



# PROCUREMENT

## Request for Proposal #2021-022

Procurement Professional Point of Contact:  
 Theresa Bauccio-Teschlog, CPPB  
 Procurement Manager  
 (425) 257-8901  
[bids@everettwa.gov](mailto:bids@everettwa.gov)

### Job Order Contracting for General Construction Services

<b>TIME LINE</b> - The following represents the schedule for this solicitation.	
<b>Event</b>	<b>Date</b>
<b>Issue Date</b> .....	May 20, 2021
<b>Pre-Proposal Meeting</b> The purpose of this pre-proposal conference will be to discuss and answer questions regarding this solicitation and the project scope. It is <b>highly recommended that contractors attend</b> in order to facilitate questions regarding this project, however, attendance is not mandatory.	June 8, 2021 from Noon to 1:00 p.m. <b>Meeting Link will be available at:</b> <a href="https://everettwa.gov/319/Procurement">https://everettwa.gov/319/Procurement</a>
<b>Deadline for Final Questions</b> .....	July 1, 2021
<b>Proposal Due Date</b> .....	July 13, 2021, 2:00 p.m. Pacific Time
<b>Anticipated Award</b> .....	September, 2021
<b>Anticipated Contract Start Date</b> .....	November 21, 2021
<b>Contract Term</b>	Two (2) years with one (1) bilateral option term of one (1) year
<p><b>Submit Sealed Proposals to:</b>  <b>Procurement</b>  <b>3200 Cedar Street, Door #5</b>  <b>Everett, WA 98201</b></p> <p>Clearly label the outside of the sealed envelope containing the <u>original proposal response plus five (5) complete identical copies with the Proposal Name, Proposal Number and contact information listed above.</u> Only Proposals that arrive in the Procurement office by the deadline will be considered.</p>	
<p><b>Information &amp; Addenda:</b> All Information including Addenda regarding this solicitation can be found at:  <a href="https://everettwa.gov/319/Procurement">https://everettwa.gov/319/Procurement</a></p>	

Suppliers are responsible for checking the City of Everett website for the issuance of any addenda prior to submitting a proposal.

Job Order Contract Construction Tax Catalog (CTC):

<https://fortive.box.com/s/z7udclhd1y7n34c7poavrhtxqwhg6lhx>

**Questions:** All questions must be requested through Public Purchase utilizing the above link or e-mailed to the Procurement Professional listed above.

Unauthorized contact regarding this Request for Proposal with any other City of Everett employee or supplier may result in disqualification. Any oral communications will be considered unofficial and non-binding on the City of Everett. Proposers should rely only on written statements issued by the individual named listed above.

## **SECTION 1 - INSTRUCTIONS**

### **1.1 PROPOSAL SUBMITTAL**

The City Procurement Office must receive the supplier's proposal, in its entirety, by 2:00 p.m. Pacific Time. Proposals arriving after the deadline will be returned unopened to their senders. All proposals and accompanying documentation will become the property of the City of Everett and may not be returned.

Proposal pricing must be submitted on the forms provided in this document. To receive consideration for award, the proposal must be completed and signed by an authorized representative of the supplier. Submission of a proposal constitutes acceptance of the procedures, evaluation criteria, and other instructions of this Request for Proposal (RFP).

No supplier may withdraw their proposal after the hour set for the proposal closing unless the award is delayed for a period exceeding one hundred and twenty (120) days.

### **1.2 PROPOSAL CLOSING**

At the appointed time, the names of the suppliers who submitted proposals will be read aloud publicly via live stream only. The link to watch the bid opening will be accessible from <https://www.everettwa.gov/purchasing>. If you have any questions about logging into the live streaming quote opening, call (425) 257-8901.

### **1.3 OFFER PERIOD**

All Proposals submitted must remain open for one hundred and twenty (120) days from the receipt date. The City of Everett reserves the right to extend this period.

### **1.4 REQUEST FOR DUE DATE EXTENSION**

Suppliers may request an extension of the Proposal Due Date. Supplier must supply any justification and additional information that will facilitate an evaluation and decision by the City of Everett. Any approved extension will be issued in an addendum.

### **1.5 WITHDRAWAL OF PROPOSALS**

Suppliers may withdraw a Proposal which has been submitted at any time up to the due date and time. To accomplish this, a written request signed by an authorized representative of the supplier must be submitted to the Procurement Professional named on the Request for Proposal cover sheet.

### **1.6 SINGLE RESPONSE**

A single response to the RFP may be deemed a failure of competition, and in the best interest of the City of Everett, the RFP may be cancelled.

### **1.7 MULTIPLE PROPOSALS**

Suppliers interested in submitting more than one Proposal may do so, so long as each Proposal stands alone and independently complies with the instructions, conditions and specifications of this RFP.

**1.8 EVALUATION AND AWARD**

The City of Everett will award the Proposal to the responsive and responsible supplier(s) whose offer best meets the needs of the City or reject any and all Proposals.

- a. Responsive Supplier – A business entity or individual who has submitted a bid or proposal that fully conforms in all material respects to the Invitation for Bids (IFB)/Request for Proposals (RFP) and all of its requirements, including all form and substance.
- b. Responsible Supplier – A business entity or individual who has the financial and technical capacity to perform the requirements of the solicitation and subsequent contract.

**1.9 WAIVER OF MINOR ADMINISTRATIVE IRREGULARITIES & REJECTION OF PROPOSALS**

The City of Everett reserves the right, at its sole discretion, to waive minor administrative 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 offer whose proposal is determined to be the most advantageous to the City of Everett. The City of Everett reserves the right to reject any and all proposals.

**1.10 EXCLUDED PARTIES**

All suppliers must certify that they are not on the Comptroller General’s list of ineligible contractors nor the list of parties excluded from federal procurement or non-procurement programs. <https://www.sam.gov>

**1.11 BUSINESS LICENSE**

The successful supplier will be required to possess or be able to obtain a City of Everett Business License and pay City of Everett Business & Occupation (B & O) Tax, when applicable. B & O Tax questions may be directed to Everett City Clerk, (425) 257-8610.

**1.12 BID PROTEST PROCEDURES**

Chapter 3.46 of the Everett Municipal Code (EMC) governs all protests. Protest Procedures are available for review in the Everett Municipal Code 3.46 which can be found at: <http://www.codepublishing.com/WA/Everett>

The City reserves the right to require strict compliance with all requirements of Chapter 3.46 EMC.

**1.13 NON-ENDORSEMENT**

As a result of the selection of a supplier to provide the commodities described in Section 2 to the City of Everett, the City of Everett is neither endorsing nor suggesting that the supplier's product is the best or only solution. The supplier agrees to make no reference to the City of Everett in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the City of Everett.

**1.14 PROPRIETARY MATERIAL SUBMITTED-PUBLIC DISCLOSURE**

**A. Property of the City of Everett**

All materials submitted in response to this RFP must become the property of the City of Everett. Selection or rejection of a proposal does not affect this. In this section, the term “proposal” is generic and refers to

proposals, statements of qualification, letters of interest and any other material submitted in response to this RFP.

**B. Proposals are Public Records**

Pursuant to Chapter 42.56 RCW and other statutes regarding public agencies, all materials (including, for example, proposals) submitted under this RFP must be considered public records and except to the extent protected by state and or federal laws will be available for inspection and copying by the public following contract award. Records will not be released by the City of Everett prior to contract award in order to protect the integrity of the procurement process, unless otherwise required by law.

**C. Public Records Exemption / Notice of RCW 39.10.470**

In accordance with RCW 39.10.470, trade secrets as defined in RCW 19.108.010, or other proprietary information submitted by a Proposer in connection with this RFP might not be subject to public disclosure under chapter 42.56 RCW if the proposer specifically states in writing the reasons why protection from disclosure is necessary, and identifies the data or materials to be protected. Proposers must specifically designate and clearly label as “CONFIDENTIAL” any and all such materials or portions thereof that they deem to contain trade secrets or other proprietary information. Proposers should carefully consider what is truly confidential and should not mark an entire proposal as confidential. The proposer must provide the legal basis for the exemption to the City upon request. Proposers are advised that this exemption is subject to judicial review and the proposer’s designation of confidential may or may not be upheld by a Court.

**D. Proposals Not Marked as Confidential**

If a proposal or other material does not clearly identify the “CONFIDENTIAL” portions, the City will not notify the proposer that its proposal will be made available for inspection and copying, and the City may publicly disclose such non-clearly identified portion with no liability whatsoever to the proposer.

**E. Process for Disclosing Information**

If a request is made for disclosure of material or any portion marked “CONFIDENTIAL,” the City will determine whether the material should be made available under the law. If the City determines that the material is subject to disclosure, the City will seek to notify the Proposer of the request and allow the proposer ten (10) business days after such notification to take appropriate legal action in Snohomish County Superior Court at the proposer’s sole expense and liability. If the proposer does not within such ten (10) business days serve the Office of the City Attorney with a copy of an order entered by the Superior Court that expressly prohibits the City from disclosure of the material marked “CONFIDENTIAL,” then the proposer will be deemed to have consented to the public disclosure of the material marked “Confidential” and the City may publicly disclose such material without any liability whatsoever to proposer.

**F. Indemnification by Proposer**

To the extent that the City withholds from disclosure all or any portion of proposer’s material marked “CONFIDENTIAL”, the proposer, by submitting a proposal in response to this RFP, agrees to indemnify, defend and hold harmless the City of Everett from all lawsuits, liabilities, losses, damages, penalties, attorneys’ fees and costs the City incurs arising from or relating to such withholding from disclosure.

## **G. Consent to Procedure**

Proposers, by submission of materials marked "CONFIDENTIAL", acknowledge and agree that the City will have no obligation to advocate for nondisclosure in any forum and has no liability whatsoever to any proposer for the disclosure of any material or record of any kind when that disclosure is in accordance with applicable law or in accordance with an order applying applicable law entered by the Snohomish County Superior Court or a Washington appellate court. By submitting a proposal, the supplier consents to the procedure in this Section as its sole remedy and waives and releases all claims against the City arising from the City's actions taken in accordance with this procedure.

### **1.15 RESPONSE PROPERTY OF THE CITY OF EVERETT**

All materials submitted in response to this request become the property of the City of Everett. Selection or rejection of a response does not affect this right.

### **1.16 NO OBLIGATION TO BUY**

The City of Everett reserves the right to refrain from contracting with any supplier. The release of this RFP does not compel the City of Everett to purchase.

### **1.17 COST OF PREPARING PROPOSALS**

The City of Everett is not liable for any costs incurred by suppliers in the preparation and presentation of proposals and demonstrations submitted in response to this RFP.

### **1.18 COOPERATIVE PURCHASING**

**Suppliers:** RCW 39.34 allows cooperative purchasing between public agencies also called political subdivisions. Public agencies which have an Intergovernmental Cooperative Purchasing Agreement with the City of Everett may purchase from City of Everett contracts, provided that the supplier has agreed to such participation. Each supplier must indicate on the quote submittal form if they will not honor other public agency orders in accordance with contract terms and conditions in addition to orders from the City of Everett. The City of Everett does not accept any responsibility for purchase orders issued by other public agencies.

**Cooperating Political Subdivisions:** Public agencies desiring to use Everett's contracts must have executed an Intergovernmental Cooperative Purchasing Agreement with the City of Everett, as required by RCW 39.34. Only those public agencies who have complied with these requirements are eligible to use this contract. The public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency in question. A purchase by a public agency must be affected by a purchase order from the public agency, directed to the supplier or other party contracting to furnish goods or services to the City of Everett.

The City of Everett accepts no responsibility for the performance of any purchasing contract by the supplier, and the City of Everett accepts no responsibility for payment of the purchase price for any public agency.

## **SECTION 2 - SPECIFICATIONS**

### **2.1 INTENT SUMMARY / REASONS FOR USING JOB ORDER CONTRACTS**

The City of Everett 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 unit price books 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 general construction firms. 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.

### **2.2 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.

At this time, the total estimated annual value is \$4,000,000 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 \$4 million per contractor per year. The Maximum Contract Value shall not exceed the value set forth in the RCW. Any unused capacity from the previous year may be carried over for one (1) year and added to the immediate following year's limit. The maximum annual volume including unused capacity shall not exceed the limit of two (2) years.

### **2.3 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 Software and JOC Applications, construction cost data and Construction Task Catalog®, which will be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the Owner. 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™. 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. A copy of the license agreement is attached and is included by reference. This Section is repeated in Section 18.1.1.

Link to the Job Order Contract Construction Task Catalog® (CTC):  
<https://fortive.box.com/s/z7udclhd1y7n34c7poavrhtxqwhg6lhx>

## **2.4 BACKGROUND**

In August 2015, the City of Everett awarded its first job order contracts to two (2) general construction contractors. In November 2018, the City of Everett awarded its second job order contract to two (2) general construction contractors. From 2018 - 2021, City departments utilized the Job Order Contracting program to successfully complete over 122 construction, maintenance, and repair projects valued at over \$7 million. Projects have ranged from:

- facility maintenance including HVAC;
- structural maintenance and remodels including roofing;
- road repair & sidewalk construction;
- right of way improvements;
- water main repairs & pipe installation;
- park improvements including fencing;
- guardrail replacements;
- structural demolition.

## **2.5 SCOPE OF WORK**

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.

As a part of the Job Order Contracting program, the City is accepting proposals from experienced general construction firms. Contracts will be awarded through an advertised multi-phased process. It is the intent of the City to award a contract to one or two separate Contractors using the evaluation factors and the relative weight of the Adjustment Factors. Award will be made to the highest scored contractors.

## **2.6 KEY PERSONNEL**

The Contractor agrees to provide all key personnel necessary to perform all work, including the individuals who were named in the proposal submitted in response to this Request for Proposals. These key personnel shall remain assigned for the duration of the contract, unless otherwise agreed to in writing by the City. In the event the Contractor proposes to substitute any of the key personnel designated in the Proposal, the individual(s) proposed must demonstrate similar qualifications and experience as required to successfully perform such duties. The City shall have the sole right to determine whether key personnel proposed as substitutes are qualified to work on the project. The City shall not unreasonably withhold approval of staff changes.

## **2.7 JOB ORDER CONTRACTING PROCESS OVERVIEW**

- Projects are identified by the City departments.
- The Contractor jointly scopes the work with the City.

- The Contractor prepares a Detailed Scope of Work.
- The City reviews the scope of work, modifies the scope as applicable and requests a price proposal from the Contractor.
- The Contractor prepares a Job Order Proposal for the Project including a Price Proposal, Schedule, list of Subcontractors, Sketches or Drawings, and other requested documentation.
- If the Job Order Proposal is found to be complete and reasonable, a Job Order may be issued.
- A Job order will reference the Detailed Scope of Work and set forth the completion time and price. The price will be a lump sum, fixed price for the completion of the Detailed Scope of Work.
- A separate Job Order will be issued for each Project. Extra work, credits, and deletions will be contained in Supplemental change orders.

All Job Orders issued prior to the expiration of this Contract shall be performed and completed as part of this contract. Payments will be made, and the guarantee period will continue after contract term has expired.

All terms and conditions of the Contract apply to each Job Order.

## **2.8 COMPLIANCE WITH APPLICABLE CODES, LAWS, AND REGULATIONS**

The Work shall be conducted by the Contractor in strict accordance with the Contract Documents and all applicable Federal, State, and City laws, regulations and codes, including but not limited to:

- City of Everett Standard Plans, current edition
- City of Everett Standard Specifications, current edition
- WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, current edition, and all amendments
- Manual of Uniform Traffic Control Devices (MUTCD)
- EPA and Washington Department of Ecology Standards
- Others, as required

## **2.9 FEDERAL REGULATIONS**

At times the City is a recipient of federal funding. When a Job Order is funded with federal funds, the City will attach any grant terms, conditions and special requirements that will be applicable to the Job Order. The Contractor agrees to abide by all federal terms and conditions in effect for that Job Order. Current Federal clauses are attached as reference.

## **2.10 ADJUSTMENT FACTORS**

1. Contractors must provide three separate Adjustment Factors. The Adjustment Factors are as follows:
  - **Normal Working Hours:** Monday thru Friday 7:00 am to 4:00 pm except Holidays;

- **Other Than Normal Working Hours:** Monday thru Friday 4:01 pm to 6:59 am and all day Saturday, Sunday and Holidays;
  - **Non-Prepriced:** For Non-Prepriced Work.
2. ***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.***
3. For bid evaluation purposes only, the following work distributions shall be used to determine the Award Criteria Figure:

<b>Adjustment Factor</b>	<b>% Weight (For Evaluation Only)</b>
Normal Working Hours	60%
Other than Normal Working Hours	30%
Non-Prepriced	10%

4. The Construction Task Catalog<sup>®</sup> 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<sup>®</sup>. Suppliers who submit Adjustment Factors other than listed above may be considered non-responsive and their proposal may be rejected.

## **2.11 MANDATORY QUALIFICATIONS**

Contractors must meet the qualifications described in this section or be subject to disqualification from the RFP process. To be considered to be awarded a Job Order Contract, the Proposer must:

- a) At the time of proposal submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
- b) Have a current state unified business identifier (UBI) number;
- c) If applicable, have industrial insurance coverage for the proposer’s employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;
- d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
- e) If 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
- f) Have received training on the requirements related to public works and prevailing wage under chapter 39.04 RCW and chapter 39.12 RCW as required by RCW 39.04.350.

- 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 Washington State 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.

## **2.12 PREVAILING WAGE COMPLIANCE**

Job order contractors shall pay state prevailing wages for all work that would otherwise be subject to the requirements of Chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each job order must be the rates in effect at the time the individual Job Order is issued.

Some Job Orders may be funded through federally programs. For these Job Order, contractors must 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 state prevailing wages or Davis-Bacon wages, whichever is higher.

Upon contract execution and prior to the performance of Job Orders, the Job Order Contractor must submit to the City an Intent to Pay Prevailing Wage as filed online with Washington State Department of Labor and Industries.

## **2.13 INTENTS AND AFFIDAVITS**

Each job order issued will require the submittal of a 'Statement of Intent to Pay Prevailing Wages' and 'Affidavit of Wages Paid' that has been approved by the Department of Labor and Industries by the prime contractor and any subcontractors.

1. The City of Everett must have a copy of the approved forms before it can make payment(s) to the contractor.
2. The applicable wage rate for the repair is the rate is that is in effect on the date for the Job Order is issued.
3. Throughout the contract, the Contractor and any subcontractor must pay at least the prevailing wage rates that were in effect at the time the Job Order is issued.

## **2.14 PERFORMANCE AND PAYMENT BONDS**

The Payment and Performance Bond will be in the penal sum equal to \$2,000,000. 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 such amount, the Contractor shall deliver new Payment and Performance Bonds or rider(s) as required by the City. The Contractor must use the Performance Bond form and the Payment Bond form provided by the City.

## **2.15 RETAINAGE BOND**

The City requires each Contractor to provide a Retainage Bond in the penal sum equal to \$100,000. If the cumulative amount of required Retainage under Chapter 60.28 RCW exceeds this amount, the Contractor shall deliver a rider or a new Retainage Bond as required by the City. The Contractor must use the Retainage Bond form provided by the City.

**2.16 OPTION TO EXTEND**

The parties may elect to extend the contract for one (1) year, in which case all contract terms and conditions will remain unchanged for the extension year.

**2.17 OPTION YEAR PRICE INCREASE**

See Article 17.

**2.18 PAYMENT**

Within thirty (30) days after delivery, acceptance of items ordered and a properly prepared invoice but not more often than once per month the City of Everett will pay the Contractor according to the terms of the contract.

No down payment or advance payment of any kind will be made. Washington State law requires proof that the materials have been furnished, the services rendered or the labor performed as described before payment may be made. All invoices must list the Job Order number and are to be submitted to the following address:

City of Everett – Procurement  
tbauccio@everettwa.gov  
Attn: JOC Contract Administrator  
3200 Cedar Street #5  
Everett, WA 98201

## **SECTION 3 – PROPOSAL SUBMITTAL REQUIREMENTS**

### **3.1 SUBMITTAL REQUIREMENTS**

The City will adhere to RCW 39.10.430. Proposals will be evaluated in two (2) phases.

A. The following documents are required and will be evaluated as part of the **original Proposal Submittal package**:

1. Minimum Qualifications per Section 4
2. Form 5.01 Supplier Commitment and Information
3. Form 5.03 Questionnaire – Sections 1 & 2
4. Form 5.04 Debarment Form
5. Form 5.05 Wage Compliance Form
6. Form 5.06 Certification Regarding Lobbying by Contractor
7. Form 5.07 Disclosure of Lobbying Activities
8. Federal Transit Administration Clause Certifications (See back of RFP).

B. After an initial evaluation, the finalists will be requested to provide and will be evaluated on the following documents as part of the **Final Proposal package**:

1. Form 5.02 Price Sheet
2. Form 5.03 Questionnaire- Section 3 & 4

C. Awarded Contractor(s) will be requested to provide the following documents as part of the **Award Package**:

1. Signed Contract
2. Performance Bond
3. Payment Bond
4. Retainage Bond
5. Insurance Certificates
6. City of Everett business license

### **3.2 CONTENT AND FORMAT**

Suggested response format:

- Standard 8 1/2" x 11" paper; Single or double-sided, numbered pages;
- Typed with a minimum of 12-point font;
- Foldouts containing charts, spreadsheets, exhibits are permissible;
- Manuals and other reference documentation may be bound separately.

