



INVITATION TO BID

FOR

**2024 CanAM Defender Pro Limited
with Plow Attachment
#24-028-ERR-001**

Bid Due Date: Friday, January 19, 2024 at 11:00am (local time)

FOR INFORMATION, CONTACT:
Tiffany Matson, Contract Specialist
City of Anacortes
matsont@cityofanacortes.org
904 6th Street
PO Box 547
Anacortes, WA 98221

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INVITATION TO BID

Sealed bids will be received by the City of Anacortes (“City”) until 11:00am on Friday, January 19, 2024 at the office of the Clerk-Treasurer, Municipal Building, P.O. Box 547, 904 6th Street, Anacortes, WA 98221, for the purchase of a **2024 CanAM Defender Pro Limited with Plow Attachment**, project #24-028-ERR-001. Bids are to be submitted only on the PROPOSAL FORM provided. Bids must be submitted in a sealed envelope with the outside clearly marked with the bid opening date and time, the project name and number as it appears in this advertisement, plus the name and address of the bidder. Bids shall be addressed to the City Clerk, City of Anacortes, and 904 6th Street, PO Box 547, Anacortes, WA 98221. Proposals will be publicly opened at Anacortes City Hall and read aloud following bid closing. No bid security is required.

Project Documents: Specification, Conditions, Addenda are available through the City of Anacortes website at www.anacorteswa.gov/Bids.aspx.

All bidding and performance shall be performed in compliance with the Invitation to Bids and any addenda issued thereto. Bids shall constitute offers to the City of Anacortes which shall be binding for one hundred eighty (180) days from the date of bid opening. The City of Anacortes reserves the right to cancel this solicitation, reject any bid, reject any portion of any bid and/or to reject all bids. The City of Anacortes further reserves the right, but without obligation, to waive informalities and irregularities.

Bids will be evaluated based on capital cost, quality of the materials, life expectancy and life cycle costing, and maintenance requirements for the goods. The City reserves the right to award the Purchase Contract to the lowest responsive, responsible bidder as it best serves the interest of the City. The Bidder to whom the Purchase Contract is awarded shall execute and return the Contract to the City within ten (10) calendar days from the date the Bidder receives the contract documents. In case of failure of the Bidder to execute the Contract, the Bidder shall be in default, and the City shall have the right to award the Purchase Contract to the next lowest responsive, responsible Bidder.

Title VI: The City of Anacortes, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Questions regarding the Invitation to Bid or Contract documents may be directed to Tiffany Matson, Contract Specialist, at matsont@cityofanacortes.org. Questions regarding specifications may be directed to WiL Ludemann at 360-299-1515 or ludemannw@cityofanacortes.org. A bidder may be required to submit a question in writing. No oral responses to questions by City personnel about the bid will be binding on the City.

Published: Skagit Valley Herald 1/12/24

TO: City of Anacortes
(City or Owner):

FROM: Bidder: _____:

PROJECT: 24-028-ERR-001

1. GENERAL

The undersigned Bidder, having reviewed the Invitation to Bid (ITB) for the 2024 CanAM Defender Pro Limited with Plow Attachment purchase hereby proposes and agrees, if this bid is accepted, to enter into an agreement with Owner to provide the goods as specified and within the contract time indicated in this bid for an amount computed upon the basis of the goods to be provided at the following prices.

2. LIMITATION OF DAMAGES

The Bidder:

- a) agrees not to bring any Claim against the City or any of its employees, advisers, or representatives for damages in excess of an amount equivalent to the reasonable costs incurred by the Bidder in preparing its Bid for any matter in respect of this ITB, including:
 - I. if the City accepts a non-compliant Bid or otherwise breaches (including breach of material terms) the terms of this ITB; or
 - II. if the Project is modified, suspended, or cancelled for any reason (including modification of the scope of the Project or modification of this ITB or both) or the City exercises any rights under this ITB; and
- b) waives any and all Claims against the City or any of its employees, advisers, or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between the City and the Bidder for any reason, including:
 - I. if the City accepts a non-compliant Bid or otherwise breaches (including breach of material terms) the terms of this ITB; or
 - II. If the Project is modified, suspended, or cancelled for any reason (including modification of the scope of the Project or modification of this ITB or both) or the City exercises any rights under this ITB.

