



**City of Mercer Island**  
**BID DOCUMENTS, SPECIFICATIONS, AND CONTRACT DOCUMENTS FOR:**  
**Job Order Contracting General Construction Services 2023**  
**Bid Number: 23-29**

**Table of Contents**

**BID DOCUMENTS**

1. Advertisement for Bid
2. Instructions to Bidders
3. Bid Form
4. Contractor Declaration Pursuant to RCW 39.04.350(2)
5. Bid Guaranty Bond
6. Non-Collusion Declaration
7. Bidders Qualification Certificate
8. Bidders Checklist

**SPECIFICATIONS**

9. City of Mercer Island General Terms and Conditions
10. Job Order Contracting (JOC) Special Conditions
11. Supplementary Conditions – FEMA Funded Project
12. The Construction Task Catalog (CTC) Link

**CONTRACT DOCUMENTS AND OTHER SUPPLEMENTAL FORMS**

13. City of Mercer Island Job Order Contract
14. Performance Bond
15. Payment Bond
16. Retainage Agreement
17. Release of Lien Form
18. ARPA Addendum

## **Advertisement for Bids City of Mercer Island**

**Project Title: Job Order Contracting General Construction Services 2023**  
**Bid Number: 23-29**

The City of Mercer Island has determined that the use of the Job Order Contracting system benefits the public by providing an effective means of reducing total lead-time, facilitating collaboration between the Contractor and design team, and reducing cost for public works projects. Through the use of Contract Construction Task Catalog® and Job Orders, time consuming, costly aspects of traditional public works processes can be eliminated.

As a part of the Job Order Contracting program, the City is accepting proposals from experienced Contractors. The City expects a collaborative process of project procurement that combines the commitment, expertise, and skills of the City and the Contractor(s) to achieve the completion of projects in the best interest of the public.

A Job Order Contract is an indefinite quantity construction contract pursuant to which the Contractor may perform an ongoing series of individual Projects at different locations and facilities under the jurisdiction of the Owner. Job Order Contracting is typically used for small to medium-sized repair and rehabilitation work, replacement-in-kind projects, and minor new construction.

It is the intent of the City to award Job Order Contracts to no more than three (3) separate Contractors using the evaluation factors and the relative weight of the Adjustment Factors. Award will be made to the highest-scored contractors.

The Contract Documents include a Construction Task Catalog® containing Pre-priced Tasks for construction work with preset Unit Prices. All Unit Prices are based on local labor, material, and equipment costs and are for the direct cost of construction.

The Minimum Contract Value the Contractor will be given the opportunity to perform, for each awarded Contract, is \$25,000 with a maximum contract value of \$2 million per contractor per year. At the City's discretion, the Maximum Contract Value may be increased to the state maximum. The term of the Contract is two years with one bilateral one-year option, for a total of three years.

A Mandatory Virtual Pre-Bid Meeting is scheduled on September 14, 2023 at 10:30 am PDT. The City, at its sole discretion, may schedule an additional pre-bid meeting/walk-through. If interested, contact Jaime Page, Support Services Manager, [jaime.page@mercerisland.gov](mailto:jaime.page@mercerisland.gov).

Zoom Meeting link: <https://us02web.zoom.us/j/89266970237?pwd=ZXcxbFZlcG5vT3NnY2ZSdkphdnBXQT09>  
Passcode: 798965

Attendance at the Pre-Bid Meeting is mandatory for prime bidders and highly recommended for subcontractors. Roll will be taken and the prime bidder will need to acknowledge their attendance on the Bid Form. Bids from entities not represented at the Pre-Bid Meeting will not be considered for contract award.

During the pre-bid meeting/walk-through, all conversations are considered informal and are not contractually binding unless stated in the contract bid package, contract drawings, or modified by a written addendum. The order of precedence is written addendum, contract drawings, and lastly contract specifications.

Sealed bids will be received electronically by the City until 2:00 pm PDT on October 5, 2023. Bidders shall submit their bids in PDF format to [publicworks@mercerisland.gov](mailto:publicworks@mercerisland.gov). Prequalification and Bid package will be accepted at the above date and time. The Bid form must be submitted under separate cover from the prequalification package.

There will be no public bid opening for this project; bid results will be posted on the City's webpage at: <https://www.mercerisland.gov/rfps>.

Work to be performed under this contract includes, but is not limited to, services of experienced general construction contractors with work experience similar to the type of work the City may procure through its Job Order Contracting program.

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.

All submitted bids/proposals are subject to RCW 30.10.470.

Bidders' questions must be directed to Jaime Page, Support Services Manager, via email at [jaime.page@mercerisland.gov](mailto:jaime.page@mercerisland.gov) by 5:00 pm PDT, September 20, 2023.

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 August 31, 2023; September 5, 2023; September 6, 2023; and September 11, 2023

# City of Mercer Island

## Instructions to Bidders and Prequalification of Bidder

1. GENERAL CONTRACT PROJECT OVERVIEW:

The City of Mercer Island has determined that the use of the Job Order Contracting system benefits the public by providing an effective means of reducing total lead-time, facilitating collaboration between the Contractor and design team, and reducing cost for public works projects. Through the use of Contract Construction Task Catalog® and Job Orders, time consuming, costly aspects of traditional public works processes can be eliminated.

As a part of the Job Order Contracting program, the City is accepting proposals from experienced Contractors. The City expects a collaborative process of project procurement that combines the commitment, expertise and skills of the City and the Contractor(s) to achieve the completion of projects in the best interest of the public

It is the intent of the City to award Job Order Contracts to no more than three (3) separate Contractors using the evaluation factors and the relative weight of the Adjustment Factors. Award will be made to the highest scored contractors.

A Job Order Contract is an indefinite quantity construction contract pursuant to which the Contractor may perform an ongoing series of individual Projects at different locations and facilities under the jurisdiction of the Owner. Job Order Contracting is typically used for small to medium sized repair and rehabilitation work, replacement in kind projects, and minor new construction.

The Contract Documents include a Construction Task Catalog® containing Pre-priced Tasks for construction work with preset Unit Prices. All Unit Prices are based on local labor, material and equipment costs and are for the direct cost of construction.

2. ELIGIBILITY TO BID:

As a part of the Job Order Contracting program, the City is accepting bids from experienced Contractors. Contracts will be awarded through an advertised process. Before award, the bidders must meet the following bidder responsibility criteria to be considered a responsible bidder. To be eligible to bid, each Bidder must, at the time of the bid submittal:

- A. 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
  - 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, 39.12.050, RCW 39.12.055, 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.
  - F. Completed the L&I online training or meet the prior experience requirements in RCW 39.04.350(1)(f); and
  - G. Bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and
  - H. Have received training from the Washington State Department of Labor & Industries or a training provider approved by the Department on the requirements related to public works and prevailing wage under chapter 39.04 RCW and chapter 39.12 RCW unless the bidder has completed three or more public works projects and has had a valid business license in Washington for three or more years, and
  - I. 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.

Contracts shall only be awarded to Bidders that demonstrates to the City's satisfaction that the Bidders are qualified to perform the Work and is, therefore, a responsible bidder.

3. 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, RCW 39.12.050, RCW 39.12.055, or RCW 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.
- F. Completed the L&I online training or meet the prior experience requirements in RCW 39.04.350(1)(f); and
- G. 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.
- H. Key personnel must hold an appropriate license in the applicable discipline.

4. EXAMINATION OF BID DOCUMENTS:

Each bidder is instructed to examine the Bid Documents, Specifications, Addenda, 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.

5. ADDITIONAL INFORMATION:

All questions about the meaning or intent of the Contract Documents are to be directed to **Jaime Page, Support Services Manager**, by email to [jaime.page@mercerisland.gov](mailto:jaime.page@mercerisland.gov). No telephone questions will be

accepted or considered. Bidders should include a reference to the specification section and paragraph number and/or drawing number in the Contract Documents.

The City will receive questions until **5:00 p.m. PDT on September 20, 2023**. Questions received after this date will not be answered. All questions and responses will be posted by **5:00 pm PDT, September 27, 2023** to the Builders Exchange site. The City will delete bidder names from the text of question(s) and answers being sent.

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. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6. 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/prevaling-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.

7. PROGRESS AND COMPLETION:

Time is of the essence for this Work. 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.

8. 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.

9. 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.

#### ADJUSTMENT FACTORS

Contractors must provide five separate Adjustment Factors on the Bid Form. The Adjustment Factors are as follows:

- Normal Working Hours: Monday thru Friday 7:00 am to 4:00 pm except City holidays;
- Other Than Normal Working Hours: Monday thru Friday 4:01 pm to 6:59 am and all day Saturday, Sunday and City holidays;
- Secured Facilities Normal Working Hours Secured Facilities: Monday thru Friday 7:00 am to 4:00 pm except City holidays;
- Secured Facilities Other Than Normal Working Hours Secured Facilities: Monday thru Friday 4:01 pm to 6:59 am and all day Saturday, Sunday and City holidays;
- Non-Prepriced: For Non-Prepriced Work.

**The Other than Normal Working Hours Adjustment Factor must be equal to or greater than the Normal Working Hours Adjustment Factor.**

**The Non-Prepriced Adjustment Factor must be equal to or greater than 1.0000.**

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.

#### 10. MANDATORY PRE-BID MEETING:

A Mandatory Virtual Pre-Bid Meeting is scheduled on **September 14, 2023 at 10:30 a.m. PDT**. The City, at its sole discretion, may schedule an additional pre-bid meeting/walk through. If interested, contact **Jaime Page, Support Services Manager, [jaime.page@mercerisland.gov](mailto:jaime.page@mercerisland.gov)** .