## SECTION 4 – PROPOSAL EVALUATION PROCESS

### 4.1 GENERAL

All proposals will be reviewed to determine compliance with the requirements as specified in the RFP. Proposals will be evaluated on how well the proposal meets the needs of the City, as described in the proposer’s response to each requirement and the evaluation criteria identified in this RFP. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal.

### 4.2 CONTRACT AWARD AND EXECUTION

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

### 4.3 EVALUATION CRITERIA

A City of Everett evaluation panel will review and score proposals in accordance with the requirements stated in this solicitation.

Minimum Qualifications:

The evaluation panel will first examine proposals and eliminate those that do not meet the following minimum qualifications.

#		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 Workmen’s compensation account</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 the RFP.

Criteria #	Criteria	Points	Description
<b>Phase 1 Evaluation</b>			
1	Qualifications and Relevant Experience	50	Evaluate responses to Questionnaire 4.04
2	Technical Capability, Approach, and Capacity	75	Evaluate responses to Questionnaire 4.04

<b>Phase 2 Evaluation</b>			
3	Communication and Customer Service	50	Evaluate responses to Questionnaire 4.04.
4	Risk, Performance, and Quality Assurance	25	Evaluate responses to Questionnaire 4.04 which includes past performance on similar contracts.
5	Price Proposal	200	Evaluate Contractor's Adjustment Factors to determine fair and reasonableness <ul style="list-style-type: none"> <li>• 60% of the points will be determined by the lowest adjustment factor receiving the most points</li> <li>• 40% of the points will be based on the perceived value of the proposal response in relation to the listed scope of work.</li> </ul>
	Total	400	

#### **4.4 INTERVIEWS**

The City of Everett may request interviews with the highest-ranked Supplier(s). The purpose of the interview, if held, will be to further review the finalist(s) in specific areas to determine which proposal provides the best fit and value to the City of Everett. Finalist(s) shall have key employees available for these interviews. The City of Everett will notify the finalist(s) as to the time, date, and location for an interview or conference call.

**FORM 5.01 SUPPLIER COMMITMENT AND INFORMATION – PHASE 1 SUBMITTAL**  
**REQUEST FOR PROPOSAL #2021-022 JOB ORDER CONTRACTING FOR GENERAL  
CONSTRUCTION SERVICES**

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

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

The Supplier 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* and <b>Date</b> :	
<small>*A signature means an original signature, a copy of an original signature, a PDF scan of an original signature, or a DocuSign/AdobeSign electronic signature.</small>	

**FORM 5.02 PRICE SHEET – PHASE 2 SUBMITTAL**

**REQUEST FOR PROPOSAL #2021-022 JOB ORDER  
CONTRACTING FOR GENERAL CONSTRUCTION SERVICES**

Contractor Name:

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

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

The weighted multipliers are for the purpose of calculating the Award 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 Award Criteria Figure is only used for the purpose of determining the lowest proposed price.

When submitting Job Order Price Proposals related to specific Job Orders, the Contract 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 Everett 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>Multiplier</b>	<b>Total</b>
1	Normal Working Hours		x 0.60	
2	Other Than Normal Working Hours		x 0.30	
3	Non-Prepriced Work		x 0.10	
	Add all the total amounts in the right column: The sum of these total amounts is the Award Criteria Figure.			

**FORM 5.03 QUESTIONNAIRE - SECTIONS ARE SUBMITTED IN BOTH PHASE 1 & 2**

**REQUEST FOR PROPOSAL #2021-022 JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES**

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

**1. Qualifications and Relevant Experience (Phase 1)**

- 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 is their years of experience, years in industry, years with firm, year of applicable licenses, and 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 three 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 (Phase 1)**

- 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 small and disadvantaged business plan. Identify, in specific detail, how the firm will maximize participation of small and disadvantaged businesses 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 within the City of Everett limits.
- 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? How do you schedule projects so that City of Everett projects are accomplished within the required completion timeframe.
- H. Describe your process to ensure compliance with Washington State laws and regulations.

**3. Communication and Customer Services (Phase 2)**

- A. How will your project manager communicate with City of Everett's project managers in all phases of the contract? Include how often are status reports provided.
- B. Describe your company's policy for correcting defective workmanship or your own and of subcontractors. Include information on your warranty policy.
- C. Describe your approach to achieving Customer Satisfaction.

**4. Risk, Performance, and Quality Assurance (Phase 2)**

- 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.

**FORM 5.04 CERTIFICATE OF NON-DEBARMENT / SUSPENSION – PHASE 1 SUBMITTAL**

**REQUEST FOR PROPOSAL #2021-022 JOB ORDER CONTRACTING FOR GENERAL  
CONSTRUCTION SERVICES**

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

**The Supplier, \_\_\_\_\_, 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 SUPPLIER WITH THEIR ORIGINAL PROPOSAL PACKAGE**

**AND**

**PROVIDED FOR ANY SUB-TIER SUPPLIERS THAT WILL BE AFFILIATED WITH THE JOB ORDER PRIOR TO AWARD OF THE JOB ORDER**

**FORM 5.05 CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES PHASE 1**  
**SUBMITTAL**

**REQUEST FOR PROPOSAL #2021-022 JOB ORDER CONTRACTING FOR GENERAL  
CONSTRUCTION SERVICES**

The proposer hereby certifies that, within the three-year period immediately preceding the bid solicitation date ( \_\_\_\_\_ ), the proposer 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:

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

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*\* 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.*

**FORM 5.06 CERTIFICATION REGARDING LOBBYING BY CONTRACTOR – PHASE 1**

Pursuant to 40 CFR Part 20 (which is by this reference incorporated herein), the undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.



## **INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form must be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant

announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official must sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



## CITY OF EVERETT, WASHINGTON

### JOB ORDER CONTRACT

THIS CONTRACT by and between the City of Everett (hereinafter called City) and [Insert Contractor's Name] (hereinafter called Contractor). City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

#### **SECTION 1 - WORK**

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

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 Prepriced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Prepriced Tasks.

#### **SECTION 2 – CITY REPRESENTATIVES**

- 2.1 **Project Manager:** The City will appoint a Project Manager for each Job Order, who shall be the City's representative, assume all duties and responsibilities and have the rights and authority assigned to the Project Manager in the Contract Documents in connection with completion of the Work in accordance with the Job Order and the Contract Documents.
- 2.2 **Contract Administrator:** The JOC Contract Administrator is designated by the City to manage the Job Order Contracting program for the City. The Contract Administrator will oversee the execution of the program on behalf of the City and will provide overall guidance to the Project Managers and Contractor(s) in the execution of Job Orders. The Contract Administrator shall intervene in disputes or disagreements between the Project Manager and the Contractor. The Contract Administrator also may exercise any authority granted to Project Managers under the Contract Documents with respect to any Job Order at any time.

#### **SECTION 3 - CONTRACT TIME**

- 3.1 The Base Term of the Contract is two (2) years.
- 3.2 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.
- 3.3 The City and the Contractor may agree to extend the Option Term.
- 3.4 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.

3.5 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.

**SECTION 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 three Million Dollars (\$3,000,000) 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 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**

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

\_\_\_\_\_.

**Other Than Normal Working Hours Adjustment Factor**

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

\_\_\_\_\_.

**Non-Prepriced Adjustment Factor:**

\_\_\_\_\_.

**SECTION 5 - PAYMENT PROCEDURES**

Contractor shall submit Applications for Payment in accordance with Article 12 the General Conditions. Applications for Payment will be processed by the Contract Administrator with approval by the Project Manager as provided in the General Conditions.

- 5.1 Progress Payments. City shall make progress payments on account of the Job Order Price on the basis of Contractor's Invoices as recommended by Project Manager and Contract Administrator in accordance with Article 12.1 of the General Conditions. All progress payments will be on the basis of the progress of the Work as established in the General Conditions (and in the case of Unit Price Work based on the number of units completed).
- 5.2.1 Final Payment: Upon final completion and acceptance of the work in accordance with the General Conditions, City shall pay the remainder of the Job Order Price as recommended by Project Manager and Contract

Administrator. A Certificate of Completion signed by the Project Manager is required prior to payment of any final invoice(s).

5.2.2 As determined by the Project Manager, progress payments shall be made per the Project Payment Schedule.

5.2.3 Per RCW 39.10.450, for purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Job order issued shall be treated as a separate contract. Contractor will provide the bonds as set forth in the RFP and in the General Conditions on the forms provided by the City.

## **SECTION 6 INDEMNIFICATION**

The indemnity and defense obligations in this Section 6 are in addition to any other indemnity and defense obligation elsewhere in the Contract Documents.

A. Contractor will defend and indemnify the City from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Contractor relating to, or arising out of its performance of, this Contract. The Contractor will defend and indemnify the City whether a Claim is asserted directly against the City, or whether a Claim is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The amount of insurance obtained by, obtainable by, or required of the Contractor does not in any way limit the Contractor's duty to defend and indemnify the City. The City retains the right to approve Claims investigation and counsel assigned to said Claim and all investigation and legal work regarding said Claim shall be performed under a fiduciary relationship to the City.

B. The Contractor's obligations under this Section shall not apply to Claims caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) such Claim is caused by or results from the concurrent negligence of (a) the Contractor, its employees, subcontractors/subconsultants or agents and (b) the City, then the Contractor's obligations under this Section 6 shall apply only to the extent allowed by RCW 4.24.115.

C. As used in this section: (1) "City" includes the City's officers, employees, agents, and representatives; (2) "Claims" include all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, whether

threatened, asserted or filed against the City, whether such Claims sound in tort, contract, or any other legal theory, whether such Claims have been reduced to judgment or arbitration award, irrespective of the type of relief sought or demanded (such as money or injunctive relief), and irrespective of the type of damage alleged (such as bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages); and (3) "Contractor" includes Contractor, its employees, agents, representatives and subcontractors.

D. Contractor waives any right of contribution against the City. It is agreed and mutually negotiated that in any and all claims against the City, its agents or employees, the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts any of them may be liable, the defense and indemnification obligations hereunder shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under industrial worker's compensation acts, disability benefit acts, or other employees' benefit acts. Contractor's and City's signatures hereto indicate specific waiver of Contractor's industrial insurance immunity in order to fulfill this indemnity. Solely for the purpose of indemnification and defense as provided in this Contract, the Contractor specifically waives any immunity under the State Industrial Insurance Law, Title 51 RCW. The Contractor expressly acknowledges that this waiver of

immunity under Title 51 RCW was the subject of mutual negotiation and was specifically entered into pursuant to the provisions of RCW 4.24.115.

#### **SECTION 7 - CONTRACTOR'S REPRESENTATIONS**

Contractor, by submittal of a Proposal and entering into this Contract, makes the following representations:

- 7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 7.2 Contractor is fully qualified to perform the Work to be performed hereunder in a competent and professional manner.
- 7.3 Contractor has given Project Manager written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Project Manager is acceptable to Contractor.

#### **SECTION 8 - CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between City and Contractor concerning the work consist of the following:

- 8.1 This Contract and its exhibits, if any. In a Federally Funded Job Order (as defined in the General Conditions) this Contract includes the applicable current Federal Contract Clauses, which the City will specifically designate in the Job Order. These Federal Contract Clauses are only applicable to that specific Federally Funded Job Order and have no force or effect with respect to any other Job Order. A Federally Funded Job Order may also include one-time changes to the Contract Documents specifically for that Job Order signed for the City by the Contract Administrator as necessary to coordinate the requirements of the applicable Federal Contract Clauses with the requirements of the Contract Documents.
- 8.2 General Conditions, incorporated by reference.
- 8.3 Supplementary Conditions, incorporated by reference.
- 8.4 The RFP and all addenda, incorporated by reference.
- 8.5 Contractor's Proposal, incorporated by reference. If there is inconsistency between any provision of the Contractor's Proposal and any other Contract Document, then the provision imposing the more stringent requirement on the Contractor will control.
- 8.6 The Construction Task Catalog<sup>®</sup>, incorporated by reference.
- 8.7 All Job Orders and related documents, including but not limited to, the Detailed Scope of Work with Drawings and/or Specifications, Request for Proposal, Price Proposal, Job Order Proposal, Notice to Proceed, submittals, record documents, and all required close-out documentation and warranties, incorporated by reference. If there is inconsistency between any provision of the documents listed in this Section 8.8 and any other Contract Document, then the provision imposing the more stringent requirement on the Contractor will control.

There are no Contract Documents other than those listed above in this Section 8. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions or Supplementary Conditions.

All Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. In cases of conflict in the requirements and provisions as set out by the Contract Documents, the specifications, or the drawings, such conflict shall be reconciled by the order of precedence in the order the Contract Documents are set forth above.

Any modification of any Contract Document listed in sections 8.1 to 8.6 above requires an amendment executed by an authorized representative of the City and by an authorized representative of the Contractor. Changes to Contract Documents listed under Section 8.7 may be executed by an authorized representative of the Contractor and by the Project Manager or the Contract Administrator for the City, as determined by Contract Administrator policy.

#### **SECTION 9 – PREVAILING WAGE**

Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid. The Contractor will be required to file prevailing wage intents and affidavits with Labor & Industries for each Job Order. A Federally-Funded Job Order may specify the Davis-Bacon Act and Copeland Anti-Kickback Act, in which case Contractor shall comply with these requirements. The Contractor will pay state prevailing wage or Davis-Bacon wages, whichever is higher.

#### **SECTION 10 - MISCELLANEOUS**

10.1 Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

10.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in an written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 City and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

10.4 This Contract is governed by the laws of the State of Washington, without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be exclusively brought in the Superior Court of Snohomish County, Washington.

IN WITNESS WHEREOF, City and Contractor have signed this Contract. This Contract is effective as of the date of the last person to sign it, and may be executed in multiple counterparts, each of which shall be deemed an original.

**CITY OF EVERETT, WASHINGTON**

APPROVED AS TO FORM:

ATTEST

**CONTRACTOR**

[Contractor's Complete Legal Name]

By:

Typed/Printed Name:

Its (Title):

## PERFORMANCE BOND

**Bond No.:** \_\_\_\_\_

The City of Everett has awarded to \_\_\_\_\_ (Principal), a contract for the construction of the project designated as Job Order Contracting for General Construction Services, Project No. 2021-022, in Everett, 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 of Everett 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 the 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 full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any 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 officer executing on behalf of the surety.

PRINCIPAL

SURETY

\_\_\_\_\_

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

--

---

PERFORMANCE BOND APPROVED BY  
CITY OF EVERETT, WASHINGTON

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_

Cassie Franklin, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_

Sharon Fuller, City Clerk

Date: \_\_\_\_\_

\_\_\_\_\_

City Attorney

Date: \_\_\_\_\_

**PAYMENT BOND**

**Bond No.** \_\_\_\_\_

The City of Everett has awarded to \_\_\_\_\_ (Principal), a contract for the construction of the project designated as Job Order Contracting for General Construction Services, Project No. 2021-022, in Everett, Washington (Contract), and said Principal is required under the terms of that Contract to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

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

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

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, 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 officer executing on behalf of the surety.

PRINCIPAL

SURETY

\_\_\_\_\_

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

PAYMENT BOND APPROVED BY  
CITY OF EVERETT, WASHINGTON

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Cassie Franklin, Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
Sharon Fuller, City Clerk  
Date: \_\_\_\_\_

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_



## RETAINAGE BOND

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_, and registered to do business in the State of Washington as a contractor, as Principal, and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ and registered to transact business in the in the State of Washington as surety, as Surety, their heirs, executors, administrators, successors and assigns, are jointly and severally held and bound to the City of Everett, Washington, hereinafter called "City", and are similarly held and bound unto the beneficiaries of the trust fund created by RCW Chapter 60.28, in the sum of \_\_\_\_\_ and \_\_\_\_\_/100's Dollars (\$\_\_\_\_\_), the payment of which, well and truly to be paid, we bind ourselves, our heirs, executors and successors, jointly and severally, formally by these presents.

THE CONDITIONS OF THE ABOVE OBLIGATION ARE THAT:

WHEREAS, on \_\_\_\_\_, the Principal executed a contract (the "Contract") with the City known as:

Project Number and Name: **RFP 2021-022 JOB ORDER CONTRACTING FOR GENERAL CONSTRUCTION SERVICES**

And,

WHEREAS, said Contract and RCW Chapter 60.28 require the City to withhold from monies earned by the Principal during the progress of the construction, hereinafter referred to as "earned retained funds"; and

WHEREAS, the Principal requested that the City release earned retained funds, as allowed under RCW Chapter. 60.28;

NOW, THEREFORE, the condition of this obligation is such that the Surety is held and bound to the City to indemnify, defend and hold the City harmless from any and all loss, costs or damages that the City may sustain by reason of release of said earned retained funds to Principal, then this obligation to be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, it is expressly understood and agreed that:

1. Any suit or action under this bond must be instituted within the time period provided by applicable law. The bond shall be subject to all claims and liens provided for by law or Contract against the earned retained funds and in the same manner and priority as set forth for retained percentages in RCW Chapter 60.28 and the Contract.
2. The Surety hereby consents to and waives notice of any extension in the time for performance of the Contract, assignment of obligations under the Contract, or Contract alteration, termination, amendment or change order.
3. Until written release of this obligation by the City, this bond may not be terminated or canceled by the Principal or Surety for any reason. Any extension of time for the Principal's performance on the Contract, assignment of obligations under the Contract, or Contract alteration, amendment or change order shall not release the Surety from its obligation under this bond.
4. RCW Chapter 60.28 authorizes the City to substitute a retainage bond in lieu of earned retained funds and the Surety hereby waives any defense that this bond is void or otherwise not authorized by law.

- 5. Any claim or suit against the City to foreclose the liens provided for by RCW Chapter 60.28 shall be effective against the Principal and Surety and any judgment under RCW Chapter 60.28 against the City shall be conclusive against the Principal and the Surety.
- 6. The laws of the State of Washington shall apply to the determination of the rights and obligations of the parties hereunder. Venue for any dispute or claim hereunder shall be the state courts of Washington in Snohomish County, Washington.

SIGNED AND SEALED THIS \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.

PRINCIPAL

SURETY

\_\_\_\_\_

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

Attorney-in-Fact: \_\_\_\_\_

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**ARTICLE 1    DEFINITIONS**

**1.1    Definition of Terms:**

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

**Acceptance**

The official act of the City, Contract Administrator, or Project Manager as described in Article 12.

**Addenda**

Written or graphic instruments issued prior to the submittal of Contractor Proposals which clarify, correct or change the Proposal documents or the Contract Documents

**Contract (or Job Order Contract)**

The written agreement between City and Contractor.

**Application for Payment**

The form accepted by Project Manager which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.

**Bonds**

Performance and payment bonds and other instruments of security.

**Contract Administrator**

The authorized representative of the City who is assigned immediate charge of the administration of the Job Order Contract.

**Contract Documents**

All of the documents constituting the Contract.

**Contractor**

The individual, firm, partnership, corporation or combination thereof with whom City has entered into the Contract.

**City**

The City of Everett. Depending on the context, the term City may also include all of the City's elected officials, officers, employees and other authorized representatives

**Day**

Unless otherwise designated in the Contract Documents, a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

**Defective**

An adjective which when modifying the word Work refers to

Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents or does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Project Manager's recommendation of final payment.

**Drawings**

The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Project Manager assigned to the Job order and which are referred to in the Detailed Scope of Work.

**Effective Date of the Contract**

The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

**Federally Funded Job Order**

A Job Order designated by the City as federally funded, in which case the Job Order includes the Federal Contract Clauses.

The current federal contract clauses determined by the City to be applicable to a Federally Funded Job Order. .

**Federal Contract Clauses**

**Field Order**

A written order issued by Project Manager which orders minor changes in the Work in accordance with section 10.1.5, but which does not involve a change in the Price or the Completion Time.

**Final Completion**

Occurs when all requirements have been completed as stated in section 2.3 and Article 12

**Final Payment**

The payment to be made to the Contractor in accordance with Article 12.

**Hazardous Materials**

The term "Hazardous Materials" means any hazardous or toxic substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table 49 CFR 172.101 or listed by the Environmental Protection Agency as hazardous substances in 40 CFR Part 302 and any amendments thereto, and any substances, materials or wastes that are or become regulated under federal, state or local law. Hazardous Materials or substances shall also include, but not

be limited to: regulated substances, petroleum products, pollutants, and any and all other environmental contamination as defined by, and in any and all federal, State and/or local laws, rules, regulations, ordinances or statutes now existing or hereinafter enacted relating to air, soil, water, environmental or health and safety conditions.

**Inspector**

The City's authorized representative assigned to make inspections of the Contractor's performance of the Work.

**Liquidated Damages**

The amount prescribed herein to be paid to the City, or to be deducted from any payments due or to become due the Contractor, for each day's delay in completing the whole or any specified portion of the work beyond the time allowed in the Job Order.