3. BIDDER'S REPRESENTATIVE: The Bidder's Representative identified below is an officer of the company and is fully authorized to represent the Bidder in any and all matters related to its Bid.

4. IRREVOCABLE OFFER PERIOD: The undersigned Bidder understands and acknowledge that the offer submitted as your Bid is firm and irrevocable for one (1) New 2024 CanAM Defender Pro Limited with Plow Attachment from the City's close of business on the Bid Submission Date until 180 days after the Bid Opening Date. Seller agrees that if the City requires the purchase of additional 2024 CanAM Defender Pro Limited with Plow Attachment during the contract term that such purchase(s) shall be in accordance with the specifications, terms, and prices indicated therein, if all parties are willing at the time of purchase and so agree in writing through a contract modification as specified in Contract **Article 21. Changes/Additional Work.**

5. SCHEDULE:

The City requires that the successful vendor order components immediately upon contract issuance and that the vendor will diligently pursue acquisition of required components as bid. The City requires delivery within 30 days of contract execution. If, after a delivery date has been agreed to by both parties, a component is delayed for reasons beyond the vendors control, a brief description of the delay shall be provided to the City within 2-working days of their notification. The City will have to right to investigate and may purchase the component through a separate vendor, if available, without penalty.

6. **SCOPE:** Delivery of One New/Unused 2024 CanAM Defender Pro Limited with Plow Attachment. Brochures and/or specification literature clearly describing the unit and verifying that the unit meets or exceeds the requirements of this specification should accompany each bid proposal. Warranty and delivery information shall be provided with the bid proposal. Any Manufacturer's name and model called out in this bid is intended to set the quality and design of equipment desired and is not meant to limit bidding on products of equal quality. Any exceptions to or deviations from the specifications set forth in the bid must be clearly described in the bidder's proposal. During a standard warranty period or for any extended warranty no deductibles, upcharges, overtime, mileage, freight or charges for parts and service shall be charged to the City pertaining to warranty repairs.

7. **ALTERNATIVE PRODUCTS:** These specifications are intended to be precise where a specific make, model, or trade name is requested, but the City is open to equal alternatives. Whenever a make, model or trade name is used, it shall be that or the equal or the approved equal. The equal or the approved equal means that make, model or trade name will be given consideration if they fulfill the same performance requirements. The City reserves the right to make the decision on acceptability. The specifications set forth herein are for the purpose of establishing the type of material, equipment, components, accessories and appurtenances desired and not to exclude any equal, similar models or makes of a reputable manufacture.

Performance, product and other appropriate characteristics shall meet or exceed those of particular manufacturer (make and model number) if any are described in the bid response section or in any specifications, if attached, to this Invitation to Bid. The vendor shall furnish any additional pertinent information that will assist the City in evaluating the particular equipment if a submittal is made for any product that differs from what the City has specified.

If vendor's proposed equipment deviates from the specifications of this Invitation to Bid in any way, the vendor must include along with their submittal, specifications of vendor's proposed equipment, clearly detailing deviation(s). It remains the vendor's responsibility to provide a unit that meets all bid specifications.

If awarded a contract in connection with this Invitation to Bid, any unit that is shipped that does not conform to the exact specifications, or City approved equals, may be rejected and it will be the responsibility of the vendor, manufacturer and/or vendor to conform with the requirements unless deviations have been specifically cited by the vendor and acceptance made by the City on the basis of exception. If the materials, supplies or equipment provided does not meet the specification criteria, it will be returned to the vendor at the vendor's expense with no cost or penalty to the City of Anacortes whatsoever.

8. SPECIFICATIONS

The City of Anacortes requests bids for the purchase and delivery of **One (1) new/unused 2024 CanAM Defender Pro Limited with Plow Attachment**. The unit shall be delivered within 30 days of contract execution to Anacortes Operations Shop, 2201 37th St, Anacortes, WA 98221. Any bids with an estimated delivery time outside of 30 days of contract execution shall be deemed non-responsive. The unit shall meet the following minimum specifications (unit to be delivered "turnkey" with all equipment installed):

2024 CanAM Defender Pro Limited with Plow Attachment

- a) Color: stone gray
- b) Engine: HD10
- c) Accessories:
 - a. HVAC heating and ventilation
 - b. Power tilt bed
 - c. Wiper and power windows cable
 - d. Windshield wiper and washer kit
 - e. Flip glass windshield
 - f. Panoramic center mirror
 - g. Rear glass window
 - h. Can-Am HD 4500 winch
 - i. Winch harness
 - j. Dome light
 - k. Roof power cable

- l. LED signature lights
- m. Deluxe sport roof
- n. Removable storage bin – passenger
- o. Removable storage bin
- p. Front deluxe full doors
- q. Front bumper
- r. Cargo bed protectors and tie rails
- s. Can-Am ProMount steel 72” (183 cm) blade
- t. Can-Am ProMount mounting kit
- u. Can-Am ProMount push frame with quick-attach system

9. WARRANTY

Supplier shall assure that the Goods and/or Services purchased hereunder are covered by all available and applicable manufacturers’ warranties for such Goods and/or Services. Unless otherwise agreed to in writing Supplier shall bear the cost of all transportation associated with warranty repairs. If Suppliers location is outside of Skagit County, Supplier shall supply the name of the local factory authorized repair facility. The factory authorized warranty repair facility may be contacted for verification prior to awarding the bid. This information shall be part of the bid evaluation process. Failure to comply may affect the award of bid.

10. DELIVERY REQUIREMENTS

The Supplier shall deliver all vehicles to the City of Anacortes Operations Shop, 2201 37th St, Anacortes, WA 98221, fully assembled and operational with all items such as mounting brackets, temporary mud flaps, fluids such as oil and fuel, batteries, etc. installed upon delivery. No crated or non-operational equipment requiring assembly or adjustments of any kind shall be accepted. Supplier will be required to operate the equipment and demonstrate all features and operational modes to the City personnel.

11. BID SCHEDULE

Note: Bid prices for all items, all extensions and total amount of Bid must be shown below.

| Line | Qty | Unit | Description | Unit Price | Ext. Price |
|-------------------|-----|------|--|------------|------------|
| 1 | 1 | EA | New/Unused 2024 CanAM Defender Pro Limited with Plow Attachment, as specified in the Invitation to Bid #24-028-ERR-001 | | |
| Subtotal: | | | | | |
| Freight/Delivery: | | | | | |
| 8.8% Sales Tax: | | | | | |
| Total Bid: | | | | | |

Estimated Delivery Date: _____

12. ADDENDUMS

Bidder acknowledges review of all Addenda through No. _____

NOTE: Failure to acknowledge any issued Addenda may render proposal non-responsive and therefore void. It is the sole responsibility of the Bidder to learn of Addendum, if any. Such information may be obtained from the City of Anacortes website: <https://www.anacorteswa.gov/Bids.aspx>.

13. NON-COLLUSION DECLARATION

By signing the signature page of this proposal, I declare, under penalty of perjury under the laws of the United States, that the following statement is true and correct:

1. That my firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

14. BIDDER INFORMATION

This Bid is submitted on and by:

Company Name: _____

Signature: _____

Name (Print): _____

Title: _____

Email: _____

Date: _____

Address of Bidder: _____

Telephone No.: _____

END OF SECTION

1. USE AND COMPLETION OF CITY'S PROPOSAL SHEETS

A. Bidder's Proposal

Each Bidder must bid exactly as specified on the Invitation to Bid (hereinafter referred to as bid) sheets. All bids must remain open for acceptance by the City for a period of at least 180 calendar days from the date of opening of the bids.