Zoom link: <https://us02web.zoom.us/j/89266970237?pwd=ZXcxbFZlcG5vT3NnY2ZSdjkphdnBXQT09>

Webinar Passcode: 798965

Attendance at the Pre-Bid Meeting is mandatory for prime bidders and highly recommended for subcontractors. Roll will be taken, and the prime bidder will need to acknowledge their attendance on the Bid Form. Bids from entities not represented at the Pre-Bid will not be considered for contract award.

During the pre-bid meeting, all conversations are considered informal and are not contractually binding unless stated in the contract bid package, contract drawings, or modified by a written addendum. The order of precedence is written addendum, contract drawings, and lastly contract specifications.

11. 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.

12. 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.

13. 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.

14. DELIVERY OF BID:

Each Bid shall be submitted in PDF format via electronic transmission to the Public Works email address at: [publicworks@mercerisland.gov](mailto: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.

15. 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.

16. 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.

17. EVALUATION OF BIDS AND BID ERRORS:

The City of Mercer Island reserves the right, at its sole discretion, to waive minor irregularities and informalities contained in any proposal submitted and accepted by the City. The City further reserves the right to make awards to the responsible Proposer whose proposal is determined to be the most advantageous to the City of Mercer Island. The City of Mercer Island reserves the right to reject any and all proposals.

After opening the Bids, the City will check them for correctness of extensions of the bid Adjustment Factors. 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. An Adjustment Factor 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 proposed Adjustment Factor for every Working hours item;
  - ii. Receipt of Addenda is not acknowledged;
  - iii. 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
  - iv. If Bid Form entries are not made in ink.

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

18. EVALUATION OF BIDDER RESPONSIBILITY AND PREQUALIFICATION OF BIDDERS:

The City is seeking to obtain the services of experienced general construction contractors with work experience similar to the type of work the City may procure through its Job Order Contracting program. 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. A City of Mercer Island evaluation panel will review and score proposals in accordance with the requirements stated in this solicitation.
- i. Preliminary Evaluation Minimum Qualifications
  - ii. Phase 1: Evaluation of Responses to Questionnaire 4.04
  - iii. Phase 2: Evaluation of Adjustment Factor Proposal 4.03
- C. 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 total contract price, the name of the foreman, the foreman’s previous project experience as a foreman on 3 similar construction contracts, 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 impression of the company; firm experience and technical knowledge; foreman experience and quality of work, 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.

Minimum Qualifications:

Preliminary Evaluation: The proposals will be reviewed to ensure the proposal meets the following minimum qualifications. If the minimum qualifications are not satisfied, the proposal will be eliminated from consideration.

Criteria #	Criteria	Points	Description
1	Eligibility	Pass/Fail	Minimum qualifications: <ul style="list-style-type: none"> <li>• <u>Registered/Licensed Contractor;</u></li> <li>• <u>UBI number;</u></li> <li>• <u>Current Employment Security account;</u></li> <li>• <u>Current Dept. of Revenue account;</u></li> <li>• <u>Current Worker’s compensation account</u></li> <li>• <u>Not be disqualified from bidding on public works contracts</u></li> </ul>

Proposals will then be evaluated based on the following weighted criteria and how well the proposal meets the requirements as described in this bid.

**Phase 1:**

Criteria #	Criteria	Points	Description
1	Qualifications and Relevant Experience	50	Evaluate responses to Questionnaire responses.
2	Technical Capability, Approach and Capacity	75	Evaluate responses to Questionnaire responses.
3	Communication and Customer Service	50	Evaluate responses to Questionnaire responses.
4	Risk, Performance and Quality Assurance	25	Evaluate responses to Questionnaire responses. which includes past performance on similar contracts
Total		200	

Evaluators will then open the Bid Form, that was submitted under separate cover, from the highest scoring bidders containing the Bid Form. **The Bid Form (must be included with proposal under separate cover)**

**Phase 2:**

Criteria #	Criteria	Points	Description
5	Price Proposal	100	Evaluate Contractors' Adjustment Factors to determine fair and reasonableness, points will be based on the perceived value of the proposal response in relation to the listed scope of work.

For bid evaluation purposes only, the following work distributions shall be used to determine the Proposal Criteria Figure:

Adjustment Factor	% Weight (For Evaluation Only)
Normal Working Hours	40%
Other than Normal Working Hours	10%
Normal Working Hours Secured Facilities	30%
Other than Normal Working Hours Secured Facilities Other	10%
Non-Prepriced	10%

The Construction Task Catalog® is priced at a net value of 1.0000. The price shall be an increase to (e.g., 1.1000) or decrease from (e.g., 0.9500) to the Unit Prices listed in the Construction Task Catalog®. Contractors who submit Adjustment Factors other than listed above may be considered non-responsive and their proposal may be rejected

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.

19. 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.

20. CONTRACT AWARD:

A contract award will be for the proposal(s) that best meets the needs of the City of Mercer Island. The award of a contract to the successful bidder(s) will be notice of acceptance. The award of a contract will bind the bidder(s) to furnish the service in accordance with the information herein, responses to questions, the bidder's proposal, other representations made, as well as all other terms and conditions of the contract in its final form.

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.

21. CONTRACT VALUE

The Minimum Contract Value for each awarded Contract is \$25,000. The awarded Contractor(s) are each guaranteed to receive the opportunity to perform Job Orders totaling at least \$25,000 during the Base Term of the Contract.

The Estimated Annual Value per Contract is \$2,000,000 per year.

The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate. The City has no obligation to issue Job Orders in excess of the Minimum Contract Value.

The City reserves the right to issue up to the maximum amount specified in RCW 39.10.440, which is up to \$2,000,000 per contractor per year. The Maximum Contract Value shall not exceed the value set forth in the RCW. The maximum dollar amount for a Job Order is \$500,000, excluding Washington state sales and user tax. At the City's discretion, the Maximum Contract Value may be increased to the state maximum.

22. 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.

23. EXECUTION OF JOB ORDER CONTRACT:

The City of Mercer Island has determined that the use of the Job Order Contracting system benefits the public by providing an effective means of reducing total lead-time, facilitating collaboration between the Contractor and design team, and reducing cost for public works projects. Through the use of Contract Construction Task Catalog® and Job Orders, time consuming, costly aspects of traditional public works processes can be eliminated.

As a part of the Job Order Contracting program, the City is accepting proposals from experienced Contractors. The City expects a collaborative process of project procurement that combines the commitment, expertise and skills of the City and the Contractor(s) to achieve the completion of projects in the best interest of the public.

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.

24. CONTRACTOR LICENSE FEE / IDENTITY OF UNIT PRICE BOOK TO BE USED

The CITY selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") System for their JOC program. The Gordian JOC Solution includes Gordian's proprietary JOC System Software and JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be

used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including preparation and submission of Job Order Proposals, subcontractor lists, and other requirements specified by the CITY. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the CITY is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement and pay a one percent (1%) JOC System License Fee to Gordian to obtain access to the Gordian JOC Solution. Should Gordian, or any applicable tax authority, conclude that any sales and/or use tax shall be imposed on any part of the of the transactions contemplated herein, said tax shall be collected from Contractor, in addition to the fees set forth herein, and remitted by Gordian. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors.

**Link to the Job Order Contract Construction Task Catalog® (CTC):**

<https://fortive.box.com/s/rmzdr1mhx44bvcxufcv29if26qe070i3>

25. PERFORMANCE AND PAYMENT BONDS

A Payment Bond and a Performance Bond for the Job Order Contract are required. Each bond will be in the penal sum no less than \$2,000,000. Additionally, a "Letter of Bondability" issued by a surety licensed in the state of Washington demonstrating that the surety will provide bonds to the Contractor of up to \$4,000,000 is required. In the event the parties agree to extend the Base Term, or if the cumulative amount of Work issued and not yet completed and accepted exceeds the bonded amounts, the Contractor shall deliver new Payment and Performance Bonds or rider(s) as required by the City. The Contractor must use a Performance Bond form and a Payment Bond form acceptable by the City.

26. 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, Jaime Page at the City of Mercer Island, via email at [supportservices@mercerisland.gov](mailto:supportservices@mercerisland.gov). 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 ten (10) business days following the day of the announcement of the apparent successful proposal .
  - 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 Protestor and all proposers 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.

## QUESTIONNAIRE

Contractors shall complete this "Questionnaire" providing the information in the same order requested below. Contractors may emphasize in their narrative any areas of their proposal that they believe exceed our requirements.

### 1. Qualifications and Relevant Experience

- A. Briefly describe your company. Include:
  - how long the company has been in the business under the current name,
  - approximate volume of annual work,
  - an estimated percentage of work that is subcontracted.
  - percentage of work that is general contracting
  - percentage of work that is Job Order Contracting
  - total number of staff dedicated to Job Order contracting contracts
- B. Describe the qualifications of your company, its business experience and achievements.
- C. Who are you proposing to be the project manager, superintendent and contract coordinator if awarded this contract? What is their experience with Job Order contracting? What are their years of experience, years in industry, years with firm, year of applicable licenses, etc. Provide a list of three major projects that person has been involved in and their role.
- D. Provide names, tenure, roles, and responsibilities for other key team members.
- E. What is your staff turnover rate annually for the past five years?
- F. Describe your firm's prior subcontracting experience and ability to manage multiple subcontractors working on multiple project sites simultaneously.
- G. What characteristics most distinguish your organization from your competitors?