**Notice of Intent to Award**

The written notice by City identifying the highest ranked Proposers and indicating that the City intends to award a contract to that Proposer(s) or enter into negotiations with such Proposer(s).

**Notice to Proceed**

A written notice given by City to Contractor fixing the date on which the start of Work will commence and on which Contractor shall start to perform its obligation within the completion time under the Contract Documents.

**Payment Bond**

The form of security approved by the City, furnished by the Contractor and its surety guaranteeing the complete and faithful payment of all labor, material, equipment, and any other services provided to the Work.

**Performance Bond**

The form of security approved by the City, furnished by the Contractor and its surety guaranteeing the complete and faithful performance of the construction of the Work as specified in the Contract Documents.

**Plans**

The concept or mental formulation for the Work. The plans may be represented graphically by drawings, by the written words within the Contract Documents, or both.

**City Furnished  
Materials or  
Equipment**

Materials or equipment furnished by the City which is to be incorporated into the Work by the Contractor.

<b><u>Product Data</u></b>	The illustrations, standard schedules, performance charts, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system.
<b><u>Project</u></b>	The collective improvements to be constructed by the Contractor pursuant to issuance of a Job order. A Project will consist of one Job order and any Supplemental Job Orders issued.
<b><u>Project Manager</u></b>	The authorized representative of the City who is assigned immediate charge of the work of the project.
<b><u>Proposal</u></b>	The offer or proposal of the Contractor submitted in response to the City's Request For Proposal for the selection of Contractor(s). Usually referred to as the Contractor's Proposal.
<b><u>Proposer</u></b>	Any individual, firm, partnership, corporation or combination thereof formally submitting a proposal for the work contemplated, or any portion thereof, acting directly or through an authorized representative.
<b><u>Provide</u></b>	The all-inclusive actions required to furnish, install, connect, adjust, test, and make ready for use or occupancy.
<b><u>Punch List</u></b>	<b><u>Shall have the meaning set forth in Article 12.</u></b>
<b><u>RFP</u></b>	The Request for Proposal issued by the City for the selection of the Contractor(s).
<b><u>Samples</u></b>	Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
<b><u>Schedule of Prices</u></b>	Means the Unit Prices set forth in the Contract Documents.
<b><u>Shop Drawings</u></b>	All drawings, diagrams, illustrations, brochures, standard schedules, performance charts, instructions, and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, material or equipment.
<b><u>Specifications</u></b>	Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, performance requirements and workmanship as

applied to the Work and certain administrative details applicable thereto.

**Subcontractor**

An individual, firm, or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

**Sub-Subcontractor**

A Sub-Subcontractor is a business entity that has an agreement with a Subcontractor to perform a portion of the Work. The term Sub-Subcontractor means and includes the Sub-Subcontractor at all tiers.

**Substantial Completion**

The Work or a specified part thereof has progressed to the point where, in the opinion of Project Manager as evidenced by his/her certificate of Substantial Completion, the Detailed Scope of Work is sufficiently complete, in accordance with the Contract Documents, so that the Work or specified part can be utilized for the purposes for which it was intended; or if there be no such certificate issued, when final payment is due in accordance with section 12.4. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion

**Supplementary Conditions**

That portion of the Contract Documents that amends or supplements these General Conditions.

**Supplier**

A vendor, supplier, distributor, or materialman which supplies material or equipment used in the performance of the Work.

**Surety**

The company or association which is bound with and for the Contractor for the acceptable performance of the Contract and for its payment of all obligations arising out of the Contract

**Titles or Headings**

The titles or headings of the sections, divisions, parts, articles, paragraphs, or subparagraphs of the specifications are intended only for convenience of reference and shall not be considered as having any bearing on the interpretation of the text.

**Unit Prices**

The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Prepriced Tasks can be established during the course of the Contract and added to the Construction Task Catalog(s)®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Prepriced Task.

**Work**

The entire completed project or the various separately identifiable parts required to be furnished in accordance with the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the project, all as required by the Contract Documents.

**1.1.1 Job Order Contracting Specific Definition of Terms:**

**Adjustment Factor**

A competitively bid adjustment to be applied to the unit prices listed in the Construction Task Catalog®. Also known as a “coefficient.”

**Base Term**

The initial period of the Contract and does not include any Option Terms.

**Construction Task Catalog®**

A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.

**Detailed Scope of Work**

A document setting forth the work the Contractor is obligated to complete for a particular Job Order.

**Estimated Annual Value**

An estimate of the value that could be issued to the Contractor each year.

**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 Job Order with one or more Supplemental Job Orders.

[Job Order] Completion

<u>Time</u>	The time within which the Contractor must complete the Detailed Scope of Work.
<u>[Job Order] Price</u>	The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
<u>[Job Order] Price Proposal</u>	A price proposal prepared by the Contractor that includes the Prepriced Tasks, Non-Prepriced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
<u>Job Order Proposal</u>	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.
<u>Joint Scope Meeting</u>	A site meeting to discuss the work before the Detailed Scope of Work is finalized.
<u>Maximum Contract Value</u>	The estimated maximum value of Job orders that the Contractor may receive under this Contract.
<u>Minimum Contract Value</u>	The minimum value of Job orders that the Contractor is guaranteed the opportunity to perform under this Contract.
<u>Non-Prepriced Task</u>	A task that is not set forth in the Construction Task Catalog®.
<u>Normal Working Hours</u>	Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, except for City holidays.
<u>Notice to Proceed</u>	A written notice issued by the City directing the Contractor to proceed with construction activities.
<u>Option Term</u>	An additional period of time beyond the Contract Term which extends the termination date of the Contract.
<u>Other than Normal Working Hours</u>	Includes the hours of 4:01 p.m. to 6:59 a.m., Monday to Friday and all day Saturday, Sunday, and City Holidays.
<u>Proposal Criteria Figure</u>	The amount determined in the Proposal Criteria Figure Calculation section of the Price Proposal, which is used for the purposes of determining the lowest price.
<u>Prepriced Task</u>	A task described in and for which a unit price is set forth in the Construction Task Catalog®.

<u>Request for Proposal</u>	A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein. <u>Note:</u> For clarity, the Request for Proposal issued by the City for the selection of the Contractor is referred to as the “RFP”.
<u>Supplemental Job Order</u>	A secondary Job Order (change 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.
<u>Technical Specifications</u>	The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

## **1.2 Definitions/Abbreviations**

AAR	Association of American Railroads
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute APA American Plywood Association
API	American Petroleum Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers ASME American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWS	American Welding Society
COE	City of Everett
CPM	Critical Path Method of Project Scheduling
CRSI	Concrete Reinforcing Steel Institute
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FM	Factory Mutual
FS	Federal Specification

FTA	Federal Transit Administration
IEEE	Institute of Electrical and Electronics Engineers ISO Insurance Service Office
JIC	Joint Industrial Council
NAAMM	National Association of Architectural Metal Manufacturers

NBFU	National Board of Fire Underwriters
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NESC	National Electrical Safety Code
NIOSH	National Institute of Occupational Safety and Health
NFPA	National Fire Protection Association
OFCCP	Office of Federal Contract Compliance Programs
OSHA	Occupational Safety and Health Act
PCA	Portland Cement Association
PSCAAPCA	Puget Sound Clean Air Pollution Control Agency
SAE	Society of Automotive Engineers
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
SSPC	Steel Structures Painting Council
SWI	Steel Window Institute
UFC	Uniform Fire Code
UL	Underwriter's Laboratory
WISHA	Washington Industrial Safety & Health Act Administration

END ARTICLE 1

## **ARTICLE 2     PRELIMINARY MATTERS**

### **2.1     *City Operations***

The City is an operating facility which will continue in full operation throughout the term of this contract. Where facility operations conflict with those of the Contractor, the operations of the facility will take precedence over those of the Contractor. It shall be the sole responsibility of the Contractor to schedule and coordinate its activities with those of the facility to assure minimum disruption of facility operations.

### **2.2     *Starting the Job Order (Notice to Proceed)***

The Contractor shall show evidence that work has commenced on the Job Order within seven (7) days from the effective date of the Notice to Proceed. Work in this case is not limited to physical work at the project site. Work started prior to the effective date stated in the Notice to Proceed shall be at the Contractor's risk.

### **2.3     *Job Order Completion Time***

2.3.1 The Job Order Completion Time will commence to run on the effective date stated in the Notice to Proceed. The City Contract Administrator will transmit an executed copy of the Job Order to the Contractor as well as a Notice to Proceed.

2.3.2 The Job Order Completion Time is that period of time allotted in the Job Order, as adjusted, for Contractor to achieve Substantial and/or Final Completion of the Detailed Scope of Work.

2.3.3 The term "day" as used in the Contract Documents shall mean a calendar day unless otherwise specifically designated.

2.3.4 Substantial Completion occurs when the City can use the Work for the use for which it is intended, and when all required documentation has been properly submitted to the City in accordance with the Job Order. Such documentation shall include but is not necessarily limited to:

- a. Maintenance and Operations manuals;
- b. Warranties; and
- c. Submittals required by the Specifications

2.3.5 Final Completion occurs when all requirements of the Job Order and Contract Documents have been properly and completely fulfilled including but not limited to:

- a. Completion of re-inspection and City approval of all Punch List items;
- b. Submittal of final invoice and approval by the Contract Administrator and Project Manager;
- c. Submittal of all properly completed as-built record drawings; and
- d. Submittal of any other documents required by the Job Order.

2.3.6 Final Acceptance is the formal action of the City accepting the Work as complete.

2.3.7 Progress and Completion

- a. All time limits stated in the Job Orders are of the essence of this Contract.
- b. The Contractor shall begin the Work on the date indicated in the Notice to Proceed and shall diligently prosecute the Work with adequate equipment and forces in order to bring the Work to completion within the Job Order Completion Time.

## **2.4 Extension of Time**

Any extension of Job Order Completion Time must have the written approval of the Project Manager/City and must conform to the procedures set forth in Article 10.3.

## **2.5 Before Starting Work**

2.5.1 Before undertaking each part of the Work, Contractor shall carefully study and compare the Detailed Scope of Work and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Project Manager any conflict, error or discrepancy which Contractor may discover; however, Contractor shall not be liable to City for failure to report any conflict, error or discrepancy in the Detailed Scope of Work, Drawings or Specifications, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

2.5.2 If requested, within five (5) days after the effective date of the Notice to Proceed and prior to start of work (unless otherwise specified in the General Requirements), Contractor shall submit to Project Manager for review a preliminary Schedule of the Values of the work. Each bid item shall be broken down to its basic elements. The cost breakdown for both lump sum and unit price estimates shall include:

- a. Labor;
- b. Materials;
- c. Equipment;
- d. Overhead, profit and taxes;
- e. Other factors;
- f. Time required.

2.5.3 If requested, within ten (10) days after the effective date of the Notice to Proceed and prior to start of Work, unless otherwise specified in the General Requirements, Contractor is to submit to Project Manager for review an estimated Progress Schedule indicating the starting and completion dates of the various stages of the Work and a Preliminary Schedule of Shop Drawings submissions. The Schedule should include a bar chart. The Contractor may use a commercial scheduling program such as the "Microsoft Project" or equal. All submissions of schedule information to the Project Manager or other city representatives are to be provided in hard copy format and electronic format.

## **2.6 *Preconstruction Conference***

Within seven (7) days after the effective date of the Job Order, but before Contractor starts the Work at the site, unless otherwise specified in the Contract Documents, a conference will be held with Contractor, Project Manager, Contract Administrator and others as determined by the Project Manager for review of the schedules to establish procedures for handling Shop Drawings and other submittals, for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

END ARTICLE 2

## **ARTICLE 3 CONTRACT DOCUMENTS: INTENT, CORRELATION, EXECUTION OF AND OWNERSHIP OF CONTRACT DOCUMENTS**

### **3.1 Intent**

- 3.1.1 The Contract Documents comprise the entire Contract between City and Contractor concerning the Work.
- 3.1.2 The Detailed Scope of Work is complementary; what is called for by one is as binding as if called for by all.
- 3.1.3 It is the intent of the Detailed Scope of Work to describe a complete Project or part thereof or performance requirements to be completed in accordance with the Contract Documents. Any Work that may reasonably be inferred from the Detailed Scope of Work and the Contractor's Price Proposal as being required to produce the intended result shall be supplied whether or not it is specifically called for. Words, which have a well-known technical or trade meaning and are used to describe Work, materials or equipment, shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect at the time of Price Proposal Submittal or on the effective date of the Job Order. However, no provision of any referenced standard specification, manual or code whether or not specifically incorporated by reference in the Detailed Scope of Work shall change the duties and responsibilities of City or Contractor, or any of their agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Detailed Scope of Work shall be issued by Project Manager as provided for in section 9.2.

### **3.2 Correlation of the Contract Documents**

- 3.2.1 Each Contract Document is an essential part of the Contract between the City and the Contractor. The Contract Documents are intended to be complementary and prescribe and provide for all Work required by the Job Orders. Anything mentioned in the Specifications and not shown in the Detailed Scope of Work, or shown in the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. Any Work, materials or equipment that has not been specifically included in the Detailed Scope of Work but which is reasonably required to produce the intended result shall be provided by the Contractor as though it had been specifically included.
- 3.2.2 If there are discrepancies between the various Contract Documents, Specifications shall govern over Conditions and Drawings, Drawings shall govern over Conditions, larger scale drawings shall govern over smaller scale drawings, Supplementary Conditions shall govern over General Conditions, computed dimensions shall govern over scaled dimensions, and specific descriptions shall govern over general ones.

3.2.3 In the event of a conflict between the Detailed Scope of Work or the Contract Documents and applicable laws, codes, ordinances, regulations or orders of governmental authorities having jurisdiction over the Work or any portion thereof, or in the event of any conflict between such applicable laws, codes, ordinances, regulations, or orders, the most stringent requirements of any of the above shall govern and be considered as a part of this Contract in order to afford the City the maximum benefits thereof.

**3.3 *No Warranties by the City***

3.3.1 No information derived from inspection of records or reports of investigation concerning the Work or conditions at the site(s) of the Work made or provided by the City will in any way relieve the Contractor from its responsibility for properly performing its obligations under the Contract Documents. Such records and reports are provided solely for the convenience of the Contractor with no warranties whatsoever, express or implied, by the City. Such records and reports are not part of the Contract Documents. The Contractor shall make its own conclusions and interpretations from the data supplied, information available from other sources, and the Contractor's own observations.

3.3.2 The Contract Documents will be governed by the laws of the State of Washington.

END ARTICLE 3

## **ARTICLE 4      PHYSICAL CONDITIONS AND REFERENCE POINTS**

### **4.1      *Unforeseen Physical Conditions***

Contractor shall promptly notify Project Manager in writing of any latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Detailed Scope of Work. Project Manager will promptly review those conditions. If Project Manager finds that there are latent physical conditions which differ materially from those intended in the Detailed Scope of Work, Project Manager will prepare a Supplementary Job Order incorporating modifications to plans and specifications as necessary to proceed with and complete the Work.

END ARTICLE 4

## **ARTICLE 5     BONDS AND INSURANCE**

### **5.1     *Performance Bond***

Contractor shall furnish a duly executed Performance Bond upon a form provided by the City within ten (10) calendar days following receipt of the Notice of Award. The Bond shall be executed by a licensed surety which is registered with the Washington State Insurance Commissioner and the surety's name shall appear in the current Authorized Insurance Company List for the State of Washington published by the Office of the Insurance Commissioner, and must be approved by the U.S. Department of Treasury as evidenced by a listing in the Federal Register. In addition, the surety must be rated "A-, FSC (6)" or higher by A.M. Best Rating Guide. The penal amount of the bond shall be in an amount equal to the amount stated in the Proposal Requirements and conditioned upon the faithful performance of the Contract by the Contractor.

If the Surety on any Performance Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in the state of Washington, or it ceases to meet the requirements as stated above, Contractor shall within five days thereafter substitute another Bond and Surety. City reserves the right to approve or reject any substitute Bond and Surety.

The Performance Bond will initially be in the penal sum equal to \$2,000,000. In the event the parties agree to exercise to extend the Contract, or if the cumulative amount of Work issued and not yet completed and accepted exceeds the such amount, the Contractor shall deliver a new Performance Bond or a rider as required by the City.

For a Federally Funded Work Order, the Contractor may be required to submit an additional performance bond in accordance with the applicable Federal Contract Clauses.

### **5.2     *Payment Bond***

Contractor shall also furnish a duly executed Payment Bond upon a form provided by the City, within ten (10) calendar days following receipt of the Notice of Award. The Bond shall be executed by a licensed surety which is 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, and must be approved by the U.S. Department of Treasury as evidenced by a listing in the Federal Register. In addition, the surety must be rated "A-, FSC (6)" or higher by A.M. Best Rating Guide. The penal amount of the bond shall be in the amount stated in the Proposal Requirements and conditioned upon the payment by the Contractor to all laborers, mechanics, Subcontractors, suppliers, and all persons who shall supply for the performance of the Work covered by this Contract.

If the Surety on any Payment Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in the state of Washington, or it ceases to meet the requirements as stated above, Contractor shall within five days thereafter substitute another Bond and Surety. City reserves the right to approve or reject any substitute Bond and Surety.

The Payment Bond will initially be in the penal sum equal to \$2,000,000. In the event the parties agree to exercise to extend the Contract, or if the cumulative amount of Work issued and not yet completed and accepted exceeds the such amount, the Contractor shall deliver a new Payment Bond or a rider as required by the City.

For a Federally Funded Work Order, the Contractor may be required to submit an additional payment bond in accordance with the applicable Federal Contract Clauses.

### **5.3 Contractor's Liability Insurance**

5.3.1 Contractor shall purchase and maintain such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

a. Commercial General Liability Insurance on an Occurrence Basis in an amount not less than \$2,000,000 per occurrence and at least \$5,000,000 in the annual aggregate, including but not limited to:

1. Bodily Injury Liability;
2. Property Damage Liability (to include explosion, collapse and underground);
3. Blanket Contractual Liability;
4. Premises/Operations (including off-site operations);
5. Broad Form Property Damage Liability;
6. Products: Completed Operations Liability;
7. Personal Injury Liability;
8. Liability for Property of Others in the Care, Custody and Control of the Contractor.

Commercial General Liability Insurance shall be written on Insurance Services Office ("ISO") occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products- completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named an insured under the Contractor's Commercial General Liability insurance policy with respect to the Work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

b. Comprehensive Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, including but not limited to:

1. Bodily Injury Liability;
2. Property Damage Liability;
3. Personal Injury Liability;
4. Owned and Non-Owned Auto Liability;
5. Hired and Borrowed Auto Liability.

Comprehensive Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles as well as employee vehicles utilized in performance of the Work or at the Work site shall be provided. Coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage. The insurance policy shall be endorsed to provide contractual liability coverage.

- c. Worker's Compensation as required by Washington law and Employer's Liability Insurance (Stop Gap) with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Contractor shall require each subcontractor to provide Worker's Compensation Insurance for its employees, unless the Contractor covers such employees.

Contractor shall comply with the following conditions and procure and keep in force during the term of this Contract, at Contractor's own cost and expense, the policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than VII, by A.M. Best Company and which are acceptable to the City.

The Contractor's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance or other coverage maintained by the City shall be for the protection of the City and excess to the Contractor's insurance and shall not contribute with it. The above liability policies shall be endorsed to contain a provision that the policy shall not be canceled or materially changed without thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Contractor to furnish the required insurance during the term of this Contract.

The Insurer or his/her agent will furnish to the Contract Administrator upon request, prior to any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

Contractor shall provide the Contract Administrator, prior to any Work being performed, a Certificate of Insurance and additional insured endorsement(s) acceptable to the City Attorney evidencing the above-required insurance(s) and naming the City of Everett, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Contract; and that such insurance shall apply as primary insurance on behalf of such Additional Insureds. The City shall be named as an Additional Insured by endorsement using ISO Form CG 2010 or equivalent. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Contractor's obligations to fulfill the requirements.

- 5.3.2 Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or subcontractors as well as to any temporary structures, scaffolding and protective fences.

Contractor certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington which requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Contractor shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of any Work. Contractor shall provide the Contract Administrator with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

In case of breach of any provision of this section, the City may, at its option and with no obligation to do so, provide and maintain at the expense of Contractor, such types of insurance in the name of the Contractor, and with such insurers, as the City may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Contractor under this Contract or may demand Contractor to promptly reimburse the City for such cost.

#### **5.4 Contractor Pollution Liability**

5.4.1 If a Job Order requires Contractor Pollution Liability, the successful Contractor(s) will be required to provide Contractor Pollution Liability with minimum limits of liability not be less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one (1) year.

If the Contractor Pollution Liability coverage is written on a claims-made form:

- a. The retroactive date must be shown and must be before the date of the Contract or the start of Work;
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Work;
- c. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a retroactive date prior to the Contract Date the Contractor must purchase an extended period coverage for a minimum of five (5) years after the completion of the Work;
- d. A copy of the claims reporting requirements must be submitted to the City for review.

