



**DEPARTMENT OF PUBLIC WORKS
POLICIES AND PROCEDURES**

TITLE General Procedures for Contracting for Emergency Work		SUBJECT: Public Works Program and Project Management		
		INDEX NO: 300-07a		
EFFECTIVE DATE: April 21, 2004	SUPERSEDES: 10/4/02	PAGE NO: 1 OF: 2	PREPARED BY: Pam Miller Admin. Services Supv.	DIRECTOR'S APPROVAL:

PURPOSE: To set forth procedures for contracting for emergency public works projects.

Reference RCW 39.04.280, which provides for the following:

- Competitive bidding requirements may be waived for public works in the event of an emergency.
- An emergency is defined as an unforeseen circumstance beyond the control of the municipality that either: (a) presents a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.
- A written finding of the existence of an emergency must be made by the City and duly entered on the record no later than two weeks following award of the contract.

Procedures

- A. When an emergency arises and City operations and maintenance staff determine that they cannot perform the required work, the staff should contact:
 - During Normal Working Hours – the Program Manager.
 - Outside of Normal Working Hours - The Construction Manager. If the Construction Manager is not available, they should go down the Construction Inspector list.
- B. If the Program Manager and/or Construction Manager determines an emergency, the Public Works Director will be notified immediately.
- C. If the Public Works Director concurs that an emergency situation exists and a contractor(s) needs to be called in, the Director will notify the Mayor, who is authorized by Auburn City Code 3.10.050 to enter into emergency contracts.
- D. Upon concurrence of the Mayor that an emergency situation exists, and upon the Mayor’s authorization, contractor(s) can be called upon to make the necessary repairs.

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- E. Prior to work commencing, the contractor(s) shall review and sign an Emergency Public Work Agreement form [FC125A](#), outlining prevailing wage and bond requirements and payment schedule.
- F. The first working day following the emergency situation, the staff member directing the contractor's on-site work will notify the Administrative Services Supervisor of:
1. The need for the emergency work.
 2. The name(s) of contractor(s) called in to perform the work.
 3. The type of work being performed by the contractor(s).
 4. The estimated cost of the work.
- G. The Administrative Services Supervisor will ensure that a description and estimate of the work is published within seven (7) days of commencement of the work (RCW 39.04.020) (see [FE033](#)) and will create an agenda bill (see [ab-Emergency](#)) outlining the emergency situation and the details listed in Item F above. The agenda bill will be presented to the Public Works Committee and City Council in a manner such that the agenda bill is presented to the Council within two weeks following award of the emergency contract(s).
- H. If the amount of work being done by any single contractor is greater than \$5,000, an Emergency Public Work Contract form [fc125](#) will be entered into with the contractor. For work less than \$5,000, the Emergency Public Works Agreement form and a purchase order will be sufficient.

REF: H:\PUB_WRKS\Policy\300-07a.doc



Emergency Public Work Agreement
 Auburn Public Works Department
 25 W Main Street
 Auburn WA 98001
 253.931.3010

Date: _____

Contractor	Name:	
	Address:	
	City:	State and Zip:
	Phone:	Fax:
	State Contractors License No.:	

Project Site	
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Scope of Work	
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Time of Completion	Work shall be completed within _____ working days.
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Estimated Cost	\$ _____
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PREVAILING WAGES. The Contractor shall pay prevailing wages and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. Intent to Pay Prevailing Wage forms are required.

RETAINAGE. Retainage is required.

- If the cost of work is \$25,000 or less, the Contractor can choose to be paid 50% of the contract amount upon completion and acceptance of the work by the City. The remaining 50% of the contract amount will be retained by the City.
- If the cost of work is greater than \$25,000, the amount of retainage is 5% of the contract price. The contractor can elect to furnish a bond in lieu of retainage, have the retainage held in an escrow account, or decline escrow and have the City retain the funds.

Regardless of the method chosen, retainage will be held for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor & Industries, and until settlement of any liens filed under Chapter 60.28. RCW, whichever is later. On the first working day following the award of the Emergency Contract, you will be contacted by City staff to discuss retainage.

If the estimated cost of work is over \$5,000, an Emergency Public Work Contract shall be executed within five (5) working days of the work commencing. A performance bond and certificates of insurance will also be required.

CONTRACTOR

CITY OF AUBURN

Signature of Representative

Signature of Representative

Printed Name

Printed Name

Title

Title

EMERGENCY PUBLIC WORK CONTRACT NO. XX-XX
Project No. xxxx, Title

THIS CONTRACT is entered into between the City of Auburn, a Washington Municipal Corporation ("City"), and _____ ("Contractor"), whose mailing address is _____.

The parties agree as follows:

- I. CONTRACTOR SERVICES.** The Contractor shall do all work and furnish all tools, materials and equipment for the construction of Project No. XXXX in accordance with this Contract form. Scope of work is as follows:

(List here).

If attaching a scope of work and/or drawings, use the following language: "The Contractor shall do all work and furnish all tools, materials and equipment for the construction of Project No. MSxxxx, in accordance with this Contract form and as shown on the attached Exhibit "?", which is by this reference incorporated herein and made a part hereof."

Note: In the paragraphs above, if you have referenced any documents or exhibits as "attached," they must be attached to the three Contract originals that are prepared for execution by the Contractor and City. Be sure to adjust punctuation and wording so that it makes sense.

The complete Contract includes the following parts, which are by this reference incorporated herein and made a part hereof. Any inconsistency in the parts of the Contract shall be resolved by the order in which they are listed.

- A. Emergency Public Work Contract
- B. List specific exhibits, attachments, drawings, including those attached to Small PW Contract
- C. Washington State Department of Labor & Industries Prevailing Wage Rates and Benefit Key Code effective date. (must be the rate in effect on the date that the Emergency Public Works Agreement was executed, or the date the work commenced if an Agreement was not executed)

On the Contract plans, working drawings, and standard plans, figured dimensions shall take precedence over scaled dimensions.

In case of any ambiguity or dispute over interpreting the Contract, the City Engineer's decision will be final.

- II. CITY OF AUBURN BUSINESS LICENSE REQUIRED.** In order to do business in the City of Auburn, you are required to have a current City of Auburn business license. All subcontractors and lower tier subcontractors working on the project must also have a City of Auburn business license.

III. TIME OF COMPLETION. The Contractor shall complete the work within [redacted] working days from the date of work commencing.

Add the following section if liquidated damages are deemed to be appropriate – check w/Proj. Eng.

IV. LIQUIDATED DAMAGES. If said work is not completed within the time specified, the Contractor agrees to pay liquidated damages to the City as follows:

A. To pay (according to the following formula) liquidated damages for each working day beyond the number of working days established for physical completion, and

B. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

C. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract.

Formula: $\text{Contract Price (without tax)} \times 0.15$, divided by the original number of working days for completion.

If inserting the above section, remember to renumber the following sections.

IV. HOURS OF WORK. Normal working hours for the Contract shall be any consecutive 8-hour period between 7:00 a.m. and 6:00 p.m., Monday through Friday. If the Contractor desires to perform work on holidays, Saturdays, Sundays, or between the hours of 6:00 p.m. and 10:00 p.m. on any day, the Contractor shall apply in writing to the Engineer for permission to work such times. Permission to work longer than an 8-hour period between 7:00 a.m. and 6:00 p.m. is not required. Such requests shall be submitted to the Engineer two (2) working days prior to the day for which the Contractor is requesting permission to work. The City reserves the right to grant or deny any such request at its sole discretion.

Permission to work between the hours of 10:00 p.m. and 7:00 a.m. during weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on weekends or holidays may also be subject to noise control requirements, as indicated in Auburn City Code Chapter 8.28.010 entitled “Noise Control.” If the Contractor desires to work during restricted times, the Contractor shall submit a written request to the Engineer fourteen (14) calendar days prior to the day for which the Contractor is requesting permission to work. The written request will include specific days and times and description of work to be performed and the reasons the work cannot be performed during the normal hours of work. The City reserves the right to grant or deny any such request at its sole discretion. If approval is granted, it may be revoked at any time the City receives complaints from the public or adjoining property owners regarding the noise from the Contractor’s operations. The Contractor shall have no claim for damages or delays should such permission be revoked for any reason.

V. **COMPENSATION.** The Contractor shall do all work and furnish all tools, materials, and equipment for the work and services contemplated in this Contract for the not-to-exceed amount of \$_____, and Washington State Sales Tax of \$_____ for a total of \$_____ (based on time and materials in accordance with Section 1-09.6 of the current WSDOT Standard Specifications for Road, Bridge and Municipal Construction.).

(When filling in contract after award, spell out and list amounts in numbers. If this is a Street project that is not taxable, delete “and Washington State Sales Tax of \$_____ for a total of \$_____ and add the following: This project is subject to use tax, which shall be included in the not-to-exceed amount) Our sales tax area is 1702 for King County. No payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each and every Subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

A. **Performance Bond.** The Contractor shall furnish the City with an executed performance bond for the full Contract amount of \$_____. **(when filling in contract after award, show total contract price, with tax – spell out and show numbers). If the contract amount is over \$25,000, delete the following sentence.** This requirement may be waived if the Contractor chooses Option 2 of Section VI.B, “Retainage,” below.

For contracts <\$25,000, use the following:

B. **Retainage.** The Contractor may elect to (1) furnish a performance bond in accordance with Section VI. A, in which case the City shall hold back retainage in the amount of five percent (5%) of any and all payments made to the Contractor, or (2) have the City retain, in lieu of the performance bond, fifty percent (50%) of the total Contract amount, pursuant to RCW 39.08.010. The Contractor shall execute a “Declaration of Option for Performance Bond or Additional Retainage” to indicate his/her option. In either case, the Contractor can choose to have the retainage held by the City in a non-interest bearing account, have it placed in an Escrow (interest bearing) Account, or submit a bond in lieu of retainage. Said retainage shall be held by the City for a period of forty-five (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and State Employment Security Department, including Affidavits of Wages paid for the Contractor and each and every subcontractor, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

If contract amount is over \$25k, delete above Section B and use the following:

B. **Retainage.** The City shall hold back retainage in the amount of five percent (5%) of any and all payments made to the Contractor pursuant to RCW 39.08.010. The Contractor can choose to have the retainage held by the City in a non-interest bearing account, have

it placed in an Escrow (interest bearing) Account, or submit a bond in lieu of retainage. Said retainage shall be held by the City for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and State Employment Security Department, including Affidavits of Wages paid for the Contractor and each and every subcontractor, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

- C. Defective or Unauthorized Work. The City reserves its right to withhold payment from the Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and the Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any additional costs, from any and all amounts due or to become due the Contractor.
- D. Final Payment: Waiver of Claims. The making of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the Contractor as unsettled at the time request for final payment is made.

VI. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor - Employer Relationship will be created by this Contract, the City being interested only in the results obtained under this Contract.

VII. SUBCONTRACTING. Work done by the Contractor's own organization shall account for at least 30 (thirty) percent of the awarded Contract price. Before computing this percentage however, the Contractor may subtract (from the awarded Contract price) the costs of any subcontracted work on items the Contract designates as specialty items.

The Contractor shall not subcontract work unless the City approves in writing. Each request to subcontract shall be on the form the City provides. If the City requests, the Contractor shall provide proof that the subcontractor has the experience, ability, and equipment the work requires. The Contractor shall require each subcontractor to comply with RCW 39.12 (Prevailing Wages on Public Works) and to furnish all certificates and statements required by the Contract. As stated in Section VI, "Compensation," no payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each

and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

Along with the request to sublet, the Contractor shall submit the names of any contracting firms the subcontractor proposes to use as lower tier subcontractors. Collectively, these lower tier subcontractors shall not do work that exceeds 25 percent of the total amount subcontracted to a subcontractor. When a subcontractor is responsible for construction of a specific structure or structures, the following work may be performed by lower tier subcontractors without being subject to the 25 percent limitation:

- A. Furnishing and driving of piling, or
- B. Furnishing and installing concrete reinforcing and post-tensioning steel.

Except for the 25 percent limit, lower tier subcontractors shall meet the same requirements as subcontractors.

The City will approve the request only if satisfied with the proposed subcontractor's record, equipment, experience and ability. Approval to subcontract shall not:

- 1. Relieve the Contractor of any responsibility to carry out the Contract.
- 2. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond.
- 3. Create any contract between the City and the subcontractor, or
- 4. Convey to the subcontractor any rights against the City.

The City will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies. However, the Washington State Department of Labor and Industries may determine that RCW 39.12 applies to the employees of such firms identified in A and B above in accordance with WAC 296-127.

If dissatisfied with any part of the subcontracted work, the City may request in writing that the subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the subcontractor for any further work under the Contract.

This section does not create a contractual relationship between the City and any subcontractor. Also, it is not intended to bestow upon any subcontractor, the status of a third-party beneficiary to the Contract between the City and the Contractor.

VIII. TERMINATION. The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly-skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Contract.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.

After all the work contemplated by the Contract has been completed either by the Surety or the City, the City will calculate the total expenses and damages for the completed work. If the total expenses and damages are less than any unpaid balance due the Contractor, the excess will be paid by the City to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor and the Surety shall be jointly and severally liable to, and shall pay the difference to, the City on demand.

IX. PREVAILING WAGES. Contractor shall file a "Statement of Intent to Pay Prevailing Wages" with the State of Washington Department of Labor & Industries prior to commencing the Contract work. The Contractor shall pay prevailing wages and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The prevailing wage rate revision in effect on the **date that the Emergency Public Works Agreement was fully executed" or "in effect on the date work commenced" if agreement was not executed**) is attached and by this reference incorporated herein and made a part hereof. No payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City. Retainage shall not be released until an Affidavit of Wages Paid form for the Contractor and each and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

X. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to an authorized agent of the City within fifteen (15) calendar days of the date the Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems

appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time allowed, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the Contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided below:

- A. Procedure and Protest by the Contractor. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor shall:
1. Immediately give a signed written notice of protest to the City;
 2. Supplement the written protest within fifteen (15) calendar days with a written statement that provides the following information:
 - a. The date of the Contractor's protest.
 - b. The nature and circumstances that caused the protest.
 - c. The provisions in this Contract that support the protest.
 - d. The estimated dollar cost, if any, of the protested work and how that estimate was determined.
 - e. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

The Contractor shall keep complete records of extra costs and time incurred as a result of the protested work. The City shall have access to any of the Contractor's records needed for evaluating the protest.
 3. The City will evaluate all protests, provided the procedures in this section are followed. If the City determines that a protest is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.
- B. Contractor's Duty to Complete Protested Work. In spite of any protest, the Contractor shall proceed promptly with the work as the City has ordered.
- C. Contractor's Acceptance of Changes. The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for

Contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

XI. CLAIMS. Changes references from X.A. to XI.A. if Liquidated Damages (Sect. V) was inserted. The Contractor waives right to a claim if they have not followed procedures outlined in Section X.A of this Contract. If resolution cannot be reached under Section X.A, then the Contractor shall give written notice to the City of all claims other than change orders within fifteen (15) calendar days of the City's notice of its final decision on the Contractor's protest. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract; or if (and only if) no such provision is applicable, unless that claim is set forth in detail in writing and received by the City within seven (7) calendar days from the date the Contractor knew, or should have known, of the facts giving rise to the claim. At a minimum, a Contractor's written claim must include the information set forth regarding protests in Section X.A.

Failure to provide a complete, written notification of claim within the time allowed shall be an absolute waiver of any claims arising in any way from the facts or events surrounding that claim or caused by that delay.

The Contractor must, in any event, file any claim or bring any suit arising from or connected with this Contract within forty-five (45) calendar days from the date the Contract work is complete.

XII. WARRANTY. All defects in workmanship and materials that occur within one year from the date of the City's acceptance of the Contract work shall be corrected by the Contractor. When defects are corrected, the warranty for that portion of the work shall extend for one year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a

reasonable time, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

XII. INDEMNIFICATION. Contractor shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of the Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that this indemnification constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties acknowledge that they have mutually negotiated this waiver.

The provisions of this section shall survive the expiration or termination of this Contract.

XIV. INSURANCE. The Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the Contract work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

Before beginning work on the project described in this Contract, the Contractor shall provide a Certificate of Insurance evidencing the coverages listed below. The policies of insurance for general, automobile, and pollution policies shall be specifically endorsed to name the Contracting Agency and its officers, elected officials, employees, agents and volunteers, and any other entity specifically required by the Contract Provisions, as additional insured(s).

A. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

- B. Commercial General Liability insurance written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit. Coverage shall be written on 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 Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy, with respect to the work performed for the City using ISO Additional Insurance endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
- C. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Per WCIA Jan/Feb 2005 newsletter, Builders Risk Coverage is provided automatically in the property insurance coverage offered by WCIA for remodeling or additions to facilities already on the City's scheduled of property values. Separate builders risk is needed for any of the following: New facilities, structures, or building; bridges; dams; piers; new wastewater treatment facilities; all projects [involving a building] over \$25 million in value. If the project requires builders risk, include the following language and re-letter the remaining paragraphs.

- D. Builders Risk insurance, if any structures are involved in the Contract. The Contractor shall provide Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work in an amount equal to the completed value of the structure with no coinsurance provisions. Builders Risk Insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the

responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

- D. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability: (if Builders Risk insurance required, delete the word “and” and use a comma between Auto Liability and Commercial GL, and then add to end of sentence, “, and Builders Risk Insurance”):
1. The Contractor’s insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor’s insurance and shall not contribute with it.
 2. The Contractor’s insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- E. 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 contractors as well as to any temporary structures, scaffolding, and protective fences.
- F. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to Section XV of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.
- G. Acceptability of Insurers. Insurance is to be placed with authorized insurers in Washington State with a current A.M. Best rating of not less than A-:VII.
- H. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

- I. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtains and maintains at a minimum, the insurance coverages listed in this section. Upon request of the City, the Contractor shall provide evidence of such insurance.

Any payment of deductible or self insured retention shall be the sole responsibility of the Contractor.

The City reserves the right to receive a certified copy of all the required insurance policies.

XV. MISCELLANEOUS.

- A. Nondiscrimination. In the hiring of employees for the performance of work under this Contract, the Contractor, its subcontractors, or any person acting on behalf of Contractor shall not, by reason of race, religion, color, sex, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
- B. Compliance with Laws. The Contractor shall comply with all federal, state and local laws, rules and regulations throughout every aspect in the performance of this Contract.
- C. Work Performed at Contractor's Risk. The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of this Contract. All work shall be done at the Contractor's own risk, and the Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- D. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.
- E. Governing Law. This Contract shall be governed and construed in accordance with the laws of the State of Washington. If any dispute arises between the City and the Contractor under any of the provisions of this Contract, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the King County Superior Court, King County, Washington.
- F. Attorney's Fees. To the extent not inconsistent with RCW 39.04.240, in any claim or lawsuit for damages arising from the parties' performance of this Contract, each party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit; however, nothing in this subsection shall limit the City's right to indemnification under Section 10 of this Contract.
- G. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless otherwise notified. Any

written notice shall become effective upon delivery, but in any event three (3) calendar days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract.

- H. Assignment. Any assignment of this Contract by the Contractor without the written consent of the City shall be void.
- I. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and the Contractor.
- J. Severability. If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.
- K. Entire Contract. The written provisions and terms of this Contract, together with any referenced documents and attached Exhibits, supersede all prior verbal statements by any representative of the City, and those statements shall not be construed as forming a part of or altering in any manner this Contract. This Contract, referenced documents, and any attached Exhibits contain the entire Contract between the parties. Should any language in any referenced documents or Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

IN WITNESS WHEREOF, the parties below have executed this Contract.

CONTRACTOR

THE CITY OF AUBURN

(Signature)

(Signature)

By _____
(Print name here)

By Peter B. Lewis

Its _____
(Authorized representative)

Its Mayor

DATE: _____

DATE: _____

Contractor's State License No. _____

State Tax Registration (UBI) No. _____

Federal Tax ID # _____

Notices to be sent to:

Notices to be sent to:

CONTRACTOR

CITY OF AUBURN

Attn:
Address
City, State Zip
Phone:
Fax:
E-mail:

Attn: **Insert Proj. Eng./Mgr. name here**
25 West Main Street
Auburn, WA 98001
Phone: 253.**xxx.xxxx**
Fax: 253.931.3053
E-mail:

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

H:\FORMS\FC125 (Rev. 12/1/06)

Cxxxx CAPITAL PROJECT CHECKLIST

Emergency Public Works

Use this worksheet for projects that:

* Are necessary due to an emergency that has been declared by the Mayor

PROJECT SET UP (Administrative Services Supervisor)		
Date	Task	Hyperlinks
	Emergency situation discovered.	
	Emergency declared by PW Director and Mayor.	
	Estimated Cost	
	Inspector fills out Emergency PW Contract (3-part NCR form FC125a.doc, that all inspectors have in their trucks), and has contractor's representative sign it prior to work commencing.	
	Date Emergency Public Works Agreement Signed.	
	1 st Working Day	
	Administrative Services Supervisor Notified (1 st working day after work commenced) and given copy of Emergency PW Contract.	

Perform Verifications listed on Contractor Verification worksheet.

Working with the inspector or engineer assigned to the project, draft the following documents:		
	Using the sample ad at H:\Forms\FC033.doc or one of the samples at H:\AdminServices\EmergencySamples, create a draft advertisement containing a description and estimate of the work. This ad must be published in the City's newspaper of record within 7 days.	FE033 SampleAds
	Have the ad reviewed and approved by the Assistant City Engineer prior to finalizing and sending it to the paper.	
	Date advertised in City's newspaper of record.	
	Date Affidavit of Publication received	
	Using one of the samples at H:\AdminServices\CA-Construction\EmergencySamples, draft a resolution. Call the City Clerks office to get a resolution number.	
	E-mail the draft resolution to the City Attorney for his comments/edits. Upon receipt of the resolution, make sure he has signed it. If not, give him a call and set up a time when you can go down to his office and get it signed.	
	Using the format at H:\AgendaBills\FormsAndSamples\ab-Emergency or one of the samples at H:\AdminServices\CA-Construction\EmergencySamples, draft an agenda bill outlining the emergency situation, contractor performing the work, type of work performed, and estimated costs. The agenda bill must go to the Public Works Committee and Council (Per RCW 39.04.280, the agenda bill must go to Council within 2 weeks following award of the emergency work, which is the date Emergency Public Works Agreement form was signed.)	ab-Emer Samples
	Upon finalization, give the agenda bill and resolution to the Department Secretary for inclusion in the Public Works Committee agenda packet.	

SET UP PRECON (Contracts Administration Specialist)

Date	Task	Hyperlinks
	Check with the PM/PE - Is a preconstruction meeting necessary? If yes, continue with the remainder of the procedures listed in this section.	
	Check with PM - who should attend pre-con (consultant, staff ,etc.)? Any special conditions for award letter?	

Call Contractor:		
	Introduce yourself and set up pre-con.	
	Ask how they want to handle retainage: Choices are the City holds the retainage in (1) a non-interest bearing account (decline escrow agreement) or (2) in an Escrow Account (an interest bearing account set up by the contractor) or (3) if they want to furnish Note: If contract amount is less than \$25,000, contractor can choose to have 50% retainage withheld in lieu of providing a performance bond.	
	Find out who the contract documents should be sent to the attention of.	

CONTRACT DOCUMENTS (Contracts Administration Specialist)

Prepare Appropriate Retainage Documents:

	Declaration of Bond Option (only if under \$25k)	
	Escrow Agreement (H: \Forms\FC115.doc) - Print 4 copies of agreement and one copy of instructions page (last page of document).	
	Bond in Lieu of Retainage (H:\Forms\FC047.doc). Print 3 copies.	
	Escrow Agreement for Retainage Declined (City Held) (H:\Forms\	

Contract Documents:

	Award Letter (Form FC003-emergency.doc).	
	Prepare Emergency Contract (Form FC125.doc). Print 3 originals.	
	Contract Bond (not required if under \$25k and contractor chose 50% retainage)	
	Request to Sublet (H:\Forms\fc155.doc).	
	1 copy of Emergency Contact List (H:\Forms\FC040.doc). Fill in project and prime contractor information and print back-to-back.	
	If a precon is to be held, set up Pre-Con Notice (H:\Forms\FC009-CIP). Remember to include consultants or other outside agency staff, if applicable. Print 1 copy.	
	Set up Prevailing Wage Survey for Inspector (H:\Forms\FC114.doc). Print 6 copies and put them in a folder and give to Inspector.	

Assemble Document Packet:

	Award Letter	
	Emergency Contract (3 originals)	
	Declaration of Bond Option (only if under \$25k) (3 originals)	
	Contract Bond (if applicable) (3 originals)	
	Appropriate # originals of retainage documents	
	5 copies of Request to Sublet, with label affixed to Post-it Note on bottom copy, stating to use as original to make more copies.	
	1 Emergency Call List	
	3 City of Auburn business license application forms.	
	Prevailing Wages effective on date that the Emergency PW Agreement was signed (or that work commenced).	

Continue usual contract administration process.