### 2. Technical Capability, Approach, and Capacity

- A. What is your approach to managing multiple subcontractors? Describe your execution, management, and control of a sample Job Order project.
- B. Describe how your firm will select subcontractors and the basis for such selection.
- C. Describe your company's quality assurance and inspection policy.
- D. Provide your firm's minority and women's business enterprises business plan. Identify, in specific detail, how the firm will maximize participation of certified women and minority business enterprises under this Contract.
- E. Provide your firm's local business utilization plan. Identify, in specific detail, how the firm will maximize participation of local businesses under this Contract. Local businesses are considered those businesses residing in City of Mercer Island.
- F. Describe your approach to subcontracting versus self-performing the work with your own forces. Identify the types of work the Proposer intends on self-performing.
- G. What is your availability for this project? Please include a statement of other work currently under way or anticipated to be in progress during the time frame of this project and show how

you intend to schedule projects, so this project is accomplished as well.

H. Describe your process to ensure compliance with Washington State laws and regulations.

**3. Communication and Customer Services**

- A. How will your project manager communicate with City of Mercer Island's project manager in all phases of the contract? (How often are status reports provided)?
- B. Describe your company's policy for correcting defective workmanship.
- C. Describe your approach to achieving Customer Satisfaction.
- D. Where is your office located and what are your customer service hours?

**4. Risk, Performance, and Quality Assurance**

- A. Provide a list of current and past Job Order contracts. Priority should be on providing current and active contracts within the past five years that demonstrate successful contract performance. Include the following for each reference:
  - a. Entity name and full address
  - b. Point of contact name, title, e-mail address, and phone number
  - c. Contract title, number, start and completion dates
  - d. Describe the Job Orders, clearly indicating the scope of work for which you were responsible. Detailed project information and/or pictures are not required but may be submitted at the Proposer's discretion. Submit projects that have achieved final acceptance after January 1, 2016.
  - e. Describe any problems or major issues encountered during the projects listed and what was done to resolve it.
- B. Have you defaulted on any contracts within the past three years or failed to meet contract terms? If so, describe.

**CONTRACTOR COMMITMENT AND INFORMATION – SUBMITTAL REQUEST FOR PROPOSAL 2023 PROPOSAL  
#23-29**

**JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES**

Company Name:		
Company Address:		
City:	State:	ZIP:
Tax ID #:	UBI#:	
Contractor's License #:	State of Washington Department of Employment Security #	
Legal status of Contractor organization, i.e., corporation, partnership, sole proprietorship.		
Contractor Contact Name (if different from Authorizing Official):		Contractor Contact Title:
Contractor Contact Email:		Contractor Contact Direct Phone:
Contractor Contact Address (If different from above):		
City:	State:	ZIP:

By responding to this solicitation, the Contractor understands and agrees to be bound by all requirements and contract terms and conditions contained in this solicitation. By signing this form, the Contractor acknowledges receipt and understanding of any and all addenda issued for this solicitation. This form, signed by an individual authorized to legally commit the Contractor, shall be submitted as the cover page.

The Contractor also certifies that:

- I am authorized to commit my firm to this Proposal and that the information herein is valid for 120 days from this date.
- That all information presented herein is accurate and complete and that the scope of work can be performed as presented in this proposal upon the City's request.
- That I have had an opportunity to ask questions regarding this Proposal and that those questions have been answered.
- That this Proposal response is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for this Proposal and is in all respects fair and without collusion or fraud.

Authorizing Official Name:	Authorizing Official Title:
Authorizing Official Email:	Authorizing Official Phone:
Authorizing Official Signature:	

**CERTIFICATE OF NON-DEBARMENT / SUSPENSION – SUBMITTAL**

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER  
INELIGIBILITY AND VOLUNTARY EXCLUSION  
LOWER TIER COVERED TRANSACTIONS

The Lower Tier Participant (Applicant for a third-party subcontract or subgrant under a federally funded project),

\_\_\_\_\_ hereinafter referred to as *Contractor*, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this submittal.

**The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801 et seq. are applicable thereto.**

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date

**THIS FORM SHALL BE COMPLETED AND RETURNED BY THE PRIME CONTRACTOR WITH THEIR ORIGINAL PROPOSAL PACKAGE**

**CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES SUBMITTAL**

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (            ), the bidder is not a “willful” violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as 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.

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

\_\_\_\_\_  
Bidder’s Business Name

\_\_\_\_\_  
Signature of Authorized Official\*

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
City

\_\_\_\_\_  
State

*Check One:*

Sole Proprietorship  Partnership  Joint Venture  Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

\_\_\_\_\_

If a co-partnership, give firm name under which business is transacted:

\_\_\_\_\_

*\* If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

# BID FORM

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

**TO:** City of Mercer Island  
**ADDRESS:** 9611 SE 36<sup>th</sup> Street  
Mercer Island, Washington 98040  
**PROJECT TITLE:** Job Order Contracting General Construction Services 2023

## Bidder Declaration and Understanding

The undersigned Bidder hereby declares that they have carefully examined the Contract Documents for the Job Order Contracting of General Construction Services to be rendered.

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 the requested Job Order 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 he/she will, if necessary, accelerate his work, provide additional workers and equipment, and expedite materials delivery to meet these dates, all at no additional expense to the OWNER.

By submitting this bid, the bidder agrees that, if awarded this contract, they will achieve Final Completion within date specified in Job Order Proposal from the Notice to Proceed and the Substantial Completion Date will be 5 calendar days prior to the Final Completion Date.

Bid Schedule

**PRICE SHEET – Bid Number: 23-29**  
**JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES**

Contractor Name: \_\_\_\_\_

This form must be included with the proposal under separate cover.

Specify all Adjustment Factors to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward). If any of the Adjustment Factors are not specified to the 4th decimal, the remaining decimals will be considered to be zero.

The Other Than Normal Working Hours Adjustment Factor must be greater than or equal to the Normal Working Hours Adjustment Factor.

The Non-Prepriced Task Adjustment Factor must be greater than or equal to 1.0000.

The City reserves the right to make arithmetic corrections, if necessary. In the event of discrepancy between the Adjustment Factors and the calculation of the Bid Criteria Figure, the individual Adjustment Factors in the column titled “Proposed Adjustment Factors” will prevail and will be used to calculate the Bid Criteria Figure.

When submitting Job Order Price Proposals related to specific Job Orders, the Contractor must utilize one or more of the Adjustment Factors applicable to the Work being performed.

Having carefully examined the contract documents prepared by the City of Mercer Island and having familiarized ourselves with the JOC procurement system and procedure for ordering work, the undersigned proposes to perform the Tasks required by each individual Job Order using the following Adjustment Factors:

	<b>Adjustment Factor Name</b>	<b>Proposed Adjustment Factor</b>	<b>X Multiplier</b>	<b>= Total</b>
1.	Normal Working Hours	_____	X 0.40	=____. _____
2.	Other Than Normal Working Hours	_____	X 0.10	=____. _____
3.	Normal Working Hours Secured Facilities	_____	X 0.30	=____. _____
4.	Other Than Normal Working Hours Secured Facilities	_____	X 0.10	=____. _____
5.	Non-Prepriced Work	_____	X 0.10	=____. _____
	<b>Add all the Total amounts in the right column. The Sum of these Total amounts is the Bid Criteria Figure.</b>			=

**Note:** The weighted percentages (x multiplier) are for the purpose of calculating the Bid Criteria Figure only. No assurances are made by the City that Work will be ordered under the Contract in a distribution consistent with the weighted percentages. The Bid Criteria Figure is only used for the purpose of determining the lowest proposed price. It is not used to prepare Price Proposals. When preparing Price Proposals, the Bidder shall use one or more of the Adjustment Factors written above.



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

\_\_\_\_\_

**Contractor Declaration Pursuant to RCW 39.04.350(2)**

**Project Name:** JOB ORDER CONTRACTING GENERAL CONSTRUCTION SERVICES 2023

**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 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

**Job Order Contracting General Construction Services 2023**

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.**

## Non-Collusion Declaration

---

**Project Name: Job Order Contracting General Construction Services 2023**

**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

## 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**

## **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 Bid Form must be submitted under separate cover from the other required documents. 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. **INSTRUCTION TO BIDDERS INCLUDING PREQUALIFICATION.** Failure to submit any of the required documents specified in the Instruction to Bidders will make the bid non-responsive.
6. **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.