END ARTICLE 5

## **ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES**

### **6.1 Examination of the Site of Work and Detailed Scope of Work**

By submitting a Job Order Proposal for a Job Order, the Contractor represents that it has carefully examined and investigated the site(s) of the Work, including material site(s), and Detailed Scope of Work. The submission of its Job Order Proposal shall be conclusive evidence that the Contractor represents and acknowledges that it has made such examinations and investigations and is satisfied as to the conditions to be encountered in the performance of the Work, including the character, quantity, quality, and Detailed Scope of the Work, safety precautions to be undertaken, the quantities and qualities of materials to be supplied, and equipment and labor to be used, the requirements of the Detailed Scope of Work and how all such requirements correlate to the conditions at the site(s) of the Work.

The Contractor shall determine from careful examination of the Detailed Scope of Work and the site of the Work, the methods, materials, labor, and equipment required to perform the Work in full, and the Contractor shall reflect the same in its Proposal.

### **6.2 Error, Inconsistency, Omission or Variance in the Contract Documents**

The Contractor shall promptly report to the Project Manager and/or the Contract Administrator any error, inconsistency, omission, or variance from applicable laws, statutes, codes, ordinances, or regulations which it discovers in the Detailed Scope of Work. If the Contractor promptly reports such discovery prior to commencement of any portion of the Work affected by any such error, inconsistency, omission, or variance, the Contractor shall not be liable to the City for damage resulting from such error, inconsistency, omission, or variance. If, however, the Contractor fails either to carefully study and compare the Detailed Scope of Work, or to promptly report the discovery of any error, inconsistency omission, or variance known or believed by the Contractor to exist, the Contractor shall assume full responsibility therefore and shall bear all costs, liabilities and damages attributable to such error, inconsistency, omission, or variance.

### **6.3 Supervision**

6.3.1 Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Detailed Scope of Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of Work. Contractor shall be responsible to see that the finished Work complies accurately with the Detailed Scope of Work.

6.3.2 Contractor will provide a competent resident supervisor who understands the contract and the task being performed to continuously oversee the contract work. Supervisor will not be replaced without written notice to Project Manager except under extraordinary circumstances. The supervisor will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the supervisor shall be as binding as if given to Contractor.

- a. Any supervisor who repeatedly fails to follow the Project Manager's written or oral orders, directions, instructions, determinations or has proven to be incompetent,

careless or negligent shall be subject to removal from the work site. Upon the written request of the Project Manager or Contract Administrator, the Contractor shall immediately remove such supervisor and name a replacement in writing.

- 6.3.3 Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform Work as required by the Detailed Scope of Work. Contractor shall at all times maintain good discipline and order at the site.
- 6.3.4 Non-compliance with the Project Manager's request to remove and replace personnel at any level shall be grounds for terminating the Contract under the terms of Article 13.
- 6.3.5 The Contractor shall be fully responsible to the City for the acts or omissions of its employees, agents, Subcontractors, Sub-Subcontractors, suppliers, and their agents and employees, and all other persons who are to perform any of the Work.
- 6.3.6 The Contractor may not assign any portion of this Contract without the City's prior written consent.

#### **6.4 Labor, Materials, and Equipment**

- 6.4.1 Contractor shall furnish all materials, equipment, labor, transportation, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the Work.
- 6.4.2 All materials and equipment shall be of good quality and new, except as otherwise provided in the Detailed Scope of Work. If required by Project Manager, Contractor shall furnish satisfactory evidence (including reports or required tests) as to the kind and quality of materials and equipment.
- 6.4.3 All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents.
- 6.4.4 For equipment and materials that are permanently incorporated in the Work, the Contractor will provide to the Project Manager all Owners Manuals and Operating Instructions furnished by the equipment or material manufacturer.

#### **6.5 Equivalent Materials and Equipment, "or Equal"**

- 6.5.1 Whenever materials or equipment are specified or described in the Detailed Scope of Work, Drawings, Construction Task Catalog® or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers or distributors may be accepted by Project Manager if sufficient information is submitted by Contractor to allow Project Manager to determine that the material or equipment proposed is equivalent to that

named. The procedure for review by Project Manager will be as set forth in sections 6.5.2 below as supplemented in the General Requirements.

- 6.5.2 Requests for review of substitute items of material and equipment will not be accepted by Project Manager from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Project Manager for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified. The application will state whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other Contractors affected by the resulting change, all of which shall be considered by Project Manager in evaluating the proposed substitute. Project Manager may require Contractor to furnish at Contractor's expense additional data about the proposed substitute. Project Manager will be the sole judge of acceptability, and no substitute will be ordered or installed without Project Manager's prior written acceptance. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

## **6.6 Disposal of Demolished Materials**

- 6.6.1 Waste material is defined as all material from demolition or other source that is unsuitable to, or in excess of the needs of the work, or material that is designated for removal and disposal off of City property. All waste materials shall become the property of the Contractor. Materials containing substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous under applicable Local, State and/or Federal regulations which shall be handled and disposed of as directed by applicable regulations, the Detailed Scope of Work and/or the Contract Documents.

Proof of proper disposal of substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous are required by the City.

- 6.6.2 The Contractor is solely responsible for the lawful managing and disposal of waste material and shall indemnify, defend and hold the City harmless from all liability, damages, claims, lawsuits, penalties and expenses, whether direct, indirect or consequential including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration arising from or in any way connected with, the demolition, removal or disposal of materials, except as specified for hazardous materials.
- 6.6.3 The value of waste materials, if any, shall be reflected in the total Job Order price.
- 6.6.4 During the course of the Work, if Contractor encounters site materials that it believes may be hazardous, potentially hazardous, infectious, toxic or dangerous, Contractor will immediately notify the Project Manager and Contract Administrator.
- 6.6.5 The City will retain title to all hazardous waste presently on-site encountered during demolition and removal. This does not include hazardous materials generated by the Contractor, such as used motor oils, lubricants, cleaners, etc. Contractor shall dispose of such hazardous waste according to the Detailed Scope of Work and the Contract Documents, following local, State, and Federal regulations. The City of Everett will be shown as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-contractor generated hazardous wastes. Nothing contained within these Contract Documents shall be construed or interpreted as requiring Contractor to assume the status of City or generator of hazardous waste substances for non-contractor generated hazardous wastes.
- 6.6.6 Contractor shall follow all Environmental Protection Agency (EPA) and all other regulations regarding reporting the disposal of all materials.

## **6.7 Subcontractors and Sub-Subcontractors**

- 6.7.1 Mandatory Criteria: As required by RCW 39.06.020 and 39.04.350(1), all subcontractors must satisfy all of the following criteria:
  - At the time of bid submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
  - Have a current state unified business identifier number;
  - If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
  - Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

- If 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
- 6.7.2 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Project Manager may have reasonable objection. Acceptance of any Subcontractor, other person or organization by City or Project Manager shall not constitute a waiver of any right of City to reject defective Work. If City after due investigation has reasonable objection to any Subcontractor other person or organization proposed by Contractor after the issuance of the Job Order, Contractor shall submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.
- 6.7.3 Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between City or any contractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of City to pay or to see to the payment of any moneys due any contractor or other person or organization, except as may otherwise be required by law. City may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.
- 6.7.4 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of City. The City reserves the right to obtain copies of any Subcontractor and supplier agreements at any tier from the Contractor.
- 6.7.5 Contractor will pay Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Contractor has received from City on account of their work. Contractor will impose similar requirements on Subcontractors to pay those parties with whom they have contracted.

## **6.8 Patent Fees and Royalties**

- 6.8.1 Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention,

design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Detailed Scope of Work for use in the performance of the Work and if to the actual knowledge of City its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by City in the Job Order. Contractor shall indemnify and hold harmless City and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Detailed Scope of Work, and shall defend all such claims in connection with any alleged infringement of such rights.

## **6.9 Laws and Regulations**

6.9.1 Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the Work. If Contractor observes that the Specifications or Drawings are at variance therewith, Contractor shall give Project Manager prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If Contractor performs any Work knowing or having reason to know that it is contrary to such laws, ordinances, rules and regulations, and without such notice to Project Manager, Contractor shall bear all costs arising therefrom; however, it shall not be Contractor's primary responsibility to make certain that the Detailed Scope of Work, Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.

## **6.10 Taxes**

6.10.1 Contractor shall pay all sales, consumer, use and other similar taxes required to be paid in accordance with the law of the State of Washington. All taxes are considered to be included in the Adjustment Factors.

## **6.11 Use of Premises**

6.11.1 Contractor shall confine equipment, the storage of materials and equipment and the operations of workmen to areas permitted by the City, and shall not unreasonably encumber the premises with equipment or other materials or equipment.

6.11.2 During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor will remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials. Contractor will leave the site clean and ready for occupancy by City and restore to original condition any portions of the site not designated for alteration by the Detailed Scope of Work.

6.11.3 Contractor will not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor will Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

## **6.12 Record Documents**

6.12.1 Contractor shall keep one (1) record copy of all Specifications, Drawings, Addenda, modifications, Shop Drawings and samples at the site, in good order and annotated to show all changes made during the construction process. These will be available to Project Manager and Contract Administrator for examination and shall be delivered to Project Manager for City upon completion of the Work before final payment is made.

## **6.13 Safety and Protection**

6.13.1 Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and provide the necessary protection to prevent damage, injury or loss to:

- a. All employees on the Work and other persons who may be affected thereby;
- b. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and,
- c. Other property at the site or adjacent thereto, including vegetation, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;
- d. It will be the Contractor's responsibility to protect the Work and repair any damages to the Work until after Final Acceptance, as defined in Article 12, has been achieved.

6.13.2 Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and will erect and maintain all necessary safeguards for such safety and protection. Contractor will notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of City or Project Manager or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor). Contractor's duties and responsibilities for the safety and protection of the Work will continue until such time as all the Work is completed and Project Manager has issued a notice to Contractor in accordance with these General Conditions that the Work is acceptable.

6.13.3 Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's supervisor unless otherwise designated in writing by Contractor to City.

#### **6.14 Emergencies**

6.14.1 In emergencies affecting the safety or protection of persons, Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Project Manager, is obligated to act to prevent threatened damage, injury or loss. Contractor will give Project Manager and Contract Administrator prompt written notice of any significant changes in the Work or deviations from the Detailed Scope of Work caused thereby.

#### **6.15 Shop Drawings and Samples**

6.15.1 After checking and verifying all field measurements, Contractor will submit Shop Drawings to Project Manager for review and approval, as specified in the Job Order. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Project Manager to review the information as required.

6.15.2 Contractor will promptly submit to Project Manager for review and approval all samples required by the Job Order. All samples will have been checked by and stamped with the approval of Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.

6.15.3 At the time of sample & drawings submission, any identified deviations from the Detailed Scope of Work will be called in writing to the Project Manager's attention

6.15.4 Project Manager will review Shop Drawings and samples within fifteen (15) days, but Project Manager's review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Detailed Scope of Work and will not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor will make any corrections required by Project Manager and return the required number of corrected copies of Shop Drawings and resubmit new samples for review and approval. Contractor will direct specific attention in writing to revisions other than the corrections called for by Project Manager on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to City and Project Manager that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Detailed Scope of Work and the Contract Documents.

6.15.5 Where a Shop Drawing or sample is required by the Job Order, no related Work shall be commenced until the submittal has been reviewed and approved by Project Manager.

#### **6.16 Continuing the Work**

6.16.1 Contractor shall carry on the Work and maintain the progress schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and City may otherwise agree in writing.

#### **6.17 Warranties**

6.17.1 All Work will be of good quality, free from fault or defect, and in strict accordance with the requirements of the Detailed Scope of Work. Any Work not conforming to the foregoing warranty, including unapproved or unauthorized substitutions, shall be considered defective.

6.17.2 All Subcontractors', Sub-Subcontractors', manufacturers', and Suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and all materials used therein shall be obtained and enforced by the Contractor for the benefit of the City without the necessity of separate transfer or assignment thereof. When directed by the Project Manager or required by the Contract Documents, the Contractor shall require that Subcontractor, Sub-Subcontractor, manufacturers, and Suppliers execute separate warranties and guarantees in writing directly to the City. Warranty provisions which support to limit or alter the City's rights under the Contract Documents are null and void.

6.17.3 The Contractor warrants that title to all Work, materials and equipment covered by a request for a progress payment or final payment will pass to the City either by incorporation in the Work or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. The Contractor further warrants that no Work, materials, or equipment covered by a request for a progress payment or final payment will have been acquired by the Contractor, or by any other person performing Work at the project site or furnishing materials and equipment for the project, which Work, materials, or equipment are subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller of the same or is otherwise imposed by the Contractor or other person.

#### **6.18 Not Used**

#### **6.19 Progress Schedule**

6.19.1 Within ten (10) days after the effective date of the Notice to Proceed and prior to start of Work unless otherwise specified in the Job Order, Contractor will prepare and submit a Progress Schedule in a form satisfactory to the Project Manager. Failure to

submit a proposed Progress Schedule within the allowed time will not constitute grounds for an extension of the Job Order Completion Time.

- 6.19.2 The Progress Schedule will consist of a network analysis of the Critical Path Method (CPM) in arrow diagram form showing an activity description, cost, and calendar day duration for all significant design, manufacturing, construction, and installation activities. An activity list will be included with each copy of the Progress Schedule.
- 6.19.3 Within thirty (30) calendar days after receipt, the City will review, add comments and return three (3) copies of the Progress Schedule to the Contractor. Review by the City of the proposed Progress Schedule does not constitute an approval of the Contractor's construction means, methods, sequences, or schedule.
- 6.19.4 The Progress Schedule shall outline the proposed operations, the interrelations of the various operations, and the order of performance in sufficient detail that progress of the Work can be evaluated accurately at any time during the performance of the Work. If abbreviations are used in the make-up of the Progress Schedule, a legend is to be provided to define all abbreviations.
- 6.19.5 If milestone completions are required by the Job Order, then those milestones are to be clearly defined on the Progress Schedule.
- 6.19.6 Should it become evident that the Contractor may fail to meet the scheduled dates as shown, the Project Manager may require the Contractor to submit a recovery schedule demonstrating its proposed plan to make up lag in scheduled progress and to ensure completion of the work within the Job Order Completion Time. The Contractor, upon request, will be required at Contractor's own expense to submit a revised Progress Schedule and to increase Contractor's work force and working hours (second and third shifts) as required to bring the actual completion dates of the activities into conformance with the Progress Schedule. Further, Contractor will submit a revised Progress Schedule at no cost to the City when, in the opinion of the Project Manager, Contractor's sequence of Work varies significantly from that shown on the Progress Schedule. The City reserves the right to withhold progress payments until such time as an approved modified Progress Schedule in a form satisfactory to the Project Manager has been provided by the Contractor.
- 6.19.7 Failure of the Contractor to substantially comply with the requirements of this section may be considered grounds for a determination by the City that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified, and to take whatever action the City deems necessary and appropriate under the terms of the Contract Documents.

## **6.20 On-Site Documents**

- 6.20.1 The Contractor is to maintain at the Project site, in good order for ready reference by the Project Manager, one (1) complete record copy of the Detailed Scope of Work,

including changes in the Work, Field Orders, and all working drawings, Progress Schedule, and other approved submittals.

6.20.2 The Job Order record drawings are to be marked to truly record all changes made during construction, i.e., the "as-built" conditions. The Project's record drawings are to be updated on a weekly basis and before elements of the Work are covered or hidden from view. After the completion of the Work or portions of the Work and before requesting final inspection, the record copy of the Drawings will be given to the Project Manager.

## **6.21 Working Drawings, Product Data, Samples, and Other Submittals**

6.21.1 The Contractor will review and submit all working drawings, product data, samples and other items required to be submitted to the City accompanied by a "shop drawing multi-transmittal" form. Such submittals will be given to the City in a complete and final form at least thirty (30) days prior to any Contractor need for review response or such other longer time that may be needed to allow time for detailed review by the City or others. The Contractor should allow sufficient time for the possibility of rejection of the submittal, needed revisions, and resubmittal review time.

6.21.2 By submitting working drawings, product data, and samples, the Contractor represents that it has determined and verified all materials, field measurements, and related field construction criteria are in accordance with the Detailed Scope of Work, and that the Contractor has checked and coordinated the information contained within the submittal with the requirements of the Detailed Scope of Work. The costs incurred by the City to review resubmitted working drawings, product data, and samples may be offset from any monies due the Contractor when the Contractor has failed to comply with this Subsection.

6.21.3 Review and approval by the City of the Contractor's working drawings, product data, or samples does not relieve the Contractor of responsibility for the accuracy of dimensions and details. Likewise, any review and comments do not relieve the contractor from complying with every requirement of the Job Order drawings and specifications unless the Contractor has called written attention to any deviations contained in the submittal and these deviations have been reviewed and accepted. By omission of any feature, capability or part of any item submitted the Contractor implies that these missing features, capabilities or parts will be furnished exactly as required by the Job Order documents. Review and approval shall not constitute acceptance by the City of the correctness or adequacy of such submittals, nor shall it constitute a representation or warranty by the City that the drawings will satisfy the requirements of the Job Order. The review of a specific item shall not indicate approval of an assembly in which the item functions. The City's review or approval of a submittal shall not relieve the Contractor from responsibility for errors or omissions in the submittals.

- 6.21.4 Any Work delayed by reason of a properly rejected submittal is deemed to be entirely the Contractor's risk, and will not be the basis for a claim by the Contractor for additional compensation or an extension of Job Order Completion Time. Drawings marked "subject to change" or the like will not be reviewed. The City is not required to review submittals that depend for their review on other submittals not yet submitted.
- 6.21.5 When resubmitting a submittal, the Contractor is to direct specific attention, in writing or on the resubmittal itself, to all revisions it has made.
- 6.21.6 No portion of the Work requiring submittal of a working drawing, product data, or sample is to be commenced until the submittal has been approved by the City as provided in these General Conditions. All portions of the Work involving submittals shall be performed in accordance with the approved submittals.

## **6.22 Cutting, Fitting and Patching of Work**

- 6.22.1 The Contractor will be responsible for all cutting, fitting, patching or such other altering as may be required to complete the Work, or to make its several parts fit together properly.
- 6.22.2 The Contractor will not damage or endanger any portion of the Work, other work of the City, or that of any separate Contractor's by cutting, fitting, patching or other altering of any work, or by excavation. The Contractor will not alter any of the work of the City or any separate Contractor without written authorization from the City.

## **6.23 Inspection of the Work**

- 6.23.1 The Project Manager or authorized representative shall have the right but not the obligation to inspect the Work, and to reject and refuse all labor and materials or methods of application, or any part thereof, which does not comply in kind, quality or material with the requirements of the Detailed Scope of Work. Any labor or material rejected, as not conforming to the Contract Documents shall be promptly removed. Labor and materials which do so conform will be furnished and delivered in place thereof; and if the Contractor refuses or neglects to remove such rejected material or to rebuild any such rejected Work, or otherwise correct the defects as the Project Manager directs, the City may obtain, use and employ materials, labor, tools and implements to do the same and the expense thereof will be deducted from moneys which may otherwise be due or become due to the Contractor.

## **6.24 Uncovering of Work**

- 6.24.1 If any portion of the Work should be covered prior to inspection called for by law or as required by the Contract Documents, the Contractor will, upon request of the Project Manager, uncover or remove the Work for inspection by the Project Manager or other governmental representatives, and replace the Work to the standard required by the Detailed Scope of Work, all at the Contractor's expense.
- 6.24.2 If any other portion of the Work has been covered or completed, the Contractor will, upon the request of the Project Manager, remove or uncover such Work for the Project

Manager's observation. The Contractor will subsequently restore that portion of the Work to the standard required by the Detailed Scope of Work at no additional costs to the City.

## **6.25 Correction of Work**

- 6.25.1 The Contractor will, at no additional expense to the City, promptly correct all Work which is defective or otherwise fails to conform to the requirements of the Detailed Scope of Work. Such Work is to be corrected even though it was previously inspected by the City, payment for it was included in a progress payment, whether or not it was completed, and whether or not it was observed before or after the date of Substantial Completion.
- 6.25.2 If, within one (1) year after Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable additional warranty required by the Job Order, any of the Work is found to be defective or otherwise not in conformance with the Detailed Scope of Work, the Contractor will, at its cost, promptly correct such defective or non-conforming Work after receipt of written notice from the City. The obligation of this subsection shall survive termination of the Contract.
- 6.25.3 If the Contractor refuses or neglects to correct the defects as directed by the Project Manager, the City may obtain, use and employ materials, labor, tools and implements to do the same and the expense thereof shall be deducted from moneys which may otherwise be due or become due to the Contractor or the City. If the Contractor fails to promptly correct defective or non-conforming Work, the City may correct it as provided in section 6.25, or may terminate this Contract.
- 6.25.4 Work corrected by the Contractor pursuant to section 6.25 will also be subject to the provisions of this section to the same extent as Work originally performed and for an additional one-year period commencing upon City acceptance of corrected work.
- 6.25.5 Nothing contained in this section is to be construed to establish a period of limitation with respect to any other obligation imposed on the Contractor by the Contract Documents or law, including the obligations imposed by section 6.17. The establishment of the time period of one year after the date of Final Completion Acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Job Order relates only to the specific obligation of the Contractor to correct defective or non-conforming Work, and bears no relationship to the time within which the Contractor's obligation to comply with the Job Order may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to obligations imposed on it by the Contract Documents or as otherwise may exist in law.

6.25.6 The City may, at its sole option, elect to retain defective or nonconforming Work. In such case, the Contractor will reduce the Job Order Price in a reasonable amount to account for such defect or non-conformance.

## **6.26 Responsibility for Work**

6.26.1 All Work performed under the Contract and all materials to be incorporated in the Work, whether in storage or on the Project site and whether under the care, custody and control of the Contractor, Subcontractor, or Sub-Subcontractor, shall be at the sole risk of loss and responsibility of the Contractor until Final Completion of the entire Project, except as may be limited by the Project Manager in writing for the period following Substantial Completion of the Work or designated portion thereof as provided in section 12.4. Damage from any cause to either permanent or temporary Work, utilities, materials, equipment, existing structures, the Project site, and other property owned by the City or others, shall be repaired by the Contractor to the satisfaction of the Project Manager at no additional cost to the City. At no time during the execution of this Contract shall the Contractor direct City staff or City agents to assist in the execution of the Work.

## **6.27 Hazardous Materials**

6.27.1 The Contractor will comply with WAC 296-901 Global Harmonized System for Hazard Communication; and provide properly communications with personnel to prevent injury or illness.

6.27.2 The Contractor will take the following precautions to lessen the possibility of exposure to any hazardous material(s):

- Notify all Subcontractors and/or suppliers of any Hazardous Materials that may be on site;
- Label any Hazardous Materials brought on site as to contents, hazard warning, name and address of manufacturer;
- Provide the following written information to Project Manager prior to commencement of Work:
  1. A list of Hazardous Materials to be used during the construction phase of the Work along with appropriate Material Safety Data Sheets.
  2. A list of any Hazardous Materials that have been incorporated into the project and will remain on site, along with the Material Safety Data Sheets.

6.27.3 Contractor is not to cause or permit any Hazardous Material(s), as defined herein, to be brought upon, kept or used in or about the job site except to the extent such Hazardous Materials are necessary for the prosecution of the Work or are required pursuant to the Contract Documents.

Removal of such Hazardous Materials will be undertaken within twenty-four (24) hours following City's demand for such removal. Removal will be undertaken by Contractor at its sole cost and expense and will be performed in accordance with all

applicable laws. Any damage to the Work, the job site or any adjacent property resulting from the improper use, or any discharge or release of Hazardous Materials will be remedied by Contractor at its sole cost and expense, and in compliance with all applicable laws. Contractor will immediately notify City of any release or discharge of any Hazardous Materials on the job site. Contractor will be responsible for making any and all disclosures required under applicable "Community Right-to-Know" laws. Contractor will not clean or service any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing will be collected and moved from the job site in accordance with all applicable laws and regulations. Contractor will immediately notify City of any citations, orders or warnings issued to or received by Contractor, or of which Contractor otherwise becomes aware, which relate to any Hazardous Materials on the job site. Without limiting any other indemnification provisions pursuant to law or specified in this Contract, Contractor will indemnify, defend at Contractor's sole cost with legal counsel approved by City and hold City harmless from and against any and all such claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs and expenses in removing or remediating the effect of any Hazardous Materials on, under, from or about the job site, arising out of or relating to, directly or indirectly, Contractor's failure to comply with any of the requirements of Section 6.27.

## **6.28 Clean-up**

- 6.28.1 At all times, and as may specifically be requested by the Project Manager, the Contractor will clean-up and remove all refuse resulting from the Work in order that the Project site remains free from an accumulation of construction debris. Upon failure to do so within 24 hours after request by the Project Manager, such clean-up Work may be done by the City and the cost be charged to the Contractor and deducted from the Job Order Price.
- 6.28.2 Upon completion of the Work and before final inspection, the Contractor will clean the entire Work premises occupied or used in connection with the Work of all rubbish, surplus and discarded materials, false work, temporary structures, equipment, and debris. The entire Work premises shall be left in a clean, neat, and presentable condition. The Contractor will not remove warning, regulatory, or guide signs prior to Final Completion Acceptance except as requested by the Project Manager.

## **6.29 Protection of Work During Suspension**

- 6.29.1 In preparation for and during any suspension of Work as provided in section 13.1, the Contractor will take every precaution to prevent damage to, or deterioration of, the Work. Except as provided elsewhere in the Job Order, the Contractor will be responsible for all damage or deterioration to the Work during the period of suspension and shall, at its sole expense, correct or restore the Work to a condition acceptable to the Project Manager prior to resuming Work. A suspension of Work will not relieve the Contractor of any of its responsibilities under the Job Order.

### **6.30 Notice and Detailed Breakdown of Claim**

6.30.1 Notice. If unforeseen conditions or changes in the Work arise for which the Contractor believes an equitable adjustment in time or money or any other adjustment in Job Order Completion Time or Job Order Price is or will be due, the Contractor will give the City immediate oral notice followed by written notice within seven (7) calendar days of such event. In all events, Notice must be given and the Project Manager's direction received prior to performing the Work which Contractor believes entitles it to such adjustments. Notice must identify in detail the basis for the claim. The date such written notice is received by the City shall define the start of time for any purpose regarding the claim.

6.30.2 Detailed Breakdown. Within thirty (30) calendar days of the City's receipt of written notice above, the Contractor is to provide the City with a written breakdown of all of the elements and sub elements of the claim detailing the increase in the Job Order Completion Time or Job Order Price being sought.

6.30.3 If the Contractor fails to satisfy the requirements of this section, the Contractor will be deemed to have waived all rights to assert the claim against the City.

6.30.4 Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

6.30.5 For Federally Funded Job Orders, the requirements in this Section 6.30 are in addition to any claim requirements in the Federal Contract Clauses.

### **6.31 Prerequisite to Suit**

No legal action against the City may be filed on account of a claim or other liability arising out of or related to Work unless:

- a. The requirements of section 6.30 have been complied with; and,
- b. The lawsuit is filed and served on the City within one hundred eighty (180) days of the date of Substantial Completion. The Contractor's failure to strictly comply with all requirements of this section shall be a complete bar to any claims, suit or cause of action against the City.

For Federally Funded Job Orders, the requirements in this Section 6.31 are in addition to any claim requirements in the Federal Contract Clauses.

### **6.32 Indemnification**

6.32.1 The Contractor shall defend, indemnify and hold harmless the City and its agents from all liability, claims, damages, losses and expenses, whether direct, indirect or consequential (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of the performance of the Work, which is caused, or alleged to be caused, in whole or in part, by any negligent act or omission of the Contractor (which for the purposes of this Article 6.33 shall include the Contractor and all of its Subcontractors, Sub-

Subcontractors, Suppliers, agents, any other person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable); provided, however, that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the City or its agents, and (2) the Contractor, it is expressly agreed that the Contractor's obligations of indemnity under this section shall be effective only to the extent of the Contractor's negligence. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this section. This section shall not be construed so as to require the Contractor to defend, indemnify, or hold harmless the City from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the City or its agents.

6.32.2 In any and all claims against the City or its agents, the indemnification obligation of Article 6.32.1 above shall not be limited in any way to the extent of insurance coverage described in Articles 5.3 and 5.4 of the General Conditions, or by articles, which apply to insurance coverage, of the Supplementary Conditions, or by any limitation on the amount or type of damages, compensation benefits payable by or for the Contractor under applicable workers' compensation, benefit, or disability laws (including, but not limited to the Industrial Insurance laws, Title 51 of the Revised Code of Washington). The Contractor expressly waives any immunity the Contractor might have had under such laws with respect to the indemnities set forth in these General Conditions, and, by agreeing to enter this Contract, acknowledges that the foregoing waiver has been mutually negotiated by the parties.

6.32.3 For federally funded job orders, the following clause applies:

**No Federal Government Obligations to Third Parties**

(1) The City of Everett and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

END ARTICLE 6

## **ARTICLE 7 ADDITIONAL WORK AND WORK BY OTHERS**

### **7.1 Additional Work**

- 7.1.1 City may perform additional work related to the Project by itself or let other direct contracts which may contain General Conditions similar to these. Contractor shall afford the other contractors who are parties to such direct contracts (or City, if City is performing the additional work with City employees) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate its Work with theirs.
- 7.1.2 If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or City, Contractor shall inspect and promptly report to Project Manager in writing any patent or apparent defects or deficiencies in such work that render it unsuitable for such proper execution and results. Contractor's failure so to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.
- 7.1.3 Contractor will do all Work required to make its several parts come together properly and integrate with such other work. Contractor will not endanger any work of others by otherwise altering their work and will only alter their work with written consent of Project Manager and the others whose work will be affected.
- 7.1.4 If the performance of additional work by other contractors or City was not noted in the Detailed Scope of Work, written notice will be given to Contractor prior to starting any such additional work. City will coordinate and schedule any such additional Work not noted in the Detailed Scope of Work to avoid interference or conflict with ongoing or scheduled work by the Contractor.

END ARTICLE 7

## **ARTICLE 8 CITY'S RESPONSIBILITIES**

### **8.1 Authority of the Project Manager**

- 8.1.1 A Project Manager's authority is specific to the Job Order to which he or she is assigned.
- 8.1.2 The Contract Administrator will exercise all authority of the Project Manager with respect to any and all Job Orders at any time.
- 8.1.3 The Contract Administrator will be the City's representative and shall administer all contract documents. With respect to a Job Order, Final Acceptance as provided for in Article 12 will be accomplished by the Project Manager. The Project Manager and the Contract Administrator have the authority to enforce all obligations imposed on the Contractor by the Contract Documents.
- 8.1.4 The Work will be performed in accordance with the Detailed Scope of Work and the Contract Documents. The Project Manager has the authority but not the obligation to reject Work that is defective or does not otherwise conform to the Detailed Scope of Work.
- 8.1.5 The Project Manager is not responsible for and will not have control or charge of the means, methods, techniques, sequences, or procedures of Work, or for safety precautions or programs incidental thereto, these being the sole responsibility of the Contractor. The Project Manager will not be responsible for or have any control or charge of the acts or omissions of the Contractor, Subcontractor, Sub-Subcontractor, suppliers, or any of their agents or employees, or any other persons performing a portion of the Work.
- 8.1.6 City will issue all communications to Contractor through the Project Manager or Contract Administrator, as determined. In case of termination of the employment of Project Manager or Contract Administrator, the City will appoint a replacement(s).

### **8.2 Administration of the Contract**

- 8.2.1 Nothing in this Article or elsewhere in the Contract Documents shall be construed as requiring the Project Manager, Contract Administrator, Inspector, consultant, or other representative of the City to direct or advise the Contractor as to the method or manner of performing the Work. No approval or advice given by the City as to the method or manner of performing the Work or procuring materials to be furnished will constitute a representation or warranty by the City that the result of such method or manner will conform to the Detailed Scope of Work or achieve the desired results. Such approval or advice will neither relieve the Contractor of any of its obligations under the Contract nor create any liability to the City on account of approval or advice. The Project Manager or Inspectors may call to the attention of the Contractor defective Work or Work that does not conform otherwise to the Detailed Scope of Work. However, the failure of the Project Manager or inspectors to so

inform the Contractor will not constitute approval or acceptance of such defective or non- conforming Work.

8.2.2 The presence of the Project Manager or Inspector during the progress of any Work does not relieve the Contractor from responsibility for defects in the Work, nor does it bind the City in determining Final Completion Acceptance of the Work.

8.2.3 Work done or material furnished which at any time is found not to conform to the requirements of the Contract Documents shall be at the Contractor's risk and expense and shall furnish no basis for an increase in the Contract Sum or Contract Time, even though the Project Manager or inspector fails to reject such Work or material.

### **City's Right to Carry Out Other Work**

The City reserves the right at all times to perform or cause to be performed other and additional work on or near the site of the Project. Should such other or additional work or City operations be either underway or subsequently undertaken at or near the Project, the Contractor will coordinate its activities with those of all other work forces and conduct its activities to avoid or minimize any conflict between the operations of the Contractor and those persons performing the other or additional work or operations.

### **Officers and Employees of the City Have No Personal Liability**

Neither the Elected officials, Project Manager, Contract Administrator, Inspector, nor any other officer, employee or agent of the City shall be personally liable to Contractor for any of their acts or omissions arising out of the Project.

### **Gratuities**

The Contractor will not extend any loan, gratuity, or gift of money or services in any form whatsoever to any employee or officer of the City or City consultant, nor will the Contractor rent or purchase any equipment, materials, or services from any employee or officer of the City or City consultant.

### **Service of Notices on the Contractor**

Any written notice required under the Contract Documents to be given to the Contractor may, at the option of the City, be served on the Contractor by personal service, electronic or facsimile transmission, mail, or private courier delivery to the last address provided in writing to the City Project Manager and Contract Administrator. For the purpose of measuring time in determining the parties' rights and obligations with respect to notice given pursuant to the Job Order and Contract Documents (other than that given by the personal service) is conclusively presumed to be received by the Contractor on the next business day following the City's electronic or facsimile transmittal placing the notice in the U.S. mail or delivering it to the private courier.

END ARTICLE 8

## **ARTICLE 9 PROJECT MANAGER'S STATUS DURING WORK**

### **9.1 City's Representative**

Project Manager will be City's representative for a Job Order. The Project Manager and City's Contract Administrator will be identified to the Contractor prior to commencement of the work.

### **9.2 Clarifications and Interpretations**

Project Manager will issue with reasonable promptness such written clarifications or interpretations of the Detailed Scope of Work in the form of Drawings or otherwise as Project Manager may determine necessary, which will be consistent with or reasonably inferable from the overall intent of the Detailed Scope of Work. If Contractor believes that a written clarification or interpretation justifies an increase in the Job Order Price or Job Order Completion Time, Contractor may make a claim as provided in Article 10.

### **9.3 Rejecting Defective Work**

Project Manager will have authority to disapprove or reject Work which is defective, and will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed or completed.

### **9.4 Not Used**

### **9.5 Decisions on Disagreements**

9.5.1 The Contract Administrator will be the initial interpreter of the Contract Documents while the Project Manager will be the initial interpreter of the requirements of the Job Order and judge of the acceptability of the Work. Additional disputes relating to the acceptability of the Work or the interpretation of the requirements of the Detailed Scope of Work or Contract Documents pertaining to the execution and progress of the Work shall be referred to the Contract Administrator in writing with a request for a formal decision in accordance with this section, which Contract Administrator will render in writing within a reasonable time. Written notice of each such dispute shall be delivered by the claimant to Contract Administrator within fifteen (15) calendar days of the occurrence after the event giving rise thereto, and written supporting data will be submitted to Contract Administrator within forty-five (45) calendar days of such occurrence unless the Contract Administrator allows an additional period of time to ascertain more accurate data.

9.5.2 The rendering of a decision by Contract Administrator pursuant to section 9.6.1 with respect to any such dispute (except any which have been waived by the making or acceptance of final payment as provided in section 12.8) will be a condition precedent to any exercise by City or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of any such dispute.

## **9.6 Limitations on Project Manager's Responsibilities**

- 9.6.1 Neither Project Manager's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by Project Manager in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Project Manager to Contractor, any Subcontractor, any manufacturer, fabricator, supplier or distributor, or any of their agents or employees or any other person performing any of the Work.
- 9.6.2 Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used, to describe requirement, direction, review or judgment of Project Manager as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents unless there is a specific statement indicating otherwise. The use of any such term or adjective never indicates that Project Manager shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of sections 9.7.2 or 9.7.3.
- 9.6.3 Project Manager will not be responsible for Contractor's means, methods, techniques, sequences or procedures of Work, or the safety precautions and programs incident thereto, and Project Manager will not be responsible for Contractor's failure to perform the Work in accordance with the Detailed Scope of Work.
- 9.6.4 Project Manager will not be responsible for the acts or omissions of Contractor or of any Subcontractor, or of the agents or employees of any Contractor or Subcontractor Contractor, or of any other persons at the site or otherwise performing any of the Work.

## **9.7 *Not Used***

## **9.8 Requests for Instruction**

- 9.8.1 Due to the highly variable nature of the materials and facilities encountered within the site, the Contractor will require instructions from the Project Manager as new areas are uncovered or exposed by the work in progress. In the event that the Contractor requests such instructions in order to comply with the Contract requirements, the Project Manager will provide the instructions in writing, within forty-eight (48) hours. During the 48-hour period, no additional payments will be made to the Contractor for equipment, labor, or any other item related to the request for instructions.
- 9.8.2 In addition, the requirements of the Detailed Scope of Work may be supplemented and minor variations and deviations in the work may be authorized, in one or more of the following ways:

- a. Project Manager may authorize minor variations in the work from the requirements of the Detailed Scope of work which do not involve an adjustment in the Job Order Price or Job Order Completion Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on City, and also on Contractor who shall perform the work involved promptly. If Contractor believes that a Field Order justifies an increase in the Job Order Price or an extension of the Job Order Completion Time and the parties are unable to agree as to the amount or extent thereof. The Contractor may make a claim as provided in Article 10.
- b. Project Manager's approval of a Shop Drawing or sample.
- c. Project Manager's written interpretation or clarification.

END ARTICLE 9

## **ARTICLE 10 CHANGES IN THE WORK**

### **10.1 Changes to Contract Documents**

#### **Non-Job Order Specific Contract Documents.**

Modification of the following Contract Documents after the effective date of the Contract requires a Contract amendment signed by an authorized representative of the Contractor and an authorized representative of the City: Contract, General Conditions, Supplementary Conditions, RFP and addenda thereto, Contractor's Proposal, and the Construction Task Catalog®.

#### **Job-Order Specific Contract Documents.**

Modification of the following Contract Documents and requirements after the effective date of the Contract are to be signed by the Contract Administrator and the Project Manager: all Job Orders and Job-Order specific documents, including but not limited to, the Detailed Scope of Work, Job Order Completion Time, Request for Proposal, Price Proposal, Job Order Proposal, Notice to Proceed, submittals, record documents, and all required close-out documentation and warranties. Any modification that increases/decreases the Job Order Price must be signed by the Contract Administrator.

### **10.2 Change Order and Supplemental Job Order**

Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract.

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.

Credits for Prepriced and Non-Prepriced 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 Price Proposal.

All such Work shall be executed under the applicable conditions of the Contract Documents.

Project Manager may authorize minor changes that do not change the Job Order price, in the Work which are consistent with the overall intent of the Detailed Scope of Work. These may be accomplished by a Field Order and shall be binding on City, and also on Contractor who shall perform the change promptly.

Additional Work performed without authorization of a Supplemental Job Order will not entitle Contractor to an increase in the Job Order Price or an extension of the Job Order Completion Time.

Contractor may request a Supplemental Job Order to reflect modifications to the Work resulting from unforeseen site conditions. If Project Manager determines that

such unforeseen site conditions require a modification of the Work, Project Manager will prepare a Supplemental Job Order for execution by the Contract Administrator incorporating such modifications as necessary to proceed with and complete the Work. The Contractor shall be responsible for reallocation of its work force when work cannot be continued in an area due to unforeseen conditions. In no event will the City reimburse the Contractor for charges caused by delays unless prior written authorization is provided by the City.

### **10.3 Job Order Price**

The Job Order Price constitutes the total compensation subject to authorized adjustments payable to Contractor for performing the Detailed Scope of work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Job Order Price.

Contractor Mobilization consists of preconstruction expenses and costs of preparatory work and operations performed by the Contractor that are not defined as a part of a payment item are considered to be part of the Job Order Price.

### **10.4 Job Order Completion Time**

Any extension of Job Order Completion Time must have the written approval of the City and must conform to the procedures set forth here.

In event of delay in completion of the Work caused by acts of God, or the public enemy, or another contractor in the performance of a contract with the City, or caused by fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or weather, the sole and exclusive remedy of the Contractor will be an equitable extension of time allowed for completion.

Reasonable Delays. The Contractor should anticipate that some reasonable delays, including those caused by normal weather patterns, may occur. The Contractor shall not be entitled to any compensation, damages, or extension of the Contract Time for such reasonable delays.

Excusable Delays. The Job Order Completion Time may be extended without compensation by the City for a period equivalent to the time that the Contractor was delayed in the Work by one or more of the following causes, beyond the control of the City and the Contractor, occurring during the performance of the Work:

- a. Fire or other casualty for which the Contractor is not at fault or otherwise responsible;
- b. Strike, riot, war, or civil disorder;
- c. Suspension of Work due to unusual and severe weather;
- d. Suspension of Work due to other unsuitable conditions in accordance with Article 13.

Unreasonable Delays. Extensions of Job Order Completion Time, if any, will be determined by the Project Manager. Time extensions will be allowed only to the extent that completion of the Work is unreasonably delayed through no fault of the Contractor, which must in all cases unless otherwise determined by the Project Manager be substantiated by impact to the critical path on the Progress Schedule. Any extension of the Job Order Completion Time by the City will be set forth in writing, which shall specify the calendar days by which the Contract Time is to be increased.

