 prevent excessive tension and tube elongation.
- 29 • The maximum allowable longitudinal elongation, or stretch, of the material
30 shall be one (1) percent. The longitudinal stretch of the tube shall be gauged
31 by comparing marker on the fully inserted tube to the actual length of pipe
32 being rehabilitated.
- 33 • The Contractor shall use a flexible and impermeable calibration hose to
34 inflate the tube. The calibration hose may or may not remain in the complete
35 installation. Hose materials remaining in the installation shall be compatible
36 with the resin system used, shall bond permanently with the tube, and shall
37 be translucent to facilitate post-installation inspection. Hose materials that
38 are to be removed after curing shall be of non-bonding material.
- 39 • Liner installation shall be in accordance with ASTM F2019.

40
41
42 3. Existing storm sewers to be lined may be located on steep slopes. The impact
43 of the slope and grade change shall be accounted for in the design and
44 installation of the liner.

45
46 4.

SPECIAL PROVISIONS

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
 - 8
 - 9
 - 10
 - 11
 - 12
 - 13
 - 14
 - 15
 - 16
 - 17
 - 18
 - 19
 - 20
 - 21
 - 22
 - 23
 - 24
 - 25
 - 26
 - 27
 - 28
 - 29
 - 30
 - 31
 - 32
 - 33
 - 34
 - 35
 - 36
 - 37
 - 38
 - 39
 - 40
 - 41
 - 42
 - 43
 - 44
 - 45
 - 46
2. The heat source shall be fitted with continuous monitoring thermocouples to measure and record the temperature of the incoming and outgoing water, steam, and/or air supply. Water, steam, or air temperature during the cure period shall meet the requirements of the resin Manufacturer or Assembler as measured and recorded at the heat source inflow and outflow return lines.
 3. Provide standby equipment to maintain the heat source supply. The temperature during the cure shall not be less than the minimum allowable per Manufacturer's requirements at the boundary between the pipe wall and the liner unless otherwise directed by the Manufacturer or Assembler to meet resin system requirements.
 4. Temperature shall be maintained during the curing period as recommended by the resin Manufacturer or Assembler, and shall follow the heating schedule supplied by the Manufacturer or Assembler.
 5. A data logger shall record temperature, pressure, and time during activation, heating, and curing.
 6. Under no circumstances shall the circulating hot water, air, and/or steam from the lined section be dumped onto ground surface or streets; or into catch basin, manholes, storm drains. Contractor shall collect and properly dispose the curing condensate off-site and provide documentation from the receiving facility that the curing condensate was properly disposed off.

Cool Down:

1. Cool the liner down to temperature specified by Manufacturer or Assembler following the cure period for duration specified by Manufacturer or Assembler, prior to relieving static head.
2. Care shall be taken to ensure that a vacuum is not induced which could damage the new CIPP during the release of head on the new CIPP.
3. A data logger shall record temperature, pressure, and time during cool down.

Rinse:

1. The Contractor shall thoroughly rinse the cured lined pipe with clean water and capture and properly dispose of rinse water prior to re-introducing flow. The contractor shall provide documentation from the receiving facility that the rinse water was properly disposed off

SPECIAL PROVISIONS

1 Sealing at the Stormwater Pipe and Manholes/Catch Basin:
2

3 1. To prevent water movement between the host pipe and liner, contractor shall
4 provide a hydrophilic end seal at both the upstream and downstream ends of the
5 rehabilitated segments at the maintenance hole/Catch Basin. The seals will be
6 watertight. Seals will be installed within 2 feet of all Maintenance hole/Catch Basin
7 channel entrances or exit points to be lined. No water shall be able to migrate
8 between the CIPP and the host pipe, otherwise the CIPP shall be considered
9 defective and shall be repaired or replaced at the Contractor's expense.
10

11 12 **7-20.3(3) Testing**

13
14 Material Testing:

- 15
16 1. Contractor shall provide flat plate samples as per ASTM F1216 and F2019. The
17 sample will be large enough to allow for the following:
18 a) A minimum of five specimens for flexural testing per ASTM D790. Tests
19 will be conducted in accordance with ASTM D790, D3567 and D5813.
20 b) For UV Cured Systems: One specimen to allow circumferential (hoop)
21 directions of the Fiberglass reinforcement, at least 2-inches wide (axial
22 direction of the liner, along the length) to test a representative amount of
23 fibers if glass roving mats are used. The samples are to be tested in a
24 curved beam configuration where the minimum beam width is 2-inches, in
25 accordance with ASTM F2019.
26 c) One flat plate sample per CIPP installation of adequate size to allow the
27 above testing will be required. If more than one section of mainline pipe
28 was lined in one installation, one flat plate sample will be sufficient. Testing
29 of the samples will be performed by the Owner approved Materials Testing
30 Lab.
31 d) All samples will be clearly marked with the location, date, diameter, and
32 wall thickness. Samples will be furnished to the Engineer within 24 hours of
33 installation.
34
35 2. The Contractor shall be required, at no expense to the Owner, to replace or
36 repair any CIPP liners failing to pass flexural and wall thickness testing. All
37 CIPP installation procedures and materials will be approved by the Supplier and
38 Engineer.
39

40 Field Testing:

41 Low Pressure Air Test: Mainlines without service connections shall be low pressure
42 air tested in accordance with Section 7-17.3(2)F or the Standard Specifications.
43

44 CCTV Inspection:

SPECIAL PROVISIONS

1 The post-installation CCTV inspection video files and Inspection Log reports shall
2 meet the requirements of section 7-22. The installed liner shall meet the
3 requirements of section 7-20.1(3).
4

Clean Up and Restoration:

5
6 The Contractor shall maintain all project sites in a neat and orderly condition
7 throughout the construction period.
8

9 On or before the physical completion date, the Contractor shall clean and remove
10 from the project site all surplus and discarded materials, temporary structures, and
11 debris of any kind. The project site will be left in a neat and orderly condition, similar
12 or equal to that prior to construction.
13

As-Built Records:

14
15 An as-built record of CIPP installation must be submitted to the City of Mercer Island
16 Engineer within two weeks of the site repairs and television inspection. At a
17 minimum, the as-built records will include the following:

- 18 1. The start and completion dates of the CIPP installations;
- 19 2. The length of pipe(s) repaired;
- 20 3. Pipe size;
- 21 4. The location of the repairs in relation to either the Upstream Catch Basin or
22 Downstream Catch Basin;
- 23 5. Type and thickness of liner installed;
- 24 6. The approximate depth of the repairs;
- 25 7. Any unusual circumstances of repairs;
- 26 8. Address of repairs;
- 27 9. Type of Liner (Fiberglass, felt or other);
- 28 10. Physical properties of the installed CIPP including thickness and short-term
29 flexural modulus of elasticity
30
31

7-20.4 Measurement

32
33
34 The length of Storm Sewer CIPP liner will be the number of linear feet of completed
35 installation measured along the invert of the existing pipe from end-to-end.
36

37 The length of Reinforced Pre-Liner will be the number of linear feet of completed
38 installation measured along the invert of the existing pipe from end-to-end.
39
40
41

7-20.5 Payment

42
43
44 Payment will be made in accordance with Section 1-04.1 for each of the following
45 bid items that are included in the Proposal:
46

SPECIAL PROVISIONS

- 1 "Storm Sewer CIPP 12 In. Diam.", per linear foot.
- 2 "Storm Sewer CIPP 24 In. Diam.", per linear foot.
- 3 "Reinforced Pre-Liner", per linear foot.

4

5 The unit Contract price per linear foot for storm sewer CIPP shall be full pay for all

6 Work to furnish and install the CIPP in the existing storm sewer pipe including

7 contractor submittals, roadside restoration, removal of access obstructions or

8 intrusions and associated restoration (not including removal of pipe obstructions,

9 point repairs, CCTV inspection, bypass pumping, and project temporary traffic

10 control), preparation, installation, and testing, of the storm drain.

- 11
- 12
- 13
- 14
- 15
- 16

SPECIAL PROVISIONS

7-22 CCTV INSPECTION
(***)**

NEW SECTION

7-22.1 General

7-22.1(1) Description

This specification covers the interior inspection of storm drain with a remotely controlled CCTV (Closed Circuit Television) camera.

7-22.1(2) Contractor Submittals

1. CCTV Inspection submittals shall include:

a. For each pipe to be repaired - Pre- and post-installation CCTV inspection video files and Inspection Log reports shall be submitted on DVD-R disc. The Video file format for all CCTV inspections submitted over the course of the project shall be MPEG. No other file formats will be accepted unless approved by the Engineer.

b. The CCTV Inspection Video of each pipe shall include the following:

i. Continuous Display - The size and position of the data display shall be such as not to interfere with the main subject of the picture and centered on the viewing screen with white lettering against a black background. During the survey of the pipe, following minimum information shall be continually displayed

- o Date of Inspection
- o Upstream and downstream catch basin numbers (if applicable)
- o Pipe dimension in inches
- o Current distance along the mainline

ii. Video

- o The video of each single segment of pipe shall be continuous between structures.
- o The video shall pause forward movement, inspect and identify each relevant defect in the pipe segment. All continuous defects shall incorporate a start and finish abbreviation in the log report.

iii. Audio

- o Date of Inspection
- o Verbal confirmation of upstream and downstream catch basin numbers
- o Verbal description of pipe size and material
- o Verbal description of setup (Normal or Reverse Flow)
- o Verbal description and location of defects
- o Verbal description and location of lateral connections (if any)

SPECIAL PROVISIONS

1
2 c. The Inspection Log Report shall be in PDF format and include the following
3 information:

- 4 o Date of Inspection
- 5 o Upstream and downstream catch basin numbers
- 6 o Street Location
- 7 o Setup (Normal or Reverse Flow)
- 8 o Pipe Size and Material
- 9 o Location and description of defects with photographs of each
10 defect.
- 11 o Confirmation of ability or inability to rehabilitate the subject storm
12 sewer main segment.
- 13 o The post-work NASSCO rating of the repaired/replaced/relined
14 pipe

15 16 **7-22.2 Equipment**

17 18 **7-22.2(1) Camera Equipment**

19 The camera shall be a 360-degree radial view color television camera (also known
20 as "pan and tilt") with a mechanical footage counter calibrated to indicate video
21 footage consistent with distance traveled in the pipe. Footage shall be zeroed at
22 centerline structure (maintenance hole, vault, etc.) where the video begins and
23 footage shall increase as it travels forward, and decrease when backward camera
24 movement is required. Footage shall be displayed on the video recording and be
25 mentioned on the audio portion (see "audio commentary on recording"). Correct
26 adjustment of the recording apparatus and monitor shall be demonstrated by use
27 of the test video or other device approved by the Engineer. Satisfactory
28 performance of the camera shall be demonstrated by the recording of the
29 appropriate test device at the commencement of each day for a minimum period of
30 30 seconds [over a minimum of fifteen feet].

31 32 **7-22.2(2) Light Source**

33 The camera shall have a light source providing adequate illumination to clearly
34 identify invert, crown, joints, sides, connections, defects in the pipe and
35 infiltration/exfiltration. Illumination shall be capable of providing adequate
36 illumination to at least 15 feet in front of the camera.

37 38 **7-22.2(3) Camera travel in the pipe**

39 All mainline inspections shall be from the downstream MH (DSMH) to the upstream
40 MH (USMH). The camera shall be positioned to reduce the risk of picture distortion.
41 In circular pipes the camera lens head shall be positioned centrally within the pipe.
42 The camera shall travel along pipe invert to provide the best view of the crown,
43 invert, connections and sides of the pipe, and shall travel at a speed no faster than
44 25 feet per minute.

SPECIAL PROVISIONS

1 Audio commentary on recording: Commentary shall be objective and shall be
2 based on PACP defined assessment conditions. Audio shall be intelligible and shall
3 be as free from interference and background noise as can reasonably be done.
4 Subjective comments (such as “the fault of”, “caused by”, and opinion, etc.) shall
5 not be used. Comment shall include the footage location of the comment, each
6 connection, the starting and ending structure, indicated defects, areas of
7 infiltration/exfiltration, open joints, outfall, and other features as may be necessary.
8
9

10 **7-22.3 CCTV Reinspection**

11
12 Should CCTV inspection of a repaired pipe reveal defective work, the Contractor
13 shall, upon written notice from the Engineer, correct said defects. An additional
14 CCTV inspection (“reinspection”) shall then be taken of the corrected pipe run to
15 verify the corrected pipe meets Specifications. The audio portion on this recording
16 shall indicate the same information as specified in this section also stating “this is
17 an additional television inspection to verify corrections at ___ footage location”. The
18 Contractor shall be responsible for the CCTV reinspection cost.
19

20
21 **7-22.4 Measurement**

22
23 CCTV inspection, will be measured by each end-to-end pipe segment inspected.
24 Pre-installation and post-installation CCTV inspections are measured separately.
25

26
27
28 **7-22.5 Payment**

29
30 "CCTV Inspection", EA
31

32 The unit Contract price per each for storm sewer pipe shall include full pay for all
33 Work to furnish, set up equipment, conduct CCTV inspection, clean up, removal of
34 equipment, providing the submittal documents (DVD, Inspection Log Reports etc.)
35
36
37

SPECIAL PROVISIONS

7-23 TEMPORARY STORMWATER SYSTEM BYPASS PUMPING

NEW SECTION

(*****)

7-23.1 General

7-23.1(1) Description

This specification covers the basic requirements for installing and maintaining a temporary stormwater system bypass pumping system during the repair of a storm drain.

7-23.1(2) Contractor Submittals

- 1. The Temporary Stormwater System Bypass Pumping Plan submittal shall include:
 - a. A written proposal for each site showing the following:
 - i. The upstream location of where the existing flow will be collected.
 - ii. The downstream location where the existing flow will be discharged.
 - iii. Proposed location of the hoses and how they will take into account vehicle and pedestrian traffic/access to adjacent properties.
 - iv. List of all equipment to be used

The Engineer's review shall not relieve the Contractor of its responsibilities or of any public liability for spills under this Contract.

7-23.2 Materials – Not Used

7-23.3 Construction Requirements

The Contractor shall be responsible for designing, providing, installing and operating equipment to implement adequate flow bypass systems and shall at all times manage stormwater flows in a manner that averts backups, overflows, spills or any other incident that harms the environment or causes property damage. Unless authorized in advance by the Inspector, temporary mechanical flow bypassing equipment (pumps) shall only be in operation during periods when the Contractor is present on the work site. Power for the flow bypass systems shall be provided by the Contractor.

7-23.4 Measurement

Temporary Stormwater System Bypass Pumping Plan will be measured as linear foot of culvert bypassed.

7-23.5 Payment

SPECIAL PROVISIONS

1 "Temporary Stormwater System Bypass Pumping Plan", per linear foot
2
3 The unit Contract price for the Temporary Stormwater System Bypass Pumping
4 Plans shall include full pay for all Work to furnish, set up equipment, bypass
5 stormwater, clean up, removal of equipment and providing the submittal
6 documents.

7
8 **END DIVISION 7**
9

SPECIAL PROVISIONS

1 -The Contractor shall keep daily inspection records of all erosion control measures
2 and practices. Daily inspection records shall, at a minimum, contain the date,
3 location, erosion control measure in place, adjustments/additions/removals, areas
4 of concern and response to such concern.
5

6
7 **8-01.4 Measurement**

8
9 (*****)

10
11 SUPPLEMENT this Section with the following:

12
13 No specific unit of measurement will apply for the bid item "Erosion/Water Pollution
14 Control", per lump sum.
15

16
17 **8-01.5 Payment**

18 (*****)

19
20 SUPPLEMENT this Section with the following:

21
22 "Erosion/Water Pollution Control" shall be per lump sum.
23

24 The lump sum price for "Erosion/Water Pollution Control" shall include full
25 compensation for all labor, materials, tools, equipment, and incidentals necessary to
26 satisfactorily complete the work as defined in the plans, and specifications, including
27 preparation of the TESC Plans and maintenance and removal of erosion and water
28 pollution control devices.
29

30 **8-02 ROADSIDE RESTORATION**

31
32 **8-02.3 Construction Requirements**

33
34 **8-02.3(1) Responsibility During Construction**
35 *(August 2021 WSDOT GSP)*
36

37 SUPPLEMENT this Section with the following:

38
39 Throughout planting operations, the Contractor shall keep the premises clean, free
40 of excess soils, plants, and other materials, including refuse and debris, resulting
41 from the Contractor's work. At the end of each work day, and as each planting area
42 is completed, it shall be neatly dressed, and all surrounding walks and paved areas
43 shall be swept to remove soil and plant debris. At the conclusion of work, the
44 Contractor shall remove surplus soils, materials, and debris from the construction
45 site.

SPECIAL PROVISIONS

1
2
3
4
5
6
7
8

END OF DIVISION 8

APPENDIX



HYDRAULIC PROJECT APPROVAL

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

Issued Date: March 21, 2022
Project End Date: March 20, 2027

Permit Number: 2022-4-181+01
FPA/Public Notice Number: N/A
Application ID: 26971

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

Project Name: East and West Mercer Way Culvert Replacement

Project Description: Replace existing cross culverts under roadway with trenchless Cure-in-place pipe (CIPP), i.e.. rehabilitation of pipelines by the installation of resin-impregnated fabric line.

PROVISIONS

1. This STANDARD Hydraulic Project Approval (HPA) is issued for:
 - A. Repairs to four (4) existing water crossing structures, to include;
 - i. Slip-lining using cure-in-place pipe (CIPP) lining of the existing culverts with the following dimensions:
 - a. 61 linear feet of the 12-inch diameter Culvert D;
 - b. 46 linear feet of the 24-inch diameter Culvert E;
 - c. 35 linear feet of the 12-inch diameter Culvert F;
 - AND;
 - d. 167 linear feet of the 12-inch diameter Culvert G;
 - B. Temporary stormwater bypass pumping of each of the four (4) water crossing structures.
2. TIMING - PLANS - INVASIVE SPECIES CONTROL
3. TIMING LIMITATION: You may begin the project immediately and must complete project activities by March 20, 2027.
4. 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, entitled, "HPA application drawing set_ East and West Mercer Way Culvert Replacement.pdf," dated December 2, 2021, revised February 15, 2022, and all supporting documents and communications uploaded to the Aquatic Protection Permitting System (APPS) project file; except as modified by this HPA. You must have a copy of these plans available on site during all phases of the project.
5. INVASIVE SPECIES CONTROL: Follow Level 1 Decontamination protocol for low risk locations. Thoroughly remove visible dirt and organic 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. Properly dispose of any water and chemicals used to clean gear and equipment. For contaminated or high risk sites please refer to the Level 2 Decontamination protocol. You can find this and additional information in the Washington Department of Fish and Wildlife's Invasive Species Management Protocols (November 2012), available online at <http://wdfw.wa.gov/publications/01490/wdfw01490.pdf>.
6. NOTIFICATIONS
7. PRE- AND POST-CONSTRUCTION NOTIFICATION: You, your agent, or contractor must contact the Washington Department of Fish and Wildlife by e-mail at HPAapplications@dfw.wa.gov; mail to Post Office Box 43234,



HYDRAULIC PROJECT APPROVAL

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

Issued Date: March 21, 2022

Permit Number: 2022-4-181+01

Project End Date: March 20, 2027

FPA/Public Notice Number: N/A

Application ID: 26971

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. The Washington Department of Fish and Wildlife may conduct inspections during and after construction; however, the Washington Department of Fish and Wildlife will notify you or your agent before conducting the inspection.

8. **PHOTOGRAPHS:** You, your agent, or contractor must take photographs of the job site 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 Washington Department of Fish and Wildlife at Post Office Box 43234, Olympia, Washington 98504-3234 within 30-days after the work is completed.

9. **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 the Washington Department of Fish and Wildlife 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 the Washington Department of Fish and Wildlife gives approval. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

10. STAGING, JOB SITE ACCESS, AND EQUIPMENT

11. 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.

12. Check equipment daily for leaks and complete any required repairs in an upland location before using the equipment in or near the water.

13. Use environmentally acceptable lubricants composed of biodegradable base oils such as vegetable oils, synthetic esters, and polyalkylene glycols in equipment operated in or near the water.

14. Use existing roadways or travel paths for site access.

15. 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 pre-project location before leaving the job site.

16. This Hydraulic Project Approval does not authorize the removal of riparian zone vegetation.

17. Equipment used for this project may operate waterward of the ordinary high water line, provided the drive mechanisms (wheels, tracks, tires, etc.) do not enter or operate waterward of the ordinary high water line.

18. CONSTRUCTION-RELATED SEDIMENT, EROSION AND POLLUTION CONTAINMENT

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

20. Ensure that large plumes of silt-laden water are not released into the stream and beyond the limits of the immediate work area.

21. 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.

22. 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.

23. 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.

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



HYDRAULIC PROJECT APPROVAL

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

Issued Date: March 21, 2022

Permit Number: 2022-4-181+01

Project End Date: March 20, 2027

FPA/Public Notice Number: N/A

Application ID: 26971

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

25. Do not allow any contaminants, cure water, curing steam condensation, wash water, or waste to be disposed of into waters of the state. All waste waters must be collected and properly disposed in approved off-site facilities.

26. CONSTRUCTION MATERIALS

27. 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.

28. IN-WATER WORK AREA ISOLATION USING A TEMPORARY BYPASS

29. Isolate streamflow from the work area by using a bypass system to reroute the watercourse through a temporary pipe or hose, if feasible. If work must be completed in the wetted watercourse, every effort must be made to comply with state water quality standards while the work is occurring.

30. Sequence the work to minimize the duration of dewatering.

31. Use the least-impacting feasible method to temporarily bypass water from the work area. Consider the physical characteristics of the site and the anticipated volume of water flowing through the work area.

32. During all phases of bypass installation and decommissioning, maintain flows downstream of the project site to ensure survival of all downstream fish.

33. If the bypass is a pumped diversion, once started it must run continuously until it is no longer necessary to bypass flows. This requires back-up pumps on-site and twenty-four-hour monitoring for overnight operation.

34. If the diversion inlet is a pump diversion in a fish-bearing stream, the pump intake structure must have a fish screen installed, operated, and maintained in accordance with RCW 77.57.010 and 77.57.070. Screen the pump intake with one of the following: a) Perforated plate: 0.094 inch (maximum opening diameter); b) Profile bar: 0.069 inch (maximum width opening); or c) Woven wire: 0.094 inch (maximum opening measured on the diagonal). The minimum open area for all types of fish screens is twenty-seven percent. The screened intake facility must have enough surface area to ensure that the velocity through the screen is less than 0.4 feet per second. Maintain fish screens to prevent injury or entrapment of fish.

CULVERT REPAIR

35. Cured-in-place pipe lining (CIPP) is authorized to be installed in the four (4) existing pipes as shown in the approved plans, to include: 61 linear feet of the 12-inch diameter culvert D, 46 linear feet of the 24-inch diameter culvert E, 35 linear feet of the 12-inch culvert F, and 167 linear feet of the 12-inch diameter culvert G.

36. DEMOBILIZATION AND CLEAN-UP

37. Upon completion of the project, restore the disturbed bed, banks, and riparian zone to pre-project condition to the extent possible.

38. Remove any temporary erosion and sediment control methods after job site is stabilized or within three months of project completion, whichever is sooner.

39. Upon completion of the project, remove all materials or equipment from the site and dispose of all excess spoils, including trash and waste materials found in the project area at an appropriate upland disposal location.

LOCATION #1:	Site Name: "D" No address- East Mercer Way, by 7008 block, Mercer Island, WA		
WORK START:	March 21, 2022	WORK END:	March 20, 2027



HYDRAULIC PROJECT APPROVAL

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

Issued Date: March 21, 2022
Project End Date: March 20, 2027

Permit Number: 2022-4-181+01
FPA/Public Notice Number: N/A
Application ID: 26971

<u>WRIA</u>		<u>Waterbody:</u>			<u>Tributary to:</u>	
08 - Cedar - Sammamish		Lake Washington			Ship Canal	
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	30	24 N	05 E	47.539851	-122.212848	King
<u>Location #1 Driving Directions</u>						
On I-90, take exit toward East Mercer Way, go south to 7008 block.						
LOCATION #2:	Site Name: "E" No address- East Mercer Way by 7444 block, Mercer Island, WA					
WORK START:	March 21, 2022			WORK END:	March 20, 2027	
<u>WRIA</u>		<u>Waterbody:</u>			<u>Tributary to:</u>	
08 - Cedar - Sammamish		Lake Washington			Ship Canal	
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	30	24 N	05 E	47.535558	-122.213829	King
<u>Location #2 Driving Directions</u>						
On I-90, take East Mercer Way exit, go south to 7444 block						
LOCATION #3:	Site Name: "F" No address- East Mercer Way by 7928 block, Mercer Island, WA					
WORK START:	March 21, 2022			WORK END:	March 20, 2027	
<u>WRIA</u>		<u>Waterbody:</u>			<u>Tributary to:</u>	
08 - Cedar - Sammamish		Lake Washington			Ship Canal	
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
	30	24 N	05 E	47.531441	-122.219094	King
<u>Location #3 Driving Directions</u>						
On I-90, take East Mercer Way exit, go south until 7928 block						
LOCATION #4:	Site Name: "G" No address- West Mercer Way, by 3545 block, Mercer Island, WA					



HYDRAULIC PROJECT APPROVAL

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

Issued Date: March 21, 2022
Project End Date: March 20, 2027

Permit Number: 2022-4-181+01
FPA/Public Notice Number: N/A
Application ID: 26971

WORK START: March 21, 2022		WORK END: March 20, 2027				
<u>WRIA</u>		<u>Waterbody:</u>			<u>Tributary to:</u>	
08 - Cedar - Sammamish		Lake Washington			Ship Canal	
<u>1/4 SEC:</u>	<u>Section:</u>	<u>Township:</u>	<u>Range:</u>	<u>Latitude:</u>	<u>Longitude:</u>	<u>County:</u>
SW 1/4	24	24 N	12 E	47.578827	-122.246137	King
<u>Location #4 Driving Directions</u>						
On I-90, take West Mercer Way exit, go south to 3545 block						

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.



HYDRAULIC PROJECT APPROVAL

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

Issued Date: March 21, 2022

Permit Number: 2022-4-181+01

Project End Date: March 20, 2027

FPA/Public Notice Number: N/A

Application ID: 26971

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.



HYDRAULIC PROJECT APPROVAL

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

Issued Date: March 21, 2022
Project End Date: March 20, 2027

Permit Number: 2022-4-181+01
FPA/Public Notice Number: N/A
Application ID: 26971

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 Julian.Douglas@dfw.wa.gov
Julian Douglas 206-584-9808

for Director
WDFW