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

<b>Article 1: GENERAL PROVISIONS</b> .....	<b>1</b>
1.1 Definitions .....	1
1.2 Intent and Interpretation of the Documents .....	4
1.3 Clarification of Drawings and Detail Drawings.....	5
<b>Article 2: CITY</b> .....	<b>5</b>
2.1 Authority.....	5
2.2 Information Supplied by City .....	6
2.3 Work by City or Separate Contractors .....	6
<b>Article 3: CONTRACTOR</b> .....	<b>6</b>
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
<b>Article 4: ADMINISTRATION OF THE CONTRACT</b> .....	<b>18</b>
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
<b>Article 5: CHANGES TO THE CONTRACT</b> .....	<b>25</b>
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.....	27
5.5 Force Majeure.....	28
5.6 Change Orders .....	28

5.7	City Request for a Change Proposal.....	29
<b>Article 6: TIME AND PRICE ADJUSTMENTS .....</b>		<b>30</b>
6.1	Change in the Contract Time .....	30
6.2	Change in the Contract Price.....	30
6.3	Method to Calculate Adjustments to Contract Price .....	32
6.4	Allowable Costs .....	32
<b>Article 7: PAYMENT AND COMPLETION .....</b>		<b>34</b>
7.1	Applications for Payment .....	34
7.2	Payments.....	34
7.3	Payment Withheld.....	35
7.4	Title.....	36
7.5	Substantial Completion .....	36
7.6	Final Inspection.....	36
7.7	Requirements for Final Application For Payment.....	37
7.8	Completion/Final Acceptance .....	37
7.9	Warranty and Guaranty .....	37
7.10	Prior Occupation .....	38
<b>Article 8: TERMINATION .....</b>		<b>39</b>
8.1	City's Right to Terminate Contract .....	39
8.2	City's Right to Stop the Work for Cause .....	41
<b>Article 9: CLAIMS AND LITIGATION .....</b>		<b>41</b>
9.1	Contractor Claims .....	41
9.2	Contractor's Burden of Proof on Claim .....	43
9.3	Litigation.....	43
<b>Article 10: MISCELLANEOUS.....</b>		<b>43</b>
10.1	Compensation, Wages, Benefits and Taxes.....	43
10.2	Prevailing Wages.....	44
10.3	Successors and Assigns.....	44
10.4	Third Party Agreements .....	44
10.5	Nonwaiver of Breach.....	44
10.6	Notice to City of Labor Disputes.....	44
10.7	Headings.....	44
10.8	Choice of Law .....	45
10.9	Severability .....	45



## 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. 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. Contract Modifications (later takes precedence over earlier);
  2. The signed Agreement between City and Contractor (the “Public Works Contract”);
  3. Addenda;
  4. The Contractor’s completed Bid Form;
  5. Job Orders (including Detailed Scopes of Work, Job Order Proposals, and any Supplemental Job Orders);
  6. JOC Special Conditions;
  7. The City’s General Terms and Conditions (May 2020 ed.);
  8. Supplementary Conditions FEMA
  9. The Construction Task Catalog®;
  10. Gordian Technical Specifications;
  11. City Technical Specifications;
  12. Drawings;
- D. **“Contract Execution.”** occurs when City Manager or his/her designee signs the Contract, which shall only occur after the Contractor signs the Contract.
- E. **“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.
- F. **“Contractor.”** The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with City to do the Contract Work.

- G. **“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.
- H. **“Day.”** A calendar day, unless otherwise specified.
- I. **“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).
- J. **“Engineer.”** The City representative who administers the Contract for the City.
- K. **“Final Acceptance.”** Written acceptance of the Project by City.
- L. **“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.
- M. **“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.
- N. **“City”** or **“Owner”** may be used interchangeably and refer to the City of Mercer Island.

- O. **“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.
- P. **“Notice To Proceed.”** A written directive issued by City authorizing the Contractor to perform some or all of the Work.
- Q. **“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.
- R. **“Parties.”** The Contractor and City.
- S. **“Project.”** All activity relative to this Contract including activity of the Contractor, its Subcontractors, and City.

- T. **“Request for Information.”** A request from the Contractor to City seeking an interpretation or a clarification of some requirement of the Contract Documents.
- U. **“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 in the Work, Contract Price and/or Contract Time; or (2) sign the Contract or Supplemental Job 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 Supplemental Job Orders;
  - 6. Recommending Supplemental Job Orders for approval by the City Manager or its designee;
  - 7. Issuing decisions with respect to Requests for Supplemental Job 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 Supplemental 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, Supplemental Job 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 as indicated by the Working Hours noted in the JOC Special Conditions.
- 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.

### **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 Job Order Price, Job Order Completion 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 Job Order Price and/or Job Order Completion Time shall be recorded on the same day the work is performed and kept separate so as to distinguish it from Contract Work.

### **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 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 each Job Order.

- 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 bid Adjustment Factors. 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. With each Job Order Proposal, the Contractor shall submit to City a detailed Schedule of Values that identifies the various activities of the Work and their values and quantities, and applied Adjustment Factor. 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 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 Supplemental Job 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, with each Job Order Proposal, 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 Work, indicate Substantial Completion within the Job Order Completion 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 Work until the Project Schedule complies with all Contract requirements.
- E. The Contractor shall schedule the Work so that the Work is completed within the Job Order Completion 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 Job Order Completion Time extensions, if any, approved by City on the Project Schedule. Updated Project Schedules shall reflect actual progress and completion within the Job Order Completion 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 original Job Order. 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 respective Job Order and overall 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 Job Order Price due to the time it takes City to respond to the RFI provided that the 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 Job Order completion date.
- C. City's response to a RFI shall not be considered a change to the Contract requirements or Job Order requirements unless it is accompanied by a Request for Supplemental Job Order Proposal. If the Contractor believes that City's response to the RFI constitutes changed work impacting Job Order Price or Job Order Completion Time, the Contractor shall submit a Notice of Claim, Supplemental Information and a Request for Supplemental Job Order to City in accordance with Articles 5, *Changes to the Work*.

#### **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 a 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 Job Order Contract Price and/or Job Order Completion 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 Supplemental Job 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.

## **ARTICLE 5: CHANGES TO THE WORK**

### **5.1 GENERAL**

- A. No provisions of the Contract may be amended or modified except by written agreement signed by the City.
- B. All Supplemental Job 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 Supplemental Job Order, and shall not constitute, in and of itself, entitlement to an adjustment in Job Order Price and/or Job Order Completion Time.
- D. The Contractor shall not be entitled to any change in the Job Order Price and/or Job Order Completion Time under the following conditions or events:
  - 1. They were reasonably foreseeable at the time the Contractor submitted its original Job Order Proposal;
  - 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 Supplemental Job Orders are set forth in Article 6, *Time and Price Adjustments* and further set forth in the JOC Special Conditions.
- 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 SUPPLEMENTAL JOB 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 Supplemental Job Order.
1. A Request for a Supplemental Job Order must be submitted in writing to the Engineer no later than fourteen (14) days after the Contractor submitted its supplemental information pursuant to Paragraph 5.1(A)(2).
  2. The Request for a Supplemental Job 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 Supplemental Job 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 Supplemental Job Order; and
    - e. The Contractor waives all claims for additional compensation and time if it fails to provide a timely Request for Supplemental Job Order with the information required by this Section.
- C. City's Response to Contractor's Request for Supplemental Job Order.

1. City will make a written determination with respect to the Contractor's Request for Supplemental Job 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 Supplemental Job 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 Supplemental Job Order is deemed denied.
- D. Approval of Request for Supplemental Job Order and Execution of such Order. If City determines that a Supplemental Job Order is necessary, the parties may negotiate acceptable terms and conditions and execute a Bilateral Order or City may issue a Unilateral Order.
- E. Contractor Procedure upon Denial or Deemed Denial of a Request for a Supplemental Job 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 Supplemental Job Order, the Contractor shall continue to perform all Work including, at the written request of City that work associated with the pending Request for Supplemental Job 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 Supplemental Job Order based on Differing Site Condition. Unless otherwise agreed upon in writing by the Engineer, within twenty-one (21) days of the Contractor's initial written notification of the Differing Site Condition to City, the Contractor shall provide a Request for Supplemental Job 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 Supplemental Job 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 Supplemental Job Order.
- D. City's Response to the Differing Site Condition Request for Supplemental Job Order. City shall investigate the alleged Differing Site Conditions and respond to the Differing Site Condition in accordance with the Request for Supplemental Job 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 Job Order Completion Time, or Job Order 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 Job Order Price and/or Job Order Completion 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 Supplemental Job Order to City in accordance with Article 5, *Changes to the Work*.
- D. Failure to comply with these requirements shall constitute a waiver of Contractor rights to any adjustment in Job Order Completion Time and/or Job Order 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 Supplemental Job Order to City in accordance with Article 5, *Changes to the Work*.
- B. Contractor shall not be entitled to a change in Job Order Price resulting from an act of Force Majeure.
- C. Contractor is not entitled to an adjustment in Job Order Completion 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 Job Order Completion 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 Job Order Completion Time. No change to the Job Order Price shall be allowed as a result of such concurrent delay.

**5.6 CHANGE ORDERS/SUPPLEMENTAL JOB ORDER**

**A. Bilateral Changes to the Work**

1. If City and Contractor reach agreement on the terms and conditions of any change in the Work, including any adjustment in the Job Order Price and Job Order Completion Time, such agreement shall be incorporated into a Supplemental Job Order and signed by both Parties. Such Bilateral Supplemental Job 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 Supplemental Job Order, or related to the events giving rise to the Bilateral Supplemental Job Order.

B. Unilateral Change Order

1. City's Right to Issue Unilateral Supplemental Job Order.

- a. City may unilaterally issue a Supplemental Job Order at any time, without invalidating the Contract and without notice to the sureties, making changes to the work.
- b. If any such Supplemental Job 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 Job Order Price, Job Order Completion Time, or both, in accordance with Articles 5, *Changes to the Work*, and 6, *Time and Price Adjustments*.

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

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 Supplemental Job Order.

**5.7 CITY REQUEST FOR A CHANGE PROPOSAL (SUPPLEMENTAL JOB ORDER 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 Job Order Completion 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 Supplemental Job 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 Supplemental Job Order in accordance with the terms of the Change Proposal or negotiated Change Proposal.

E. Execution of Unilateral Supplemental Job 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 Supplemental Job Order.