No extension of time shall be allowed for any claimed delay which is caused by or results from concurrent delay or the fault, negligence, or collusion of the Contractor or its Subcontractors, suppliers, or any others, or any of their acts or failure to act or to timely perform the Work according to the Contract. Failure to make timely submittals to the City, procure materials or workmen, or perform the Work in accordance with the requirements of the Detailed Scope of Work, or to adequately plan for such functions will not be an adequate reason for an extension of the Job Order Completion Time.

In no event shall the Contractor be entitled to loss or damage, including a change in Job Order Price for any delay in the Contractor's prosecution of the Work, even if such delay is caused by the City, except to the extent such acts or omissions of the City result in a delay to the Project's critical path, in which case the Contractor may receive an adjustment to the Job Order Price and/or an extension of the Job Order Completion Time. Any request for such cost shall be established and documented by the Contractor in detail to the satisfaction of the Project Manager. If the Contractor fails to fully comply with section 6.30, its claim for an extension of the Job Order Completion Time or adjustment to the Job Order Price on account of such claimed delay is waived.

The Job Order Completion Time may only be changed by the City. Any request for an extension in the Job Order Completion Time shall be based on written notice delivered to the Project Manager and Contract Administrator within fifteen (15) days of the occurrence of the event giving rise to the request. All requests for adjustment in the Job Order Completion Time shall be determined by Contract Administrator if Project Manager and Contractor cannot otherwise agree. Any change in the Job Order Completion Time resulting from any such request shall be incorporated in a Field Order.

The Job Order Completion Time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if a request is made therefore as provided in this Article 10.

All time limits stated in the Job Orders and the Contract Documents are of the essence of the Contract. The provisions of this Article 10 shall not exclude recovery for damages including compensation for additional professional services for delay by either party.

END ARTICLE 10

**ARTICLE 11 WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION,  
REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

**11.1 Warranty and Guarantee**

Contractor warrants and guarantees to City that all Work will be in accordance with the Detailed Scope of Work and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in Article 13.

**11.2 Access to Work**

Project Manager and Project Manager's representatives, other representatives of City, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspection and testing. Contractor shall provide proper and safe conditions for such access.

**11.3 Tests and Inspections**

11.3.1 Contractor will give Project Manager a minimum of seven (7) days' notice of readiness of the Work for all required inspections, tests or approvals.

11.3.2 If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any Work or part thereof to specifically be inspected, tested or approved, Contractor will assume full responsibility, pay all costs in connection, and furnish Project Manager with the required certificates of inspection, testing or approval. Contractor will also be responsible for and pay all costs in connection with any inspection or testing required in connection with City's or Project Manager's acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by City unless otherwise specified.

11.3.3 All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction will be performed by organizations acceptable to City and Contractor or by Project Manager if so specified.

11.3.4 If any Work that is to be inspected, tested or approved is covered without written concurrence of Project Manager, it must, if requested by Project Manager, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Project Manager timely notice of Contractor's intention to cover such Work and Project Manager has not acted with reasonable promptness in response to such notice.

11.3.5 Neither observations by Project Manager nor inspections, tests or approvals by others will relieve Contractor from its obligations to perform the Work in accordance with the Detailed Scope of Work.

#### **11.4 City May Stop the Work**

If the Work is defective, or Contractor fails to supply sufficient skilled workmen or suitable materials or equipment, City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor or any other party.

#### **11.5 Correction or Removal of Defective Work**

If required by Project Manager, Contractor shall promptly, without cost to City and as specified by Project Manager, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Project Manager, remove it from the site and replace it with non-defective Work.

#### **11.6 Acceptance of Defective Work**

If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. In such case, if acceptance occurs prior to Project Manager's recommendation of final payment, a Supplemental Job Order shall be issued incorporating the necessary revisions in the Detailed Scope of Work, including appropriate reduction in the Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by Contractor to City.

#### **11.7 City May Correct Defective Work**

If Contractor fails within a reasonable time after written notice of Project Manager to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Project Manager in accordance with section 11.5, or if Contractor fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), City may, after seven (7) days' written notice to Contractor, correct and remedy any such deficiency. In exercising its rights under this section City shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, City may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees such access to the site as may be necessary to enable City to exercise its rights under this section. All direct and indirect costs of City in exercising such rights shall be charged against Contractor in an amount verified by Project Manager, and a Supplemental Job Order shall be issued incorporating the necessary revisions in the Detailed Scope of Work and a reduction in the Job Order Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work. Contractor shall not be allowed an extension of the Job

Order Completion Time because of any delay in performance of the Work attributable to the exercise by City of City's rights hereunder.

END ARTICLE 11

## **ARTICLE 12 PAYMENTS TO CONTRACTOR AND COMPLETION**

### **12.1 Application for Progress Payment**

Unless otherwise specified in the General Requirements, Contractor will submit applications for payment & invoices to the Contract Administrator for review and approval following completion of each Job Order. Under no circumstances will the City pay Job Order Invoices more often than once a month. The payment application shall be accompanied by such supporting documentation as is required by the Contract Documents and also as Contract Administrator reasonably requires. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Invoice shall also be accompanied by such data, satisfactory to City, as will establish City's title to the material and equipment and protect City's interest therein, including applicable insurance.

### **12.2 Contractor's Warranty of Title**

Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens").

### **12.3 Review of Applications for Progress Payment**

12.3.1 Contractor Administrator and Project Manager will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Invoice for payment, or return the Invoice to Contractor indicating in writing reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application. Within thirty (30) days of receipt of a correct Invoice and with Contract Administrator and Project Manager's recommendations, pay Contractor the invoiced amount.

12.3.2 Not Used

12.3.3 Not Used

12.3.4 Project Manager may refuse to recommend the whole or any part of any payment if, in his/her opinion, it would be incorrect to make such representations to City. He/she may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify and such payment previously recommended to such extent as may be necessary in Project Manager's opinion to protect City from loss because:

- a. the Work is defective, or completed Work has been damaged requiring correction or replacement;
- b. written claims have been made against City or Liens have been filed in connection with the Work;

- c. the Job Order Price has been reduced because of Supplemental Job Order(s);
- d. City has been required to correct defective Work or complete the Work in accordance with section 11.7;
- e. of Contractor's unsatisfactory prosecution of the Work in accordance with the Detailed Scope of Work;
- f. Contractor's failure to make payment to Subcontractor, or for labor, materials or equipment; or,
- g. of quantity adjustment or correction.

## **12.4 Substantial Completion**

12.4.1 When Contractor considers the entire Work ready for its intended use Contractor will certify in writing to Project Manager that the entire Work is substantially complete and request that Project Manager issue a Certificate of Substantial Completion. Within a reasonable time thereafter, Contractor and Project Manager will make an inspection of the Work to determine the status of completion. If Project Manager does not consider the Work substantially complete, Project Manager will notify Contractor in writing giving his/her reasons. If Project Manager considers the Work substantially complete, Project Manager will prepare a Certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative "punch list" of items to be completed or corrected before final payment. A copy of the Certificate of Substantial Completion shall be forwarded to the Contract Administrator.

12.4.2 City has the right to exclude Contractor from the Work after the date of Substantial Completion, but will allow Contractor reasonable access to complete or correct items on the punch list.

## **12.5 Partial Utilization**

Use by City of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

- a. City at any time may request in writing to Contractor to permit City to use any part of the Work which is believed to be substantially complete and can be used without significant interference with the other parts of the Work. If Contractor agrees, Contractor will certify to City and Project Manager that said part of the Work is substantially complete and request Project Manager to issue a Certificate of Substantial Completion for that part of the Work. Within a reasonable time City, Contractor and Project Manager will make an inspection of that part of the Work to determine its status of completion. If Project Manager does not consider that part of the Work to be substantially complete, Project Manager will notify Contractor in writing giving his/her reasons. If Project Manager considers that part of the Work to be substantially complete, Project Manager will execute and deliver to Contractor a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching a tentative list (punch list) of items to be completed or corrected before final payment. City will have the right to exclude Contractor from any part of the Work which Project Manager has so certified to

be substantially complete, but will allow Contractor reasonable access to complete or correct items on the tentative list.

- b. In lieu of the issuance of a Certificate of Substantial Completion as to part of the Work, City may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately usable; provided that prior to any such takeover, City and Contractor have agreed as to the division of responsibilities between City and Contractor for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

## **12.6 Final Inspection**

Upon written notice from Contractor that the Work is complete, Project Manager will make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

## **12.7 Final Application for Payment**

At the time of submission of its Final Application for Payment, Contractor shall, unless otherwise determined by the Contract Administrator, provide the following information:

- 12.7.1 an affidavit for Contractor confirming that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect City's interests;
- 12.7.2 a general release executed by Contractor in a form acceptable to City waiving, upon receipt of final payment by Contractor, all claims, except those claims previously made in writing to City and remaining unsettled at the time of final payment;
- 12.7.3 all operating manuals, warranties and other deliverables required by the Contract Documents;
- 12.7.4 if applicable, certified payrolls from the Contractor and all Subcontractors,
- 12.7.5 "Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid" from Contractor and each Subcontractor filed with the City and the Department of Labor and Industries,
- 12.7.6 Certification of Use or Deferred Sales Tax Paid or both, and if required by the City, other data establishing payment or satisfaction of obligations, including, but not limited to, receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City. If a Subcontractor refuses to furnish a release or waiver required by the City, the Contractor may furnish a bond satisfactory to the City to indemnify the City against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the City all money that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

## **12.8 Final Payment and Acceptance**

12.8.1 If, on the basis of Project Manager's observation of the Work during construction and final inspection, and Contract Administrator and Project Manager's review of the final Application for Payment and accompanying documentation, Project Manager is satisfied that the work has been completed and Contractor has fulfilled all of its obligations with regard to construction of the Project, the Project Manager will indicate approval of final payment by signing such invoice. The Contract Administrator will sign the final invoice as well and submit for final payment. Project Manager will give written notice to Contractor that the Work is acceptable subject to the provisions of Section 12.9.

Otherwise, Contract Administrator will return the Payment Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, City will, within thirty (30) days after receipt, pay Contractor.

12.8.2 Payment will be made to Contractor only for those portions of the work that have been fully completed and accepted.

## **12.9 Contractor's Continuing Obligation**

Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Project Manager, nor the issuance of a Certificate of Substantial Completion, nor any payment by City to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by City, nor any act of acceptance by City nor any failure to do so, nor the issuance of a notice of acceptability by Project Manager pursuant to section 12.8, nor any correction of defective Work by City shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

## **12.10 Waiver of Claims**

The making and acceptance of final payment shall constitute Contractor's waiver of all claims by Contractor against City other than those previously made in writing and still unsettled.

END ARTICLE 12

## **ARTICLE 13 SUSPENSION OF WORK AND TERMINATION**

### **13.1 *Suspend the Work***

City may, at any time and without cause, suspend the Work or any portion for a period of not more than thirty (30) calendar days with written notice to Contractor. Notice will state the date when work will resume. Contractor will resume the work on said date. Contractor will be allowed an increase in the Job Order price or an extension of the Job Order completion time or both directly attributable to any suspension if it makes a claim as provided in Article 10 unless suspension of the Work is mutually agreed upon by the City and the Contractor.

### **13.2 *City May Terminate***

13.2.1 Upon the occurrence of any one or more of the following events of default:

- a. Contractor is adjudged bankrupt or insolvent;
- b. Contractor makes a general assignment for the benefit of creditors;
- c. a trustee or receiver is appointed for Contractor or for any of Contractor's property;
- d. Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- e. Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment;
- f. Contractor repeatedly fails to make prompt payments to Subcontractor or for labor, materials or equipment;
- g. Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- h. Contractor disregards the authority of Project Manager or Contract Administrator;
- i. Contractor refuses or fails to prosecute Job Orders or any separable part thereof, with the diligence that will ensure its completion within the Job Order Completion Time or any extension or fails to complete the work within this time; or
- j. Contractor otherwise violates in any substantial way any provisions of the Contract Documents, this includes without limitation breach of applicable Federal Contract Clauses in a Federally Funded Job Order.

City may, after giving Contractor and its Surety sixty (60) days' written notice specifying the event of default, terminate the services of Contractor, exclude Contractor from the site, and take possession of the Work and of all Contractor's tools, appliances, equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which City has paid Contractor but which

are stored elsewhere, and finish the Work as City may deem expedient. The City may complete the Work itself or with other contractors. The Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Job Order Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor or its Surety shall pay the difference to City. The Contractor and its sureties shall be liable for any other damage to the City resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated.

13.2.2 Where Contractor's services have been so terminated by City, the termination will not affect any rights of City against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.

13.2.3 Upon seven (7) days written notice to Contractor, City may without cause and without prejudice to any other right or remedy elect to abandon the Work and terminate the Contract. The City will have all remedies in law and equity, including the right to specific performance (or injunction or other appropriate equitable remedy), without further assistance, and the rights to termination or suspension as provided herein. In such case, Contractor shall be paid for all work completed and accepted as complete by the Project Manager.

13.2.4 Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City, the Contractor expressly agrees that no default, act or omission of the City shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the City directs Contractor to do so) or to suspend or abandon performance.

13.2.5 If there is a dispute regarding a Federally Funded Job Order, the parties will use the dispute resolution in the Federal Contract Clauses, if any.

13.2.6 Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved

### **13.3 Termination for Convenience**

13.3.1 In addition to City's other termination rights, City may terminate the Contract for convenience. Upon ten (10) days' written notice to Contractor, City may, for its convenience and without cause, elect to terminate this Contract or any portion of this Contract.

13.3.2 If the Work or any portion thereof is terminated for convenience, Contractor shall, subject to the limitation set forth in 13.3.3 below, be entitled to be paid that portion of the Job Order Price that corresponds to the percentage of work that is complete and accepted, in accordance with the Contract Documents, but shall not be entitled to any other costs or damages whatsoever including without limitation fee or profit on terminated Work. If the Contractor has any property in its possession belonging to City, the Contractor will account for the same, and dispose of it in the manner City directs.

13.3.3 The total sum to be paid to Contractor under this Section 13.3 shall not exceed the Job Order Price(s) outstanding at the time of termination, as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this

Contract. The amounts payable to Contractor shall exclude the fair value of property not under City's control which is destroyed, lost, stolen or damaged so as to become undeliverable to City.

13.3.4 Any claim, request for equitable adjustment or other demand for extra compensation or time extension by Contractor arising from or related to acts, events, occurrences or omissions prior to the effective date of the convenience termination shall continue to be subject to and resolved in accordance with the rules (contractual or legal, express or implied) in effect prior to the termination. The convenience termination will not convert this Contract into a cost reimbursement contract.

**13.4 Minimum Contract Value Not Achieved**

If, in the Base Term, City, at no fault of the job order contractor, fails to issue Job Orders totaling at least the Minimum Contract Value, then the Contractor sole remedy is as set forth in RCW 39.10.440(7).

**13.5 Contractor May Stop Work or Terminate**

If, through no act or fault of Contractor or its subcontractors, the Work is suspended for a period of more than sixty (60) days by City or under an order of court or other public authority, then Contractor may, upon seven (7) days' written notice to City, terminate the Contract and recover from City payment for all Work completed and accepted.

END OF ARTICLE 13

**ARTICLE 14 NOT USED**

END OF ARTICLE 14

## **ARTICLE 15 MISCELLANEOUS**

### **15.1 General Requirements**

15.1.1 Should City or Contractor suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

15.1.2 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by sections 11.1, and 13.2 and all of the rights and remedies available to City thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this section shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Contract.

### **15.2 Giving Notice**

Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### **15.3 Computation of Time**

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

### **15.5 Non-Discrimination**

Contractor shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in such discrimination, including discrimination in employment practices. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract Documents or applicable law, City may impose such sanctions as it, or the City's funding agencies, may determine to be appropriate, including, but not limited to: (a) withholding of payments to Contractor until Contractor complies, and (b) termination or suspension of the Contract, in whole or in part.

## **ARTICLE 16 JOC PROCEDURE FOR ORDERING WORK**

### **16.1 *Initiation of a Job Order.***

16.1.1 As the need exists, the Contract Administrator will notify the Contractor of a Project, schedule a Joint Scope Meeting, and issue a Notice of Joint Scope Meeting.

16.1.2 The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

- a. the work to be performed;
- b. alternatives for performing the work and value engineering;
- c. access to the site and protocol for admission;
- d. any long lead time materials;
- e. staging area;
- f. requirements for catalog cuts, technical data, samples and shop drawings;
- g. requirements for professional services, sketches, drawings, and specifications;
- h. construction duration, schedule, work hours and any phasing requirements;
- i. the presence of hazardous materials;
- j. date on which the Job Order Proposal is due;
- k. if the Job Order will be a Federally Funded Job Order, the applicable Federal Contract Clauses, such as, for example, Davis-Bacon and DBE requirements.
- l. Job Order specific insurance (if any)
- m. Required permits;
- n. Controlled inspections, testing requirements;
- o. Value Engineering;
- p. Any other items as required by the City

16.1.3 Upon completion of the joint scoping process, the Contractor 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 City shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work is complete, the City will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal within a certain period of time. The Detailed Scope of Work 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.

### **16.2 *Preparation of the Price Proposal.***

16.2.1 The Contractor's Job Order Proposal shall include, at a minimum:

- a. Job Order Price Proposal;
- b. Support documentation for Non-Prepriced Tasks;
- c. Required drawings or sketches;
- d. List of anticipated Subcontractors and Materialmen;
- e. Construction schedule;
- f. Other requested documents.

16.2.2 The Job Order Price shall be the value of the approved Job Order Price Proposal.

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

16.2.4 The Contractor will prepare Price Proposals in accordance with the following:

- a. **Prepriced Task:** A task described for which a unit price is set forth in the Construction Task Catalog®.
- b. **Non-Prepriced Task:** A task that is not set forth in the Construction Task Catalog®.
- c. Information submitted in support of Non-Prepriced Tasks shall include, but not limited to the following:
  - 1) Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
  - 2) If Contractor will perform Work with its own forces, it must submit three (3) independent quotes for all material to be installed and will use Prepriced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three (3) independent quotes from subcontractors. The Contractor will 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 (3) quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the Owner's approval. If approved, less than three (3) quotes or bids will be allowed.
  - 3) The final price submitted for Non-Prepriced 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® 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.

**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

- 4) After a Non-Prepriced Task has been approved by the Owner, the Unit Price for such task will be established, and fixed as a permanent Non-Prepriced Task which will no longer require price justification.
- 5) The City's determination as to whether a task is a Prepriced Task or a Non-Prepriced Task will be final, binding and conclusive to the Contractor.
- 6) If the City chooses, it may approve less than three quotes at its discretion.

16.2.5 Contractor will 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. 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 for which a receipt is obtained will be treated as a Reimbursable Task to be paid without markup.

16.2.6 The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.

16.2.7 The Contractor's Job Order Proposal is to 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 (7) and fourteen (14) 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.

16.2.8 In emergency 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.

16.2.9 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 Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the City.

16.2.10 If the Contractor requires clarifications or additional information regarding the 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.

### **16.3 Review of the Job Order Proposal and Issuance of the Job Order**

16.3.1 The City will evaluate the entire 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.

16.3.2 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:

- a. Will constitute or create a hazard to the work, or to persons or property; or
- b. Will not produce finished Work in accordance with the terms of the Contract; or
- c. Unnecessarily increases the price of the Job Order when alternative means and methods are available.

16.3.3 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 will 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.

16.3.4 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-Prepriced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the City.

16.3.5 Each Job Order provided to the Contractor will 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.

### **16.3.6 Federally Funded Job Orders**

When the City initiates a Job Order, the City will specify whether the Job Order is a Federally Funded Job Order or not. If the Job Order has no such specification, then the Job Order is not a Federally Funded Job Order. A Federally Funded Job Order is subject to the Federal Contract Clauses, which will be provided by the City. In the event of irreconcilable conflict between the Federal Contract Clauses applicable to a Federally Funded Job Order and other Contract Documents, such Federal Contract Clauses control. The Federal Contract Clauses do not apply to Job Orders that are not Federally Funded Job Orders.

END ARTICLE 16

## **ARTICLE 17 ENGINEERING NEWS RECORD CONSTRUCTION COST INDICES ADJUSTMENT OF THE ADJUSTMENT FACTORS**

- 17.1 Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the Contract date to account for changes in construction costs, provided, the Contractor requests in writing, approximately thirty (30) days prior to the anniversary of the Contract date, that the Adjustment Factors be updated. Such request shall be delivered to the City and to the Consultant/Gordian. In the event the Contractor fails to deliver the request timely, then the City will determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty (30) days after the written request is received by the City. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:
- 17.2 The Contractor's Normal Working Hours and Other than Normal Working Hours Adjustment Factors will be adjusted according to the following:
- 17.2.1 A Base Year Index will be calculated by averaging the 12-month Construction Cost Indices (CCI) for the average of the twenty (20) cities published in the Engineering News Record (ENR) for the twelve (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).
- 17.2.2 A Current Year Index will be calculated by averaging the 12-month Construction Cost Indices (CCI) for the average of the twenty (20) cities published in the Engineering News Record (ENR) for the twelve (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).
- 17.2.3 The Economic Price Adjustment will be calculated by dividing the Current Year Index by the Base Year Index.
- 17.2.4 The Contractor's original Adjustment Factors will be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next twelve (12) months.
- 17.2.5 Averages shall be obtained by summing the 12-month indices and dividing by twelve (12).
- 17.3 All calculations in this article will be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
- 17.3.1 The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
- 17.3.2 The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 17.4 Engineering News Record occasionally revises indices. Engineering News Record Construction Cost Indices used in the calculations described above will 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 Engineering News Record revision. Revised Construction Cost Indices, if any, will be used in subsequent calculations.