B. Alterations of Proposals Not Allowed

Proposals that are incomplete or conditioned in any way, containing alternatives or items not called for in the General Provisions and Specifications, or not in conformity with law may be rejected as non-responsive. The City cannot legally accept any proposal containing a substantial deviation from these Specifications.

C. Filling Out City Bid Forms

All proposals must be made upon the BID PROPOSAL in the Invitation to Bid and the prices must be stated in figures either written in ink or typewritten. No proposal having erasures or interlineations will be accepted unless initialed by the Bidder in ink.

2. CLARIFICATION OF PROPOSAL FOR BIDDER

Questions and requests for clarification of these Specifications may be submitted in writing by 9:00 a.m., Pacific Time, January 17, 2024, via email to contracts@cityofanacortes.org or to Tiffany Matson, PO Box 547, Anacortes, WA 98221. Questions received after this date and time may not be answered. Any oral communications will be considered unofficial and non-binding on the City. Contractors should rely only on written statements issued by the City's representative. Responses to verbal requests for information or clarification will be considered unofficial until received in writing. Any questions received after the deadline may not be addressed. Questions will be held until the deadline and answered collectively. Questions marked confidential will not be answered. The City reserves the discretion to group similar questions to provide a single answer.

3. BID SECURITY - Not Required.

4. DELIVERY OF PROPOSALS TO THE CITY

All bids must be delivered in the manner specified herein. Bids submitted by Bid closing date and time for public reading must include:

- ☐ **Bid Proposal Form (4 pages)** - completed signed by an authorized representative

Sealed Bid proposals must be delivered to:

City Clerk
904 6th Street
PO Box 547
Anacortes, WA, 98221-0547

Proposals must be in a sealed, properly addressed envelope with the name of the Bidder and project/bid number and description of the project plainly written on the outside of the envelope, prior to the scheduled time and date stated in the Invitation to Bid. City offices are not open for special mail or other delivery on weekends and City holidays. The City shall assume no responsibility for delay in U.S. mail service or for bids delivered to City offices other than the specified City Office. Bids received after the time stated in the bid will not be accepted and will be returned, unopened, to the Bidder. There will be no exceptions or waivers of this requirement.

5. WITHDRAWAL OF BID

A. Prior to Bid Opening

Any Bidder may withdraw their bid prior to the scheduled bid opening time by delivering a written notice to the City Clerk. The notice may be submitted in person or by mail; however, it must be received by the City Clerk's Office prior to the time for bid opening.

B. After Bid Opening

No bidder will be permitted to withdraw their bid after the time of bid opening, as set forth in the Invitation to Bid, and before the actual award of the Contract, unless the award of Contract is delayed more than one hundred eighty (180) calendar days after the date set for bid opening. If a delay of more than 180 calendar days does occur, then the Bidder must submit written notice withdrawing their bid to the City Clerk.

6. OPENING OF BIDS

Shortly after the deadline specified for submitting bids, the City shall open all accepted bids, read aloud and record only the name of each Bidder and the Total Bid Price, irrespective of any irregularities or informalities in such Proposal. The public opening of bids can also be viewed live through Zoom. The Zoom meeting is provided for convenience only and the City reserves the right to cancel it at any time. To Join Zoom Meeting: <https://us02web.zoom.us/j/82480284134> . Meeting ID: 824 8028 4134.

Find your local number: <https://us02web.zoom.us/j/kble5FCBzM>

7. WAIVER OR REJECTION

The City may waive any informality, irregularity, or minor defect or reject any and all bids at any time.

8. EVALUATION OF BID

A. Insertions of Material Conflicting with Specifications

Only material inserted, as outlined in Articles 6 and 7 of the Bid Proposal, by the Bidder to meet requirements of the Specifications will be considered. Any other material inserted by the Bidder will be disregarded as being non-responsive and may be grounds for rejection of the Bidder's bid.

B. Correction of Ambiguities and Obvious Errors

The City reserves the right to correct obvious ambiguities and errors in the Bidder's bid and to waive non-material irregularities and/or omissions. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

9. NON-RESPONSIVE BIDS

Supplier understands and acknowledges any bid with an estimated delivery time outside of 30 days of contract execution may be deemed non-responsive. Supplier understands and acknowledges that if it adds terms and conditions to its Bid that are different from the terms set forth herein that its Bid may be rejected as non-responsive. Furthermore, if City accepts Supplier's Bid and awards a contract to Supplier based on such Bid, City shall not be bound to any exceptions, changes or additions made by Supplier, and any terms and conditions added by Supplier which are not expressly agreed to by City in writing will be void and of no force and effect and the parties will be governed according to the fully executed Contract.

10. TAXES

Sales tax shall be separately stated as provided on the PROPOSAL FORM then added to the Subtotal Bid. The Supplier must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Supplier's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

11. QUANTITY REQUIREMENTS

The quantities listed are the city's current requirements. The City will neither be obligated by nor restricted to these quantities and may increase or decrease any item(s) ordered under this contract and pay according to the unit prices quoted in the Bid.

12. COOPERATIVE PURCHASING

The Washington State Interlocal Cooperative Act (RCW 39.34) provides that other governmental agencies may purchase goods or services on this solicitation or contract in accordance with the terms and prices therein if all parties agree. The City of Anacortes does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

13. AWARD

The City reserves the right to award a contract for any or all items to one or more Bidders, to reject any and all Bids or any item(s) within the Bids, to waive any informality in the Bids, and to call for new Bids as best meets the needs of the City.

14. IRREVOCABLE OFFER

Supplier understands and acknowledges that its signature on this Bid Proposal constitutes an irrevocable offer to provide the Goods and/or Services. There is no contract unless and until City's Mayor/Mayor Pro Tem executes the Contract accepting Supplier's Bid. No City officer, employee or agent except the Mayor (or Mayor Pro Tem) has the authority to award contracts or legally obligate the City to any contract. Supplier shall not provide any Goods and/or Services to City pursuant to the Contract before the Contract is executed by City. If Supplier provides any Goods and/or Services to City pursuant to the Contract before the Contract is executed

by City, such Goods and/or Services are provided at Supplier's risk and City shall have no obligation to pay for any such Goods and/or Services.

15. CONTRACT

The sample form of Contract is included in the Invitation to Bid, which form shall be used and required of the bidder to be executed for the Contract. The party to whom the Contract is awarded will be required to execute the Contract within 10 calendar days from the date when the bidder receives the contract documents. In case of failure of the bidder to execute the Contract, the City may at its option consider the bidder in default.

END OF SECTION



CONTRACT 24-028-ERR-001
Between
THE CITY OF ANACORTES
AND
“SUPPLIER”

2024 CanAM Defender Pro Limited with Plow Attachment

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as “City”) and _____ a private company at ADDRESS (herein after referred to as “Supplier”).

1. **Scope of Work.** The Supplier shall furnish and deliver goods in accordance with and as described in the City of Anacortes document entitled “Invitation to Bid 2024 CanAM Defender Pro Limited with Plow Attachment #24-028-ERR-001” issued January 12, 2024, which is hereby incorporated by reference and made a part hereof. Seller agrees that if the City requires the purchase of additional 2024 CanAM Defender Pro Limited with Plow Attachments during the contract term that such purchase(s) shall be in accordance with the specifications, terms, and prices indicated therein, if all parties are willing at the time of purchase and so agree in writing through a contract modification as specified in Contract **Article 21. Changes/Additional Work.**

2. **Price and Payment Terms.** The Total Contract Price is _____. The Supplier’s bid schedule is incorporated by reference and attached hereto as Exhibit A.

3. **Contract Term.** The contract term is from full execution through December 31, 2024.

4. **Acceptance.** Supplier acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other Contract relating to the provision of goods and/or related services by Supplier. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

5. **Warranty.** Supplier shall assure that the Goods and/or Services purchased hereunder are covered by all available and applicable manufacturers’ warranties for such Goods and/or Services. Supplier expressly agrees that it will be responsible for performing all warranty obligations set forth in the Invitation to Bid. Supplier also warrants that the Goods and/or Services will conform to the Specifications, and further warrants that the Goods and/or Services shall be of good materials and workmanship and free from defects for either a minimum of one (1) year from the date of Acceptance or installation by City, whichever is later, or as specified in the Invitation to Bid, whichever is later. In no event shall Supplier be allowed to disclaim or otherwise limit the express warranties set forth herein. In addition, the Supplier shall obtain and submit to the City any necessary documentation to secure any extended manufacturer’s warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Supplier’s work comply with the requirements of the Contract or any other legal rights or remedies of the City.

6. **Warranty Remedies.** City shall notify Supplier if any of the Goods and/or Services fails to meet the warranties set forth above, and Supplier shall promptly correct, repair or replace such Goods and/or Services at Supplier’s sole expense. Notwithstanding the foregoing, if such Goods and/or Services shall be determined by City to be defective or non-conforming within the first thirty (30) days after the date of Acceptance by City, then City at its option shall be entitled to a complete refund of the purchase price and, in the case of Goods, shall promptly return such Goods to Supplier. Supplier shall pay all expenses related to the return of such Goods to Supplier.

7. **Supplier Bears Risk.** The risk of loss or damage shall be borne by Supplier at all times until the Acceptance of the Goods or Services by City

8. **Taxes.** The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Supplier must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Supplier’s gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

9. **Invoicing.** All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, and Contract Number. The Supplier must allow 30 calendar days from receipt of the invoice for payment. Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Suppliers may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution.

The City shall notify the Supplier within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Supplier shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

10. **Withholding Payment.** In the event the City determines that the Supplier has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Supplier the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Supplier to terminate or damages, provided that the City promptly gives notice in writing to the Supplier of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Supplier of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Supplier acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Supplier, (3) to set off any amount so paid or incurred from amounts due to become due the Supplier. In the event the Supplier obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Supplier by reason of good faith withholding by the City under this clause.

11. **Final Payment: Waiver of Claim.** The Supplier's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the Supplier as unsettled at the time request for final payment is made.

12. **Defense and Indemnity.** The Supplier shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of the Contract, except for injuries and damages caused by the sole negligence of the City.

13. **Insurance Requirements**

A. Insurance Term: The Supplier shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied to the City.

B. No Limitation: The Supplier's maintenance of insurance as required by the Contract shall not be construed to limit the liability of the Supplier to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance: The Supplier shall obtain insurance of the type and coverage described below:

Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers shall be named as an additional insured** under the Supplier's Commercial General Liability insurance policy using ISO Additional Insured-Vendors Endorsement CG 20 15 04 13 or a substitute endorsement providing at least as broad coverage.

D. Minimum Amounts of Insurance: The Supplier shall maintain the following insurance limits:

Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products liability aggregate limit.

E. Other Insurance Provision: The Supplier's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Supplier's insurance and shall not contribute with it.

F. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

G. Verification of Coverage: The Supplier 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 insurance requirements of the Supplier before goods, materials or supplies will be accepted by the City.

H. Notice of Cancellation: The Supplier shall provide the City with written notice of any policy cancellation, within One business days of their receipt of such notice.

I. Failure to Maintain Insurance: Failure on the part of the Supplier to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Supplier to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Supplier from the City.

J. City Full Availability of Supplier Limits: If the Supplier maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Supplier, irrespective of whether such limits maintained by the Supplier are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Supplier.

14. Inspection.

A. **Of the Work:** All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Supplier shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Supplier of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. **Project Manager's Authority:** The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Supplier may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in their opinion, to safeguard the interest of the City. The Supplier shall comply with any and all orders and instructions given by the representative of the particular Department administering the Contract in accordance with the terms of the Contract. Nothing herein contained, however, shall be taken to relieve the Supplier of their obligations or responsibilities under the Contract.

15. **Standard Title VI / Non-Discrimination Assurances.** During the performance of this contract, the Supplier, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

16. **Assignment/Subcontract.** Supplier shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of City. No such written approval shall relieve the Supplier of any obligations of this Contract, and any transferee or subcontractor shall be considered the agent of the Supplier. Supplier shall remain liable as between the original parties to this Contract as if no such assignment had occurred.

17. **Supplier is an Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. No agent, employee or representative of the Supplier shall be deemed to be an agent, employee or representative of the City for any purpose. Supplier shall be solely responsible for all acts of its agents, employees, representatives and sub-contractors during the performance of this Contract.

18. **Ownership and Use of Documents.** All finished and unfinished documents and material prepared by the Supplier with funds paid by the City pursuant to the terms of this Contract shall become the property of the City and shall be forwarded to the City upon its request. Documents and materials shall include but not be limited to plans, specifications, reports, electronic and non-electronic data, and other design documents

prepared by the Supplier. Pursuant to RCW 42.56.70, all information and documents produced under this Contract may be subject to public disclosure.

19. **Assistance Regarding Patent and Copyright Infringement.** In the event of any claim or suit against City on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any material furnished or work or services performed hereunder, Supplier shall defend City against any such suit or claim and hold City harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.

20. **The City's Right to Terminate Contract.**

A. **Termination for Default:** If the Supplier defaults by failing to perform any of the obligations of the Contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Supplier in the U.S. mail, postage prepaid, terminate the Contract, and at the City's option, obtain performance of the work elsewhere. If the Contract is terminated for default, the Supplier shall not be entitled to receive any further payments under the Contract until the Scope of Services under this Contract has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Supplier. The Supplier shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Supplier was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. **Termination for Public Convenience:** The City may terminate the Contract in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Contract is terminated in accordance with this paragraph, the Supplier shall be entitled to payment for actual work performed at unit Contract prices for completed items of work through the date of termination. An equitable adjustment in the Contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Contract by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Contract by the City.

21. **Changes/Additional Work.** The City may engage Supplier to perform services in addition to those listed in this Contract, and Supplier will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Contract. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Supplier to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Contract is approved in writing by both parties.

22. **Non-waiver.** Waiver by the City of any provision of this Contract or any time limitation provided for in this Contract shall not constitute a waiver of any other provision.

23. **Covenant Against Contingent Fees.** The Supplier warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Supplier, to solicit or secure this Contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Supplier, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, the City shall have the right to annul this Contract without liability or, in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

24. **Disputes**

A. **General:** Differences between the Supplier and the City, arising under and by virtue of this Contract shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Contract.

B. **Notice of Potential Claims:** The Supplier shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Supplier has given the City a written Notice of Potential

Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Supplier believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Supplier shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. **Detailed Claim:** The Supplier shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Supplier has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. **Dispute Resolution:** In the event of a dispute between the City and the Supplier arising out of this Contract, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Supplier to have oversight over the administration of this Contract. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute.

In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

25. **Force Majeure.** Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; pandemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. Failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Supplier shall have no recourse against the City.

26. **Governing Law.** This Contract shall be governed by and construed under the laws of the State of Washington. Any action brought under the Contract or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

27. **Compliance with Laws.** The Supplier in the performance of this Contract shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Contract to assure quality of services.

28. **Severability.** If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

29. **Survival of Contract Termination.** The provisions of the following paragraphs and the liability of the Supplier for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Disputes; Defense & Indemnity.

30. **Notices.** Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

SUPPLIER:

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

CITY OF ANACORTES

SUPPLIER

By _____
Matt Miller, Mayor

By _____

Date _____

Title _____

Date _____

APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

END OF SECTION