## ARTICLE 6: TIME AND PRICE ADJUSTMENTS

### 6.1 CHANGE IN THE CONTRACT TIME

- A. The Job Order Time shall only be changed by the issuance by the City of a Supplemental Job Order.
- B. No change in the Job Order Completion 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 Job Order Completion Time unless the progress of the Work on the Critical Path is delayed and completion of the Work within Job Order 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 Job Order Completion Time. No change to the Job Order Price shall be allowed as a result of such concurrent delay
- E. A Request for Supplemental Job Order that includes a request for an adjustment in the Job Order Completion Time shall:
  - 1. Be in writing and delivered to City within the appropriate time period specified in Article 5, *Changes in the Work*.
  - 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 Job Order Completion 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 Job Order 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 JOB ORDER PRICE

- A. The Job Order Price shall only be changed by a Supplemental Job Order.
- B. No change in the Job Order 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 Supplemental Job 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 Supplemental Job Order that includes a request for an adjustment in Job Order Price shall:
1. Be in writing and delivered to City within the applicable time period specified in Article 5, *Changes to the Work*.
  2. Identify the following information:
    - a. The event or condition which caused the Contractor to submit its request for an adjustment in the Job Order Price;
    - b. The nature of the impacts to Contractor and its Subcontractors, if any; and
    - c. The amount of the adjustment in Job Order 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 Job Order Price and in the Job Order Completion Time that arise out of the same event or conditions shall be submitted together.
- E. The adjustments to the Job Order 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 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. Preparation of a Supplemental Job Order Proposal in the Gordian Software shall be used to calculate damages and/or adjustments to the Job Order Price that result from or relate to Change Proposal, Request for Supplemental Job Order, and/or Claim.

#### B. Deductive Changes to the Job Order Price

1. A deductive change to the Job Order 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 Job Order 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.

#### C. 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 Job Order 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.

## 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.

### 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, , 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 Job Order Completion 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 Job Order Completion 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, as set forth in the JOC Special Conditions, 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."

Some Job Orders may be funded through federal programs. For these Job Orders, contractors shall be compliant with the Davis Bacon Act, Copeland Anti-Kickback Act and all other relevant federal clauses as provided with the Job Order. Contractors must pay prevailing wages or Davis-Bacon wages, whichever is higher.

## **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.

# JOB ORDER CONTRACTING (JOC) SPECIAL CONDITIONS

## MODIFICATIONS TO THE GENERAL and CITY SPECIAL AND SUPPLEMENTAL CONDITIONS

The following clarifications and modifications apply to the General, Supplemental and Special Conditions:

1. Whenever the term "Contract" is used to describe the Work associated with an individual project, the term "Contract" shall be replaced with "Job Order".
2. Whenever the term "Contract Time" is used to describe the duration associated with an individual project, the term "Contract Time" shall be replaced with "Job Order Completion Time".
3. Whenever the term "Contract Sum or Price" is used to describe the value associated with an individual project, the term "Contract Sum or Price" shall be replaced with "Job Order Price"
4. The Job Order Price shall set forth the fixed price, lump sum amount for which the Contractor is paid to complete the Detailed Scope of Work. Unless specifically stated for a Job Order, estimated quantities, lists of materials and bid prices shall not apply, the descriptions as related to costs and payment shall not apply, and the payment sections within the individual sections shall not apply.
5. All references to "Bid Items" shall be interpreted to mean Work tasks necessary to complete the Detailed Scope of Work.
6. All references to "change order work", "extra work", "force account work", and any other descriptions to changes to the Detailed Scope of Work shall be interpreted to mean work described in a Detailed Scope of Work of a Supplemental Job Order.
7. The Construction Task Catalog<sup>®</sup> shall govern the work included in the Unit Price of a Pre-Priced Task.

### 1. DEFINITIONS

1. **Adjustment Factor** - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog<sup>®</sup>.
2. **Award Criteria Figure** - The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Base Term** - The initial period of the Contract and does not include any Option Terms.
4. **Construction Task Catalog<sup>®</sup>** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
5. **Detailed Scope of Work** - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
6. **Estimated Annual Value** - An estimate of the value of Job Orders that could be issued to the Contractor each year.

7. **Job Order** - A written order issued by the City, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
8. **Job Order Completion Time** - The time within which the Contractor must complete the Detailed Scope of Work.
9. **Job Order Price** - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
10. **Job Order Price Proposal** - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
11. **Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.
12. **Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
13. **Maximum Contract Value** - The maximum value of Job Orders that the Contractor may receive under this Contract.
14. **Minimum Contract Value** - The minimum value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract.
15. **Non Pre-priced Task** - A task that is not set forth in the Construction Task Catalog®.
16. **Normal Working Hours (General Facilities)** - Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, except for City holidays in properties identified by the City as General Facilities.
17. **Normal Working Hours (Secured Facilities)** - Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, except for City holidays in properties identified by the City as Secured Facilities.
18. **Notice to Proceed** - A written notice issued by the City directing the Contractor to proceed with construction activities to complete the Job Order.
19. **Option Term** - An additional period of time beyond the Contract Term which extends the termination date of the Contract.
20. **Other than Normal Working Hours (General Facilities)** - Includes the hours of 4:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and City Holidays in properties identified as General Facilities.
21. **Other than Normal Working Hours (Secured Facilities)** - Includes the hours of 4:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and City Holidays in properties identified as Secured Facilities.
22. **Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.

23. **Project** - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
24. **Request for Proposal** - A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.
25. **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
26. **Technical Specifications** - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
27. **Unit Price** - The price published in the Construction Task Catalog<sup>®</sup> for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs<sup>®</sup>. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
28. **Work** - All materials, labor and use of tools, equipment and services necessary by the Contractor and/or Subcontractor to complete the Job Order.

## 2. CONTRACTOR SELECTION

- 2.1. Job Order Contracting: The CITY may award an individual Job Order to any selected Contractor. Selection of the Contractor and award of the Job Order will be in compliance with established CITY procedures and based on one or more of the following criteria:
  - 2.1.1. Rotational selection among all Contractors, unless otherwise determined by the CITY.
  - 2.1.2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
  - 2.1.3. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors.
  - 2.1.4. Price, as it relates to the CITY's independent cost estimate.
  - 2.1.5. Contractor's responsiveness to the CITY on Job Orders.
  - 2.1.6. Other appropriate criteria as deemed in the best interest of the CITY.

## 3. CONTRACTOR'S PERSONNEL

- 3.1. The Contractor shall have at all times an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job Order issued, the Contractor shall identify the Superintendent responsible for that Job Order. The Superintendent shall be reachable 24 hours a day, seven days a week. If the named Superintendent is not available because of illness or vacation or the like, the Contractor shall notify the City of a substitute Superintendent. At all times, the Contractor shall provide at least one Superintendent for every four Job Orders. Whenever, in the sole discretion of the City, the Contractor is not providing a sufficient level of supervision, the City may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute



subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the City.

#### **4. ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS**

- 4.1. In the event of conflicting provisions within the Job Order Contract, the Order of Precedence that shall govern is in ARTICLE 1 of the City's General Terms and Conditions.

#### **5. INITIATION OF A JOB ORDER**

- 5.1. As the need exists, the CITY will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- 5.2. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
  - 5.2.1. the general scope of the work;
  - 5.2.2. alternatives for performing the work and value engineering;
  - 5.2.3. access to the site and protocol for admission;
  - 5.2.4. hours of operation;
  - 5.2.5. staging area;
  - 5.2.6. requirements for catalog cuts, technical data, samples and shop drawings;
  - 5.2.7. requirements for professional services, sketches, drawings, and specifications;
  - 5.2.8. construction duration;
  - 5.2.9. the presence of hazardous materials;
  - 5.2.10. date on which the Job Order Proposal is due.
- 5.3. Upon completion of the joint scoping process, the CITY will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the CITY will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the CITY, will be the basis on which the Contractor will develop its Job Order Proposal and the CITY will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.
- 5.4. The City may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the City cannot agree on the quantities required, or for any other reason as determined by the City. In all such cases, the City shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

## 6. PREPARATION OF A JOB ORDER PROPOSAL

- 6.1. The Contractor's Job Order Proposal shall include, at a minimum:
  - 6.1.1. Job Order Price Proposal;
  - 6.1.2. Required drawings or sketches;
  - 6.1.3. List of anticipated Subcontractors and Certification;
  - 6.1.4. Construction schedule;
  - 6.1.5. Other requested documents.
- 6.2. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- 6.3. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 6.4. The Contractor will prepare Job Order Price Proposals in accordance with the following:
  - 6.4.1. Pre-priced Task: A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog<sup>®</sup>. The Contractor will select the appropriate Pre-priced Tasks, and enter the accurate quantity, and the appropriate Adjustment Factor.
  - 6.4.2. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog<sup>®</sup>.
  - 6.4.3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
    - 6.4.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
    - 6.4.3.2. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog<sup>®</sup>. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The CITY may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the City's approval. If approved, less than three quotes or bids will be allowed.
    - 6.4.3.3. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

For Non-Prepriced Tasks Performed with Contractor's Own Forces:

A = The hourly rate for each trade classification not in the Construction Task Catalog<sup>®</sup> multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three (3) independent quotes for all materials, unless a lower number of quotes is approved by the Owner.

Total for a Non-Prepriced Tasks performed with Contractor's Own Forces  
= (A+B+C) x Non-Prepriced Task Adjustment Factor

For Non-Prepriced Tasks Performed by Subcontractors:

If the Non-Prepriced Task is to be subcontracted, the Contractor must submit three (3) independent quotes for the work.