- 17.5 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.
- 17.6 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.
- 17.7 The Adjustment Factor for Non-Prepriced Tasks will remain constant for the duration of the Contract.

END ARTICLE 17

## **ARTICLE 18 Software, JOC System License, and Cooperative Purchasing**

### **18.1 JOC System License**

18.1.1 The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) System for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software and JOC Applications, construction cost data and Construction Task Catalog®, which will be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the Owner. 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™. 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. A copy of the license agreement is attached and is included by reference.

### **18.2 Cooperative Purchasing**

18.2.1 Other agencies or members of cooperative purchasing entities may purchase construction services from the Contractor utilizing this Contract with prior approval of the City. To utilize the construction services from the Contractor, the entity must first execute a Intergovernmental Purchasing Agreement with the City and agree to pay Gordian's fee directly. If the Contract is utilized by other entities, the Contractor agrees to pay Gordian the 1% JOC System License Fee.

18.2.2 Within two (2) business days of receipt of a Purchase Order from an entity, Contractor is to provide notification to the City and Gordian by forwarding a copy of the Purchase Order to Gordian via email to PO@ezlQC.com or via facsimile to (864) 233-9100; and to the City via email to the Contract Administrator.

18.2.3 Within two (2) business days of sending an invoice to an Entity, Contractor is to provide notification to the City and Gordian by forwarding a copy of the invoice to Gordian via email to Invoice@ezlQC.com or via facsimile to (864) 233-9100; and to the City via email to the Contract Administrator.

18.2.4 The City and Gordian may request records from the Contractor for all cooperative purchasing and payments of all JOC System License Fees through this contract. The Contractor hereby agrees and authorizes the City and/or Entity to provide Gordian with purchase order and/or invoice copies. If discrepancies exist between cooperative purchasing activity and License Fees paid, Gordian will provide written notification to the Contractor of discrepancies and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of Gordian, Gordian reserves the right to engage a third party to conduct an independent audit of the Contractor's records and in the event Contractor is not in compliance with this Contract, Contractor shall reimburse the appropriate party for the cost and expense related to such audit.

## **ARTICLE 19 COMPLIANCE WITH THE JOC RCW REQUIREMENTS**

### **19.1 CONTRACTOR'S RESPONSIBILITY**

Contractor acknowledges that it has carefully examined the RFP documents and the Job Order Contracting RCW's. For example, the Contract is subject to RCW 39.10.200; 39.10.210; 39.10.420; 39.10.430; 39.10.440; 39.10.450; 39.10.460; and, 39.10.470.

### **19.2 MAXIMUM JOB ORDER VALUE**

The maximum dollar amount for an individual Job Order is three hundred fifty thousand dollars (\$350,000) pretax. All Job Orders for the same project (original plus any Supplemental Job Orders) shall be treated as a single Job Order for the purpose of the

\$350,000 limit. A Job Order issued for a particular project may not exceed \$350,000 excluding sales tax and Gordian fees. As required by RCW 39.10.450(3), no more than twenty percent of the dollar value of a Job Order may consist of items of work not contained in the unit price book. As required by RCW 39.10.450(4), any new permanent, enclosed building space constructed under a Job Order shall not exceed two thousand gross square feet.

### **19.3 ADJUSTMENT FACTORS AND CONSTRUCTION TASK CATALOG®**

The Contractor is paid for the Job Order based upon a fixed percentage multiplier (Adjustment Factor) and fixed prices based on The Gordian Group's Construction Task Catalog® agreed to in the initial contract. Everything that is to be included in the Contractor's Adjustment Factors is listed and identified in the Construction Task Catalog® under Construction Task Catalog® Section and "Using the Construction Task Catalog®," pages 00-1 through 00-7.

### **19.4 PREVAILING WAGE RATES TO BE PAID**

- A. Prior to making any payment, the City must receive a Labor and Industries approved copy of the "Statement of Intent to Pay Prevailing Wages" form from the Contractor, all sub-contractors and lower-tiers. Each progress payment application is to include a signed statement that prevailing wages have been paid. With final invoicing of a project, the City must receive a Labor and Industries certified copy of the "Affidavit of Wages Paid" form from the Contractor, all sub-contractors and lower-tiers.
- B. It is the Contractor's sole responsibility to ensure that the approved Intents and certified Affidavits are filed from all sub-contractors and lower-tiers and file with the City for each Job Order.
- C. Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each Job Order must be the rates in effect at the time the individual Job Order is issued.
- D. If the Job Order is Funded by the Federal Transit Administration, the Davis-Bacon Act and Copeland Anti-Kickback applies.

## **19.5 EXECUTED OMWBE PLAN**

- A. Per RCW 39.10.450, a public body may issue no Job Orders under a Job Order Contract until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the Contractor that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines.
- B. The executed plan is required before the City will sign the Contract.

## **19.6 SUBCONTRACTING**

- A. At least ninety percent (90%) of all work contained in a Job Order Contract must be subcontracted to entities other than the Contractor. The Contractor must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.

### **RETAINAGE**

The City requires each Contractor to provide a Retainage Bond in the penal sum equal to

\$100,000. If the cumulative amount of required retainage under Chapter 60.28 RCW exceeds this amount, the Contractor shall deliver a new Retainage Bond as required by the City. The Contractor must use the Retainage Bond form provided by the City.

## **19.7 PUBLIC RECORDS**

Under Washington state public records laws, records and documents including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions provided to City or used by the City in connection to the Contract Documents become a public record subject to mandatory disclosure upon request by any person, unless the records and documents are exempt from public disclosure by a specific provision of law. The City has no obligation to enforce any exemption. Contractor will fully cooperate with the City to comply with the Washington state public records laws.

## **19.8 AUDITS AND RETENTION OF RECORDS**

- A. All of the Project Records related to this Contract shall be open to inspection, audit, and/or copying by the City:
  - i. During the Contract Time;
  - ii. For a period of not less than six (6) years after the date of Final Acceptance of the last Work or termination of the Contract. The Contractor shall also ensure that the wage, payroll and cost records of all Subcontractors and Suppliers at all tiers is retained and open to similar inspection or audit for the period required above by incorporating the provisions of this Audit section into any agreements with Subcontractors or Suppliers related to this Contract; and

- iii. If any Claim, audit, or litigation arising out of, in connection with, or related to this Contract is initiated, all documents and records shall be resolved or completed, whichever occurs later.
- B. The Contractor, its Subcontractors and Suppliers will make a good faith effort to cooperate with the City when the City gives notice of its need to inspect or audit Project Records. Cooperation will include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation will also include establishing a specific mutually agreeable timetable for making the records available for inspection by the City and its designee. Unless otherwise agreed, if the Contractor, its Subcontractors and Suppliers cannot make at least some of the relevant records available for inspection within fourteen (14) days of the City's written request, cooperation will necessarily entail providing the City with a reasonable explanation for the delay in production of records. Failure to cooperate will impact future responsibility determinations.
- C. The Contractor agrees that no Claim will be made against the City for the Work described herein unless the Contractor makes available to the City all documents and records. Failure to maintain and retain sufficient records to allow the City to verify all costs or damages or failure to permit the City or its designee 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 and shall bar any recovery there under.
- D. Inspection, audit, and/or copying of Project Records may be performed by the City at any time with not less than fourteen (14) days written notice; provided however, if an audit is to be commenced more than sixty (60) days after Final Acceptance of the Contract, the Contractor will be given thirty (30) days' notice of the time when the audit or inspection is to begin.
- E. The Contractor and its Subcontractors and Suppliers shall provide adequate facilities, acceptable to the City, for inspection, auditing, and/or copying during normal business hours.
- F. No additional compensation will be provided to the Contractor, its Subcontractors, or Suppliers for time or money spent in complying with the requirements of this Audit section. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it will immediately notify the City and preserve such records, at its expense, as directed by the City.
- G. This Audit Section shall survive for six (6) years after the termination or expiration of this Contract, or conclusion of all Claims, audits or litigation, whichever occurs later.
- H. At a minimum the following documents shall be considered Project Records and made available for inspection, auditing and copying:
  - i. Daily time cards, time-sheets, daily reports, inspection reports, and supervisor's reports;

- ii. Insurance, welfare, and benefits records;
- iii. Payroll registers;
- iv. Earnings records;
- v. All relevant tax forms and records, including any state and federal payroll tax rate schedules governing the employer's payroll tax rates paid on behalf of employees that work on the project and any payroll tax forms summarizing the amounts paid;
- vi. Material invoices and requisitions;
- vii. Material cost distribution worksheets;
- viii. Equipment records including a list of company-owned equipment and an equipment distribution report containing equipment descriptions, equipment number, equipment rates, recorded equipment hours, phase or cost codes, dates, and any other relevant information as related to how equipment was recorded to the project;
- ix. Contractors' rental agencies', Subcontractors', and lower tier subcontractors' invoices;
- x. Contracts, purchase orders and agreements between the Contractor and each of its Subcontractors, and all lower tier subcontractor contracts and supplier contracts;
- xi. Subcontractor' and lower tier subcontractors' payment certificates/payment applications;
- xii. Canceled checks, payroll and Contractors;
- xiii. Job cost reports, including both a job cost summary report comparing budgeted amounts to recorded amounts by cost type and phase or cost code and a job cost history/detail/transaction report listing each individual transaction by phase or cost code;
- xiv. General Ledger;
- xv. Cash disbursements journal;
- xvi. All documents which relate to each and every claim together with all documents which support the amount of damages to each claim;
- xvii. All schedule documents, including man-loaded schedules, work plans, planned resource codes, phasing documents and summaries;
- xviii. All other documents, including email, related to the Project, Claims, or Change Orders;
- xix. Any documentation or information relied upon for the purposes of translating the bid amounts to original budget amounts;
- xx. Original budget and updated budgets used for tracking job performance throughout the project;

- xxi. Labor distribution reports summarizing straight time, overtime, and double time by employee and also separately summarizing base wage amounts versus labor burden and benefit amounts;
- xxii. Copies of all draft and approved change orders including a supplementary documentation or information relied upon for the purposes of pricing the change orders;
- xxiii. To the extent any of the above-referenced records exist in machine readable format, Contractor will make them available in that form. This requirement specifically includes but is not limited to an obligation to provide the information and access in the native format in which it is maintained by Contractor. The Contractor will, as reasonably requested by the City, provide read-only access to and reasonable technical support necessary to make use of any enterprise or legacy software utilized by the Contractor to manipulate and/or store the relevant data.

## **19.9 PUBLIC NOTICE REQUIREMENTS**

The Contractor will publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated, per RCW 39.10.440 (5).

## **19.10 PUBLIC INSPECTION OF CERTAIN RECORDS-PROTECTION OF TRADE SECRETS**

A. RCW 39.10.470(1) and (2) state as follows:

(1) Except as provided in subsections (2) and (3) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter [42.56](#) RCW.

(2) Trade secrets, as defined in RCW [19.108.010](#), or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter [42.56](#) RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.

B. The following shall govern to the application of RCW 39.10.470 to this Contract and the Work:

1. Proprietary information and trade secrets must be clearly identified as "CONFIDENTIAL."
2. If any document or record does not clearly identify the "CONFIDENTIAL" portions, the City will not notify the Contractor that such documents and records will be made available for inspection and copying, and the City may publically disclose such non- clearly identified portions with no liability whatsoever to the Contractor.

3. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL," the City will determine whether the material should be made available under the law. If the City determines that the material is subject to disclosure, the City will seek to notify the Contractor of the request and allow the proposer ten (10) business days after such notification to take appropriate legal action in Snohomish County Superior Court at the Contractor's sole expense and liability. If the Contractor does not within ten (10) business days serve the Office of the City Attorney with a copy of an order entered by the Superior Court that expressly prohibits the City from disclosure of the material marked "CONFIDENTIAL," then the proposer will be deemed to have consented to the public disclosure of the material marked "Confidential" and the City may publically disclose such material without any liability whatsoever to Contractor.
4. To the extent that the City withholds from disclosure all or any portion of Contractor's material marked "CONFIDENTIAL", the Contractor shall indemnify, defend and hold harmless the City of Everett from all lawsuits, liabilities, losses, damages, penalties, attorneys' fees and costs the City incurs arising from or relating to such withholding from disclosure.

END OF SECTION 19

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## Excluded Parties Listing System Search (Phase 1 Submittal)

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The

certification in this clause is a material representation of fact relied upon by

\_\_\_\_\_ **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to

\_\_\_\_\_ **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

## License and User Agreement

This Click-Through Agreement (the "Agreement") contains the terms and conditions upon which The Gordian Group, Inc., a Georgia corporation ("Gordian") grants to you ("Licensee") a limited license to perform your obligations pursuant to the Licensee Contract. Please read this Agreement carefully. By clicking "I Accept", you acknowledge that you have read and accept the terms and conditions of this Agreement in its entirety.

**IF YOU ARE ENTERING INTO THIS AGREEMENT WITHIN THE SCOPE OF YOUR EMPLOYMENT OR IN CONNECTION WITH YOUR ENGAGEMENT AS AN INDEPENDENT CONTRACTOR, THEN THE TERM "LICENSEE" INCLUDES YOUR EMPLOYER OR PRINCIPAL CONTRACTOR, AS APPLICABLE, AND YOU WARRANT AND REPRESENT TO GORDIAN THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH EMPLOYER'S OR PRINCIPAL CONTRACTOR'S BEHALF.**

WHEREAS, pursuant to the terms and conditions of a contract between Gordian and one or more mutual clients of Gordian and Licensee that is a party to the Licensee Contract ("Client Contract"), and the terms and conditions of the Licensee Contract, Gordian has agreed to provide Licensee with a limited license to Gordian's Job Order Contracting system ("JOC System"), and

NOW, THEREFORE, Gordian and Licensee agree to the terms and conditions of the following:

Gordian hereby grants to Licensee, and Licensee hereby accepts from Gordian for the term of the Licensee Contract, or the term of the Client Contract, whichever is shorter, a non-exclusive and nontransferable right, privilege, and license to Gordian's proprietary JOC System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing the Licensee's responsibilities under the Licensee Contract for which Licensee is utilizing the JOC system ("Limited Purpose"). Licensee hereby agrees that the Proprietary Information shall include, but is not limited to, Gordian's JOC Software and information management applications and support documentation, Construction Task Catalog<sup>®</sup> and any construction cost data and copyrighted materials contained therein, training materials, and any other proprietary materials provided to Licensee by Gordian either electronically or through an alternative means of delivery. In the event the applicable Licensee Contract expires or terminates, or the Client Contract expires or terminates, this JOC System License shall terminate and Licensee shall return all Proprietary Information in its possession to Gordian.

Licensee acknowledges that Gordian shall retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights and trade secrets. Licensee shall have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor shall not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

Licensee hereby agrees to pay Gordian the applicable license fee ("Contractor License Fee") as provided for in either the Client Contract or Licensee Contract. Licensee further agrees to remit the Contractor License Fee to Gordian within ten (10) days of Licensee's receipt of a Job Order, Purchase Order or other similar purchasing document pursuant to the Licensee Contract. Licensee shall make payments payable to The Gordian Group, Inc. and shall mail the payments to P.O. Box 301013, Los Angeles, CA 90030-1013. All payments received after the due date set forth above will incur a late payment charge from such due date until paid at a rate of 1.5% per month.

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing.

Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Agreement, and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to Licensee, subject to federal, state and local laws related to public disclosure. Licensee further acknowledges that a breach of any of the terms of this Agreement by Licensee will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian shall be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to enforce the provisions of this Agreement or to obtain redress for the breach or violation of any of its provisions, including nonpayment of any Contractor License Fees owed, whether by litigation, arbitration or other proceedings, the prevailing party shall be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

This Agreement shall be construed under the laws of the State of South Carolina without regard to choice of law principles. Both parties irrevocably consent to the jurisdiction and venue of the federal and state courts located in the State of South Carolina for purposes of any action brought in connection with this Agreement or use of the Proprietary Information.

The parties agree that in the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Licensee Contract, the Client Contract, or any Job Order, Purchase Order or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement shall take precedence.



City of Everett

# Federal Transit Administration Clauses

Last updated: 05/21/2021

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## 1. **SIMPLIFIED ACQUISITION THRESHOLD**

Required Clauses in Third Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third-party contracts made by the Recipient under the Federal award must contain provisions covering the following.

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

## 2. **ACCESS TO RECORDS AND REPORTS**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. § 5325(g); and (2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.

- a. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors’ access to the sites of performance under this contract as reasonably may be required.

### **3. BONDING REQUIREMENTS**

***Bonds are required for all construction or facility improvement contracts and subcontractsexceeding the simplified acquisition threshold.***

**a. Bid Guarantee – Bid Bond**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

Bidders shall furnish a bid guarantee in the form of a bid bond, or certified treasurer's or cashier's check issued by a responsible bank or trust company, made payable to the City of Everett. The amount of such guarantee shall be equal to five percent (5%) of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the City of Everett reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of the City of Everett.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [90] days after the bid opening without the written consent of the City of Everett, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guarantee to the extent City of Everett's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guarantee shall prove inadequate to fully recompensate the City of Everett for the damages occasioned by default, then the undersigned bidder agrees to indemnify the City of Everett and pay over to the City of Everett the difference between the bid guarantee and City of Everett's total damages so as to make the City of Everett whole.

The undersigned understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

**b. Performance Guarantee – Performance Bond**

A performance guarantee in the amount of one hundred percent (100%) of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the City of Everett within ten (10) business days from Contract execution. The City of Everett requires all performance bonds to be provided by a fully qualified surety company acceptable to the City of Everett and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. The City of Everett may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal one hundred percent (100%) of the increase in contract price. The City of Everett may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional

bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the City of Everett if:

1. A bank in good standing issues it. The City of Everett will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The RECIPIENT is identified as the Beneficiary.
5. It is in an amount equal to **100%** of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of this Agreement.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the City of Everett and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft (similar to the attached forms contained in Sections X and Y) to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

**c. Payment Bonds**

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

**4. BUS TESTING (NOT APPLICABLE)**

*The Bus Testing requirements pertain only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA.*

## 5. **BUY AMERICA REQUIREMENTS**

**(Over 150K) Add Certification to Forms section.**

*This clause flows down and extends to all first-tier contractors and their contracts. It must be included in every first-tier contract.*

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provides that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

## 6. **CARGO PREFERENCE REQUIREMENTS**

### a. **Cargo Preference - Use of United States-Flag Vessels**

**Include for all contracts in which ocean vessel is used to transport.**

The contractor agrees:

- i. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- ii. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- iii. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## 7. **CHARTER SERVICE (NOT APPLICABLE)**

**The Charter Bus requirements apply to contracts for operating public transportation service.**

## 8. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Over 150K)**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1388).
- 4) It will report violations must to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **9. CIVIL RIGHTS AND EQUAL OPPORTUNITY**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The City of Everett is an Equal Opportunity Employer. As such, the City of Everett and all third-party contractors and their contracts agree to prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Everett agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

City of Everett and all third-party contractors and their contracts also agree to comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; (ii) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; (iii) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement; (iv) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;" and (v) Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability.

The City of Everett also follows the most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3; and all other applicable federal guidance.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- 1) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- 2) **Race, Color, Religion, National Origin, Sex, including gender identity.** The Contractor will prohibit discrimination based on race, color, or national origin in accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000d. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 3) **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 4) **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- 5) **Affirmative Action.** If required to do so by U.S. DOT regulations (49 CFR Part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), take affirmative action that includes, but is not limited to: (A) Recruitment advertising, recruitment, and employment; (B) Rates of pay and other forms of compensation; (C) Selection for training, including apprenticeship, and upgrading; and (D) Transfers, demotions, layoffs, and terminations.
- 6) **Equal Employment Opportunity Requirements for Construction Activities.** Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with: (i) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

## 10. **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

### a. **Background and Applicability**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract. It is the prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subcontractors.*

### b. **Disadvantaged Business Enterprise (DBE) Participation**

The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 applies to this contract. The requirements of this contract are to encourage DBE participation and to report race neutral accomplishments semi-annually. No preference will be included in the evaluation of bids, no minimum level of DBE participation shall be required as condition for receiving an award and bids/Bids will not be rejected or considered non-responsive on that basis.