D = Lowest of three (3) Subcontractor Quotes

Total Cost for Non-Prepriced Tasks performed by Subcontractors

= D x Non-Prepriced Task Adjustment Factor

- 6.4.3.4. If the Contractor cannot obtain three quotes as specified above, the City may approve less than three with a letter of justification from the Contractor.
  - 6.4.3.5. After a Non Pre-priced Task has been approved by the CITY, the Unit Price for such task will be established, following approval by the CITY, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
  - 6.4.3.6. The CITY's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
- 6.5. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the CITY may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
  - 6.6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.
  - 6.7. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
  - 6.8. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job

Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

- 6.9. In immediate response situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
- 6.10. By submitting a Job Order Proposal to the CITY, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the CITY.
- 6.11. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.
- 6.12. Material price spike adjustment: For the purpose of this clause, a "major spike" is defined as a spike in a specific material cost of more than 25% above what the cost of that material was on the date the Construction Task Catalog® was issued.
  - 6.12.1. In the event a major spike occurs in a specific material cost, the Contractor may submit a request for a price modification to a Unit Price or individual Job Order. In order to initiate such a request, the Contractor shall,
    - a) identify the specific material that has experienced a major spike,
    - b) identify Pre-priced Task(s) or Job Orders that require the material experiencing a major spike, and
    - c) demonstrate that the spike exists by submitting a minimum of three quotes (or less if approved by the City with a letter of justification) on material supplier letterhead to show that the current price meets the "major spike" definition above.

The City, after review of a request, may elect to adjust the Unit Price or Job Order by considering it a NPP item. The adjustment will be for the difference between the material cost at the time the Construction Task Catalog® was issued times the quantity stated in the Job Order. The adjustment will not include any other markup, and the NPP adjustment factor will not apply.

The City, at its option, may also determine that a drastic decrease in a material cost warrants the same NPP adjustment downward in the Unit Price or a Job Order.

## **7. REVIEW OF THE JOB ORDER PROPOSAL AND ISSUANCE OF THE JOB ORDER**

- 7.1. The CITY will evaluate the entire Job Order Price Proposal and compare these with the CITY's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- 7.2. The Contractor may choose the means and methods of construction; subject however, to the CITY's right to reject any means and methods proposed by the Contractor that:
  - 7.2.1. Will constitute or create a hazard to the work, or to persons or property;

- 7.2.2. Will not produce finished Work in accordance with the terms of the Contract; or
- 7.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 7.3. The CITY reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The CITY also reserves the right not to issue a Job Order if it is determined to be in the best interests of the CITY. The CITY may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the CITY.
- 7.4. By submitting a Job Order Proposal to the CITY, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the CITY.
- 7.5. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the CITY and delivered to the Contractor constitutes the CITY's acceptance of the Contractor's Job Order Proposal. A **signed** copy of the Job Order will be provided to the Contractor.
- 7.6. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the CITY. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures. Contractor must submit to the Owner's Representative, their emergency procedure/ safety plan prior to starting work. Contractor must be responsible for quality assurance and quality control.

## **8. CHANGES IN THE WORK**

- 8.1. The CITY, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.
- 8.2. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

## **9. CONTRACT MODIFICATIONS**

- 9.1. Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Contract Change Order.

## **10. LIQUIDATED DAMAGES**

At the sole discretion of the CITY, liquidated damages will be assessed, if at all, on a Job Order-by-Job Order basis. For each calendar day that the Detailed Scope of Work for a Job Order shall remain incomplete after the Job Order Completion Time, the amount per calendar day specified in following table, Schedule of Liquidated Damages, will be deducted from any money due the Contractor, not as

a penalty but as liquidated damages; provided however that due account shall be taken of any adjustment of the Job Order Completion Time as provided for elsewhere in this Contract.

<u>Value of Job Order</u>	<u>Liquidated Damages</u>
\$0 to \$10,000	\$100/Day
\$10,001 to \$50,000	\$250/Day
\$50,000	\$400/Day
Over \$75,000	\$500/Day

## **11. PAYMENTS**

- 11.1. The CITY will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the CITY may make partial, monthly payments based on a percentage of the work completed.
- 11.2. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Project Manager, Jaime Page, concerning the percentage complete of the detailed Scope of work and the dollar value for which the Application for Payment may be submitted.

## **12. JOB ORDER CONTRACTING SOFTWARE**

### **12.1. Job Order Contracting Software**

- 12.1.1. The CITY selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") System for their JOC program. The Gordian JOC Solution includes Gordian's proprietary JOC System Software and JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including preparation and submission of Job Order Proposals, subcontractor lists, and other requirements specified by the CITY. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the CITY is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution.

## **13. ENR CCI ADJUSTMENT OF THE ADJUSTMENT FACTORS**

- 13.1. Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the award date to account for changes in construction costs, provided, the Contractor requests in writing, approximately fourteen to thirty days prior to the anniversary of the award date, that the Adjustment Factors be updated. Such request shall be delivered to the City and to Gordian. In the event the Contractor fails to deliver the request timely, then the City shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by the City. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:
- 13.1.1. The Contractor's Normal Working Hours and Other than Normal Working Hours Adjustment Factors will be adjusted according to the following:

- 13.1.1.1. A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for Los Angeles, published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. April bid date, Base Year Index is April of the prior year to March of the bid date year).
  - 13.1.1.2. A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for Los Angeles, published in the Engineering News Record (ENR) for the 12 months beginning with the month of anniversary of the bid due date (e.g. April bid date, Current Year Index is April of the prior year to March of the current year).
  - 13.1.1.3. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
  - 13.1.1.4. The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
  - 13.1.1.5. Averages shall be obtained by summing the 12 month indices and dividing by 12.
  - 13.1.1.6. All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
  - 13.1.1.7. The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
  - 13.1.1.8. The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 13.1.2. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
  - 13.1.3. Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.
  - 13.1.4. The Contractor cannot delay submission of the Job Order Proposal past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
  - 13.1.5. The Adjustment Factor for Non Pre-priced Tasks will remain constant for the duration of the Contract.

## **14. COOPERATIVE PURCHASING**

- 14.1. RCW 39.34 allows cooperative purchasing between public agencies in the State of Washington. Public agencies that file an Interlocal Joint Purchasing Agreement with the City of Mercer Island may wish to procure the goods and/or services herein offered by the selected Contractor. The selected Contractor shall have the option of extending the same cost, terms, and conditions offered to the City of Mercer Island to other public agencies under a separate agreement,

contract or purchase order(s). The City of Mercer Island is not liable in any regard for such agreement, contracts or purchase orders.

- 14.2. Each public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency. The City of Mercer Island accepts no responsibility for the performance of the Vendor in providing goods and/or services to other public agencies, nor any responsibility for the payment price to the Vendor for other public agency purchases.



**NOTE:** These Supplementary Conditions apply to FEMA funded City projects. The City anticipates that most projects performed through the Job Order Contracting program will not be FEMA funded.

## **SUPPLEMENTARY CONDITIONS – FEMA FUNDED PROJECT**

The Agreement/Contract (collectively, “Contract”) may be funded in whole or in part by federal grant funding received by The City of Mercer Island (“City) from the Federal Emergency Management Agency (“FEMA”), which is part of the United States Department of Homeland Security (“DHS”). Therefore, Consultant/Contractor (collectively, the “Contractor”) must comply with all federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to, the contractual provision set forth in Title 2 of the Code of Federal Regulations, Part 200, in connection with the Contractor’s performance of the work or services covered by the Contract (the “Project”). All such federal laws and regulations shall be deemed to be inserted in the Contract and the Contract shall be read and enforced as though such federal laws and regulations were included therein.

Anything to the contrary herein notwithstanding, all FEMA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any The City of Mercer Island request that would cause the City to be in violation of these FEMA terms and conditions or any other federal law or regulation applicable to the receipt of FEMA grants. If any provision of the Contract shall be such as to effect noncompliance with any FEMA requirement, such provision shall not be deemed to form a part thereof, but the balance of the Contract shall remain in full force and effect.

In addition, the Contractor agrees to the following specific provisions:

### **1.1 Debarment**

- .1 The Contractor and any prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- .2 The City will ensure the Contractor and any lower participants are not debarred by checking the governments Excluded Parties List System at [SAM.gov](https://www.sam.gov) prior to executing a contract.

### **1.2 Cost Plus Percentage Not Allowed**

- .1 Notwithstanding any provisions in the agreement to the contrary, the Contractor and any prospective lower tier participant are prohibited from using cost plus percentage contracts. This includes, but is not limited to the use of percentages

for change orders or mark-ups on sub-contractors or materials. Cost plus fixed fee either lump sum or unit price is authorized.

### 1.3 Additional Federal Contracting Requirements

- .1 The Contractor must comply with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41CFR chapter 60).
- .2 The Contractor must comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
- .3 The Contractor must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients of federal funding from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12101–12213).
- .4 The Contractor must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.
- .5 The Contractor must comply with Title VIII of the Civil Rights Act of 1968, which prohibits Contractors from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (see 24 C.F.R. § 100.201).
- .6 The Contractor must comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- .7 The Contractor must comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a7) as supplemented by Department of Labor regulations (29 CFR Part 5).

- a. This project is a public work in the State of California, funded in whole or in part with public funds. Therefore, the higher of the two applicable prevailing wage rates, federal or state, will be enforced.
- .8 The Contractor must comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- .9 The Contractor must provide reporting as specified in the plans, specifications and deliverables section of the contract.
- .10 The City shall have patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- .11 The City shall have copyrights and rights respective to any data which arises or is developed in the course of or under such contract.
- .12 The County, State, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- .13 The Contractor must maintain records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- .14 The Contractor must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)
- .15 The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- .16 The Contractor must comply with mandatory standards and policies relating to

energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163, 89 Stat. 871).

- .17 The City is entitled to exercise all administrative, contractual, or other legal remedies permitted by law to enforce the Contractor’s compliance with the terms of the Contract.
- .18 The Contractor must acknowledge its use of federal funding when issuing requests for proposals, bid invitations, and other documents describing the Project in connection with performing the Contract.
- .19 If the Contractor collects PII (Personally Identifiable Information) in connection with the Project, the Contractor is required to have a publicly-available privacy policy that describes what PII they collect, how they use the PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate.
- .20 The Contractor must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which is adopted at 2 C.F.R Part 3001, which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace.
- .21 The Contractor must comply with the requirements of 31 U.S.C. § 3729 which sets forth that no recipient of federal payments shall submit a false claim for payment. See also 38 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.
- .22 The Contractor must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
- .23 The Contractor must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (“LEP”) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation.
- .24 The Contractor must comply with 31 U.S.C. §1352, which provides that none of

the funds provided under an award may be expended by the Contractor to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.

- .25 Unless otherwise provided by law, the Contractor is subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. The Contractor is subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are in 37 C.F.R. Part 401 and the standard patent rights clause in 37 C.F.R. § 401.14.
- .26 The Contractor must comply with U.S. Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.
- .27 The Contractor must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104). This is implemented in accordance with OMB Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007. Full text of the award term is located at 2 CFR § 175.15.
- .28 The Contractor must comply with the Rehabilitation Act of 1973, including all sections, that prohibits discrimination on the basis of disability. The standards for deciding if employment discrimination exists under the Rehabilitation Act are the same as those used in Title I of the Americans with Disabilities Act.
- .29 The Contractor must maintain the currency of the information in the Universal Identifier and System of Award Management (SAM) until submission of the final financial report required under the award or receive final payment, whichever is later, as required by 2 C.F.R. Part 25.
- .30 The Contractor must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c. Among other things, the USA PATRIOT Act prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose.
- .31 The Contractor must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

- .32 The Contractor must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- .33 The Contractor must acknowledge and agree—and require any sub-contractors, successors, transferees, and assignees to acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Additionally:
- a. the Contractor must cooperate with any compliance review or complaint investigation conducted by DHS;
  - b. the Contractor must give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance;
  - c. the Contractor must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports;
  - d. the Contractor must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance;
  - e. if, during the past three years, the Contractor has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Contractor must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS awarding office (FEMA) and the DHS Office of Civil Rights and Civil Liberties; and
  - f. in the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Contractor, or the Contractor settles a case or matter alleging such discrimination, the Contractor must forward a copy of the complaint and findings to the DHS Component and/or awarding office (FEMA).
- .34 The Contractor and any prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- .35 Small and Minority Businesses: The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises,

and labor surplus area firms are used when possible. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e) of this section.  
[http://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200\\_1321&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1321&rgn=div8)

- .36 The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- .37 The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- .38 The Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a7) as supplemented by Department of Labor regulations (29 CFR Part 5). This project is a public work in the State of California, funded in whole or in part with public funds. Therefore, the higher of the two applicable prevailing wage rates, federal or state, will be enforced.
- .39 The Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- .40 The Contractor shall provide reporting as specified in the plans, specification and deliverables section of the contract.
- .41 The City shall have patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- .42 The City shall have copyrights and rights respective to any data which arises or is

developed in the course of or under such contract.

- .43 The County, State, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- .44 The Contractor shall maintain records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- .45 The Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)
- .46 The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163, 89 Stat. 871).

The United States has the right to seek judicial enforcement of these obligations.



The Construction Task Catalog (CTC) and related documents are available here:  
<https://fortive.box.com/s/rmzdr1mhx44bvcxufcv29if26qe070i3>

**CITY OF MERCER ISLAND, WASHINGTON  
JOB ORDER CONTRACT**

THIS JOB ORDER 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 as requested by the City; and

B. The Contractor has the requisite skill and experience to perform such work and has submitted a proposal dated [proposal received:------(date)] 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.

The Work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Prepriced Tasks.

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 within the timeline designated in the Job Order Proposal. 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: At the sole discretion of the CITY, liquidated damages will be assessed, if at all, on a Job Order-by-Job Order basis. For each calendar day that the Detailed Scope of Work for a Job Order shall remain incomplete after the Job Order Completion Time, the amount per calendar day specified in following table, Schedule of Liquidated Damages, will be deducted from any money due the Contractor, not as a penalty but as liquidated damages; provided however that due account shall be taken of any adjustment of the Job Order Completion Time as provided for elsewhere in this Contract.

Value of Job Order	Liquidated Damages
\$0 to \$10,000	\$100/Day
\$10,001 to \$50,000	\$250/Day
\$50,000	\$400/Day
Over \$75,000	\$500/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**

- 2.1 The Base Term of this Contract is two (2) years.
- 2.2 There is one (1) bilateral Option Term. Both parties must agree to extend the Contract for the Option Term. The duration of the Option Term is one year.
- 2.3 The City and the Contractor may agree to extend the Option Term.
- 2.4 All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after the Contract term has expired. All terms and conditions of the Contract apply to each Job Order.
- 2.5 The Contractor shall commence work upon issuance of a Job Order and shall complete the Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

## **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. CONTRACT PRICE**

- 4.1 City shall pay Contractor for completion of the Detailed Scopes of Work in accordance with the Contract Documents..
- 4.2 The Contract is an indefinite-quantity contract for general construction work and services. The Minimum Contract Value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract is Twenty-Five Thousand Dollars (\$25,000). The Estimated Annual Value is Two Million Dollars (\$2,000,000) for the City's Job Order Contracting Program. The City reserves the right to issue up to the maximum amount specified in RCW 39.10.40 of Four Million Dollars (\$4,000,000) per year or such greater amount that may be authorized by statute. The Maximum Contract Value shall not exceed the value set forth in the RCW.

- 4.3 The Contractor is not guaranteed to receive the Estimated Annual Value. It is merely an estimate. Owner has no obligation to give the Contractor the opportunity to perform Job Orders in excess of the Minimum Contract Value.
- 4.4 The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:

**Normal Working Hours Adjustment Factor (General Facilities)**

7:00 am to 4:00 pm Monday through Friday, except for City Holidays:

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**Other Than Normal Working Hours Adjustment Factor (General Facilities)**

4:01 pm to 6:59 am Monday through Friday, and all-day Saturday, Sunday and City Holidays:

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**Normal Working Hours Adjustment Factor (Secured Facilities)**

7:00 am to 4:00 pm Monday through Friday, except for City Holidays:

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**Other Than Normal Working Hours Adjustment Factor (Secured Facilities)**

4:01 pm to 6:59 am Monday through Friday, and all-day Saturday, Sunday and City Holidays:

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**Non-Prepriced Adjustment Factor:**

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- 4.5 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.
- 4.6 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:

[SupportServices@mercerisland.gov](mailto:SupportServices@mercerisland.gov)

4.7 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 \_\_\_\_\_ By \_\_\_\_\_  
 City of Mercer Island Contractor  
 Date \_\_\_\_\_ Date \_\_\_\_\_



**CITY OF MERCER ISLAND**  
9611 SE 36<sup>th</sup> 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)

) ss.

County of King )

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: \_\_\_\_\_.

**ADDENDUM TO AGREEMENT  
AMERICAN RESCUE PLAN ACT FUNDING  
Federal Award Identification No. WA0763**

THIS ADDENDUM supplements that certain [insert title of the Agreement this Addendum is attached to] (the “Agreement”) dated [insert date of agreement] between the City of Mercer Island, a Washington municipal corporation (“City”) and [insert full name of contractor or consultant] (“Contractor / Consultant”) is entered into for the purposes hereafter described.

**RECITALS**

WHEREAS, the City has received funds from the United States Department of the Treasury pursuant to Sections 602 and 603 of the Social Security Act, which implements Section 9901 of the American Rescue Plan Act (“ARPA”), Subtitle M of Title IX of Pub. L. 117-2 (“ARPA Funds”); and

WHEREAS, the City has determined that work performed or to be performed by the Contractor may be reimbursable under ARPA; and

WHEREAS, to be reimbursable, expenditures must be eligible under ARPA and the U.S. Department of the Treasury Final Rule on the “Coronavirus State and Local Fiscal Recovery Funds,” 31 CFR Part 35, published in the Federal Register at 87 Fed. Reg. 4338-4454. If the Final Rule is amended or replaced during the term of this Agreement, Contractor shall also comply with such amended final rule or its replacement; and

WHEREAS, this Addendum is intended to supplement the Agreement between the parties to ensure that Contractor meets the requirements for reimbursable activities under ARPA.

**ADDENDUM**

NOW, THEREFORE, in consideration of and subject to the provisions of the Agreement, the parties agree to the following supplemental provisions:

**1. Conflicting Terms and Conditions.** If any of the terms and conditions of this Addendum conflict with the terms and conditions of the Agreement, these terms and conditions shall control.

**2. Compliance with ARPA.** Contractor shall complete the services in a manner satisfactory to the City and consistent with the terms and conditions of this Agreement and applicable Federal statutes and regulations, including but not limited to, ARPA and the U.S. Department of the Treasury Final Rule on the “Coronavirus State and Local Fiscal Recovery Funds,” 31 CFR Part 35, published in the Federal Register at 87 Fed. Reg. 4338-4454. If the Final Rule is amended or replaced during the term of this Agreement, Contractor shall also comply with such amended final rule or its replacement.