### c. **Disadvantaged Business Enterprises (DBE) Definitions**

- 1) DBE is an incorporated or unincorporated small business concern or joint venture, as defined by Section 3 of the Small Business Act and implementing regulations, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$14 million over the previous three fiscal years. The Secretary shall adjust this figure from time to time for inflation. A DBE must be certified by the Washington State Office of Minority and Women's Business Enterprises.
  - a) At least 51 percent of which is owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and,
  - b) The management and daily business operations of which are controlled by the socially and economically disadvantaged individuals who own the business.
- 2) Socially and Economically Disadvantaged Individuals are those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:
  - a) Black Americans - which includes persons having origins in any of the black racial groups of Africa;
  - b) Hispanic Americans - which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
  - c) Native Americans - which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
  - d) Asian-Pacific Americans - which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories or the Pacific and the Northern Marianas;

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- e) Asian-Indian Americans - which includes persons whose origins are from India, Pakistan and Bangladesh;
- f) Women - regardless of race, ethnicity or origin; and,
- g) Other - individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

### **d. Disadvantaged Business Enterprises**

- 1) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of DBEs is 10%. The agency's overall goal for DBE participation is 2%. A separate contract goal has not been established for this procurement.
- 2) The successful bidder/Bidder will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- 3) The contractor must promptly notify the City of Everett, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Everett.

### **e. Affirmative Efforts to Solicit DBE Participation**

DBE firms shall have equal opportunity to compete for and perform subcontracts which the Contractor enters into pursuant to this contract. Contractors are encouraged to:

- 1) Advertise opportunities for subcontractors or suppliers in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g. newspapers, journals, etc.) or by soliciting bids/Bids directly from DBEs.
- 2) Utilize the services of available minority community-based organizations, minority contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses, such as the Office of Minority and Women's Business Enterprises listed below.
- 3) Establish delivery schedules, where requirements of the contract allow, that encourage participation by DBEs and other small businesses.
- 4) Achieve attainment through joint ventures.

In the absence of a mandatory goal, all DBE participation that is attained on this project will be considered as "race neutral" participation and will be reported as such.

**f. Information Regarding DBEs**

Information regarding Disadvantaged Business Enterprises currently certified with the State of Washington is available at:

Office of Minority and Women's Business Enterprises

PO Box 41160

Olympia, WA 98504-1160

(800) 208-1064 Toll Free

(360) 586-7079 Fax

Or visit their website at <http://www.omwbe.wa.gov/>

**g. Procedures Between Award and Execution**

After award of the contract, the successful bidder shall provide the following additional information:

A list of all firms who submitted a bid or quote in an attempt to participate in this project whether they were successful or not. Include the correct business name, federal employer identification number (optional), and a mailing address.

**h. Required DBE Contract Clauses**

**a) Contract Assurance**

*The following clause is incorporated in every FTA-assisted contract and subcontract:*

The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as City of Everett deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible per 49 CFR§ 26.13(b).

**b) Prompt Payment and Retainage**

*The following clause is incorporated in every FTA-assisted prime contract:*

When payment is received by a Contractor or Subcontractor for work performed, the Contractor or Subcontractor shall pay to any Subcontractor no later than ten (10) days after the receipt of the payment, amounts allowed the Contractor on account of the work performed by the Subcontractor, to the extent of each Subcontractor's interest therein, unless the payment otherwise is excused under the provisions of RCW 39.04.250.. This requirement shall flow down from Contractor to all lower tier subcontractors.

The City of Everett will not withhold any retainage or payments owing to the Contractor. The Contractor shall not withhold any retainage or payments owing to any Subcontractor. No delays or postponements of payment from the above referenced timeframe may occur unless approved in writing by the City. This clause applies to the DBE and non-DBE subcontracts.

If an DBE has not been paid on time, it should seek to resolve issues with the Contractor or Subcontractor, if the DBE is on a lower tier. If a satisfactory resolution is not arrived at, the DBE may approach the City of Everett Procurement Manager for assistance.

**c) Resolving Payment Disputes, Discrepancies and Delays**

Per 49 CFR §26.29 Contractors shall include in their subcontracts language providing that Contractor and Subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.

Further, if a payment to a Contractor by the City of Everett is in dispute, has discrepancies or is delayed for any other reason, Contractor shall pay its DBE subcontractor(s) in a timely manner, without waiting for receipt of payment from the City of Everett.

**d) Use of DBE Financial Institutions:**

Per 49 CFR Part 26.27, Contractors and Subcontractors are encouraged to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in their community and make reasonable efforts to use these institutions. The list of such firms is available at: [www.federalreserve.gov/releases/mob](http://www.federalreserve.gov/releases/mob).

**i. Small Business Participation**

Bidders on public works contracts greater than \$100,000 must identify and provide specific subcontracts appropriate for small business participation.

Definition of Small Business per the Code of Federal Regulations (CFR), Title 49: Transportation, Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, Subpart A – General, Paragraph 26.5:

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipt specified in Paragraph

26.65(b).

Paragraph 26.65: What rules govern business size determinations?

- 1) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
- 2) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.
- 3) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

## **11. VETERAN'S EMPLOYMENT**

To the extent practicable, Contractors shall give a hiring preference to veterans (as defined in Section 2108 of title 5 (5 USC 2108)) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **12. TERMINATION OF DBE SUBCONTRACTOR**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **bid documents** without the City of Everett's prior written consent. The City of Everett may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five (5) days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the City of Everett in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated.

### **a. Continued Compliance**

The City of Everett shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the City of Everett that summarize the total DBE value for this Contract. These reports shall provide the following details:**

## Federal Transit Administration Clauses

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the City of Everett. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder shall permit:

- The City of Everett to have access to necessary records to examine information as it deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the City of Everett, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in the solicitation.

### **b. Sanctions for Violations**

If at any time the City of Everett has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the City of Everett may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

## **13. PREVAILING WAGE AND ANTI-KICKBACK**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the

Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

**14. CONTRACT WORK HOURS AND SAFETY STANDARDS (40 U.S.C. §§ 3701 – 3708)**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or

under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the 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 this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

## **15. CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION (NOT APPLICABLE)**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) 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.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

## **16. ENERGY CONSERVATION**

*This clause flows down and extends to all third-party contractors and their contracts. It must be included in every tier contract.*

The contractor agrees to comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR Part 622, subpart C.

## **17. FLY AMERICA**

*This clause flows down and extends to the first-tier contractor only.*

a. **Definitions.** As used in this clause:

"International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States" means the 50 States, the District of Columbia, and outlying areas.

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

b. **Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]*:

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(End of statement)

The Contractor shall include the substance of this clause, including this paragraph, in each subcontract or purchase under this contract that may involve international air transportation.

## **18. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

*This clause applies to any tier contract that is expected to exceed \$25,000. The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the Recipient, the City of Everett, whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform the Recipient.*

(Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: (i) Complies with federal debarment and suspension requirements; and (ii) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.

The Contractor shall comply and facilitate compliance with U.S. DOT regulations requirements of 2 CFR Part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR Part 1200. "Nonprocurement Suspension and Debarment," which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Everett. If it is later determined by the City that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Everett, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**19. DISCLOSURE OF LOBBYING ACTIVITIES (31 U.S.C. § 1352)**

*The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant.*

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award

**20. NO FEDERAL GOVERNMENT OBLIGATION OR LIABILITY**

*This clause applies to third party contracts that are federally funded and flows down to every tier.*

- a. The Federal Government does not and shall not have any commitment or liability related to this Contract or its underlying agreements, to any participant at any tier, or to any other person or entity that is not a party (FTA or the Agency) to the underlying agreement; and
- b. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Contract at any tier that may affect any underlying agreement, the Federal Government does not and shall not have any commitment or liability to any participant or other entity or person that is not a party (FTA or the Agency) to this Contract/Task Order or any underlying agreement.

**21. PATENT RIGHTS AND RIGHTS IN DATA (NOT APPLICABLE)**

*If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award.*

## **22. PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES (NOT APPLICABLE)**

*Recipients purchasing revenue service rolling stock with FTA funds must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663. For more information about pre-award and post-delivery audit requirements, please go to [FTA's Buy America](#) page on its website.*

## **23. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Program Fraud clauses applies to all third-party contracts that are federally funded. It extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent to the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **24. PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS**

*This clause applies to all third-party contractor and their contracts at every tier.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.

2. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **25. RECOVERED MATERIALS - RECYCLED PRODUCTS**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## **26. SAFE OPERATION OF MOTOR VEHICLES**

*The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. It flows down to all third-party contractors at every tier.*

### **a. Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or the City of Everett.

### **b. Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **27. SCHOOL BUS OPERATIONS (NOT APPLICABLE)**

*The School Bus requirements apply to contracts for operating public transportation service. This clause flows down from FTA recipients and subrecipients to first tier service contractors.*

## **28. SEISMIC SAFETY**

*The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings. This clause flows down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## **29. SUBSTANCE ABUSE REQUIREMENTS (NOT APPLICABLE)**

*This clause applies to third party contractors who perform safety-sensitive functions must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." This clause flows down to all third-party contractors at every tier who perform a safety-sensitive function for the City of Everett.*

## **30. TERMINATION**

*All contracts in excess of \$10,000 must address the termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement. This clause extends to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

### **a. Termination for Convenience**

The City of Everett may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the City's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City. If the Contractor has any property in its possession belonging to the City of Everett, the Contractor will account for the same, and dispose or return of it in the manner the City directs.

If the contract elsewhere has one or more termination for convenience provisions in addition to this Section 29.a, then the City may select the termination for convenience provision for the termination that the City deems most advantageous to the City.

### **b. Termination for Default [Breach or Cause]**

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, the City of Everett may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the City may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work

site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

- 1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the City, acts of another contractor in the performance of a contract with City, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes; and
- 2) The Contractor, within fifteen [15] days from the beginning of any delay, notifies the City of Everett in writing of the causes of delay. If, in the judgment of the City, the delay is excusable, the time for completing the work shall be extended. The judgment of the City shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
- 3) If, after termination of the Contractor's right to proceed, it is determined that the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City.

**c. Opportunity to Cure**

The City, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor two weeks in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) business days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City of Everett shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach**

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

## **31. VIOLATION AND BREACH OF CONTRACT**

*All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract*

*terms, and provide for such sanctions and penalties as appropriate. The Violations and Breach of Contracts clause flow down to all third-party contractors and their contracts at every tier.*

**a. Rights and Remedies of the City of Everett**

The City of Everett shall have the following rights in the event that the City of Everett deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

**b. Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the City of Everett, the Contractor expressly agrees that no default, act or omission of the City of Everett shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract, unless the City directs Contractor to do so, or to suspend or abandon performance.

**c. Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the City of Everett will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the City takes action contemplated herein, the City will provide the Contractor with sixty (60) days written notice that the City considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

**d. Disputes**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of City's Project Manager. This decision shall be final and conclusive unless within ten (10) business days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City Clerk. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Procurement Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

**e. Performance during Dispute**

Unless otherwise directed by the City of Everett, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**f. Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or any of its employees, agents or others for whose acts it is legally liable, a claim for damages, therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**g. Remedies**

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Everett and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within in Washington State in which the City of Everett is located.

**h. Rights and Remedies**

The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Everett or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**32. PROTEST AND APPEALS**

Procurement Protest Procedures are available for review at:

<https://www.codepublishing.com/WA/Everett/#!/Everett03/Everett0346.html#3.46>

**33. FEDERAL CHANGES**

Any proposed change in this contract shall be submitted to the City of Everett for its prior approval. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (28) dated February 9, 2021) between Purchaser and FTA , or as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**34. INCORPORATION OF FTA TERMS**

The preceding and following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F dated November 1, 2008, (Revised: July 29, 2009) are hereby incorporated by reference.

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf>

Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict either other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Everett requests which

would cause City of Everett to be in violation of the FTA terms and conditions.

The contract agreement shall be binding upon and inure to the benefit of the contract parties, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.

### **35. TERMS OF THESE PROVISIONS AND COMPLIANCE**

- A. The Contractor must comply with all applicable federal laws, regulations, and requirements, and should follow applicable federal guidance, except as FTA determines otherwise in writing.
- B. To assure compliance with federal laws, regulations, and requirements, the Contractor must take measures to assure that other participants in all of its underlying agreements, including, but not limited to subcontracts or purchase or task orders with lower tier subcontractors, suppliers, consultants etc.) comply with applicable federal laws, regulations, and requirements, and follow applicable federal guidance, except as FTA determines otherwise in writing.
- C. FTA may take enforcement action if the Contractor violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.
- D. Parties agree that not every provision of this section will apply to every subcontractor or any underlying agreements. Criteria determining which federal laws, regulations, requirements, and guidance apply include the type of award, the federal law authorizing federal assistance for the award, the federal law, regulations, or requirements governing how the award must be implemented, the federal guidance pertaining to the award, and the Contractor's legal status as a business, a "private nonprofit entity," a "private for-profit entity," or an individual.
- E. As provided in federal laws, regulations, requirements, and guidance, FTA will enforce only those federal laws, regulations, requirements, and guidance that apply to the Contractor, or to any Project and related activities encompassed in the award, any accompanying underlying agreements, and any amendments thereto.
- F. This Section does not have an expiration date. Section shall continue to apply to the Agency, the Contractor and all parties covered by any underlying agreements, until the Section is modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment.
- G. The Contractor must comply with U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, which applies to this Contract or other underlying agreements.
- H. Except as FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 1201, and subparts A through E of U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200, shall apply to the Contractor and all its subcontractors.

### **36. CONTRACTOR'S RESPONSIBILITY TO EXTEND FEDERAL REQUIREMENTS TO LOWER TIER PARTICIPANTS**

In certain circumstances, the Contractor's compliance with specific federal requirements depends on compliance by its lower tier participant(s) and therefore:

- A. **General.** The Contractor agrees to ensure that its lower tier participant(s) will comply with applicable federal requirements and follow applicable federal guidance.
- B. **Performance of the Contractor's Responsibilities.** If a lower tier participant is expected to fulfill any responsibilities typically performed by the Contractor, the Contractor agrees to ensure that the lower tier participant will carry out the Contractor's responsibilities in compliance with federal requirements, and provide enough information to each lower tier participant so that they understands that they will be expected to follow federal guidance.
- C. **Risk.** As provided in 2 CFR Part 1201, which incorporates by reference 2 CFR Part 200, the Contractor agrees to evaluate the risk involved before awarding an underlying agreement to any entity.
- D. **Lower tier agreements.** To comply with federal requirements, the Contractor agrees to enter into a written agreement with each lower tier participant in its underlying agreement and must include all appropriate provisions stating the lower tier participant's responsibilities to assure the Contractor's capability to comply with applicable federal requirements and guidance and specifying the responsibilities that the lower tier participant will fulfill on the Contractor's behalf.
- E. **Notice to lower tier participants.** The Contractor agrees to include notice in each lower tier agreement that:
  - i. Federal requirements that apply to the Contractor or are included in the Contract/Task Order, the accompanying underlying agreement, and any amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in this Contract/Task Order or the Contractors underlying agreements including any information incorporated by reference and made part of that underlying agreement; and

Applicable changes to those federal requirements will apply to this Contract/Task Order and the Contractor's underlying agreements and parties thereto at any tier.

### **37. TRAFFICKING OF PERSONS**

- a. Contractor agrees to comply and assures the compliance of each Lower Tier Participant with: Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and the terms of this section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.
- b. Contractor further agrees that it and its employees that participate in this Contract/Task Order shall not:

- 1) Engage in severe forms of trafficking in persons during the contract period, including all extensions or while Contract/Task Order is in effect,
- 2) Procure a commercial sex act during the Contract or Task Order period, including all extensions, or
- 3) Use forced labor in the performance of Contract or Task Order or any sub agreements thereunder.

### **38. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

This flows down to all third-party participants regardless of tier or value of the sub agreement.

Transactions Prohibited:

- a) The Contractor agrees to certify that, prior to entering into this Contract or any Lower Tier Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the Contractor will obtain from the prospective Lower Tier Participant a certification that the Lower Tier Participant —
  - 1) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - 2) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

\_\_\_\_\_  
**Signature of Contractor's Authorized Official**

\_\_\_\_\_  
**Name and title of Contractor's Authorized Official**

\_\_\_\_\_  
**Date**

- b) Contractors that cannot certify to the provisions as listed in this Section 38 above will be deemed not responsible due to the delay such non-certification would cause to the delivery of the Contract.

### **39. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 512(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

#### **40. NOTIFICATION OF LEGAL MATTERS**

Each Third-Party Participant must include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- 1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- 2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- 3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.
- 4) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA’s prior written concurrence.
- 5) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

Contractor agrees to notify the City of Everett immediately if it becomes involved in a current or prospective legal matter that may affect the federal government, which includes, but is not limited to, FTA’s interests in the award, the accompanying underlying agreement, and any Amendments thereto, or the FTA’s administration or enforcement of federal laws, regulations, and requirements. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or where the FTA may be named as a party to litigation or a legal disagreement in any forum for any reason.

Contractor will immediately notify the City of Everett if it has knowledge of potential fraud, waste, or abuse occurring in relation to this Contract. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the City of Everett.

The City of Everett reserves the right to seek all remedies available to it under law, including to procure substitute services or products elsewhere and recover its damages, attorneys' fees and costs from Contractor.

#### **41. SOLID WASTES**

*Required Clause in Third-Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third-party contracts made by the Recipient under the Federal award must contain provisions covering the following:*

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors 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 CFR 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 during 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.

#### **42. ENVIRONMENTAL PROTECTION**

- 1) General. The Recipient agrees to, and assures that its Third-Party Participants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.
- 2) National Environmental Policy Act. An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, the Recipient agrees to, and assures that its Third-Party Participants will:
  - a. Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
    - i. Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139;
    - ii. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 CFR Part 1500 – 1508;

## Federal Transit Administration Clauses

- iii. Joint FHWA and FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622;
    - iv. Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and
    - v. Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
  - b. Follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation:
    - i. Joint FHWA and FTA final guidance, “Interim Guidance on MAP-21 Section 1319, Accelerated Decision making in Environmental Reviews,” January 14, 2013;
    - ii. Joint FHWA and FTA final guidance, “SAFETEA-LU Environmental Review Process (Public Law 109-59),” 71 Fed. Reg. 66576, November 15, 2006; and
    - iii. Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
- 3) Environmental Justice. The Recipient agrees to, and assures that its Third-Party Participants will, promote environmental justice by following:
  - a. Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. § 4321 note, (59 Fed. Reg. 7629, 3 C.F.R. 1994 Comp., p. 859) as well as facilitating compliance with that Executive Order;
  - b. U.S. DOT Order 5610.2(a), “Department of Transportation Updated Environmental Justice Order,” 77 Fed. Reg. 27534, May 10, 2012; and
  - c. The most recent edition of FTA Circular 4703.1, “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
- 4) Other Environmental Federal Laws. The Recipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order No. 11988, as amended, “Floodplain Management.”
- 5) Corridor Preservation. The Recipient agrees that:

## Federal Transit Administration Clauses

- a. It will not develop any right-of-way acquired under 49 U.S.C. § 5323(q) in anticipation of implementing its Award until all required environmental reviews for each Project or related activities have been completed; and
  - b. It will follow FTA Final Guidance on the Application of 49 U.S.C § 5323(q) to Corridor Preservation for a Transit Project, October 27, 2014.
- 6) Use of Certain Public Lands. The Recipient agrees to comply, and assures that its Third Party Participants will comply, with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 CFR Part 774, and referenced in 49 CFR Part 622.
- 7) Historic Preservation. The Recipient agrees to, and assures that its Third-Party Participants will:
  - a. Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an Award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places.
  - b. Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
  - c. Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.
  - d. Comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 CFR Part 800.
  - e. Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- 8) Indian Sacred Sites. The Recipient agrees to, and assures that its Third Party Participants will, facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).
- 9) Mitigation of Adverse Environmental Effects.
  - a. The Recipient agrees to comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
  - b. The Recipient agrees that:

- i. Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto;
  - ii. Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached; and
- 10) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

#### **43. FEDERAL “\$1 COIN” REQUIREMENTS**

The City of Everett agrees to comply with section 104 of the Presidential \$1 Coin Act of 2005, 31 U.S.C. § 5112(p), therefore its equipment and facilities will be fully capable of accepting and dispensing \$1 coins when coins or currency are required to use that equipment or those facilities, and it will display signs and notices of the \$1 coin capability of its equipment and facilities on its premises, including vending machines, where coins or currency are used.

#### **44. CENTERS FOR DISEASE CONTROL AND PREVENTION ORDER ON REQUIREMENTS FOR PERSONS TO WEAR MASKS WHILE ON CONVEYANCES AND AT TRANSPORTATION HUBS**

(a) Compliance with CDC Mask Order. The Centers for Disease Control and Prevention (“CDC”) Order of January 29, 2021, titled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (“CDC Mask Order”), is within the meaning of “Federal Requirement” as that term is defined in this Master Agreement. One of the objectives of the CDC Mask Order is “[m]aintaining a safe and operating transportation system.” The Recipient agrees that it will comply, and will require all Third-Party Participants to comply, with the CDC Mask Order.

(b) Enforcement for non-compliance. The Recipient agrees that FTA may take enforcement action for non-compliance with the CDC Mask Order, including:

- (1) Enforcement actions authorized by 49 U.S.C. § 5329(g);
- (2) Referring the Recipient to the CDC or other Federal authority for enforcement action;
- (3) Enforcement actions authorized by 2 CFR §§ 200.339 – 340; and
- (4) Any other enforcement action authorized by Federal law or regulation.