**3. Debarment and Suspension.** As required by Executive Order 12549 and implemented at 2 CFR Parts 180 and 3185, the Contractor and its undersigned signatory certify that neither the Contractor, nor any of its principals or officers:

A. are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; or are otherwise excluded pursuant to 31 CFR § 19.300;

B. have within a three-year period preceding entry into the Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, or in connection with a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) of this section; or

D. have within a three-year period preceding entry into the Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

E. Contractor further agrees that it will not enter into any contract to be funded in whole or in part under this Agreement with any contractor who is ineligible to enter into government contracts for any of the reasons described above and will require all contractors retained by Contractor to provide a certification equal to that of Contractor above. Contractor further agrees that Contractor and all contractors retained by Contractor will execute a Debarment Statement in a form to be provided by the City.

**4. Lobbying.** The Contractor and its undersigned signatory certifies, to the best of their knowledge and belief that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor or its undersigned signatory, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of a federal contract, the making of a federal grant, the making of a federal loan, the entering into of a cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.

B. If any funds other than appropriated federal funds have been paid or will be paid to any person (other than a regularly employed officer or employee of the Contractor or its undersigned signatory) for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor or its undersigned signatory shall request, complete, and submit Standard Form LLL: "Disclosure of Lobbying Activities," in accordance with its instructions.

C. Contractor shall require that the following certification be included in the award documents of all subawards of all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and Subrecipients and all recipients of subawards certify and disclose accordingly:

This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall

be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**5. Compliance with Nondiscrimination Laws.** During the performance of the Agreement, the Contractor, for itself, its subcontractors, assignees, and successors in interest assures that it currently complies and future compliance with the following laws and regulations prohibiting discrimination applicable to ARPA Funds including, without limitation, the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.
- Civil Rights Restoration Act of 1987 (Public L. 100-259), which specifies that recipients of federal funds must comply with civil rights laws in all areas, not just in the particular program or activity receiving federal funding.
- Federal-aid Highway Act of 1973 (23 U.S.C. Chapter 3 § 324), which prohibits discrimination on the basis of sex (if work performed by Contractor relates to a "federal-aid highway" as defined in 23 U.S.C. § 101).
- Fair Housing Act, Title VIII of the Civil Rights Act of 1964 (42 U.S.C. § 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
- The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.
- The Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability.
- 23 CFR Part 200, implementing regulations for Title VI of the Civil Rights Act of 1964 relative to the Federal-aid highway program, if applicable.
- 49 CFR Part 21, implementing regulations for nondiscrimination in Federally-assisted transportation programs, if applicable.
- 49 CFR Part 26, which provides for participation of disadvantaged businesses in U.S. Department of Transportation financial assistance programs, if applicable.
- RCW Chapter 49.60, the Washington Law Against Discrimination, which prohibits discrimination on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin, citizenship or immigration status, or lawful business relationship.
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
- Executive Order, 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP).
- Title IX of the Education Amendments of 1972 (20 U.S.C. § 681, et seq.) if the work performed by Contractor constitutes an education program or activity.

Contractor makes the following assurances of compliance with Title VI of the Civil Rights Act of 1964:

A. Contractor ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subsection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

B. Contractor acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Contractor shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Contractor's programs, services, and activities.

C. Contractor agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067.

D. Contractor acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Contractor and Contractor's successors, transferees, and assignees for the period in which such assistance is provided.

E. Contractor acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 5.A through 5.D above. The following provision is expressly included in this Agreement because it is required by ARPA, and Contractor and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Contractor and the Contractor's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

F. Contractor acknowledges and agrees that compliance with these assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Contractor and Contractor's successors, transferees, and assignees for the period in which such assistance is provided.

G. Contractor shall cooperate in any enforcement or compliance review activities by City or by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. Contractor shall comply with information requests, on-site compliance reviews and reporting requirements.

H. Contractor shall maintain a complaint log and inform the City and, as appropriate, the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Contractor also must inform the City and, as appropriate, the Department of the Treasury if Recipient has received no complaints under Title VI.

I. Contractor must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Contractor and the administrative agency that made the finding. If the Contractor settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Contractor has not been the subject of any court or administrative agency finding of discrimination, please so state.

J. If Contractor makes sub-awards to other agencies or other entities, the Contractor is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.

K. Contractor understands that the United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

L. Compliance with the provision required by ARPA is in addition to compliance with all other nondiscrimination laws provided in this Section. Contractor understands and agrees that compliance with the provisions of this Section constitutes a condition of continued payment for the work authorized by the Agreement and that compliance is binding upon Contractor, its successors, transferees, and assignees during the term of the Agreement.

**6. Increasing Seat Belt Use.** Pursuant to Executive Order 13403, 62 FR 19217 (Apr. 17, 1997), Contractor should (and should encourage its subcontractors to) adopt and enforce on-the-job seat belt policies and programs for employees when operating company-owned, rented or personally owned vehicles.

**7. Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor should encourage its employees and subcontractors to adopt and enforce policies that ban text messaging while driving, and Contractor should establish workplace safety policies to decrease accidents caused by distracted drivers.

**8. Drug-Free Workplace.** Contractor agrees to comply with the drug-free workplace requirements in subpart B of 2 CFR Part 3186, which adopts the Government-wide Implementation (2 CFR Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*). Contractor and its undersigned signatory certify that the Contractor will or will continue to provide a drug-free workplace by taking actions such as, but not limited to, making a good faith effort, on a continuing basis, to maintain a drug-free workplace; publishing a drug-free workplace statement; taking actions concerning employees who are convicted of violating drug statutes in the workplace; and identifying all known workplaces under the Agreement.

**9. Conflict of Interest.** The conflict of interest provisions of the Agreement are supplemented by this Section. No personnel of Contractor shall, prior to the completion of the programs and activities funded by this Agreement, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any person who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his or her interest to the City in writing. Thereafter, he or she shall not participate in any action affecting the work under this Agreement unless the City determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest. Contractor understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to the Agreement. Contractor must disclose in writing to Treasury or the City, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

**10. Procurement.** The Contractor agrees to follow the procurement standards in 2 CFR §§ 200.318 through 200.327 for any subcontracts, including ensuring that the procurement method used for the subcontracts are appropriate based on the dollar amount and conditions specified in 2 CFR § 200.320.

**11. Separate Written Assurances and Certifications.** The Contractor agrees to execute separate written assurances or certifications regarding compliance with the debarment, lobbying, nondiscrimination, and drug-free workplace provisions of this Addendum, and any other applicable laws, rules, regulations, or orders, if required to do so by the City in order to secure reimbursement from ARPA funds.

**12. Recognition of City and Federal Government.** The Contractor shall ensure recognition of the role of the City and the U.S. Department of Treasury in providing the programs and activities funded by this Agreement. All activities, facilities and items used pursuant to this Agreement shall be prominently labeled as to the funding source. In addition, the Contractor will include the following language in all publications made possible with funds made available under this Agreement in order to recognize the contribution of the City and the U.S. Department of Treasury:

This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to the City of Mercer Island by the U.S. Department of the Treasury.

**13. Protection for Whistleblowers.**

A. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee or subcontractor in reprisal for disclosing to any of the list of

persons or entities provided in subsection (B) below, information that the employee reasonably believes is evidence of a gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including competition for or negotiation of a contract) or grant.

- B. The list of persons or entities referenced in subsection (A) above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A U.S. Treasury employee responsible for contract or grant oversight or management;
  - v. An authorized official of the U.S. Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Contractor, the City, a contractor, or subcontractor, who has the responsibility to investigate, discover, or address misconduct.
- C. Contractor and its subcontractors, if any, shall inform its employees of the rights and responsibilities provided by this section, in the predominant language of the workforce.
- D. Contractor shall immediately report any information provided by an employee of Contractor pursuant to subsection (A) to the City's Finance Director.

**14. Compliance with Contract Work Hours and Safety Standards Act.** If the Agreement is a contract in excess of \$100,000 with respect to water, sewer, or broadband infrastructure projects that involve employment of mechanics or laborers, Contractor agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), including, without limitation, the following (note - as used in this section, the terms "laborers" and "mechanics" include watchmen and guards):

A. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in Paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.



C. *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this section.

D. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

E. If the Agreement is subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Part 5, §5.1, the following clause shall apply to the Agreement, and shall be inserted in any subcontract:

The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the City and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**15. Compliance with the Davis-Bacon Act and Other Acts.** (a) As set forth in 29 CFR Part 5, §5.5, the following clauses apply to the Agreement if the Agreement is for an amount in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR Part 5, §5.1, and must be included in any subcontracts:

1. *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions

as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. *Withholding.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security

number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the U.S. Department of the Treasury or other appropriate Federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the U.S. Department of the Treasury or other applicable agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under §5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under §5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. *Apprentices and trainees*—(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the

wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate able program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the U.S. Department of the Treasury may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be

responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

15. **Addendum Supplemental.** The provisions of this Addendum are supplemental to those in the Agreement. All provisions of the Agreement continue to apply except to the extent superseded or supplemented by this Addendum.

Executed by the parties and effective on the last date of signature below.

**CONTRACTOR / CONSULTANT:**

**CITY:**

[INSERT FULL LEGAL NAME OF CONTRACTOR OR CONSULTANT]

CITY OF MERCER ISLAND

By: \_\_\_\_\_  
Name: [insert full legal name of signator]  
Title: [insert title of signator]  
Date:

By: \_\_\_\_\_  
Jessi Bon  
City Manager  
Date: