

**REQUEST FOR PROPOSALS:
JOB ORDER CONTRACTING GENERAL CONTRACTOR**

<u>Request for Proposals Information:</u>	<u>Submit Proposals to:</u>
RFP NUMBER: 10-19 RFP TITLE: Job Order Contracting General Contractor (RFP) CONTACT PERSON: Anna Vogel EMAIL ADDRESS: anna.vogel@cityofvancouver.us CONTACT PHONE: 360-487-8429 QUESTIONS DUE: 8/9/19 at 4:00 PM PST RESPONSES DUE: 8/21/19 at 3:00 PM PST	For hand-delivery or delivery via a courier service: Attn: Procurement Services Vancouver City Hall 415 West 6th Street Vancouver, Washington 98660 For delivery by the US Postal Service: Attn: Procurement Services City of Vancouver P.O. Box 1995 Vancouver, Washington 98668

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SECTION 1: INSTRUCTIONS AND CONTRACT INFORMATION

A. Instructions to Proposers

The City of Vancouver (the City) is seeking proposals from experienced Job Order Contracting firms to provide, on an as-needed basis, general construction services/work, which must be performed in accordance with the City's Job Order Contracting program.

Request for Proposal packets may be examined at Vancouver City Hall, document viewing table, 1st Floor Lobby, 415 W. 6th Street, Vancouver, Washington 98660 or at: <https://vancouver.procurement.com>.

Questions or Requests for Clarification must be sent to Anna Vogel, Procurement Manager, via email to anna.vogel@cityofvancouver.us and be received by 4:00 p.m. on Friday, August 9, 2019. Incomplete or late inquiries may not be considered.

The City reserves the right to cancel this request or reject any and all proposals submitted or to waive any minor formalities of this call if the best interest of the City would be served.

Proposers may not withdraw proposals after the set due date and time, unless award of the contract is delayed for more than ninety (90) days.

Sealed proposals must be received by the City no later than 3:00 PM (Pacific Time) Wednesday, **August 21, 2019**. Submissions received after the specified time will not be accepted. The City of Vancouver is not responsible for delays in delivery.

Official delivery time shall be documented by City affixed time/date stamp.

Proposals submitted via the United States Postal Service (USPS) must be addressed to: Procurement Services Manager, City of Vancouver, P.O. Box 1995, Vancouver, Washington 98668-1995. In some cases, acceptance of submissions requiring a signature may be delayed due to City staff not being available to sign for deliveries.

Proposals delivered by all other means must be delivered to: Vancouver City Hall, Customer Service Desk, 1st Floor Lobby, 415 W. 6th Street, Vancouver, Washington 98660. USPS will NOT deliver to the street address.

Proposals must be in a sealed envelope, and clearly marked "**RFP #10-19 JOC GENERAL CONTRACTOR**". Proposals submitted by FAX or EMAIL will NOT be accepted.

The City is committed to providing equal opportunities to State of Washington certified Minority, Disadvantaged and Women's Business Enterprises.

The City of Vancouver in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will

affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises, as defined in 49 CFR part 26, will be afforded full opportunity to submit qualification statements in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.

Anna L. Vogel

Anna L. Vogel, Procurement Manager

B. Introduction/Background

Vancouver City government is responsible for the City's vital infrastructure and urban services. It builds and repairs roads, maintains water and sewer service, provides fire and police protection as well as parks & recreation programs, administers land use policy and takes an active role in Vancouver's commercial and industrial development.

The City encompasses 48.61 square miles and has a population of more than 175,000. It extends along the shore of the Columbia River, 100 miles upstream from the Pacific Ocean. It lies directly across the river from Portland, Oregon and is the southern gateway to the State of Washington.

The City implemented a JOC program in 2017 with contracts awarded to two (2) contractors. JOC projects may not exceed \$350,000, excluding Washington state sales and use tax. The City is allowed by RCW to award two JOC contracts for up to \$4 million each per year. To date, the City has processed 171 JOC projects with an approximate total cost of \$10,000,000 dollars.

The City of Vancouver will be using the RS Means books for the basis of the tasks under this contract.

In accordance with RCW 39.04.350, before award, the bidder must meet the following bidder responsibility criteria to be considered a responsible bidder. The bidder may be required to provide the City documentation demonstrating compliance with the criteria. The bidder must:

- a) Have a current certificate of registration as a contractor in compliance with Chapter 18.27 RCW, **which must have been in effect at the time of bid submittal;**
- b) **Before award of contract,**
 - i. have a current Washington Unified Business Identifier (UBI) number;
 - ii. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
 - iii. Have received training on the requirements related to public works and prevailing wage under RCW 39.05.350 and Chapter 39.12 RCW;
 - iv. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of Chapter 49.46, 49.48, or 49.52 RCW.
- c) **Before award of contract, if applicable:**
 - i. Have Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW;
 - ii. Have a Washington Employment Security Department reference number, as required in Title 50 RCW;
 - iii. Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
- d) **At the time of award of contract,** not be disqualified from bidding on any public works

contract under RCW 39.06.010 or 39.12.065(3).

Pursuant to RCW 39.06.020, the bidder who is awarded the contract must verify responsibility criteria in accordance with RCW 39.04.350 for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria in accordance with RCW 39.04.350 and possesses an electrical contractor license, if required by Chapter 19.28 RCW, or an elevator contractor license, if required by Chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in the project contract and in each subcontract of every tier.

C. Scope of Work

The City of Vancouver intends to award a maximum of two (2) JOC contracts to the most qualified JOC contractors for indefinite delivery, indefinite quantity (IDIQ) public works services pursuant to RCW 39.10.440. This Contract is for construction work and related services to be performed throughout the City at any location or facility under the jurisdiction of the City. The RS Means books will be utilized for these contracts and contain preset Unit Prices. All Unit Prices are based on labor, material, and equipment process and are for all direct and indirect costs of construction.

The actual work of the Contract will be set forth in the Detailed Statement of Work referenced in the individual Job Orders. As projects are identified, the Contractor will jointly scope the work with the City. The City will prepare and issue a Scope of Work to the JOC Contractor. The Contractor will then prepare a Job Order Proposal for the Project including a Job Order Price Proposal, drawings and sketches, a list of subcontractors and materials, construction schedule, and other requested documentation (Detailed Statement of Work). The Job Order Price shall equal the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) from RS Means. If the Job Order Proposal is found to be complete and reasonable, and the City accepts the Proposal, a Job Order Purchase Order will be issued.

A Job Order will reference the Detailed Statement of Work and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Statement of Work. A separate Job Order will be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order. The Contractor is required to complete each Detailed Statement of Work for the Job Order Price within the Job Order Completion Time.

Estimated Annual Value

The Minimum Contract Value for this Contract is \$10,000. The Contractor is guaranteed to receive the opportunity to perform Job Orders totaling at least \$10,000 during the term of this Contract.

The Estimated Annual Value for each Contract is \$3,000,000. The Contractor may be issued Job Orders totaling up to the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this value of Job Orders. It is merely an estimate. The City has no obligation to issue Job Orders in excess of the Minimum Contract Value.

The City reserves the right to issue Job Orders up to the maximum amount specified in RCW 39.10.440. The Maximum Contract Value shall not exceed the amount set forth in RCW 39.10.440. In addition, the City may elect to carry over any unused capacity from the previous year and add the value to the immediate following year limit. The maximum annual volume including unused capacity shall not exceed the limit of two years.

Maximum Job Order Value

Per RCW 39.10.450, the maximum dollar amount for an individual Job Order is three hundred fifty thousand dollars (\$350,000). All Job Orders for the same project (original plus any Supplemental Job Orders) shall be treated as a single Job Order for the purpose of the \$350,000 limit. A Job Order issued for any particular project must not exceed \$350,000, exclusive of sales tax.

The City of Vancouver intends to use the JOC Contractors to perform general construction work including, but not limited to, interior renovations, tenant improvements, interior mechanical, electrical, structural as well as concrete work, asphalt paving, underground utilities, park trails and grounds, communication network installation, channelization, permanent signing and installation of electrical traffic control devices such as flashing beacons and radar feedback signals. The City expects the average job to be less than \$100,000. This expected average is presented for information only and is not a commitment.

Unit Price Book

For Priced Items, the Unit Price Book to be used for establishing Job Order pricing is the 2019 or current Edition of RS Means, all volumes. The volumes should be used in the following order of precedence:

- 1) "Heavy Construction Cost Data"; if an item is not contained in this volume, use
- 2) "Site Work and Landscape Cost Data"; if an item is not contained in this volume, use
- 3) "Building Construction Cost Data – Western Addition."
- 4) "Facilities Construction Cost Data"; if an item is not contained in this volume, use all other Means volumes except "Building Construction Cost Data – Western Addition"; if the item is not included in these other volumes, use

The "*Assemblies*" volume can be used in lieu of using groups of individual listings in other volumes if agreed in advance by the City.

The unit price for each item to be used from the Unit Price Book is the "Bare Costs Total" column. Therefore Division 1 Items in 010-000, should not be included on a Priced Item List in a Work Order Proposal; the Coefficient bid should be used to achieve compensation for these items to the extent the Bidder proposes an increase or decrease in the amounts in the Overhead and Profit column. The price (*Unit Price x Quantity x City Cost Index x Coefficient*) is the total

amount to be paid to the Contractor for the item for self-performed items or subcontractor-performed items.

When 2020 or subsequent editions of the Unit Price Book are issued, the newest editions shall be used in pricing unit price items. The contracted Coefficients will remain the same and not be changed due to new editions.

For Non Pre-Priced Items (specific line items not found in the Unit Price Book), the Contractor shall submit unit prices for all costs of the Work that includes reimbursement for all direct and indirect costs of the Work. For direct costs for Labor and Materials, The City may request up to three (3) bids from sources acceptable to City. If equipment costs are not found in the Unit Price Book, equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources:

- 1) Associated General Contractors General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement; current edition.
- 2) The State of Washington Utilities and Transportation Commission for trucks used on highways.
- 3) The National Electrical Contractors Association for equipment used for electrical work.
- 4) The Mechanical Contractors Association of America for equipment used on mechanical work.

The Equipment Watch Rental Rate (Blue Book) shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, current edition.

Items that are treated as Non-Pre-Priced on two or more separate Job Orders may be incorporated into the Unit Price Book for future work based on the pricing established for the previous work orders. These costs may be escalated yearly based on the issuance of a new Means Historical Cost Index. Non-Pre-Priced items cannot exceed 20% of the Job Order.

Contract Term and Option Period

This Contract will be executed for an initial contract term of two (2) years with an option to extend for one (1) year.

All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Statement of Work may be performed, payments may be made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order. It is the City's intent to have all job orders issued under this contract be completed with 30 days of the final contract expiration.

The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

Contract Documents

The following documents and exhibits, this RFP (RFP 10-19), all released Addenda, and Contractor's Proposal, are considered to be part of the Contract Documents:

- JOC Services for General Construction Contract
- The Technical Specifications
- Modifications to the WSDOT Standard Specifications
- General Conditions for Facility Construction
- Washington State Non-Discrimination Clause – First Class Cities
- Non-Collusion and Debarment Affidavit
- Labor and Materials Bond and Performance Bond

The most current version of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction and all amendments are included in this RFP by reference and are considered to be part of the Contract Documents.

For the majority of Job Orders, the City's General Conditions and/or WSDOT Standard Specifications shall govern, however, depending on the type of Work being performed, the City may attach to a Job Order additional general conditions, special conditions, and/or specifications. Examples of other such additions that may apply, include, but are not limited to:

- a. American Institute of Architects (AIA) Document A201 General Conditions of the Contract for Construction (most current version)
- b. Engineering Joint Contract Documents Committee (EJCDC) C-700 Standard General Conditions of the Construction Contract
- c. Construction Specification Institute (CSI) Specifications and/or Conditions

D. Job Order Process and Requirements

Assignment of Work and Award of Individual Job Orders

The Owner may award an individual Job Order to any selected Contractor. The City of Vancouver reserves the right to limit the number of Job Orders assigned to a contractor at one time. Selection of the Contractor and award of the Job Order will be in compliance with established Owner procedures and based on one or more of the following criteria:

1. Rotational selection among all Contractors, unless otherwise determined by the Owner.
2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
3. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors.

4. Management of Job Order dollar volume within bonding limitations of the Contractor.
5. Price, as it relates to the Owner's independent cost estimate or to an offer from any other contractor.
6. Contractor's responsiveness to the Owner on Job Orders.

Initiation of a Job Order

As the need exists, the Owner will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting. The Contractor should be available with 24 hours of the invitation to attend the Joint Scope Meeting. In cases of emergencies Contractors may be required to attend a Joint Scope Meeting with in an hour of the request.

1. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
 - a. the general scope of the work;
 - b. alternatives for performing the work and value engineering;
 - c. access to the site and protocol for admission;
 - d. hours of operation;
 - e. staging area;
 - f. requirements for catalog cuts, technical data, samples and shop drawings;
 - g. requirements for professional services, sketches, drawings, and specifications;
 - h. construction duration;
 - i. liquidated damages;
 - j. the presence of hazardous materials;
 - k. date on which the Job Order Proposal is due;
 - l. Whether or not additional general or special conditions may apply to the Job Order.
2. Upon completion of the joint scoping process, the Contractor will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required

to document accurately the work to be accomplished. The Owner shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Owner will issue a Request for Job Order Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Job Order Proposal and the Owner will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

Preparation of a Job Order Proposal

1. The Contractor's Job Order Proposal shall include, at a minimum:
 - a. Job Order Price Proposal;
 - b. Required drawings or sketches;
 - c. List of anticipated Subcontractors and Materialmen;
 - d. Construction schedule; preliminary subject to change with the approval of the project manager.
 - e. Other requested documents.

Failure to submit the required documents listed above shall result in the proposal being rejected.

2. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
3. The Contractor will prepare Job Order Price Proposals in accordance with the following:
 - a. Pre-priced Task: A task described in, and for which a unit price is set forth in, RS Means.
 - b. Non Pre-priced Task: A task that is not set forth in the Construction RS Means.
 - c. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
 - i. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

- ii. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable.
- iii. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

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

A = The hourly rate for each trade classification not in RS Means multiplied by the quantity;

B = The rate for each piece of Equipment not in RS Means multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

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

For Non Pre-priced Tasks Performed by Subcontractors:

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

Total Cost for Non Pre-priced Tasks performed by Subcontractors = D x Non Pre-Priced Task Adjustment Factor

- iv. After a Non Pre-priced Task is used on two separate Job Orders, the Unit Price for such task will be established, following approval by the Owner, and fixed as a permanent Non Pre-Priced Task which will no longer require price justification.

- v. The Owner's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
4. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Owner may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
5. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The costs of expediting services or equipment use fees are not reimbursable. The City, at its discretion, has the option to pay the filing or permit fees through a City funds transfer if so desired to keep these fees out of the JOC project costs.
6. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
7. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Job Order Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
8. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Job Order Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
9. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the

price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Owner.

10. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

Review of the Job Order Proposal and Issuance of the Job Order

1. The Owner will evaluate the entire Job Order Price Proposal and compare these with the Owner's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
2. The Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:
 1. Will constitute or create a hazard to the work, or to persons or property;
 2. Will not produce finished Work in accordance with the terms of the Contract; or
 3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
3. The Owner reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Owner also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Owner.
4. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the Owner.
5. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the Owner and delivered to

the Contractor constitutes the Owner's acceptance of the Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to the Contractor.

6. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Job Order Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

Job Order Performance

Upon issuance of a job order the Contractor shall work with the assigned project manager to complete the work.

The Contractor shall provide full documentation to the City of all work, including, but not limited to: weekly meeting notes during construction, inspection reports, a comprehensive monthly summary report including status of all open Work Orders, punch-list reports as needed, as-built drawings and related items and any other reporting required or requested by the City.

During construction the Contractor will be required to submit, on a monthly basis, in a format acceptable to the City, a full cost-accounting report of the status of all expenses and individual budget items within the JOC for each Work Order, as well as quarterly reports of year-to-date and life-to-date contract expense.

Quality Control

Contractor is responsible for quality control and shall establish and maintain an effective quality control system. The Quality Control (QC) system shall consist of plans, procedures, and organization necessary to provide materials, equipment, workmanship, fabrication, construction and operations which complies with Job Order requirements. The Contractor shall review and certify as correct, complete, and in compliance with equipment as required by the Contract Documents. Quality Control is the sole responsibility of the Contractor.

Permits, Fees, and Notices

Unless otherwise provided in the Job Order, Contractor shall obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Owner will pay the permitting authority directly for the cost of any building permit, The City, at its discretion, has the option to pay the filing or permit fees through a City funds transfer if so desired to keep these fees out of the JOC project costs. All other permits are the financial responsibility of the Contractor. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner. Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

Access to Work

The City, its Agent, and/or its Representative shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide facilities for such access so that the City, its Agent, and/or its Representative may perform their functions under the Job Order documents. If the specifications, the City, its Agent, and/or its Representative instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the City, its Agent, and/or its Representative timely notice of its readiness for observation by the Owner's Representative or inspection by another authority, and if the inspection is by an authority other than the City, its Agent, and/or its Representative, of the date fixed for such inspection, required certificates of inspection being secured by the Contractor. Observations by the City, its Agent, and/or its Representative shall be promptly made, and where practicable at source of supply.

If any work should be covered up without approval or consent of the City, its Agent, Inspectors, and/or its Representative, it must, if required by the City, its Agent, and/or its Representative, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the City, its Agent, and/or its Representative and, if so requested, the work must be uncovered by the Contractor. If such work be found in accordance with the issued Job Order documents, the City will pay the cost of re-examination and replacement.

Non-Performance

In the event the contractor fails to perform specified work to the satisfaction of the City or fails to perform the specified work within the time limits specified for that work, the City shall have the right to exercise any of the following options:

- a. The City may request the contractor make immediate correction.
- b. The city may exercise its right to correct the problem by any reasonable means available. If the corrective action chosen by the City incurs costs greater than those specified in the contract, the difference between the actual cost of the work and the cost specified in the contract for that work may be deducted from payments to contractor.
- c. In addition, the City may penalize the contractor for nonperformance by deducting the amount specified in each job order from the next billing for each occurrence of unsatisfactory performance. The contractor agrees that such charge is reasonable.

OMWBE Outreach Plan

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

The successful JOC Contractor(s) shall provide to the City an Approved OMWBE Outreach Plan prior to executing the JOC Contract by the City.

Subcontracting

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

Supervision and Construction Procedures

The Contractor shall supervise and direct the Work using its best efforts, skills and attention. The Contractor shall be solely responsible for, and shall have full control and charge of construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, including the work of Subcontractors, Sub-Subcontractors, Suppliers and all other persons performing a portion of the work. The Contractor is for all purposes an independent contractor and not an agent or employee of the City.

The Contractor may not assign any portion of this Contract without the City's prior written consent.

The Contractor shall be fully responsible to the City for the acts or omissions of its employees, agents, Subcontractors, Sub-Subcontractors, Suppliers and their agents and employees, and all other persons who are to perform any of the Work.

The Contractor may be required to keep a competent resident Project Manager (PM) and/or Superintendent at the site of the Work continuously during its progress. In those cases, the Project Manager or Superintendent shall not be replaced without prior written notice and approval by the City. The Project Manager and Superintendent shall be experienced, capable of understanding and familiar with the Work and able to properly supervise performance of the Work. The Project Manager or Superintendent shall be the Contractor's representative and shall have authority to act on behalf of and bind the Contractor with respect to this Contract, except that the Contractor may indicate, in writing, limits on the authority of the Project Manager or Superintendent. Communications or notices directed or given to the Project Manager or Superintendent shall be as binding as if given to the Contractor.

If a PM or Superintendent is not required to be onsite the Contractor shall respond to a request for an on-site visit within 24 hours.

All Work shall be performed under the continuous supervision of competent and skilled personnel experienced in the tasks being performed. The Contractor shall at all times enforce strict discipline and good order among all workers on the project. Incompetent, careless, or negligent workers shall be immediately removed from the performance of the Work by the Contractor upon written request of the City.

The Contractor shall not be relieved from its obligation to perform the Work in accordance with the Contract Documents either by the activities of the City or by reason of inspections, tests, or approvals required or performed by or for the City.

Employees/Backgrounds

The contractor shall be responsible for proper conduct of its employees and agents on City premises. The contractor is to ensure that NO individuals other than those of contractor's employees necessary to perform the work under these specifications will accompany their personnel in the performance of said work.

The JOC contractor will be required to furnish the City with a list of employees working on or visiting any City projects for background purposes. The following information shall be provided for each employee: full name, date of birth and picture from shoulders up (for a City ID badge) and a valid email for CJIS training as well as having fingerprints taken at the Vancouver Police Department - West Precinct

Subcontractors of the JOC Contractor working on or visiting City buildings will be required to furnish the City with a list of employees with full name, DOB, Driver's License # and a Picture from shoulders up (for a City ID badge) for a quick background check. Fingerprints and CJIS Training will only be done if they are a continually used subcontractor.

As requested by the City the contractor shall notify the Project Manager in writing within 48 hours of employee changes and shall provide the information listed above for all replacement employees. Any Lost City ID badges or access cards shall be reported to the City Project Manager as soon as possible for security reasons.

All personnel may be required to sign in and out of the building and wear a company-issued identification card as well as a City of Vancouver issued ID badge

All employees working at City facilities shall be neatly dressed. Contractor will provide all employees with an appropriate clean uniform to be worn when working in City facilities. Contractor will provide all employees a company picture identification card to be worn and visible when working in City facilities.

The City reserves the right to reject any of the contractor's employee's and to exclude any of the contractor's employees from entering or working in a City facility as required.

Publication of Intent to Perform Public Works Project

JOC Contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.

Retainage

Per RCW 39.10.450, for purposes of Chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Job Order issued shall be treated as a separate contract. Retainage on this contract will be administered in accordance with RCW 60.28.011. If RCW 60.28.011 is revised during the course of the contract, the most current language shall apply to this Contract.

Labor and Materials Bond and Performance Bond

The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Vancouver a Labor and Materials Bond and a Performance Bond, on the forms provided by the City of Vancouver, in the amount of \$1,000,000 (one million dollars) executed by itself as principal and by a surety company authorized, licensed to do business in the State of Washington on the approved City of Vancouver form. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Revised Code of Washington, Chapter 39.08. The term of each Bond shall be one (1) year. In the event the parties agree to exercise the Contract extension, the Contractor shall deliver a new Labor and Materials Bond and a Performance Bond in the same manner.

The successful JOC Contractor(s) shall submit a signed original copy of each completed Bond form and a signed original copy of the Power of Attorney to the City prior to execution of the JOC Contract by the City.

Prevailing Wage Requirements

For projects performed under this contract, the Contractor may be required to submit weekly/bi-weekly Certified Payrolls to the City of Vancouver Procurement Services upon request.

The wage rates to be paid all laborers, workers and mechanics who perform any part of this Contract shall be not less than the prevailing wage rates as required by Chapter 39.12 of the Revised Code of Washington, as amended. This requirement applies to laborers, workers and mechanics whether they are employed by the Contractor, Subcontractors, Sub-Subcontractors, or any other person who performs any portion of the work contemplated by this Contract. It is the Contractor's sole responsibility to determine the wage rates it will actually have to pay. The Contractor is responsible for paying the most current wage rate in effect at the time the individual Job Order is issued by the City.

In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State and the Director's decision therein shall be final and conclusive and binding on all parties involved in the dispute, as provided for by Section 39.12.060 of the Revised Code of Washington, as amended.

In connection with this Contract, for each issued Job Order, the Contractor and each subcontractor shall complete or have on file a current "Statement of Intent to Pay Prevailing Wages" (Form L&I Number F700-029-000) before payment will be made for work performed. An approved "Affidavit of Wages Paid" form must be filed upon completion of the project. These forms are available from Washington State Department of Labor & Industries and can be filed electronically at <http://www.lni.wa.gov/TradesLicensing/PrevWage/>. Please note the Department of Labor and Industries charges a fee for such approval and certification, which fee shall be paid by the Contractor. Any change in the fee will NOT be grounds for revision in Job Order Price.

The Contractor is required to include this provision in all sub-contracts and shall require that it be placed in all sub-sub contracts at any tier.

All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, asphalt or other similar materials and all workers removing any materials from the construction site as required by the specifications are subject to the provisions of RCW chapter 39.12 and are entitled to the appropriate Prevailing Wage Rate. For purposes of this contract, such materials are for specified future use and per WAC 296-127-018, delivery and pick-up of the above listed materials constitutes incorporation.

E. Approximate Timeline

RFP Issued:	July 26, 2019
Questions Due:	August 9, 2019
Final Addendum Issued:	August 14, 2019
PROPOSALS DUE:	August 21, 2019
Evaluation of Proposals:	Week of September 2 nd
Interviews:	Week of September 16 th
Council Award:	October 7, 2019
Expected Notice to Proceed	October 15, 2019

F. Addendum

It is the sole responsibility of the proposer to learn of Addenda, if any. Such information may be obtained at: <https://vancouver.procurement.com>. The City of Vancouver accepts no responsibility or liability and will provide no accommodation to proposers who fail to check for addendums and submit inadequate or incorrect responses.

G. Information

Questions or Requests for Clarification must be sent to Anna Vogel, Procurement Manager, via email to anna.vogel@cityofvancouver.us and be received by 4:00 p.m. on **August 9, 2019**. Incomplete or late inquiries may not be considered.

H. General Information Form

The general information form, on the next page, is designed to serve as the cover sheet. Do not attach cover letters, title pages, or blank sheets ahead of this form, nor substitute letterhead paper for it. If additional space is needed, plain paper may be attached behind this form. This form must be signed by a person authorized to submit proposals and enter into contract negotiations on behalf of your agency. This individual must be at least 18 years of age. **Failure to submit this form may result in your proposal being deemed non-responsive and rejected.**

SECTION 2: PROPOSAL SUBMITTAL AND EVALUATION INFORMATION

**GENERAL INFORMATION FORM
RFP #10-19 JOB ORDER CONTRACTING GENERAL CONTRACTOR**

This form must be signed by a person authorized to make proposals and enter into contract negotiations on behalf of your entity. To be considered for this project, the submittals must be completed in accordance with this RFP and this cover sheet must be attached.

By submitting and signing this RFP, you are agreeing to the terms and conditions stated herein unless otherwise noted in your Proposal.

Failure to submit this form may result in your proposal being deemed non-responsive.

Authorized Official (Signature)

Date

Print Name of Authorized Official

Title of Authorized Official

Company Name

Contact Person

Address

City, State, Zip

Phone Number

Fax Number

E-Mail Address

Federal Tax ID #

NOTE: It is the sole responsibility of the Consultant to learn of Addenda, if any. Such information may be obtained at <https://vancouver.procureware.com>.

A. Submittal Requirements & Procedure

Submittal Requirements: Proposals should be concise and only include information requested.

- Proposers to provide: 1 signed original copy of the proposal and 5 paper copies along with 1 electronic copy on CD or USB thumb drive (MS Word, MS Excel compatible or pdf files)
- Page size: 8.5” x 11”
- Minimum font size: 12 point

Submittal Procedure: Proposals are to be submitted in a sealed envelope and labeled:

RFP #10-19 JOC GENERAL CONTRACTOR

- Responses due no later than: **3:00 P.M. (Pacific Time), Wednesday, March 27, 2019**

Delivery Address:

(Hand delivery & non-USPS)
Procurement Services Manager
City of Vancouver
Customer Service Desk
1st floor lobby
415 W. 6th Street
Vancouver, WA 98660

Mailing Address:

(USPS does **NOT** deliver to City Hall)
Procurement Services Manager
City of Vancouver
PO Box 1995
Vancouver, WA 98668

- All proposals must be delivered and received by Procurement Services by the time/date listed.
- Proposers shall allow enough time for delivery to occur. Official City time/date stamp shall be the sole means used to determine time/date of receipt/acceptance of proposals.
- Proposals submitted by **EMAIL** or **FAX** will not be accepted.
- Deliveries requiring a signature may not be delivered in a timely manner as our receiving point is not staffed at all times and may not be available to sign at the time of delivery.
- USPS does **NOT** provide delivery services to City Hall.
- City PO Box mail is usually collected once each business day. Mail received after that time will not be collected until the next business day, and therefore possibly not received by the City by the due date and time.
- Proposals received after the listed date and time will not be accepted. The City of Vancouver is not responsible for delays in delivery.
- All proposals submitted under this solicitation are subject to RCW 39.10.470.

B. Evaluation Process

The City will determine the most qualified firm based on the evaluation criteria listed below using predetermined weights and the responsiveness of the proposal. A subsequent round of interviews may be used to evaluate finalists.

The City reserves the right to conduct interviews of a short list of proposers. If the City decides to conduct interviews, the interview sessions will be evaluated in a manner similar to the response. Topics covered in the interview session shall include the topics listed hereinbefore under the “Evaluation Criteria” section plus any additional, relevant topics which may arise during both the formal presentation and the question and answer portions of the interview. If interviews are conducted and if your firm is selected for an interview, you will be contacted by the City for next steps.

C. Evaluation Criteria

These instructions were prepared to aid in proposal development. They also provide for a structured format so reviewers can systematically evaluate several proposals. Each copy of the proposal package must include all of the sections in the order indicated. Attachments should be clearly referenced and identified to facilitate the review process.

By submitting and signing this RFP, you are agreeing to the terms and conditions stated herein unless otherwise noted in your Proposal.

Each proposal shall include:

1. Qualifications and Experience

- a. Company Description: Provide a profile of the company including company name, address, location of the office that will be administering the contract, number of years the firm has been engaged in the construction business under the current name, describe the general character of work performed by the company, Washington state contracting number, uniform business identification number, and a description of the type of Work the firm intends to subcontract.
- b. Indicate if the firm has a physical office (primary or satellite) in the Vancouver area. If not currently have an office in the Vancouver area, describe how your firm will meet the needs and demands of this contract.
- c. Provide a list of best practices your company utilizes when conducting business.
- d. Provide a list of projects the firm is currently under contract (value and volume of work). Describe the firm’s resources available to perform the work for the City for the duration of the project period while managing these on-going projects.
- e. Describe prior comparable construction experience using the project ranges below. Describe the percentage of work sub-contracted, the role of your firm, the project type, the agency, and the project location. Further, describe these projects that occurred within the last five years as listed below:
 - i. Four (4) repair or rehabilitation projects where final value including change orders is equal to or less than \$50,000.
 - ii. Four (4) repair or rehabilitation projects where final value including change orders is between \$50,000 and \$200,000.

- iii. Four (4) repair or rehabilitation projects where final value including change orders is between \$200,000 and \$350,000.
- f. Provide 2-3 letters of reference who can attest to the proposer's ability to successfully complete the scope of work described in this RFP. References must be from clients within the last five years and shall include name of the firm, Point of Contact (POC), the firm's physical address as well as the POC's phone and e-mail. The letters of reference can copies of actual e-mail messages sent to the proposer but, if not, must signed and contain the firm's letterhead.
- g. List and describe, any and all legal actions, in which your firm has been a party, for the past five (5) years. This includes, but is not limited to, any judgments, claims, lawsuits, suspensions, debarments, legal action in which your firm has been a debtor in bankruptcy, a defendant in a lawsuit for deficient performance under a contract or agreement, a respondent in an administrative action for deficient performance, or a defendant in a criminal action.
- h. Safety: Attach a letter from the Proposer's insurance carrier, on the insurance carrier's letterhead, stating the firm's Experience Modification Rate (EMR) for the 2016, 2017, and 2018 calendar years.

2. Key Personnel

The City of Vancouver desires to have the Contract administered by personnel with extensive construction and JOC experience. Provide a narrative that describes the proposed key team members' technical competence, knowledge, and recent work experience and expertise working in areas for which they are proposed on this contract. Provide an organizational chart identifying each team member by name, discipline firm name (if different), proposed role on the contract, team hierarchy and reporting relationships. Proposer's key personnel for this contract to include Principal/Lead, Project Manager, Estimator, Scheduler, Construction Manager, Superintendent, Quality Assurance, Accounting, Administrative.

- a. Team resources available to perform the services required under this contract.
- b. Provide the name(s) of the project manager assign to this account and the general field superintendent and their experience with JOC projects and resumes.
- c. Provide resumes of team members (e.g., Estimator, Scheduler, Construction Manager, Quality Assurance, Accounting, and Administrative.) to be working on this project emphasizing directly relevant experience and why they are uniquely qualified to be part of the team.
- d. Provide names of responsible individuals in the line of authority for this project, their job titles, and a description of their responsibilities in this role.
- e. For each team member, provide a list of other projects they are working on and their weekly time commitment to each of those projects.
- f. Provide copies of all pertinent or required certifications.

3. Approach and Understanding

- a. Demonstrate a clear understanding of the goals of the project by concisely describing and clarifying major issues identified in the project information of this RFP.

- b. Provide a detailed description of the firm's approach to overall management, allocation of resources, and integration of all activities required by the Scope of this RFP.
- c. Provide a description of how your firm will respond promptly to problems and any changes to the Scope of Work.
- d. Provide a detailed description of the proposed services offered and the methodology that will be used to accomplish the tasks identified in the Scope of Work. The work plan will detail team assignments and narratives of work approach and work force, schedule of activities with time allocations.
- e. Provide a narrative describing how your firm will develop a Job Order Proposal using the Construction Task Catalog. Integrate project scoping, construction estimating, project scheduling, subcontractor selection, etc. Describe the proposed lines of communication between the key personnel and the City.
- f. Provide a narrative describing how your firm will execute the work. This should include quality assurance, quality control, construction management, subcontractor scheduling, project closeout and all proposed lines of communication for all project stakeholders.
- g. Local Business Outreach Plan: It is the City's intent to provide local businesses every opportunity to participate in its JOC program. Provide your firm's local business outreach plan. Identify, in specific detail, the efforts to be used by the firm to encourage the participation of local businesses under this Contract. Local businesses are considered those businesses residing in City of Vancouver and the surrounding areas within a 50 mile radius of the City. If awarded the contract, the Proposing firm may be required to periodically report on their local business outreach efforts.
- h. Subcontracting Experience and Plan: Per RCW 39.10.440, 90% of the work issued to the JOC Contractor must be subcontracted. Describe in specific detail your firm's prior subcontracting experience and ability to manage multiple subcontractors working on multiple project sites simultaneously. Include evidence on past projects of your firm's ability to manage multiple subcontractors. Also make sure to include the Proposer's approach to subcontracting versus self-performing the work with its own work forces as well as identification of said types of work the Proposer intends on self-performing. The Plan should also identify how the Proposer will select subcontractors and the basis for such selection and outreach.

4. Estimating and Scheduling Experience

- a. Describe your firm's experience and success rate in construction estimating and scheduling.
- b. Describe key staff experience in each of these areas.
- c. Provide examples that were developed and utilized on other JOC projects
- d. Describe your firm's approach to working with the Owner and Stakeholders.

5. Recent, Current, and Projected Workload

- a. Provide a brief description of your firm's size and capability to perform the requirements of this contract. Include annual volume and financial position.
- b. Summarize recent, current, and projected workloads (include number and size of JOCs and average monthly Work Order Volume) of your firm.

6. Required Forms

The following forms, found in Appendix A, must be completed and submitted with your proposal:

- a. Non-Discrimination Clause: Proposer must provide evidence of compliance as required by RCW 35.22.650 on the attached form.
- b. Certification and Compliance with Wage Payment Statutes: To be completed and signed.

7. Price Proposal (to be submitted in a separate sealed envelope):

Proposers should read and understand all documents associated with this RFP. Proposer's proposal is based upon the materials, systems, services and equipment required by the Proposal Documents. Proposer shall furnish all labor, equipment, and materials required to perform and complete the Detailed Statement of Work for the Job Order Price within the Job Order Completion Time.

The Coefficient prices shall reflect what the Proposer anticipates to be the cost of completing the Work, including methods, materials, labor, mobilization and equipment. The Bidder will not be compensated for additional costs unless provided for by the Contract. The Proposer is advised to include in its Coefficient the applicable costs required by the RFP related to Insurance and bonding.

Proposers should use the attached Price Proposal Form, Appendix B, when submitting their Price Proposal.

D. Evaluation Scoring

The Job Order Contractor selection will consist of two Phases. Phase I will evaluate the firms' submittals according to the point weighting system detailed below. The highest-ranked firms will be invited to participate in Phase II selection.

Phase II will include an interview and presentation by the highest scoring firms. Pricing Proposals will be opened following completion of all interviews. The selection of the successful firm will be based on the highest score of adjusted points determined by dividing the Total Points (from Phase I Proposal and Phase II interview) by the bidder's Composite Coefficient (a weighted coefficient calculated by a formula that includes coefficients for standard and non-standard work hours).

Phase 1 Scoring

- | | |
|--|-------------------|
| 1. General Information Form | Pass/Fail |
| 2. Required Forms | Pass/Fail |
| 3. Capabilities & Qualifications | 25 points maximum |
| 4. Key Personnel | 25 points maximum |
| 5. Approach and Understanding | 25 points maximum |
| 6. Estimating and Scheduling Experience | 15 points maximum |
| 7. Recent, Current, and Projected Workload | 10 points maximum |

Phase 2 Scoring

The interview/presentation will be evaluated based on the criteria in Phase 1. Scores from phase 1 will be adjusted based on the information provided during the interview/presentation.

1. Price Proposal

50 points maximum

E. Award of Contract

The City will attempt to reach a final agreement with the highest scoring responding proposer. However, the City may, at its sole discretion, terminate negotiations and reject the proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the next highest scoring proposer and may continue on, in the same manner, with remaining the proposers until an agreement is reached.

Award of the contract shall be made with reasonable promptness by giving verbal and written notice to the proposer whose proposal best conforms to the request, receives the highest score through the evaluation process, and which will be the most advantageous to the City. It is the intent of the City to award a contract on a fair and competitive basis. All performance and technical standards stated in the RFP must be met as a condition of proposal acceptance.

The successful proposer will be required to enter into a written agreement with the City in which the proposer will undertake certain obligations. These obligations include, but are not limited to; the sample contract provided in Attachment “A” which are meant to be non-negotiable, but may be modified at the City’s sole discretion. This RFP and the successful Proposer’s response shall be incorporated in and become a part of the final contract.

It is the City’s intent to enter into a contract for a period of two (2) years. The City reserves the right to offer a contract extension for up to one additional year to align with the JOC Contractor contracts.

In the event that a proposer has concerns with said terms and conditions, they must address those concerns within the submitted proposal. Requests to modify the T&Cs after the solicitation’s closing date and time will not be considered. The City will consider all concerns but is not obligated to change any part of said T&Cs.

F. RFP General Terms and Conditions

Anti-Kickback

No officer or employee of the City, having the power or duty to perform an official act or action related to this contract, shall have or acquire any interest in the contract, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the contract. Any offer of a gift, favor, service or other thing of value of any

kind whatsoever made by the proposer or any person acting on the behalf of the proposer in connection with procuring this contract to any City officer or employee is an illegal act.

Non-Discrimination

Contractors and their sub-contractors shall be familiar with and subject to equal employment opportunities, affirmative action, the Hatch Act, and other similar requirements and regulations of the Department of Housing and Urban Development published as Part 570 of Ch. V of Title 24 CFR for Community Development Block Grants. The agency/business will comply with all Federal, State and local laws relative to this type of contract.

Debarment And Suspension

The contractor must certify that they are not debarred or suspended or otherwise excluded from or are ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension". The contractor must also certify that it will not contract with a subcontractor that is debarred or suspended.

Equal Opportunity

It is the policy of the City of Vancouver to require equal opportunity in employment and services subject to eligibility standards that may be required for a specific program.

No person shall, on the grounds of race, color, religion, sex, handicap, national origin, age, citizenship, marital status, political affiliation or belief, be denied employment or benefits, or be discriminated against as a consumer, administrator or staff person under any program or activity receiving funds under this RFP.

In compliance with Department of Labor Regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, no qualified handicapped individual shall be discriminated against in admission or access to any program or activity.

The prospective consultant must agree to provide equal opportunity in the administration of the contract and its subcontracts or other agreements.

Audit Requirements

Any contract awarded as a result of this RFP will include the agreement to an audit at the City's discretion. Audits shall be performed in accordance with all Local, State and Federal requirements/statutes. Agencies not covered by Federal single audit requirements may be responsible for an independent agency audit, which meets general accepted auditing standards.

Reimbursement

The City will not reimburse proposers for any costs involved in the preparation and submission of responses to this RFP or in the preparation for and attendance at subsequent interviews. Furthermore, this RFP does not obligate the City to accept or contract for any expressed or implied services. The City reserves the right to request any Consultant to clarify their proposal or to supply any additional material deemed necessary to assist in the evaluation of the Consultant.

Cooperative Purchasing

The Washington State Interlocal Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By responding to this RFP, Consultants agree that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City of Vancouver incurring any financial or legal liability for such purchases. The City of Vancouver agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City of Vancouver is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.

Public Records and Proprietary Material

Proposers should be aware that any records they submit to the City or that are used by the City even if the proposers possess the records may be public records under the Washington Public Records Act (RCW 42.56). The City must promptly disclose public records upon request unless a statute exempts them from disclosure. Proposers should also be aware that if even a portion of a record is exempt from disclosure, generally, the rest of the record must be disclosed. Exemptions, including those for trade secrets and "valuable formula," are narrow and specific.

Proposers should clearly mark any record they believe is exempt from disclosure.

Upon receipt of a request for public disclosure, the City will notify the RFP proposer of any public disclosure request for the proposer's proposal. If the proposer believes its records are exempt from disclosure, it is the proposer's sole responsibility to pursue a lawsuit under RCW 42.56.540 to enjoin disclosure. It is the proposer's discretionary decision whether to file such a lawsuit. However, if the proposer does not timely obtain and serve an injunction, the City will disclose the records, in accordance with applicable law.

Appendix A – Required Forms

NON-DISCRIMINATION CLAUSE

RCW 35.22.650-Public Works or Improvements-Minority Business, Employees-Contract, Contents

All contracts by and between a first class city and contractors for any public work or improvement exceeding the sum of ten thousand dollars, or fifteen thousand dollars for construction of water mains, shall contain the following clause:

“Contractor agrees that they shall actively solicit the employment of minority group members. Contractor further agrees that they shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of his/her compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The Contractor shall be required to submit evidence of compliance with this section as part of the bid.”

As used in this section, the term “minority business” means a business of at least fifty-one percent of which is owned by minority group members. Minority group members include, but are not limited to, African Americans, Women, Native Americans, Asians, Eskimos, Aleuts, and Hispanics.

Bidders shall provide evidence of compliance as required by the non-discrimination clause. Bidder shall list Company names, addresses and the State Certification number for all Minority Business Enterprises from whom bids have been solicited. A list of bidder’s minority employees and the employees' classification must be attached.

a.) If minority solicitations were not made, please explain: _____

b.) If reporting of minority employees has not been attached, please explain: _____

Contractor Name/Address	WA State Certification No.
_____	_____
_____	_____

Signature of Authorized Official

Title

Printed Name

Date

Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (May 14, 2019), that the bidder is not a “willful” violator, as defined in RCW 49.48.082, of any provision of Chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

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

Bidder

Signature of Authorized Official*

Printed Name

Title

Date

City

State

Check One:

Individual Partnership Joint Venture Corporation

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

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

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

Appendix B – Price Proposal Form

The undersigned, having read all of the requirements of this solicitation, agree to furnish all labor, materials, and construction management specified herein necessary to complete the work as follows:

- A. First Year Not to Exceed Contract \$3,000,000
- B. Second Year Not to Exceed Contract \$3,000,000
- C. Third Year Not to Exceed Contract, If applicable \$3,000,000
- D. Minimum Committed Contract Amount \$ 10,000

E. Enter Coefficients to be applied to the Unit Cost Price Book in the boxes below:

- a. Standard Coefficient (Standard Working Hours) = _____
- b. Non-Standard Coefficient (Non-Standard Working Hours) = _____
- c. Non-Pre-Priced Coefficient = _____

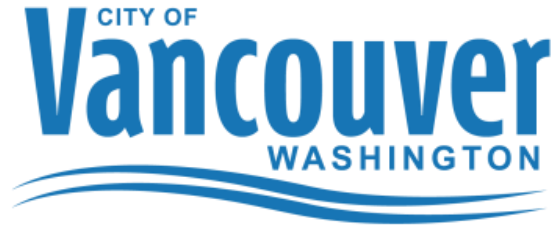
Signature of Authorized Official

Title

Printed Name

Date

Attachment A



CITY OF VANCOUVER, WA
CONTRACT No. _____

For

JOB ORDER CONTRACTING SERVICES

FOR GENERAL CONSTRUCTION

Initial Agreement Term: October 15, 2019 through October 14, 2021

(City Renewal Option: Up to one (1) additional one-year term)

Between

CITY OF VANCOUVER, WASHINGTON

And

XXX

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EXHIBITS

- Exhibit #1 – JOC System License and Fee Agreement
- Exhibit #2 – Special Provisions
- Exhibit #3 – The Construction Task Catalog
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- Exhibit #5 – Modifications to the WSDOT Standard Specifications
- Exhibit #6 – General Conditions for Facility Construction
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- Exhibit #8 – Section 3 Employment and Business Opportunity
- Exhibit #9 – Washington State Non-Discrimination Clause – First Class Cities
- Exhibit #10- Non-Collusion and Debarment Affidavit
- Exhibit #11 - Certification for Federal-Aid Contracts
- Exhibit #12 – Labor and Materials Bond and Performance Bond

JOB ORDER CONTRACTING SERVICES
FOR GENERAL CONSTRUCTION

This Contract, effective this _____ day of _____, 2019 is made and entered into by and between the City of Vancouver, a municipal corporation of the State of Washington (Owner), and ___[name and address]_____ (Contractor) hereinafter referred to as Parties. This Job Order Contract shall be the agreed basis of performing and compensating for all City issued Job Orders to Contractor.

In consideration of the mutual covenants and agreements of the Parties herein contained, the Contractor agrees to furnish all material, labor, tools, equipment, apparatus and facilities necessary to perform and complete all Work called for in the Contract Documents.

This Job Order Contract is entered into pursuant to the provisions of the Revised Code of Washington (RCW) 39.10.430. In executing this Job Order Contract, the Parties acknowledge that the scope of work will be delegated by the Owner on the basis of Job Orders. Contractor has agreed to offer its services to perform said Work per City issued RFP No. 10-19, Contractor's proposal to said RFP, and City Council's approval on _____ of Staff Report No. _____.

ARTICLE I: DEFINITIONS

In addition to the definitions set forth in the General Conditions, the following definitions shall apply to this Job Order Contract:

- 1.1 **Adjustment Factor** - The Contractor's competitively proposed price adjustment to the unit prices as published in the Construction Task Catalog. The contents and variations allowed in the Adjustment Factor are further defined in this Job Order Contract.
- 1.2 **Base Term** - The initial period of the Contract and does not include any Option Terms.
- 1.3 **Contract Award Amount** - The minimum dollar amount of total Job Orders Owner commits to spending.
- 1.4 **Construction Task Catalog[®]** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- 1.5 **Detailed Scope of Work** - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- 1.6 **Estimated Annual Value** - An estimate of the value of Job Orders that could be issued by the Owner each year.
- 1.7 **Job Order** - A written order issued by the Owner, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion

Time for the Job Order Price. The contents of the Job Order are further defined in this Job Order Contract and the General Conditions. A project may consist of one or more Job Orders.

- 1.8 **Job Order Completion Time** - The time within which the Contractor must complete the Detailed Scope of Work.
- 1.9 **Job Order Price** - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
- 1.10 **Job Order Price Proposal** - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- 1.11 **Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractor; (d) Construction schedule; and (e) other requested documents.
- 1.12 **Job Order Request** - An order issued by Owner to Contractor requesting a price for a proposed scope of work to be performed pursuant to a Job Order issued under this Job Order Contract.
- 1.13 **Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- 1.14 **Maximum Contract Value** - The maximum value of Job Orders that the Contractor may receive under this Contract per the RCW.
- 1.15 **Minimum Contract Value** - The minimum value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract.
- 1.16 **Non Pre-priced Task** - A task that is not set forth in the Construction Task Catalog[®].
- 1.17 **Normal Working Hours** - Includes the hours from 7:00 a.m. to 6:00 p.m. Monday through Friday, except for Owner holidays.
- 1.18 **Notice to Proceed** - A written notice issued by the Owner directing the Contractor to proceed with construction activities to complete the Job Order.
- 1.19 **Open Contract Sum** - The total sum of all open Job Orders.
- 1.20 **Option Term** - An additional period of time beyond the Contract Term which extends the termination date of the Contract.
- 1.21 **Other than Normal Working Hours** - Includes the hours of 6:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and Owner Holidays.
- 1.22 **Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog[®].

- 1.23 **Project** - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
- 1.24 **Request for Job Order Proposal** - A written request to the Contractor to prepare a Job Order Proposal for the Detailed Scope of Work referenced therein.
- 1.25 **Schedule of Values** - A written breakdown allocating the total Job Order Price to each category of Work, in such detail as requested by Owner.
- 1.26 **Specifications** - That portion of the Contract Documents consisting of the written requirements for contract administration, materials, equipment, systems, standards and workmanship for the Job Order Work, and performance of related services, and including Divisions 0 (less Bidding Requirements) through Division 17.
- 1.27 **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- 1.28 **Technical Specifications** - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.29 **Unit Price** - The price published in the Construction Task Catalog[®] for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs[®]. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.

ARTICLE II: CONTRACT DOCUMENTS, RELATIONSHIP OF PARTIES

2.1 Contract Documents

The Contract Documents, as detailed below, form the complete agreement between the Parties, and are as fully a part of this Job Order Contract as if attached to this Job Order Contract or repeated herein. The Contract Documents represent the entire and integrated agreement between the Parties related to this Project and supersede prior negotiations, representation or agreements, either written or oral. The Contract documents consist of the following and any inconsistency in the parts of the Contract documents shall be resolved by the following this order of precedence:

- a. Contract Modifications (later amendment takes precedence over previous)
- b. JOC Services for General Construction Contract
- c. Job Order Contract Purchase Order (including Detailed Scopes of Work, Job Order Proposals, and any additional conditions or specifications)
- d. f. Amendments to the WSDOT Standard Specifications
- e. WSDOT Standard Specifications for Road and Bridge Construction
- f. General Conditions for Job Order Contracts
- g. Addenda to Request for Proposal 10-19,
- h. RFP 43-15
- i. Successful Proposer's Proposal
- j. RS Means
- k. Technical Specifications

2.2 General

The Contractor accepts the relationship of trust and confidence established by this Job Order Contract and covenants with the Owner to cooperate with the Owner through every phase of the Work and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Contractor further recognizes that in order for the Project to be completed on time and within budget the Contractor and the Owner will have to closely cooperate to meet the Owner's financial constraints. The Contractor shall closely cooperate on a regular basis to revise materials, methods, estimates and schedules as necessary to perform and complete the Work consistent with the Contract Time unless adjusted by Supplemental Request.

2.3 Submittal of Requested Information

Contractor, upon request of the Owner, shall submit the following information in a format acceptable to the Owner:

- a. A list of Job Orders issued,
- b. The cost of each Job Order,
- c. A list of the subcontractors hired under each Job Order,
- d. The cost of each subcontract under each Job Order,
- e. A copy of the intent to pay prevailing wages and the affidavit of wages paid for each Job Order subcontract, and
- f. Any other information requested.

ARTICLE III: WORK OF THIS JOB ORDER CONTRACT

1. General

This Job Order Contract is an indefinite delivery, indefinite quantity (IDIQ) contract pursuant to which the Contractor may perform an ongoing series of individual Projects at different locations throughout the City. The Contract Documents include a CTC containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for all direct and indirect costs of construction. The City of Vancouver will use the JOC Contractors to perform general construction work including, but not limited to, interior renovations, tenant improvements, interior mechanical, electrical, structural as well as concrete work, asphalt paving, underground utilities, park trails and grounds, communication network installation, channelization, permanent signing and installation of electrical traffic control devices such as flashing beacons and radar feedback signals. The City expects the average job to be less than \$100,000. This expected average is presented for information only and is not a commitment.

2. Minimum Contract Value

The Minimum Contract Value for this Contract is \$10,000. The Contractor is guaranteed to receive the opportunity to perform Job Orders totaling at least \$10,000 during the term of this Contract.

The Estimated Annual Value for each Contract is \$3,000,000. The Contractor may be issued Job Orders totaling up to the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this value of Job Orders. It is merely an estimate. The City has no obligation to issue Job Orders in excess of the Minimum Contract Value.

The City reserves the right to issue Job Orders up to the maximum amount specified in RCW 39.10.440. The Maximum Contract Value shall not exceed the amount set forth in RCW 39.10.440. In addition, the City may elect to carry over any unused capacity from the previous year and add the value to the immediate following year limit. The maximum annual volume including unused capacity shall not exceed the limit of two years.

3. Maximum Contract Value

Per RCW 39.10.450, the maximum dollar amount for an individual Job Order is three hundred fifty thousand dollars (\$350,000). All Job Orders for the same project (original plus any Supplemental Job Orders) shall be treated as a single Job Order for the purpose of the \$350,000 limit. A Job Order issued for any particular project must not exceed \$350,000, exclusive of sales tax.

The City of Vancouver intends to use the JOC Contractors to perform general construction work including, but not limited to, interior renovations, tenant

improvements, interior mechanical, electrical, structural as well as concrete work, asphalt paving, underground utilities, park trails and grounds, communication network installation, channelization, permanent signing and installation of electrical traffic control devices such as flashing beacons and radar feedback signals. The City expects the average job to be less than \$100,000. This expected average is presented for information only and is not a commitment.

4. Assignment of Work and Award of Individual Job Orders

The Owner may award an individual Job Order to any selected Contractor. The City of Vancouver reserves the right to limit the number of Job Orders assigned to a contractor at one time. Selection of the Contractor and award of the Job Order will be in compliance with established Owner procedures and based on one or more of the following criteria:

1. Rotational selection among all Contractors, unless otherwise determined by the Owner.
2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
3. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors.
4. Management of Job Order dollar volume within bonding limitations of the Contractor.
5. Price, as it relates to the Owner's independent cost estimate or to an offer from any other contractor.
6. Contractor's responsiveness to the Owner on Job Orders.

5. Initiation of a Job Order

As the need exists, the Owner will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting. The Contractor should be available with 24 hours of the invitation to attend the Joint Scope Meeting. In cases of emergencies Contractors may be required to attend a Joint Scope Meeting with in an hour of the request.

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

1. the general scope of the work;
2. alternatives for performing the work and value engineering;

3. access to the site and protocol for admission;
4. hours of operation;
5. staging area;
6. requirements for catalog cuts, technical data, samples and shop drawings;
7. requirements for professional services, sketches, drawings, and specifications;
8. construction duration;
9. liquidated damages;
10. the presence of hazardous materials;
11. date on which the Job Order Proposal is due;
12. Whether or not additional general or special conditions may apply to the Job Order.

Upon completion of the joint scoping process, the Contractor will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Owner shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Owner will issue a Request for Job Order Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Job Order Proposal and the Owner will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

6. Preparation of a Job Order Proposal

1. The Contractor's Job Order Proposal shall include, at a minimum:
 - a. Job Order Price Proposal;
 - b. Required drawings or sketches;
 - c. List of anticipated Subcontractors and Materialmen;
 - d. Construction schedule; preliminary subject to change with the approval of the project manager.

- e. Other requested documents.

Failure to submit the required documents listed above shall result in the proposal being rejected.

2. The value of the Job Order Price Proposal shall be c by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
3. The Contractor will prepare Job Order Price Proposals in accordance with the following:
 - a. Pre-priced Task: A task described in, and for which a unit price is set forth in, RS Means.
 - b. Non Pre-priced Task: A task that is not set forth in the Construction RS Means.
 - c. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
 - i. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
 - ii. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable.
 - iii. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

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

A = The hourly rate for each trade classification not in RS Means multiplied by the quantity;

B = The rate for each piece of Equipment not in RS Means multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

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

For Non Pre-priced Tasks Performed by Subcontractors:

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

Total Cost for Non Pre-priced Tasks performed by Subcontractors = D x Non Pre-Priced Task Adjustment Factor

- iv. After a Non Pre-priced Task is used on two separate Job Orders, the Unit Price for such task will be established, following approval by the Owner, and fixed as a permanent Non Pre-Priced Task which will no longer require price justification.
 - v. The Owner's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
4. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Owner may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
5. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain

a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The costs of expediting services or equipment use fees are not reimbursable. The City, at its discretion, has the option to pay the filing or permit fees through a City funds transfer if so desired to keep these fees out of the JOC project costs.

6. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
7. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Job Order Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
8. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Job Order Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
9. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Owner.
10. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

7. Review of the Job Order Proposal and Issuance of the Job Order

1. The Owner will evaluate the entire Job Order Price Proposal and compare these with the Owner's estimate of the Detailed Scope of Work to determine the

reasonableness of approach, including the appropriateness of the tasks and quantities proposed.

2. The Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:
 - a. Will constitute or create a hazard to the work, or to persons or property;
 - b. Will not produce finished Work in accordance with the terms of the Contract; or
 - c. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
3. The Owner reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Owner also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Owner.
4. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the Owner.
5. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to the Contractor.
6. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the Owner. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Job Order Proposal, Detailed Scope of Work, or Job Order.

The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures.

6. Job Order Performance

Upon issuance of a job order the Contractor shall work with the assigned project manager to complete the work.

The Contractor shall provide full documentation to the City of all work, including, but not limited to: weekly meeting notes during construction, inspection reports, a comprehensive monthly summary report including status of all open Work Orders, punch-list reports as needed, as-built drawings and related items and any other reporting required or requested by the City.

During construction the Contractor will be required to submit, on a monthly basis, in a format acceptable to the City, a full cost-accounting report of the status of all expenses and individual budget items within the JOC for each Work Order, as well as quarterly reports of year-to-date and life-to-date contract expense.

7. Quality Control

Contractor is responsible for quality control and shall establish and maintain an effective quality control system. The Quality Control (QC) system shall consist of plans, procedures, and organization necessary to provide materials, equipment, workmanship, fabrication, construction and operations which complies with Job Order requirements. The Contractor shall review and certify as correct, complete, and in compliance with equipment as required by the Contract Documents. Quality Control is the sole responsibility of the Contractor.

8. Permits, Fees, and Notices

Unless otherwise provided in the Job Order, Contractor shall obtain all permits, licenses, and inspections necessary for proper execution and completion of the Work. Owner will pay the permitting authority directly for the cost of any building permit. All other permits are the financial responsibility of the Contractor. Prior to Final Acceptance, the approved, signed permits shall be delivered to Owner. Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

9. Access to Work

The City, its Agent, and/or its Representative shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide facilities for such access so that the City, its Agent, and/or its Representative may perform their functions under the Job Order documents. If the specifications, the City, its Agent, and/or

its Representative instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the City, its Agent, and/or its Representative timely notice of its readiness for observation by the Owner's Representative or inspection by another authority, and if the inspection is by an authority other than the City, its Agent, and/or its Representative, of the date fixed for such inspection, required certificates of inspection being secured by the Contractor. Observations by the City, its Agent, and/or its Representative shall be promptly made, and where practicable at source of supply.

If any work should be covered up without approval or consent of the City, its Agent, and/or its Representative, it must, if required by the City, its Agent, and/or its Representative, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the City, its Agent, and/or its Representative and, if so requested, the work must be uncovered by the Contractor. If such work be found in accordance with the issued Job Order documents, the City will pay the cost of re-examination and replacement.

ARTICLE IV: PRICING OF THE WORK

4.1 General

Contractor shall furnish all supervision, labor, materials, tools, supplies, equipment and transportation to perform all operations necessary and required in accordance with the terms and conditions of the Contract, and as further specified in individual Job Orders. Pricing will be provided in excel spread sheet format exported from Construction Task Catalog.

4.2 Job Order Price

The pricing of the Job Order shall be determined as follows: The unit price for each item to be used from RS Means. The price (unit price x quantity x Adjustment Factor) is the total amount to be paid to the Contractor for the item for self-performed items or subcontractor-performed items. Cost for building permits, inspection fees, utility hookup fees, and other jurisdictional fees should be included on the Job Order Proposals as separate line items.

4.3 Contractor's Adjustment Factors

The Adjustment Factor for work performed during Normal Working Hours is _____ for this contract. This is fixed for a period of one year and may be adjusted per the ENR CCI Index according to the average of the twenty cities. The Adjustment Factor for work performed during Other than Normal Working Hours is set at _____. These Adjustment Factors includes business costs, construction costs, and price variations.

4.3.1 Business costs included in the Contractor's Adjustment Factors include:

- Overhead costs, including, but not limited to: home office overhead, insurance, bonds, and indemnification, project meetings, training, management and supervision, mobilization and close-out for the contract and each Job Order ,and project office staff and equipment.
- Profit.
- Subcontractor's overhead and profit.
- All taxes for which a waiver is not available with the exception of the Washington Sales Taxes which will not be part of the adjustment factor(s) but rather a separate line item on each Job Order. However the use tax on materials for WAC 458-20-171 projects shall be part of the adjustment factor(s).

- Employee or Subcontractor's wage rates that exceed the prevailing wage rates.
- Fringe benefits, payroll taxes, worker's compensation, insurance costs and any other payment mandated by law in connection with labor that exceeds the labor rate allowances.
- Cost of financing the work.
- Business risks such as the risk of a lower than expected volume of work, smaller than anticipated Job Orders, poor Subcontractor performance, and inflation or material cost fluctuations.

4.3.2 Construction costs included in the Contractor's Adjustment Factors include:

- Services required to obtain filings and permits.
- Preparation and modification of proposals, sketches, drawings, submittals, as-built drawings, CADD drawings, microfilm, and other project records.
- Incidental engineering and architectural services.
- Office trailer and portable toilets for Contractor's use.
- Construction vehicles such as pick-up trucks, utility trucks, vans, flatbed trucks, tractors, trailers, etc.
- Storage devices or items such as gang boxes and containers for Contractor's tools, equipment and materials.
- Personnel safety equipment (e.g., hard hats, safety harnesses with lifeline or cabling, protective clothing, safety glasses, face shields, etc.), basic safety and warning signage, railings, minor barricades, tape, roping, cable, markings, cones; including traffic control cones, barrels and basic traffic sign, etc.
- Meeting Owner security requirements.
- Excess waste including roofing, drywall, VCT, carpet, wall covering, ceiling tile, pipe, conduit, siding, concrete, etc. This list is not intended to be all inclusive, but descriptive of the types of construction materials that are typically sold in standard lengths, sizes and weights.
- Removing and returning Owner's furniture and furnishings (e.g. chairs, tables, pictures, etc. but excluding modular furniture, wall or ceiling attached or fastened devices or furnishings, safes or other furniture requiring disassembly).

- Sealing, windows, and openings with plastic to contain construction dust and debris within the work area.
- Daily clean-up.
- Final professional project clean-up.
- Costs resulting from inadequate supply of building materials, fuel, electricity, or skilled labor.
- Costs resulting from productivity loss.
- Working in extreme temperatures (below or above normal) or adverse conditions such as excessive rain, wind, sleet or snow.
- Differences in project size; complexity and location.
- All costs for other than discreet items of work specifically required to complete a particular Job Order.

4.3.3 Price Variations:

- Contractors may find differences in labor, equipment and material costs due to certain economic factors. Variations in labor cost can also result from labor efficiency, labor restrictions, working conditions and local work rules. Variations in material costs can also result from the quantity of material purchased, the existing relationship with suppliers, and because the materials have been discontinued or have become obsolete.
- While diligent effort is made to provide accurate and reliable up-to-date pricing, it is the responsibility of the Contractor to review and analyze the unit prices, and to calculate their Adjustment Factors accordingly, prior to bidding.

4.3.4 General Costs:

- This list is not exhaustive and is intended to provide general examples of cost items to be included in the Contractor's Adjustment Factor as defined in the Contract.
- The only compensation to be paid to a Contractor for the unit price tasks will be:

Published Unit X Installation(or X Appropriate
Price Demolition) Quantity Adjustment Factor

- No additional payments of any kind whatsoever will be made. All costs not included in the unit prices must be part of the Adjustment Factors.

4.4 Labor and Materials Bond and Performance Bond

The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Vancouver a Labor and Materials Bond and a Performance Bond, on the forms provided by the City of Vancouver, in the amount of \$1,000,000 (one million dollars) executed by itself as principal and by a surety company authorized, licensed to do business in the State of Washington on the approved City of Vancouver form. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Revised Code of Washington, Chapter 39.08. The term of each Bond shall be one (1) year. In the event the parties agree to exercise the Contract extension, the Contractor shall deliver a new Labor and Materials Bond and a Performance Bond in the same manner.

4.5 Retainage

4.5.1 Per RCW 39.10.450, for purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Job Order issued shall be treated as a separate contract.

4.5.2 Retainage on this contract will be administered in accordance with RCW 60.28.011. If RCW 60.28.011 is revised during the course of the contract, the most current language shall apply to this Contract.

4.6 Insurance

The Contractor agrees to the following requirements relating to insurance coverage. Provide a Certificate of Liability Insurance. Said certificate must be provided on a standard “ACORD” form, or its equivalent, and must provide that coverage shall not be canceled or modified without 30 days prior written notice to the City of Vancouver.

In addition, all policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

- \$1,000,000 minimum/general liability
- \$1,000,000 combined single limit auto liability
- \$5,000,000 umbrella liability
- \$1,000,000 minimum/professional liability
- \$1,000,000 products
- \$1,000,000 for each accident;
- \$500,000 for each disease for each employee;

- \$1,000,000 for each disease policy limit.

Washington Stop Gap Coverage: Consultants located in in North Dakota, Ohio, West Virginia, Washington and Wyoming must have Washington Stop Gap coverage listed on the Certificate of Liability Insurance. The limits and aggregates noted above must apply to the Stop Gap coverage as well.

Coverage Trigger: The insurance must be written on an “occurrence” basis. This must be indicated on the certificate. Claims made policies will not be acceptable.

City Listed as Additional Insured: The City of Vancouver, its agents, representatives, officers, directors, officials, and employees must be named as an additional insured on the CGL policy and shown on the certificate as an additional insured with an additional insured endorsement.

City shall be listed as the Certificate Holder.

4.7 Items Not Found in RS Means

Non-priced items are specific line items not found in RS Means. Contractor shall submit unit prices for non-priced items that include reimbursement for all direct and indirect costs of the work, including overhead and profit, bond and insurance costs:

- a. Direct costs for Labor and Materials: Owner may request up to three bids from sources acceptable to Owner.
- b. Equipment Costs: If not found in the Unit Price Book, equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources: Associated General Contractors General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement; current edition; State of Washington Utilities and Transportation Commission for trucks used on highways; National Electrical Contractors Association for equipment used for electrical work; and Mechanical Contractors Association of America for equipment used on mechanical work.

The Equipment Watch Rental Rate (Blue Book) shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, current edition.

4.8 Hours of Work

In addition to the Adjustment Factor for Work that is conducted during Normal Working Hours (7:00AM to 6:00PM, Monday through Friday), the Contractor may utilize a separate Adjustment Factor for Other than Normal Working Hours that occurs during Other than Normal Working Hours (6:00PM to 7:00AM, Monday through Friday, and weekends and holidays), if the Owner requested submission of such alternate Adjustment Factor at the time final proposals were due. Unless specifically identified or amended in the issued Job Order, all work shall be performed during Normal Working Hours.

4.9 Payment of Labor

4.9.1 For projects performed under this contract, the Contractor may be required to submit weekly/bi-weekly Certified Payrolls to the City of Vancouver Procurement Services upon request. The Job Order will specify if this is required.

4.9.2 The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the work of this Contract will be paid not less than the prevailing rate of wage for an hours work in accordance with the provisions of the Chapter 39.12 RCW, and all rules and regulations promulgated pursuant thereto. The State of Washington prevailing wage rates applicable for this public works project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvwagelookup.aspx>. Prevailing wage rate will be based on the date of the Job Order issued by the City.

4.9.3 In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision therein shall be final and conclusive and binding on all parties involved in the dispute.

4.9.4 In connection with this Contract, for each issued Job Order, the Contractor and each subcontractor shall complete or have on file a current "Statement of Intent to Pay Prevailing Wages" (Form L&I Number F700-029-000) before payment will be made for work performed. An approved "Affidavit of Wages Paid" form must be filed upon completion of the project. These forms are available from Washington State Department of Labor & Industries and can be filed electronically at <http://www.lni.wa.gov/TradesLicensing/PrevWage/>. The Department of Labor and Industries charges a fee for such approval and certification, which fee shall be paid by the Contractor. Any change in the fee will NOT be grounds for revision in Job Order Price.

The Contractor shall include this provision in all sub-contracts and shall require that it be placed in all sub-sub contracts at any tier.

- 4.9.5 All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, asphalt or other similar materials and all workers removing any materials from the construction site as required by the specifications are subject to the provisions of RCW chapter 39.12 and are entitled to the appropriate Prevailing Wage Rate. For purposes of this contract, such materials are for specified future use and per WAC 296-127-018, delivery and pick-up of the above listed materials constitutes incorporation.

4.10 Payment to the Contractor

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed, with Procurement Services, the Labor and Industries executed Statement of Intent to Pay Prevailing Wage as required by RCW 39.12.040. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in WAC 296-127-320 Payroll. A Contractor and all subcontractors shall, within ten days after it receives a written request, as defined by RCW 39.12.010(4) file a certified copy of the payroll records with the Owner. A contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

Progress payments to the Contractor shall be made within 30 days of receipt of the signed progress payment request, as approved by the Owner, for work completed during the previous month.

Every person performing labor or furnishing supplies toward the completion of said improvement of work shall have a lien upon said monies so reserved; provided, that such notice of the lien of such claimant shall be given in the manner provided in 39.08.030 RCW and within the time provided in Chapter 60.28 RCW as now existing and in accordance with any amendments that may hereafter be made thereto.

The Contractor shall submit invoices to City covering both professional fees and project expenses, as applicable. Payments to Contractor shall be made within thirty (30) days from submission of each invoice. The City reserves the right to correct any invoices paid in error according to the rates set forth in the specific Job Order. City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract/purchase order (PO) number given on the notice to proceed must be referenced on any invoice submitted for payment.

ARTICLE V: CONTRACT TERM, COMMENCEMENT, COMPLETION, AND LIQUIDATED DAMAGES

5.1 Contract Term

The initial term of this Job Order Contract is two (2) years, with an option on the part of the Owner to extend the Job Order Contract for an additional one (1) year, as provided in RCW 39.10.440. All extensions must be priced as in the Request for Proposal and mutually agreed to by the Owner and the Job Order Contractor.

All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Statement of Work may be performed, payments may be made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order.

5.2 Commencement Date

The commencement of Contract Time for any Job Order shall be the Contract Execution Date as defined in the General Conditions. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of Contractor.

5.3 Completion Date

Each Job Order will specify the Physical Completion Dates for the Work. The Contractor shall attain Physical Completion within the dates established in the Job Orders.

5.4 Liquidated Damages

The applicable liquidated damages, if any, for failure to attain either Substantial Completion or Physical Completion will be specified by the Owner in the Job Order.

ARTICLE VI: SUBCONTRACTING

6.1 Statutory Requirements

- 6.1.1 Contactor shall comply with RCW 39.10.440, including, Contractor shall subcontract at least ninety percent (90%) of the Work performed under this Contract to entities other than the Contractor, including subsidiaries of the Contractor or Joint Venture member.
- 6.1.2 Contractor shall distribute subcontracted work as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.
- 6.1.3 Contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.
- 6.1.4 Contractor shall comply with RCW 39.10.450, including Contractor shall prepare and submit to the Washington State Office of Minority and Women's Business Enterprises a subcontracting plan that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines.

6.2 Subcontractor Responsibility Criteria

- 6.2.1 The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.
- 6.2.2 At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
 - 6.2.2.1 Have a current certificate of registration in compliance with Chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 - 6.2.2.2 Have a current Washington Unified Business Identifier (UBI) number;
 - 6.2.2.3 If applicable, have:

- a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - b. A Washington Employment Security Department reference number, as required in Title 50 RCW;
 - c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - d. An electrical contractor license, if required by Chapter 19.28 RCW;
 - e. An elevator contractor license, if required by Chapter 70.87 RCW.
- 6.2.2.4 Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

ARTICLE VII: MISCELLANEOUS

7.1 Cooperative Purchasing

The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City of Vancouver incurring any financial or legal liability for such purchases. The City of Vancouver, at its sole discretion, may allow other public agencies to purchase goods and services under this specific Contract, provided that the City of Vancouver is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040. The City will provide a written authorization to that specific agency when such authorization is granted.

In addition, those public agencies who wish to use this contract must have an expressed, written Inter-Local Agreement (ILA) from the City of Vancouver specifically authorizing them to use of this specific contract. Previously executed ILAs do not extend that authorization to this contract. JOC Contractors shall be subject to the same contractual obligations.

7.2 E-Verify

Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Contract. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Contract are eligible to work in the United States. Contractor shall provide verification of compliance upon Owner's request. Failure by Contractor to comply with this subsection shall be considered a material breach.

7.3 Employment of Labor

The Contractor agrees that all persons employed in it and by any of its subcontractors in work done pursuant to this Contract shall not be employed in excess of 8 hours in any one day, except as provided or allowed by law.

7.4 Equal Opportunity

It is the policy of the City of Vancouver to require equal opportunity in employment and services subject to eligibility standards that may be required for a specific program.

No person shall, on the grounds of race, color, religion, sex, handicap, national origin, age, citizenship, marital status, political affiliation or belief, be denied employment or benefits, or be discriminated against as a consumer, administrator or staff person under any program or activity receiving funds under this RFP.

In compliance with Department of Labor Regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended, no qualified handicapped individual shall be discriminated against in admission or access to any program or activity.

Contractor shall provide equal opportunity in the administration of the contract and its subcontracts or other agreements.

7.5 Joint Venture Contractor

In the event that Contractor is a joint venture of two or more partners, all rights and responsibilities of the Contract shall be joint and several. Any notice, order, direction, request, or communication given by the Owner to the Contractor under this Contract shall be considered given to all joint venture partners if given to any one or more of such joint venture partners. Any notice, request or other communication given to the Owner by any joint venture partner shall be deemed to have been given by, and shall bind, all joint venture partners. In the event of the dissolution of the joint venture, the Owner shall have the unqualified right to select which joint venture partner(s), if any, shall continue with the Work under this Contract. Such selected partner(s) shall assume all liabilities, obligations, rights, and benefits of the Contractor under this Contract. Dissolution of the joint venture shall not be effected without prior consultation with the Owner. In the event of failure or inability of any joint venture partner(s) to continue performance under this Contract, the remaining joint venture partner(s) shall perform all services and Work and assume all liabilities, obligations, rights, and benefits of the Contractor under this Contract. Nothing in this Paragraph shall be construed or interpreted to limit the Owner's rights under this Contract or by law to determine whether the Contractor or any joint venture partner thereof has performed within the terms of this Contract.

7.6 Indemnity and Hold Harmless

Contractor agrees to indemnify, defend, save and hold harmless the Owner, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Contract.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Contractor, the Owner retains the right to participate in said suit.

This indemnity and hold harmless shall include any claim made against the Owner by an employee of Contractor or subcontractor or agent of the Contractor, even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. To the extent that such liability arises from the concurrent negligence of both the Owner and the Contractor, such cost, fees and expenses shall be shared between the Owner and the Contractor in proportion to their relative degrees of negligence. This indemnity and hold harmless shall NOT apply in the case where liability arises from the sole negligence of the Owner. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115.

The Contractor agrees to include this language in each of their subcontracts and require of their lower tier Subcontractors that these provisions be included in the language of their Subcontracts.

7.7 Ownership of Records and Documents

All materials, writings and products produced by the Contractor in the course of performing this Contract shall immediately become the property of the Owner. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such materials, writings and products to the Owner. A copy may be retained by the Contractor.

7.8 Public Disclosure

Contractor should be aware that any records they submit to the Owner or that are used by the Owner may be subject to public records under the Washington Public Records Act (42.56 RCW). The Owner must promptly disclose public records upon request unless a statute exempts them from disclosure. Contractor should also be aware that if even a portion of a record is exempt from disclosure, generally, the rest of the record must be disclosed. Exemptions, including those for trade secrets and "valuable formula," are narrow and specific. Contractor should clearly mark any record they believe is exempt from disclosure prior to submitting them to the Owner.

If Contractor is notified of a request for public disclosure, it is the Contractor's sole responsibility and discretionary decision to pursue a lawsuit under RCW 42.56.540 to enjoin disclosure. Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the Owner from any costs, attorney fees, or penalty assessment under Ch.42.56 RCW. However, if Contractor does not timely obtain and serve an injunction, the Owner will disclose the records, in accordance with applicable law.

7.9 City Business License

Contractor shall maintain a valid City of Vancouver business license during the term of or performance of Work under this Contract.

7.10 Governing Law

This agreement and the rights of the parties herein shall be governed by the laws of the State of Washington. Venue shall be in Clark County, Washington.

7.11 Compliance with the Law

The Contractor shall have the authority to control and direct the performance and details of the work described herein. The Contractor agrees to comply with all relevant federal, state and municipal laws, rules and regulations.

7.12 Disputes

In the event of any dispute between the parties regarding performance of this Agreement, prior to commencement of litigation, Owner may require Contractor to participate in mediation or arbitration, or both, in any forum or format as determined by Owner.

7.13 Audit

Contractor agrees and shall grant Owner or its representative access to records relating to Work under this Contract for auditing purposes. Auditing shall be at the Owner's discretion. Audits shall be performed in accordance with all Local, State and Federal requirements/statutes. Agencies not covered by Federal single audit requirements may be responsible for an independent agency audit, which meets general accepted auditing standards.

7.14 Assignment

This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without express written authorization.

7.15 Contract Amendment

All changes to this Contract, except for changes to the Work for each specific issued Job Order, must be made by written amendment and signed by all parties to this Contract and shall be incorporated via written amendments to the Contract. The City Manager, or designate, is hereby authorized to execute amendments on behalf of the City.

7.16 Termination for Convenience

The Owner, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the Owner.

7.17 Future Non-Appropriation of Funds

If sufficient funds are not appropriated or allocated for payment under this Contract for any future fiscal period, the Owner will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the Owner in the event this provision applies.

7.18 Debarment and Suspension

By entering into this Contract, Contractor certifies that they are not debarred or suspended or otherwise excluded from or are ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension". In addition, Contractor certifies that its subcontractor are not debarred or suspended during their contract period.

7.19 Entire Agreement

This Contract incorporates all the terms, covenants and understandings between the parties hereto and are merged into this document. No other agreements or prior understandings, verbal or otherwise, of the parties, or their agents, shall be considered as part of this agreement, or as valid or enforceable unless set forth herein.

7.20 Notices

Whenever in this written Contract written notices are to be given or made, they may be sent by certified mail to the following people at the addresses as shown herein unless a different address is designated in writing or delivered to the respective party hereto:

Owner: Anna Vogel
Procurement Manager
City of Vancouver
415 W 6th St.
P O Box 1995
Vancouver WA 98668-1995

Contractor: "Type Contractor Contact"
"Type Contractor Contact Title"
"Type Contractor Name"
"Type Contractor Address"
"Type Contractor City, State, Zip"

IN WITNESS WHEREOF, the Parties hereto have executed this Job Order Contract by having their authorized representatives affix their signatures below.

CITY OF VANCOUVER

A municipal corporation

Eric Holmes, City Manager

Attest:

Natasha Ramras, City Clerk

Approved as to form:

E. Bronson Potter, City Attorney

CONTRACTOR:

"CLICK & TYPE CONTRACTOR NAME"

Signature:

By: Printed Name / Title



ADDENDUM NO. 1

Project: RFP 10-19 JOB ORDER CONTRACTING GENERAL CONTRACTOR

Date: AUGUST 12, 2019

This Addendum shall become as fully a part of the above-named project drawings, specifications and bid documents as if therein written and shall take full and complete charge over anything therein written contained to the contrary. Each bidder shall be responsible for reading this Addendum to ascertain to what extent and in what manner it affects the work to be performed.

THIS ADDENDUM DOES NOT CHANGE THE DUE DATE FOR PROPOSALS:

SOLICITATION DOCUMENTS: (Changes are noted in *bold italics*)

- Section 1: Instructions and Contract Information, Page 4, Introduction/Background, the third and fourth paragraphs are revised to read:

The City of Vancouver will be using the *2019* RS Means books for the basis of the tasks under this contract. *The City will utilize each subsequent year book under this contract as it is published by RS Means. The City will be using the annual updates to the RS Means books and will not be updating quarterly.*

- Section 1: Instructions and Contract Information, Page 6, Scope of Work, Unit Price Book subsection, the first paragraph is revised to read:

For Priced Items, the Unit Price Book to be used for establishing Job Order pricing is the 2019 or current Edition of RS Means, all volumes. *For Site and Civil Work* the volumes should be used in the following order of precedence:

- 1) "Heavy Construction Cost Data"; if an item is not contained in this volume, use
- 2) "Site Work and Landscape Cost Data"

For Building and Facility Work the volumes should be used in the following order of precedence:

- 1) "*Building Construction Cost Data*", if the item is not included in these other volumes, use
- 2) "*Facilities Construction Cost Data*"

- Section 1: Instructions and Contract Information, Page 6, Scope of Work, Unit Price Book subsection, the seventh paragraph is revised to read:

Items that are treated as Non-Pre-Priced on *five* or more separate Job Orders may be incorporated into the Unit Price Book for future work based on the pricing established for the previous work orders. These costs may be escalated yearly based on the issuance of a new Means Historical Cost Index. Non-Pre-Priced items cannot exceed 20% of the Job Order.

- Section 1: Instructions and Contract Information, Page 13, Job Order Process and Requirements, Review of the Job Order Proposal and Issuance of the Job Order subsection, Item #1 is revised to read:

1. The Owner will evaluate the entire Job Order Price Proposal *within 3 working days of receiving the document* and compare these with the Owner's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. *If the Owner has questions or requires additional information the Contractor shall respond to the questions or submit a revised Job Order Price Proposal within 3 working of receipt of the request. For any subsequent reviews or revisions to the price proposal the Contractor and the Owner will have 2 working days.*

- Section 2: Proposal Submittal and Evaluation Information, Page 2, Submittal Requirements and Procedures, Submittal Procedures, the first bullet is revised to read:

- Responses due no later than: **3:00 P.M. (Pacific Time), Wednesday, August 21, 2019**

- Section 2: Proposal Submittal and Evaluation Information, Page 7, Evaluation Scoring, Phase 2 Scoring is revised to read:

The interview/presentation will be evaluated based on the criteria in Phase 1. Scores from phase 1 will be adjusted based on the information provided during the interview/presentation.

1. Price Proposal

100 points maximum

The pricing for each coefficient provided will be mathematically calculated into scored points using the following formula and then the average of the three scores will be used as the final price proposal score.

$$100 - ((A-1) \times 100) = B$$

A = the co-efficient of the proposal being scored

B = the price proposal points

The revised scores from Phase 2 and the points awarded based on the price proposal will be combined to determine the highest scored proposal.

- Attachment A, Page 3, Job Order Contracting Contract, Article I Definitions, the following definitions are added:

1.30 Days –*Shall mean calendar days unless specifically stated otherwise.*

1.31 Holiday(s) – *Shall include January 1, the third Monday of January, the third Monday of February, Memorial Day, July 4, Labor Day, November 11, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.*

- Attachment A, Page 11, Job Order Process and Requirements Section, Review of the Job Order Proposal and Issuance of the Job Order subsection, Item #1 is revised to read:

1. The Owner will evaluate the entire Job Order Price Proposal ***within 3 working days of receiving the document*** and compare these with the Owner's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. ***If the Owner has questions or requires additional information the Contractor shall respond to the questions or submit a revised Job Order Price Proposal within 3 working of receipt of the request. For any subsequent reviews or revisions to the price proposal the Contractor and the Owner will have 2 working days.***

- City of Vancouver General Conditions for Job Order Contracting, Page 3, Definitions, the following definition is added:

Y. “Days” *shall mean calendar days unless specifically stated otherwise in the specification section.*

Z. *Holiday(s) – Shall include January 1, the third Monday of January, the third Monday of February, Memorial Day, July 4, Labor Day, November 11, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.*

QUESTIONS & ANSWERS:

Q1. Please clarify if additional points will be awarded in Phase 2, or if Phase 2 will be used to adjust the points awarded in Phase 1 (but the total points available will still be 100).

A. Page 7, Evaluation Scoring section of the RFP under Phase 2 scoring states that the “Scores from phase 1 will be adjusted based on the information provided during the interview/presentation.” The maximum points allowed for Phase 1 is 100 points. Up to 50 additional points will be assigned in Phase 2, depending on the scores received for the price proposal. The revised scores from Phase 2 and the points awarded based on the price proposal will be combined to determine the highest scored proposal.

Q2. Please clarify if the maximum annual value of the contract is \$3 million (as listed in Appendix B) or \$4 million (as stated on page 4).

A. The maximum annual values of the contracts will be \$3 million; the \$4 million listed on page 4 is what is allowed under State Law.

Q3. Please confirm that in accordance with page 6 of the RFP, the Vancouver, WA City Cost Index is to be applied to the unit prices to calculate the total price.

A. Vancouver, WA will be the location factor used for job order pricing proposals.

Q4. Please clarify if contractors will be using the prices in the Total Bare Costs column or the Total Including Overhead and Profit column to price projects.

A. The Contractors will be utilizing the Total Bare Costs Column for pricing.

Q5. Page 51 of the RFP file (Article IV: Pricing of the Work, paragraph 4.3) states that adjustment factors may be adjusted by the ENR Construction Cost Index each year. Elsewhere the RFP states that coefficients will be fixed for the length of the contract. Please clarify.

A. The Contractor will be able to adjust the Standard and Non-Standard Coefficients annually. The Non-Pre-Priced Coefficient will be firm for the length of the contract.

APPROVALS:

Anna L. Vogel _____ **Date:** 8/13/19
Anna L. Vogel, Procurement Manager

**CITY OF VANCOUVER GENERAL CONDITIONS FOR JOB ORDER
CONTRACTING**

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PART 1 - GENERAL PROVISIONS

1.01 DEFINITIONS

- A. “Application for Payment” means a written request submitted by Contractor to Owner for payment of the Detailed Scope of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner may require.
- B. “Architect,” “Engineer,” or “A/E” means a person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- C. “Change Order” means a written instrument signed by Owner and Contractor modifying the Contract Documents and/or changing the terms of the Contract.
- D. “Claim” means Contractor’s exclusive remedy for resolving disputes with Owner regarding the terms of a Supplemental Job Order or a request for an adjustment, as more fully set forth in Part 8.
- E. “Contract Documents” means the Request for Proposal, Construction Contract, General Conditions for Job Order Contracting, WSDOT Standard Specifications for Road and Bridge Construction, , Special Provisions, Modifications to the WSDOT Standard Specifications, Technical Specifications, other Special Forms, all Job Orders related documentation issued in conjunction with a Job Order, and all addenda and modifications thereof.
- F. “Contractor” means the person or entity who has agreed with Owner to perform the Work in accordance with the Contract Documents.
- G. “Drawings” are the graphic and pictorial portions of the Detailed Scope of Work showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- H. “Excavation” means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced to required depths. Before commencing any excavation, Contractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services.
- I. “Final Acceptance” means the written acceptance issued to Contractor by City Council after Contractor has completed the requirements of the Detailed Scope of Work and Contract Documents as more fully set forth in section 6.09(B).
- J. “Final Completion” means that the Work is fully and finally completed in accordance with the Detailed Scope of Work and Contract Documents as more fully set forth in section 6.09.

- K. “Force Majeure” means, with respect to a delay in or prevention of performance, delay or failure of performance that was unforeseeable and beyond the control of the parties, as more fully set forth in section 3.05(A).
- L. “Notice” means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.
- M. “Notice to Proceed” means a notice from Owner to Contractor that defines the date on which the Job Order Completion Time begins to run.
- N. “Owner” means the City of Vancouver, or its authorized representative with the authority to enter into, administer, and/or terminate the Work in accordance with the Contract Documents and make related determinations and findings.
- O. “Person” means a corporation, partnership, business association of any kind, trust, company, or individual.
- P. “Prior Occupancy” means Owner’s use of all or parts of the Project before Substantial Completion.
- Q. “Progress Schedule” means a schedule of the Work, including milestones, if any, in a form satisfactory to Contractor, Owner, and A/E as further set forth in section 3.02.
- R. “Project” means the total construction of which the Work performed by the Contractor pursuant to a Job Order, or a series of related Job Orders, and constructed in accordance with the Contract Documents. Some elements of a Project may include construction by the Owner or by separate contractors.
- S. “Project Manager” is Owner’s representative who oversees the Project.
- T. “Project Manual” means the volume assembled by Owner for the Work which may include the Request for Proposal, sample forms, and other Contract Documents.
- U. “Project Record” means the separate set of Drawings and Specifications as further set forth in section 4.02(A).
- V. “Schedule of Values” means a written breakdown allocating the total Job Order Price to each principle category of Work, in such detail as requested by Owner.
- W. “Specifications” are that portion of the Contract Documents or Detailed Scope of Work consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- X. “Subcontract” means a contract entered into by a Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.

- Y. “Subcontractor” means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.
- Z. “Substantial Completion” means that stage in the progress of the Work where Owner has full and unrestricted use and benefit of the facilities for the purposes intended, and where the other conditions to Substantial Completion set forth in section 6.07 have been satisfied.
- AA. “Work” means the construction and services required by the Detailed Scope of Work, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided, on or off site, in accordance with the Contract Documents.

1.02 EXECUTION AND INTENT

Contractor makes the following representations to Owner:

- A. By submitting a Job Order Proposal to the Owner, the Job Order Price is reasonable compensation for the Work and the Job Order Completion Time is adequate for the completion of the Work, as represented by the Detailed Scope of Work.
- B. By submitting a Job Order Proposal to the Owner, the Contractor has carefully reviewed the Scope of Work, visited and examined the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished, generally prevailing climatic conditions, as more fully set forth in section 8.01(B)3, anticipated labor supply and costs, and all other requirements of the Detailed Scope of Work, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof. Owner shall not make, and Contractor shall not be entitled to, any adjustment in either the Job Order Price or the Job Order Completion Time in connection with any failure by Contractor to take into account the above matters.
- C. The Scope of Work is full and complete, are sufficient to have enabled it to determine the cost of the Work and that the Drawings, Specifications, and all addenda are sufficient to enable Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, building codes, rules and regulations, and otherwise to fulfill all of its obligations under the Contract Documents. In addition, if Contractor performs any construction activity and if it knows or should have known that any of the Scope of Work contains a recognized error, inconsistency, or omission, Contractor shall be responsible for such performance and shall bear the cost of correction thereof. If there is any inconsistency in the Drawings, or between the Drawings and the Specifications, or between the Drawings and Scope of Work unless otherwise ordered in writing by the Architect or the Owner, the Contractor shall provide the better quality of, or the greater quantity of, work or materials.

- D. Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and Contractor shall provide financial statements as requested.
- E. Contractor is able to furnish tools, materials, supplies, equipment and labor required to complete the Work and perform the obligations required by the Contract Documents and has sufficient experience and competence to do so.
- F. Contractor is and shall operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. Contractor is not authorized to enter into any agreements or undertakings for or on behalf of Owner or to act as or be an agent or employee of Owner.

1.03 INSURANCE PROVISIONS

This section intentionally left blank – see the contract for requirements.

PART 2 - INTENTIONALLY LEFT BLANK

PART 3 - TIME AND SCHEDULE

3.01 PROGRESS AND COMPLETION

Contractor shall diligently prosecute the Work, with adequate forces, achieve Substantial Completion within the Job Order Completion Time, and achieve Final Completion within 30 days thereof.

3.02 CONSTRUCTION SCHEDULE

- A. Unless otherwise provided, Contractor shall submit a preliminary Progress Schedule at with the Job Order Proposal. Contractor's Progress Schedule shall show the sequence in which Contractor proposes to perform the Work, and the dates on which Contractor plans to start and finish major portions of the Work, including dates for Shop Drawings and other submittals, and for acquiring materials and equipment, including Owner furnished/Contractor installed and Owner furnished/Owner installed equipment or materials.
- B. Unless otherwise provided, Contractor's Progress Schedule shall be in the form of a bar chart, or a critical path method analysis, as specified by Owner. The preliminary Contractor's Progress Schedule may be general, showing the major portions of the Work, with a more detailed Contractor Progress Schedule submitted as directed by Owner, to include Project cash flow/timing of payments.
- C. Owner shall return comments on the preliminary Contractor Progress Schedule to Contractor within 10 days of receipt. Review by Owner of Contractor's Progress Schedule does not constitute an approval or acceptance of the accuracy or completeness of Contractor's Progress Schedule or Contractor's construction means, methods, or

sequencing, or its ability to complete the Work within the Job Order Completion Time. Contractor shall revise and resubmit its schedule, as necessary. Owner may withhold a portion of progress payments until Contractor's Progress Schedule has been submitted which meets the requirements of this section.

D. Contractor shall utilize and comply with Contractor's Progress Schedule, which may include milestones.

1. A two week look-ahead schedule shall be submitted at each weekly progress meeting.
2. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Contractor Progress Schedule at its own expense to Owner indicating actual progress.
3. If, in the opinion of Owner, Contractor is not in conformance with Contractor Progress Schedule for reasons other than acts of Force Majeure as identified in section 3.05, Contractor shall take such steps as are necessary to bring the actual completion dates of its work activities into conformance with their Contractor's Progress Schedule,

E. Schedule Revisions

Contractor shall indicate progress of each activity up to date of each Progress Schedule submission, including the following:

1. Major changes in scope
2. Activities modified since previous submission
3. Revised projections of progress and completion
4. Other identifiable changes

Provide a Narrative Report as needed to define:

1. Problem areas, anticipated delays, and related impact on schedule
2. Corrective action recommended, and expected effect

F. Make-Up

Should Contractor fail to meet any scheduled milestone date as shown on Contractor's current Progress Schedule, Contractor shall submit at its own expense within ten days of Owner's request an updated Contractor's Progress Schedule. If Contractor's progress indicates to Owner that all the Work will not be Substantially Completed within the Job Order Completion Time, Contractor shall, without change to the Job Order Price, increase its work force and/or working hours to bring the actual completion date of the activities into conformance with Contractor's Progress Schedule, and Substantial

Completion of all the Work within the Job Order Completion Time. Contractor shall also submit a revised Contractor's Progress Schedule at its own expense within ten days of notice from Owner when the sequence of work varies significantly from that shown on previously approved Contractor's Progress Schedule.

- G. Contractor and all Subcontractors, Suppliers, and Manufacturers shall schedule material deliveries and installations to conform to Contractor's Progress Schedule, and provisions to this effect shall be included in all Subcontracts.
- H. Contractor shall promptly notify Owner in writing of any actual or anticipated event which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on Contractor's Progress Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Job Order Completion Time.
- I. Owner, Contractor, A/E and all Subcontractors shall participate in a pre-construction meeting/partnering session for approximately four hours as coordinated by Owner.
- J. The superintendent and project manager shall be employees of Contractor. Unless otherwise allowed for by the Owner, the superintendent shall remain on the Project site whenever Subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the Work is closed down due to a legal holiday, a general strike, conditions beyond the control of Contractor, termination of the Contract in accordance with the Contract Documents or unless Final Completion is attained. Neither the superintendent nor Contractor's project manager shall be changed without the approval of Owner, which shall not be unreasonably withheld. The superintendent shall not be employed on any other project during the course of the Work. Contractor shall also have available for work on site experienced, skilled employees, such as carpenters, laborers, erection specialists, etc., to perform work as needed.

3.03 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE

- A. Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 days, or for such longer period as may be mutually agreed.
- B. Upon receipt of a written notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
 - 1. Cancel the written notice suspending the Work; or

2. Terminate the Work covered by the notice as provided in the termination provisions of part 9.
- C. If a written notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work. Contractor shall secure and protect Contractor installed materials at Contractor's expense in a manner acceptable to Owner.
 - D. Contractor may be entitled to an equitable adjustment in the Job Order Completion Time, or Job Order Price, or both, for increases in the time or cost of performance directly attributable to such suspension, PROVIDED Contractor timely submits its Supplemental Job Order Proposal therefore in accordance with all requirements set forth in section 11, JOC Supplemental Conditions.

3.04 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken. This right shall not excuse Contractor from damages caused by breach of this Agreement or its responsibility for full performance of this Agreement.
- B. Contractor shall not be entitled to any adjustment in the Job Order Completion Time or the Job Order price for any increased cost or time of performance attributable to Contractor's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.
- C. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a (7) seven-day period after receipt of written notice from Owner to correct such default or neglect, Owner may, without prejudice to other remedies, including, but not limited to, transfer of Work to Surety as provided in section 9.01, correct such deficiencies and, at Owner's options, complete the Work or any portion thereof using other forces. In such case an appropriate Supplemental Job Order shall be issued by Owner deducting from payments then or thereafter due Contractor the reasonable cost to Owner to commence to carry out the Work, including Owner's expense and compensation for A/E's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner within 30 days from the invoice date. The right of Owner to perform the Work pursuant to this subparagraph shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity, and Contractor waives any claim of defense based on Owner's alleged obligation to complete work using other forces.

3.05 DELAY

- A. Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the

cause for such delay or failure of performance was unforeseeable and beyond the control of the parties (“Force Majeure”). Acts of Force Majeure include, but are not limited to:

1. Acts of God or the public enemy;
 2. Acts or omissions of any government entity other than Owner;
 3. Fire or other casualty for which Contractor is not responsible;
 4. Quarantine, epidemic or pandemic;
 5. Strike or defensive lockout affecting more than Contractor;
 6. Unusually severe weather conditions which could not have been reasonably anticipated, as more fully set forth in section 8.01; and
 7. Volcanic eruption directly impacting the Project.
 8. Earthquake directly impacting the Project.
 9. Floods directly impacting the Project.
- B. Contractor may be entitled to an equitable adjustment in the Job Order Completion Time for changes in the time of performance directly attributable to an act of Force Majeure, PROVIDED it timely makes a request for a mutually agreed adjustment according to section 7.03. Contractor shall not be entitled to an adjustment in the Job Order Price resulting from an act of Force Majeure.
- C. Contractor may be entitled to an equitable adjustment in Job Order Completion Time, and may be entitled to a Supplemental Job Order adjusting the Job Order Price consistent with the Contract, if the cost or time of Contractor’s performance is changed due to the fault or negligence of Owner, PROVIDED Contractor makes a request according to sections 7.02 and 7.03.
- D. Contractor shall not be entitled to an adjustment in Job Order Completion Time or in the Job Order Price for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
- E. To the extent any delay or failure of performance was concurrently caused by the fault or negligence of Owner, Contractor may be entitled to an adjustment in the Contract Time and Contract Sum for that portion of the delay or failure of performance that was so caused by Owner, provided it timely makes a request for an adjustment according to sections 7.02 and 7.03.
- F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

3.06 NOTICE TO OWNER OF LABOR DISPUTES

- A. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give notice, including all relevant information, to Owner, including actions Contractor has to resolve dispute.
- B. Contractor agrees to insert a provision in its Subcontracts and to require insertion in all sub-subcontracts, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor or Sub-subcontractor shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

- A. Liquidated Damages
 - 1. Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract Documents are of the essence. Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Job Order Completion Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, provisions for liquidated damages are included in the Contract Documents. Owner's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations and weekend and holiday work as may be necessary to insure the production of the Work in accordance with the date of Substantial Completion and the approved Contractor's Construction Schedule. If Contractor fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of Contractor or Subcontractor(s) fails to meet Contractor's Construction Schedule, Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work, all without additional cost to Owner.
 - 2. The liquidated damage amounts set forth in the Contract Documents will be assessed not as a penalty, but as liquidated damages for breach of the Contract Documents. At the sole discretion of the Owner, liquidated damages will be assessed, if at all, on a Job Order-by-Job-Order basis. For each calendar day that the Detailed Scope of Work for a Job Order shall remain incomplete after the Job Order Completion Time, the amount per calendar day specified in following table, Schedule of Liquidated Damages, will be deducted from any money due the Contractor, not as a penalty but as liquidated damages; provided however that due account

shall be taken of any adjustment of the Job Order Completion Time as provided for elsewhere in this Contract.

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

3. If the Work is to be performed in phases, with separate dates set forth for Substantial Completion elsewhere in the Contract Documents, then the specified liquidated damages shall apply separately to each such phase unless otherwise specified.
4. Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents, including its obligation to complete the Work.

PART 4 - SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

4.01 DOCUMENTS

- A. The intent of the Scope of Work is to describe a complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, required permits, and supplies, and perform the Work required in accordance with the Scope of Work and other provisions of the Contract Documents.
- B. The Contract Documents are complementary. What is required by one part of the Contract Documents shall be binding as if required by all. Anything mentioned in the Specifications and not specified in the Scope of Work, or specified in the Scope of Work and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both.
- C. Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner including the Scope of Work issued with each Job Order. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Scope of Work, it shall promptly and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to Owner and A/E in writing.
- D. Contractor shall do no Work without applicable Drawings, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity, and it knows

or reasonably should have known that any of the Contract Documents or Scope of Work contains a conflict, error, inconsistency, or omission, Contractor shall be responsible for the performance and shall bear the cost for its correction. Contractor shall notify Owner prior to start of work.

- E. Contractor shall provide any Work or materials the provision of which is clearly implied and is within the scope of the Contract Documents and Project(s) even if the Scope of Work does not mention them specifically.
- F. Questions regarding interpretation of the requirements of the Scope of Work shall be initially referred to the project manager in accordance with Division 01.
- G. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Scope of Work, Owner or A/E will specify the performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all Drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional ('Design-Build' Documents). Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the A/E. Owner and A/E shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, or approvals performed by such design professionals. Owner's or A/E's review, approval or other action on 'Design Build' Documents is only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

4.02 PROJECT RECORD

- A. Where applicable, the Contractor shall legibly mark in red ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Supplemental Job Order Proposals. This separate set of Drawings and Specifications shall be the "Project Record."
- B. Contractor shall maintain the Project Record on the Project site throughout the construction which shall be clearly labeled "PROJECT RECORD". Contractor shall update the Project Record at least weekly noting all changes. The Project Record shall be available to Owner at all times.
- C. At Final Acceptance, Contractor shall submit the completed and finalized Project Record, as-builts and operating manuals to Owner at no additional cost.
- D.

4.03 SHOP DRAWINGS AND SUBMITTALS

- A. “Shop Drawings” means documents and other information required to be submitted to A/E by Contractor pursuant to a Job Order, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Submittals include, but are not limited to, Shop Drawings, Drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Detailed Scope of Work. For materials and equipment to be incorporated into the Work, Contractor Submittals shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense. Owner may duplicate, use, and disclose Shop Drawings and Submittals provided in accordance with the Contract Documents.

Contractor shall coordinate all Shop Drawings and Submittals, and review them for accuracy, completeness, and compliance with the Detailed Scope of Work and shall indicate its approval thereon as evidence of such coordination and review. Where required by law, Contractor shall cause Shop Drawings to be stamped by an appropriate professional licensed by the State of Washington. Shop Drawings submitted to A/E without evidence of Contractor’s approval shall be returned without action for resubmission. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor’s submittal schedule shall allow a reasonable time for A/E review. A/E will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective submittal has been reviewed and the A/E has approved or taken other appropriate action. Owner and A/E shall respond to the Shop Drawing Submittals within 15 days of the date a submittal is received by the A/E unless the A/E advises the Contractor additional response review time is required.

- B. Any Work by Contractor shall be in accordance with reviewed Shop Drawings, to the extent consistent with the Scope of Work. Submittals made by Contractor which are not required by the Job Order may be returned without action.
- C. Approval, or other appropriate action with regard to Shop Drawings and Submittals, by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Job Order, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor’s means or methods of construction. If Contractor fails to obtain approval before installation, and the item or Work is subsequently rejected, Contractor shall be responsible for all costs of correction.

- D. If Shop Drawings and Submittals show variations from the requirements of the Scope of Work, Contractor shall describe such variations in writing, separate from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If A/E approves any such variation, an appropriate Supplemental Job Order will be issued. If the variation is minor and does not involve an adjustment in the Job Order Price or Job Order Completion Time, a Supplemental Job Order need not be issued; however, A/E shall record the modification upon the Project Record (or the same shall not be deemed authorized). The Contract Documents do not include Contractor's Shop Drawings and other submittals, except variations from the Detailed Scope of Work submitted and approved pursuant to this section 4.03(E).
- E. Unless otherwise provided in the Job Order, Contractor shall submit to A/E for approval 7 copies of all Shop Drawings. Unless otherwise indicated, 5 sets of all Shop Drawings and Submittals shall be retained by A/E and 2 sets shall be returned to Contractor.
- F. Review and Approval. The review, inspection, or approval of any document submittal, or site condition by Owner or its respective representatives, Project Managers or inspectors shall not be construed as consent to modification of Contractor's obligations and duties under the Contract. Owner's approval of any documents or Drawings shall not constitute or be used, either directly or indirectly or in any manner or for any purpose as an approval of or statement that such documents or Drawings are in conformance with applicable laws, or operate or act as a waiver of any rights or remedies of Owner as to any defect or error in such documents or Drawings or in the construction or installation of the Work shown in such documents or Drawings. Owner's approval of any such documents or Drawings shall not be construed or used to impose any such responsibility or liability on Owner.
- G. Contractor shall report promptly to A/E and Owner's Representative any design errors or omissions noted by Contractor or any Subcontractor during this review, but it is recognized that Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

4.04 ORGANIZATION OF SPECIFICATIONS

- A. Specifications are prepared in sections which conform generally to trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS

- A. The Drawings, Specifications, and other documents, including those in electronic form, prepared by Owner, A/E, and A/E's consultants are Instruments of Service through which the Work to be executed by Contractor is described. Neither the Contractor nor any Subcontractor or Lower-tier Subcontractor shall claim a copyright in the Drawings, Specifications, and other documents prepared by Owner.
- B. The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of their Work.
- C. Contractor and all Subcontractors grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by Contractor or any Subcontractor. In providing Shop Drawings, Contractor and all Subcontractors warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in section 5.19 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.
- D. The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. Contractor, Subcontractors of any tier, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.

PART 5 - PERFORMANCE

5.01 CONTRACTOR CONTROL AND SUPERVISION

- A. Contractor shall supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner. Contractor shall be solely responsible

for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall disclose its means and methods of construction when requested by Owner.

- B. Performance of the Work shall be directly supervised by a competent superintendent who is approved in advance by, and at all times satisfactory to Owner who has authority to act for Contractor. The superintendent shall not be changed without the prior written consent of Owner. At Owner's request, Contractor shall dismiss the superintendent from the Project and promptly provide a substitute superintendent satisfactory to Owner.
- C. Contractor shall be responsible to Owner for acts and omissions of Contractor, Subcontractors, and their employees and agents.
- D. Contractor shall enforce strict discipline and good order among Contractor's employees and other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, require Contractor to remove from the Work or Project site any employee Owner reasonably deems incompetent, careless, or otherwise objectionable.
- E. Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, and permits and permit Drawings, and make the same available for Owner's review upon request.
- F. Contractor shall have phone, fax and e-mail capability on-site.
- G. Contractor shall ensure that its owner(s) and employees, and those of its Subcontractors, comply with the Code of Ethics of Municipal Officers RCW 42.23, and Vancouver City Charter Section 11.96, which, among other things, prohibit City of Vancouver officers and employees from having an economic interest in any public works contract that was made by, or supervised by, that officer or employee. Contractor shall remove, at its sole cost and expense, any of its, or its Subcontractors' employees, if they are in violation of these provisions.
- H. Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- I. If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by Owner hereunder shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

- J. Contractor shall use its best efforts to maintain labor peace by and/or among its employees and Subcontractors for the duration of the Project. In the event of a labor dispute by and/or among its employees and Subcontractors, Contractor shall not be entitled to any increase in the Contract Sum or Contract Time.
- K. Contractor shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Detailed Scope of Work and Contract Documents, including the then current issue of the Detailed Scope of Work. Contractor shall be responsible for examination, inspection and quality surveillance of all Work performed by any Subcontractor of any tier. Contractor shall determine when it is necessary to perform, and shall perform, tests (in addition to those requested by Owner or required by the Detailed Scope of Work or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Detailed Scope of Work and Contract Documents.
- L. Contractor shall plan and lay out all Work in advance of operations so as to coordinate all work without delay or revision. Contractor shall establish and maintain existing lot lines, restrictions and bench marks. Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. Contractor shall employ a professional land surveyor registered in the State of Washington to initially layout and be responsible for the accuracy of the Work.

5.02 PERMITS, FEES, AND NOTICES

- A. The Owner may secure the building permit and pay for plan review fees. If the Owner notifies the Contractor that the Owner will pay the fees the Contractor shall not include the Fees in the Job Order Price. The building permit sufficient to commence construction shall be available to Contractor prior to start of construction. Contractor shall secure and pay for mechanical, electrical, and miscellaneous permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. Without limitation, Contractor shall procure all certificates of inspection, use, occupancy, permits, and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use, and occupancy shall be delivered to Owner upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. If the Owner requires the Contractor obtain the permit, the Contractor will be reimbursed according to the reimbursable work task contained in RS Means.
- B. If allowances for permits or utility fees are called for in the Job Order and set forth in Contractor's Job Order Proposal, and the actual costs of those permits or fees differ from the allowances in the Job Order, the Job Order Price shall be adjusted by Supplemental Job Order to account for the difference between the allowance and the actual cost of that permit or fee.

- C. Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.
- D. All work on the Contract shall comply with the Noise Ordinance of Vancouver's Municipal Codes, VMC 20.935.030 and VMC 7.05.
- E. In the event of any conflict between the permit requirements and the Detailed Scope of Work, the requirements of the permit shall take precedence and Contractor shall not be entitled to any change in the Job Order Price or Job Order Completion Time.

5.03 PATENTS AND ROYALTIES

- A. Contractor is responsible for, and shall pay, all royalties and license fees. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement.

5.04 NONDISCRIMINATION

- A. Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60. These laws and regulations establish minimum requirements for fair employment practices which Contractor must meet.
- B. During performance of the Work:
 - 1. Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, sexual orientation, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in RCW 49.60.
 - 2. Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to race, creed, color, national origin, sex, age, marital status, sexual orientation, or the presence of any physical, sensory, or mental disability.

3. Contractor shall include the provisions of this section in every Subcontract and cause its Subcontractors of any tier to comply with these provisions.

5.05 SAFETY PRECAUTIONS

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.
- B. In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.
- C. Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.
- D. Contractor shall provide all persons working on the Project site with information and training on hazardous chemicals in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.
 1. Information. At a minimum, Contractor shall inform persons working on the Project site of:
 - a. The requirements of chapter 296-62 WAC, General Occupational Health Standards;
 - b. Any operations in their work area where hazardous chemicals are present; and
 - c. The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by chapter 296-62 WAC.
 2. Training. At a minimum, Contractor shall provide training for persons working on the Project site which includes:
 - a. Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring

devices, visual appearance or odor of hazardous chemicals when being released, etc.);

- b. The physical and health hazards of the chemicals in the work area;
 - c. The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
 - d. The details of the hazard communications program developed by Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.
- E. Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:
- 1. Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "hazardous substances"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 days on the Project site.
 - 2. Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.
- F. All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
- G. In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall act if so instructed.

- H. Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

5.06 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS

- A. Contractor shall confine all operations, including storage of materials, to Owner pre-approved areas.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by Contractor at its expense upon completion of the Work.
- C. Contractor shall use only established roadways or temporary roadways pre-approved by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.
- D. Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.
- E. Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site, including unloading, handling, and setting of Owner furnished/ Contractor installed equipment and materials. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use.
- F. Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

5.07 UNFORESEEN PHYSICAL CONDITIONS

- A. Any investigations of hidden or subsurface conditions by Owner or its consultants have been made for design purposes. There is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments may not occur. Contractor is solely responsible for reasonably interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location. At Owner's request, Contractor shall make available to Owner the results of any site investigation, test borings, analyses, studies, or other tests conducted by or in possession of Contractor or any of its agents. Contractor represents that it is familiar with the Project site and has reviewed all information made available to Contractor or listed in the Detailed Scope of Work, including the soils report and civil plan referred to therein concerning the conditions of the Project site. Contractor shall undertake such further investigations and studies as may be necessary or useful to determine Project conditions with pre-approval from Owner. Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

5.08 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

- A. Contractor shall protect from damage all existing structures, equipment, improvements, utilities, landscaping, topography, streets, curbs, walks and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, Contractor shall abide by such regulations and it shall pay for such work at no additional cost to Owner.
- B. Contractor shall only remove trees when specifically authorized to do so by Owner, and shall protect vegetation that will remain in place subject to appropriate permit requirements and the Tree Preservation Ordinance of the City of Vancouver VMC 20.770.

5.09 LAYOUT OF WORK

- A. Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.
- B. Public and private utilities, or their contractors, will furnish all work necessary to adjust, relocate, replace, or construct their facilities unless otherwise provided for in

the Plans or Specifications. Such adjustment, relocation, replacement, or construction will be done during the prosecution of the work for this Project.

- C. Contractor shall lay out the Work from Owner-established baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to lines and grades that are established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.
- D. No excavation shall begin until all known facilities, in the vicinity of the excavation area, have been located and marked.

5.10 MATERIAL AND EQUIPMENT

- A. Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of A/E and Owner, is equal to that named in the specifications, unless otherwise specifically provided in the Contract Documents.

Contractor shall check all materials and labor entering into the Work and shall keep full detailed accounts thereof.

- B. Contractor shall do all cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Detailed Scope of Work. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.
- C. Should Owner or A/E find any of the Work to be defective, or in any way not in accordance with the Detailed Scope of Work or Contract Documents, this work, in whatever stage of completion, may be rejected by Owner.
- D. Materials shall conform to the manufacturer's standards in effect at the date of execution of the Job Order and shall be installed in strict accordance with the

manufacturer's instructions, specifications and directions. Contractor shall, if required in writing by Owner and A/E, furnish satisfactory evidence regarding the kind and quality of any materials identifying thereon the source, and warranting their quality and compliance with the Detailed Scope of Work and Contract Documents.

- E. All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards. At the completion of the Project Contractor shall submit Certifications of Asbestos-Free and of Lead-Free Materials certifying that all materials and products incorporated into the Work meet the requirements of this section.

5.11 AVAILABILITY AND USE OF UTILITY SERVICES

- A. Owner, at its option, may make utilities available to Contractor from existing outlets and supplies. Unless otherwise provided in the Detailed Scope of Work, the utility service consumed shall be charged to or paid for by Contractor. Contractor will carefully conserve any utilities furnished. Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.
- B. Contractor shall confirm the location of each utility, shall excavate and dispose of each on-site utility and shall cap each off-site utility as required by the Work and as may be included in the Specifications.

5.12 TESTS AND INSPECTION

- A. Contractor shall maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Detailed Scope of Work and Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided in the Detailed Scope of Work, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, re-testing, off-site testing, inspections, and approvals. Contractor shall give Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.
- B. Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Detailed Scope of Work and Contract Documents. Owner shall promptly notify Contractor if an inspection

or test reveals that the Work is not in accordance with the Detailed Scope of Work or Contract Documents. Unless the subject items are expressly accepted by Owner, such Owner inspection and tests are for the sole benefit of Owner and do not:

1. Constitute or imply acceptance;
 2. Relieve Contractor of responsibility for providing adequate quality control measures;
 3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
 4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
 5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- C. Neither observations by Owner, A/E, an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Detailed Scope of Work or Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
- D. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner, by A/E, by law, or by the Detailed Scope of Work or Contract Documents. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes re-inspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

5.13 CORRECTION OF NONCONFORMING WORK

- A. If a portion of the Work is covered contrary to the requirements in the Detailed Scope of Work, it must, if required in writing by Owner or A/E, be uncovered for Owner's or A/E's observation and be replaced at Contractor's expense and without change in the Job Order Completion Time.
- B. If, at any time prior to Final Completion, Owner or A/E desires to examine the Work, or any portion of it, which has been covered, Owner or A/E may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Detailed Scope of Work and Contract Documents, Contractor shall be entitled to a supplemental Job Order for the Work of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Job Order Completion Time, provided it timely makes a request therefore as provided in part 7. If such Work is not in accordance with the Detailed Scope of

Work or Contract Documents, Contractor shall pay the costs of examination and reconstruction, and the Job Order Completion Time shall not be adjusted.

- C. Contractor shall promptly correct Work found by Owner or A/E not to conform to the requirements of the Detailed Scope of Work and Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections.
- D. If, within one year after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of the Detailed Scope of Work and Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.
- E. Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Detailed Scope of Work and Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- F. If Contractor fails to correct nonconforming Work within a reasonable time after written notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the cost thereof to Contractor.
- G. Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Detailed Scope of Work and Contract Documents.
- H. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in paragraph 5.13D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which Contractor's obligation to comply with the Contract Documents or warranties may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. If Owner prefers to accept Work which is not in accordance with the requirements of the Detailed Scope of Work or Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum may be reduced as appropriate and mutually agreed.

- J. Eleven months after the date of Substantial Completion of the Work Owner and Contractor shall perform a walk through to determine punch-list items to be corrected by Contractor prior to the one-year warranty expiration.

5.14 CLEAN UP

- A. Contractor and all Subcontractors shall at all times keep the Project site, including hauling routes, infrastructures, utilities, and storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises its rubbish, tools, scaffolding, equipment, and materials. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Contractor.
- B. In addition to general broom cleaning, Contractor shall perform, without limitation, the following final cleaning at completion of the Work, in addition to any cleaning required under the Detailed Scope of Work:
 - 1. Remove temporary protections;
 - 2. Remove marks, stains, fingerprints, and other soils or dirt from painted, decorated and natural-finished woodwork and other Work;
 - 3. Remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;
 - 4. Clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust and leave same in undamaged, new condition;
 - 5. Clean all metals in accordance with recommendations of the manufacturer;
 - 6. Clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring out the surfaces to sheen;
 - 7. Broom clean all interiors, roof and parking lots;
 - 8. Remove from and about the Property waste materials, rubbish, tools, construction equipment, machinery and surplus materials;
 - 9. Remove all spillage and tracking arising from the performance of work from streets and sidewalks, maintaining a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas; and

10. Replace glass damaged or broken prior to completion of the glasswork phase of the Project. After damaged or broken glass has been replaced, removed all labels, wash and polish both sides of all glass.

5.15 ACCESS TO WORK

- A. Contractor shall provide Owner and A/E access to the Work in progress wherever located. The presence of Owner or A/E on-site does not constitute acceptance of the Work.

5.16 SEPARATE CONTRACTS

- A. Owner may undertake or award separate contracts for work or services at or near the Project site. Contractor shall reasonably cooperate with the separate contractors and with Owner's employees and shall carefully adapt scheduling and perform the Work in accordance with these Contract Documents to reasonably accommodate the separate contractor. Contractor shall reimburse Owner for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor.

5.17 SUBCONTRACTORS AND SUPPLIERS

- A. Before submitting the first Application for Payment, Contractor shall furnish in writing to Owner the names, addresses, and telephone numbers of all Subcontractors, as well as suppliers providing materials. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents, if any. Contractor shall not utilize any Subcontractor or supplier to whom Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.
- B. All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.
- C. Prior to any Subcontractor or lower-tier Subcontractor beginning work, Contractor shall submit to Owner a certification that a written agreement between Contractor and the Subcontractor or between Subcontractor and any lower-tier Subcontractor has been executed.

- D. Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or any other obligations of the Contract Documents.
- E. If Owner concludes that a proposed Subcontractor is not “responsible” as that term is defined in RCW 39.04.350, Contractor shall replace the Subcontractor with no change to the Contract Sum. Such a replacement shall not relieve Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the Contract Sum and Contract Time.
- F. Each Subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:
 - 1. The assignment is effective only after termination by Owner pursuant to Part 9 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and
 - 2. After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.
 - 3. The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.

5.18 WARRANTY OF CONSTRUCTION

- A. Contractor warrants to Owner and A/E that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Detailed Scope of Work or Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; the Work will conform to the requirements of the Detailed Scope of Work and Contract Documents; that the Work will be performed in a skillful and workmanlike manner; and all punch list items shall promptly be made or repaired by Contractor. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by A/E, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. At its sole cost and expense, Contractor shall promptly pay and perform, to the reasonable satisfaction of Owner or its transferee, any repairs required of Contractor, in fulfillment of the foregoing warranty obligations. Should Contractor fail to perform any non-emergency maintenance or repair required pursuant to this Subparagraph within fifteen (15) days of notice thereof from Owner or any transferee of Owner shall be entitled to recover directly from Contractor the cost thereof (including attorneys fees) plus interest at the statutory rate thereon until repaid, immediately

and upon demand by Owner therefore. Owner or its assigns shall be entitled to make emergency repairs to the Project whether or not within the warranty obligations of Contractor hereunder without providing Contractor prior notice thereof; provided however that notice and demand for repayment for such emergency repairs shall be provided to Contractor as soon thereafter as is reasonably practicable. Contractor's warranties shall be in addition to any manufacturer's warranties and Contractor agrees to assist Owner with prosecution of manufacturer's warranties. As used above, the term "defects" shall mean (a) any portions of the Work not in conformance with the Detailed Scope of Work and Contract Documents or (b) any portion of the Work which is otherwise incomplete, defective, not performed in a sound an workmanlike manner, or not performed in accordance with applicable laws, rules, codes, and ordinances, orders, or similar binding pronouncement enacted by any local, state or federal government agency, bureau, department or government.

- B. The obligations under this section shall survive Final Acceptance.

5.19 INDEMNIFICATION

A. CONTRACTOR'S RESPONSIBILITY

To the fullest extent permitted by law and subject to the following conditions, Contractor agrees to indemnify, defend, save and hold harmless Owner, the City of Vancouver (if other than Owner), their officials, employees and agents ("Indemnified Parties") from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses, on such claims and in proving the right to indemnification, incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the acts or omissions of Contractor, its Subcontractors of any tier, their agents, and anyone directly or indirectly employed by them or anyone for whose acts they are be liable ("Indemnitor").

1. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against Contractor, Owner and the City of Vancouver retain the right to participate in said suit if any principal of public law is involved. Contractor agrees to being added by Owner or A/E as a party to any arbitration or litigation with third parties in which Owner or A/E alleges indemnification or contribution from Contractor, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Contractor agrees that all of its Subcontractors of any tier will, in their subcontracts, similarly stipulate; in the event any does not, Contractor shall be liable in place of such Subcontractor(s) of any tier.
2. To the fullest extent allowed by law, this indemnity and hold harmless shall include any claim made by an employee of Contractor or Subcontractor or agent of Contractor, even if Contractor is thus otherwise

immune from liability pursuant to Title 51 RCW. Contractor for itself, and its Subcontractors and agents, specifically and expressly waives the right to assert against the indemnities any immunity that may be granted it under the Title 51 RCW. Contractor shall include such waiver in all agreements with Subcontractors. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE OWNER PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

3. This Agreement shall not obligate Contractor to defend or indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Indemnified Parties, their agents or employees; provided that Contractor shall be obligated to indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) an Indemnified Party or the its agents or employees, and (b) Indemnitors, to the extent of Indemnitors' negligence.
 4. To the extent any portion of this Section 5.19 is stricken by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect.
- B. Contractor assumes all responsibility for protection against loss of all tools, equipment, materials and supplies used for the completion of this Contract.
- C. All provisions contained herein are in addition to those found in the Specifications and in no way waive or release the provisions found in the Specifications.

5.20 SUBSTITUTIONS

- A. Contractor may make substitutions only with the prior consent of Owner, after evaluation by Owner's Representative and A/E. By making requests for substitutions, Contractor:
1. Represents that Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
 2. Represents that Contractor will provide the same or better warranty for the substitution that Contractor would for that specified;
 3. Certifies that the cost data presented is complete and includes all related costs under this contract except A/E's redesign costs, and waives all

claims for additional costs related to the substitution which subsequently become apparent; and

4. Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be completed in all respects.

PART 6 - PAYMENTS AND COMPLETION

6.01 JOB ORDER PRICE

- A. Owner shall pay Contractor the Job Order Price for performance of the Scope of Work, in accordance with the Job Order. The Job Order Price shall include all taxes imposed by law and properly chargeable to the Project, including sales tax.
- B. The Job Order Price shall be the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- C. By submitting a Job Order Proposal, the Contractor represents and acknowledges that the Job Order Price is reasonable compensation for all the Work that the Job Order Completion Time is adequate for the performance of the Work, and that is has carefully examined the Contract Documents.

6.02 SCHEDULE OF VALUES

- A. Before submitting its first Application for Payment, Contractor shall submit to Owner for approval a breakdown allocating the total Job Order Price to each principle category of work, in such detail as requested by Owner (“Schedule of Values”). The approved Schedules of Values shall include appropriate amounts, and cost weighted percentage, for demobilization, record Drawings, Operation & Maintenance manuals, and any other requirements for Project closeout, and shall be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedules of Values.

6.03 APPLICATION FOR PAYMENT

- A. The Owner will make one payment for all Job Orders that have a Job Order Completion Time of 30 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the Owner may make partial, monthly payments based on a percentage of the work completed.
- B. **Draft Application for Payment.** Contractor shall submit to Owner a report on the current progress of the Work as compared to Contractor's Progress Schedule, and a draft, itemized application for payment for Work performed during the current calendar month on a form supplied or approved by Owner. This shall not constitute

a payment request. Contractor and Owner shall confer regarding the current progress of the Work and the amount of payment to which Contractor is entitled. Owner may request Contractor to provide data substantiating Contractor's right to payment, such as copies of requisitions from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents.

- C. **Payment Request.** After Contractor and Owner conferred regarding the draft application, and Contractor has furnished all progress information required and all data requested by Owner as provided above, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the the Contract Documents and the approved Schedules of Values for the prior month. Each Application shall be supported by such substantiating data as Owner may require.
- D. By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. The Application shall also state that prevailing wages have been paid in accordance with the prefiled statements of intent to pay prevailing wages on file with Owner and that all payments due Subcontractors of any tier from Owner's payment the prior month have been made. **THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE**, unless otherwise noted on the application. If required by Owner, Contractor shall submit proof of payment to Subcontractors for prior months, such as lien releases or cancelled checks. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in section 1.02 are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment. Such applications may not include requests for payment for portions of the Work for which Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor intends to pay. An Application for Payment shall not be valid unless it complies with the requirements of the Contract Documents.
- E. A list of all Subcontractors on site shall be provided to the Owner along with the Application for Payment, or payment shall be delayed.
- F. At the time it submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Progress Schedule.
- G. If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Project site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:

1. The material will be placed in a bonded storage facility (warehouse) that is structurally sound, dry, lighted and suitable for the materials to be stored;
2. The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
3. Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
4. Contractor furnishes Owner a certificate of insurance extending Contractor's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
5. The warehouse (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;
6. Owner shall at all times have the right of access in company of Contractor;
7. Contractor and its surety assume total responsibility for the stored materials; and
8. Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Project site.

6.04 PROGRESS PAYMENTS

- A. Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 days after receipt of the properly executed (signed) progress payment request.
- B. Owner may retain 5% of the amount of each progress payment in accordance with RCW 60.28, including, at Owner's request, consent of surety to release of the retainage. In accordance with RCW 60.28, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in an interest bearing account in a bank, mutual savings bank, or savings and loan association, or placed in escrow with a bank or trust company to be converted into bonds and securities, approved by Owner, to be held in escrow with interest to be paid to Contractor as the interest accrues. Owner may permit Contractor to provide an appropriate bond in lieu of the retained funds.
- C. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.

- D. Payments due and unpaid in accordance with the Contract Documents may bear interest as specified in RCW 39.76.

6.05 LIENS

- A. Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier) to the extent that Owner has paid Contractor for such. Contractor shall furnish to Owner such releases of claims and other documents as Owner may request from time to time to evidence such payment (and discharge). Owner may, at its option, withhold payment, in whole or in part, to Contractor until such documents are furnished. Contractor may provide other security acceptable to Owner, such as a bond, in lieu of paying disputed lien claims.
- B. Contractor shall defend, indemnify, and hold harmless Owner from any liens, including all expenses and attorneys' fees, except to the extent a lien has been filed because of failure of payment by Owner.

6.06 PAYMENTS WITHHELD

- A. Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:
 - 1. A State of Washington Department of Labor & Industries approved Intent to Pay Prevailing Wage form for work performed on file with Owner's office.
 - 2. 150% of the value of Work not in accordance with the Detailed Scope of Work or Contract Documents;
 - 3. Work by Owner to correct defective Work or complete the Work in accordance with section 5.13;
 - 4. Third party claims filed or reasonable evidence indicating probable filing of such claims, unless Owner determines it is adequately secured against such claims with adequate retainage to protect against deficiencies in the Work;
 - 5. Reasonable evidence that the Work will not be completed within the Job Order Completion Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - 6. Failure to perform in accordance with the Contract Documents; or
 - 7. Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.

6.07 SUBSTANTIAL COMPLETION

- A. Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punch list work shall be completed. Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required occupancy permits have not been issued, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion which must be approved by the Owner. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

Upon execution of Certificate of Substantial Completion, Contractor shall attach a list of each outstanding and unresolved Claim or Lien; any Claim or Lien not so attached and identified, other than retainage and the undisputed balance of the Job Order Price, shall be deemed waived and abandoned.

- B. Date of Commissioning of Critical Systems: The following systems of the Work, and any other systems designated in the Contract Documents, are considered "Critical Systems": the HVAC system, the data communication system(s), the intercom system, the life safety system(s) and the security system. When Contractor considers that the Critical Systems are up and running and ready for normal operation as specified for each phase, Contractor shall so notify A/E in writing a minimum of 14 days prior to the Date of Substantial Completion for that portion or phase as fixed in the Job Order. The A/E will then schedule a pre-commissioning inspection of these systems to determine whether the Critical Systems are complete and ready for normal operation. If A/E's inspection discloses that the Critical Systems are not Substantially Complete or that any item which is not in accordance with the requirements of the Detailed Scope of Work or the Contract Documents, Contractor shall expeditiously, and before the Date of Commissioning, complete or correct such item upon notification by A/E. Contractor shall then submit a request for another inspection by A/E to determine completion of the Critical Systems and pay the costs associated with the re-inspection, including fees of A/E and its consultants. When the Critical Systems are complete, A/E will notify Owner in writing, which shall establish the Date of Commissioning. Warranties on the Critical Systems required by the Detailed Scope of Work or Contract Documents shall commence on the Date of Commissioning, unless otherwise provided. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

6.08 PRIOR OCCUPANCY

- A. Owner may, upon written notice thereof to Contractor, take possession of or use any completed or partially completed portion of the Work (“Prior Occupancy”) at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: be deemed an acceptance of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.

6.09 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT

- A. Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Detailed Scope of Work and Contract Documents. The date Final Completion is achieved shall be established by Owner in writing.
- B. Final Acceptance is the formal action acknowledging Final Completion. Neither Final Acceptance nor final payment shall release Contractor or its sureties from any obligations of these Contract Documents or the Performance Bond and Payment Bond, or constitute a waiver of any claims by Owner arising from Contractor’s failure to perform the Work in accordance with the Scope of Work and Contract Documents.
- C. Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in part 8.
- D. Owner may, at Owner’s option and to the fullest extent allowed by law, retain from final payment up to 150% of the value of any Work Owner determines to be incomplete, defective, or otherwise not in accordance with this Agreement and the Contract Documents, until such Work is repaired or performed to Owner’s satisfaction.

6.10 RECORDS

- A. Contractor shall maintain books, ledgers, records, documents, emails, estimates, correspondence, logs, schedules, electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. Contractor shall preserve such records for a period of seven (7) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of Owner's request, Contractor agrees to make available at

the office of Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by Owner or its representatives; failure to fully comply with this requirement shall constitute a material breach of contract.

- B. Each Subcontractor of any tier shall maintain books, ledgers, records, documents, estimates, correspondence, logs, schedules, electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. Each Subcontractor shall preserve such records for a period of seven (7) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of Owner's request, a Subcontractor shall make available at the office of the Subcontractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by Owner or its representatives; failure to do so shall constitute a waiver of all claims by that Subcontractor.
- C. Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under RCW 42.17.260, "Disclosure," will commence at Final Acceptance, and that the invocation of such rights at any time shall initiate an equivalent right to disclosures from Contractor and Subcontractors of any tier for the benefit of Owner.

PART 7 - CHANGES

7.01 CHANGE IN THE WORK

- A. Changes may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order, subject to the limitations stated in this Part 7 and elsewhere in the Contract Documents. A Change Order shall be based upon agreement among Owner and Contractor.
- B. Change Order Proposals.
 - 1. Owner may, at any time and without invalidating the Job Order, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Detailed Scope of Work through the execution of Supplemental Job Orders and/or Construction Change Directive. If any change in the Work ordered by Owner causes an increase or decrease in the Job Order Price or the Job Order Completion Time, a Supplemental Job Order will be issued. A Construction Change Directive is issued by Owner and may or may not be agreed to by Contractor.

2. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.
 3. Upon receipt of the Supplemental Job Order Proposal, Owner may accept or reject the Job Order Proposal, or request further documentation. Pending agreement on the terms of the Supplemental Job Order, Owner may direct Contractor to proceed immediately with the change in Work by Construction Change Directive. Contractor shall not proceed with any change in the Work until it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- C. If and when Owner and Contractor reach agreement on the Supplemental Job Order Proposal, such agreement shall be incorporated in a Supplemental Job Order. The Supplemental Job Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Supplemental Job Order, or related to the events giving rise to the request for an adjustment.
- D. If Contractor adds a reservation of rights that has not been initialed by Owner to any Supplemental Job Order, Construction Change Directive, Supplemental Job Order Proposal, Application for Payment or any other document, all amounts therein shall be considered disputed and not due or payable unless and until costs are agreed upon or the reservation is withdrawn or changed in a manner satisfactory to Owner. If Owner makes payment for a Supplemental Job Order or an Application for Payment that contains a reservation of rights not initialed by Owner to indicate agreement with the reservation, and if Contractor negotiates the check for such payment, then the reservation of rights shall be deemed waived, withdrawn and of no effect.

7.02 CHANGE IN THE JOB ORDER COMPLETION TIME

- A. The Job Order Completion Time may be changed by Supplemental Job Order or Construction Change Directive. Contractor shall include any request for a change in the Job Order Completion Time in its Supplemental Job Order Proposal.
- B. If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an adjustment in the Job Order Completion Time in accordance with the dispute resolution procedure of Part 8. No adjustment in the Job Order Completion Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.

- C. Any change in the Job Order Completion Time covered by a Supplemental Job Order, Construction Change Directive, or based on a request for an adjustment in the Job Order Completion Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for an adjustment. Any Supplemental Job Order Proposal or request for an adjustment in the Job Order Completion Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by re-sequencing of the Work or other reasonable alternatives.
- D. Contractor may request compensation for the cost of a change in Job Order Completion Time subject to the following conditions:
1. The change in Job Order Completion Time shall solely be caused by the fault or negligence of Owner or A/E;
 2. Compensation under this paragraph is limited to changes in Job Order Completion Time for which Contractor is not entitled to be compensated under section 7.02;
 3. Contractor shall follow the procedure set forth in paragraph 7.03B;
 4. Contractor shall establish the extent of the change in Job Order Completion Time in accordance with paragraph 7.03C; and
 5. The daily cost of any change in Job Order Completion Time shall be limited to the items below, less funds that may have been paid pursuant to a change in the Job Order Price that contributed to this change in Job Order Completion Time :
 - a. Cost of nonproductive field supervision or labor extended because of the delay;
 - b. Cost of weekly meetings or similar indirect activities extended because of the delay;
 - c. Cost of temporary facilities or equipment rental extended because of the delay;
 - d. Cost of insurance extended because of the delay;

PART 8 - CLAIMS AND DISPUTE RESOLUTION

In an effort to reduce the incidence and costs to all parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, a Job Order, the Contract Documents or the breach thereof, except claims which have been waived under the terms of the Contract Documents, shall

be decided exclusively by the following alternative dispute resolution procedure unless the parties mutually agree in writing otherwise.

8.01 CLAIMS PROCEDURE

- A. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract Documents. Claims must be initiated in writing and include the information and substantiation required by the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim. Neither a Request for Information, nor a Construction Change Directive, nor a Supplemental Job Order Proposal accepted by Owner, nor a reservation of rights, nor minutes of a meeting, nor a Daily Report, nor a ROM log entry, nor an Owner's request for or Contractor's response to a Change Order Proposal, nor a notice of a potential or future Claim, nor any other Claim or purported notice of Claim that fails to meet the requirements of the Contract Documents shall constitute a Claim.
- B. Notice. Except for Claims requiring notice before proceeding with the affected Work as otherwise described in the Contract Documents, Contractor shall submit written notice to Owner of such claim within 10 days after the date when Contractor first knew, or reasonably should have known, of the event or condition giving rise to the apparent claim. The notice must identify itself as a notice of a Claim and shall include a clear description of the event leading to or causing the Claim and describe the nature and impact of the Claim in reasonable detail. Notice is sufficient if the item is both discussed in the weekly meeting and listed in the "Notice" section of the meeting minutes as a notice item.
- C. Claim. Contractor shall submit a written Claim as provided herein within thirty (30) days of the notice. Claims shall include a clear description of the Claim and any proposed change in the Job Order Price and/or Contract and shall provide data fully supporting the Claim as provided in the Contract Documents. Contractor may delay submitting data by an additional thirty (30) days if it notifies Owner in its Claim that substantial data must be assembled. The Claim shall include all changes, direct and indirect, in cost and in time to which Contractor (including Subcontractors of any tier) is entitled and may not contain reservations of rights without Owner's written approval; unapproved reservations of rights shall be without effect. Any claim of a Subcontractor of any tier may be brought only through, and after review by, Contractor.
- D. Process. All notices and Claims shall be made in writing as required by the Contract. Any notice of a Claim of Contractor against Owner and any Claim of Contractor, whether under the Contract or otherwise, must be made pursuant to and in accordance with the applicable provisions of the Contract. Failure to submit the notice or Claim in accordance with this Section 8.01 shall constitute an absolute and

unconditional waiver, bar and release of such claim. Owner may direct Contractor to proceed with the Work without Owner's signature of such change order, or by executing the change order reserving the right to claim that the work did not entitle Contractor either to the change in the Contract Sum or the change requested by Contractor. The fact that Owner and Contractor may continue to discuss or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute waiver of the provisions of the Contract Documents unless Owner and Contractor sign an explicit, unequivocal waiver approved by Owner. Actual or alleged prejudice shall not be required to enforce a notice or Claim-submittal provision of this Contract.

E. Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing, Contractor shall proceed diligently with performance of the Contract, and Owner shall continue to make payments in accordance with the Contract Documents. The time limits for submission of Claims are in addition to, and not in lieu of, the time limits for submission of requests for adjustments to the Contract Time and Contract Sum under Part 7.

1. Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Detailed Scope of Work or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Detailed Scope of Work, Contractor must give Owner written notice thereof promptly before conditions are disturbed and in no event later than 10 days after first observance of the conditions or such Claim shall be considered time-barred. The A/E will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, and are not otherwise within the scope of Contractor's investigation and review responsibility under the Contract Documents, will recommend the issuance of a Supplemental Job Order. If A/E determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Job Order is justified, A/E shall so notify Owner and Contractor in writing, stating the reasons. Claims by Contractor in opposition to such determination must be made within 10 days after A/E has given notice of the decision or such Claim shall be considered time-barred. If the Claim is timely submitted and the conditions encountered are materially different and are not within the scope of Contractor's investigation and review duties, a Supplemental Job Order will be issued, but if Owner and Contractor cannot agree on a Supplemental Job Order, the adjustment shall be referred to A/E for initial determination, subject to further proceedings pursuant to Paragraphs titled "Claims for Additional Cost" and "Claims for Additional Time", below. No increase to the Job Order Price or Job Order Completion Time shall be allowed if Contractor knew

or reasonably should have known of the concealed conditions prior to its executing the Contract.

Claims for Additional Cost. If Contractor wishes to make Claim for a Supplemental Job Order, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 5.05, provided the Claim is otherwise timely submitted within the times required under part 7 and Part 8. If Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from A/E, (2) an order by Owner to stop the Work where Contractor was not at fault, (3) a written order for a minor change in the Work issued by A/E, (4) failure of payment by Owner, (5) termination of the Contract by Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph.

2. Claims for Additional Time. Contractor shall use all reasonable efforts to mitigate the effect on cost and schedule of any cause of delay. If Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. If the delay was caused by Contractor, a Subcontractor of any tier, or anyone acting on behalf of Contractor or Subcontractor of any tier, Contractor shall not be entitled to an increase in the Job Order Completion Time or Job Order Price.
 - a. If adverse inclement weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction beyond schedule contingencies. Contractor agrees that both the Contract Sum and the Project Schedule include appropriate identified contingencies for weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by Contractor, and adversely impacted the Project. Rain, windstorm, high water, or other natural phenomenon for the specific locality of the work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. It is hereby agreed that rainfall of less than the following can be reasonably anticipated:

1. Daily rainfall equal to or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25%) or more.
2. Daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the Project site shall be considered the official agency of record for weather information.

F. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:

1. A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
2. The date on which facts arose which gave rise to the Claim;
3. The specific provisions of the Contract Documents which support the Claim;
4. Copies of any documents, other than the Contract Documents, that support the Claim;
5. If an adjustment in the Job Order Completion Time is sought: the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Job Order Completion Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Job Order Completion Time;
6. If an adjustment in the Job Order Price is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail required by, section 11; and
7. A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Job Order Price and Job Order Completion Time for which Contractor believes Owner is liable.

G. To assist in the review of Contractor's Claim, Owner may visit the Project site, or request additional information, in order to fully evaluate the issues raised by the

Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim.

- H. Any Claim of Contractor against Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by Contractor unless timely made in accordance with the requirements of this section.
- I. Contractor shall not be entitled to an increase in the Job Order Price or Job Order Completion Time arising out of an error or conflict in or among the Contract Documents where Contractor failed adequately to review the Detailed Scope of Work and Contract Documents or failed to report a known error or conflict to A/E in a timely manner consistent with the requirements of the Contract Documents.
- J. Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes without limitation: (1) damages incurred by Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by Contractor for principal and home office overhead and expenses including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work., and for interest or financing costs. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Part 9. Nothing contained in this Section shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents or to preclude any obligation to defend or indemnify for direct, indirect or consequential damages alleged by a third party.

8.02 CLAIMS AUDITS

- A. All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.
- B. In support of Owner audit of any Claim, Contractor shall, upon request, promptly, and in any event no later than the date provided by Owner, make available to Owner the following documents:
 - 1. Daily time sheets and supervisor's daily reports;
 - 2. Collective bargaining agreements;
 - 3. Insurance, welfare, and benefits records;

4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;
7. Material invoices, requisitions, and delivery confirmations;
8. Material cost distribution worksheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Vendors', rental agencies', Subcontractors', and agents' invoices;
11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
12. Subcontractors' and agents' payment certificates;
13. Cancelled checks (payroll and vendors);
14. Job cost report, including monthly totals;
15. Job payroll ledger;
16. Planned resource loading schedules and summaries;
17. General ledger;
18. Cash disbursements journal;
19. Financial statements for all years reflecting the operations on the Work. In addition, Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
22. All documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all

documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and

24. Work sheets, software, and all other documents used by Contractor to prepare its bid.
- C. The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

8.03 RESOLUTION OF CLAIMS AND DISPUTES

- A. Upon receipt of a Claim against Contractor or at any time thereafter, A/E or Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a default by Contractor, A/E or Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- B. Within 30 days of Owner's receipt of the written Claim, Owner may require that an officer of Contractor, a principal of A/E, and Owner's City Manager or designee (all with authority to settle) meet, confer, and attempt to resolve the Claim during the following 10 days. Owner may continue the meeting to a time after it assembled and reviewed data.
- C. If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by A/E, by mediation or by litigation.
- D. **Mediation.** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived shall, after completion of the dispute resolution process in Part 8, be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver. The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be filed in writing with the other party to the Contract, and the parties shall promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty (30) days of the request, either party may file the request with the American Arbitration Association or such other alternative dispute resolution service to which the parties mutually agree, with a copy to the other party, and the mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association (or other agreed service) currently in effect. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation, unless stayed for a longer period by agreement of the parties or court order. The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in

the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. An officer of Contractor and Owner's City Manager or designee must attend the mediation session with authority to settle the Claim. To the extent there are other parties in interest, such as A/E or Subcontractors, their representatives, also with authority to settle the Claim, shall also attend the mediation session. Unless Owner and Contractor mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur prior to Final Acceptance by Owner.

- E. **Litigation.** Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures of Part 8. Contractor shall have the burden to demonstrate in any litigation that it has complied with all requirements of Part 8. All unresolved Claims of Contractor shall be waived and released unless Contractor has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) one hundred twenty (120) days after the Date of Substantial Completion approved in writing by Owner or (b) sixty (60) days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by Owner and Contractor. The pendency of a mediation shall toll these deadlines until thirty (30) days after the date of the mediation session. Neither Contractor nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from Owner (but may recover attorneys' fees from the bond or statutory retainage fund itself to the extent allowable under law).
- F. Owner may join Contractor as a party to any litigation/arbitration involving the alleged fault of Contractor or Subcontractor of any tier.

8.04 NOTICE AND CLAIMS

- A. All notices and Claims shall be made in writing as required by the Contract. Any notice of a Claim of Contractor against Owner and any Claim of Contractor, whether under the Contract or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract. No act, omission, or knowledge, actual or constructive, of Owner or A/E shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless Owner and Contractor sign an explicit, unequivocal written waiver approved by Owner's City Council.
- B. The fact that Owner and Contractor may continue to discuss or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute waiver of the provisions of the Contract Documents unless Owner and Contractor sign an explicit, unequivocal waiver approved by Owner's City Council.
- C. Contractor's failure timely to submit required notices and/or Claims has a substantial impact upon and prejudices Owner, including but not limited to the inability to fully investigate or verify the Claim, mitigate damages, choose

alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, actual or alleged prejudice shall not be required to enforce the notice or Claim provisions of this Contract.

PART 9 - TERMINATION OF THE WORK

9.01 TERMINATION BY OWNER FOR CAUSE

- A. Owner may, upon written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
1. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
 2. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
 3. Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
 4. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
 5. Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
 6. Contractor disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
 7. Contractor is otherwise in material breach of any provision of the Contract Documents.
- B. Upon termination, Owner may at its option:
1. Take possession of the Project site and take possession of or use all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
 2. Accept assignment of subcontracts pursuant to section 5.17; and
 3. Finish the Work by whatever other reasonable method it deems expedient.

- C. When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in paragraph 9.02B, and shall not be entitled to receive further payment until the Work is accepted.
- D. If the unpaid balance of the Contract Sum exceeds Owner's damages and the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such may be retained by Owner and Contractor shall have no claim thereon. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.
- E. Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- F. If Owner terminates Contractor for cause, and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to section 9.02.

9.02 TERMINATION BY OWNER FOR CONVENIENCE

- A. Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:
 - 1. Stop performing Work on the date and as specified in the notice of termination;
 - 2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
 - 3. Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
 - 4. Assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;
 - 5. Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and
 - 6. Continue performance only to the extent not terminated.

- C. If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus a reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of part 7.
- D. If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

PART 10 - MISCELLANEOUS PROVISIONS

10.01 MEANING OF WORDS

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the Drawings, or required to complete the installation.

10.02 RIGHTS AND REMEDIES

No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of an acquiescence in a breach therein, except as may be specifically agreed in writing.

10.03 CONTRACTOR REGISTRATION

Pursuant to RCW 39.06, Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27.

10.04 TIME COMPUTATIONS

When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

10.05 RECORDS RETENTION

The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records subject to audit in accordance with section 8.02, shall be retained for a period of not less than seven (7) years after the date of Final Acceptance.

10.06 THIRD-PARTY AGREEMENTS

The Contract Documents shall not be construed to create a contractual relationship of any kind between: A/E and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

10.07 ANTITRUST ASSIGNMENT

Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts, and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

10.08 EMPLOYMENT PRACTICES

- A. Contractor shall perform and/or provide, or cause to be performed and/or provided, and shall pay for all Work, including design services, labor, services, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor shall keep upon the Project at all times and adequate supply of qualified workers and materials, as determined by Contractor, to secure execution of the Work in an expeditious manner. Contractor's recruitment, hiring, promotion, management and termination practices with respect to its personnel shall comply with applicable law governing employment, including laws, regulations and ordinances prohibiting discrimination in employment (including Chapter 49.60 RCW. "Discrimination") and those requiring the payment of prevailing wages (as further provided below). Contractor shall require Subcontractors likewise to comply with applicable law governing employment. Contractor shall employ a non-discriminatory process to select Subcontractors and shall ensure that all consultants and Subcontractors, including their principals and officers, disclose whether they have had any criminal felony convictions or have ever been barred from contracting with any state or federal agencies. In the event a Subcontractor discloses a felony history or disbarment, Contractor will submit the Subcontractor for Owner's approval before entering into any contract for Work on the Project with such Subcontractor.
- B. Contractor shall comply with all applicable provisions of Chapter 49.28 RCW, "Hours of Labor." Contractor agrees that all persons employed in it and by any of

its Subcontractors in work done pursuant to this Contract shall not be employed in excess of 8 hours in any one day, except as provided or allowed by law.

- C. Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where this contract will be performed is attached to the executed contract and made a part of the Contract Documents by reference as though fully set forth herein. Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

Mailing Department of Labor and Industries
Address: Prevailing Wage Office
PO Box 44540
Olympia, WA 98504
Telephone:(360) 902-5335
Fax: (360) 902-5300

Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries of the state, and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute. Contractor shall defend, indemnify and hold Owner harmless, including attorneys' fees, from any violation or alleged violation by Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") and RCW 51 ("Industrial Insurance"), including without limitation RCW 51.12.050.

- D. Pursuant to Chapter 49.70 RCW et seq., "Worker and Community Right to Know Act," and Chapter 296-802 WAC et seq., Contractor shall provide Owner copies of and have available at the Site a workplace survey or material safety data sheets for all Hazardous Materials under the control or use of Contractor or any Subcontractor at the Site. Contractor shall not be entitled to any additional Contract Time or compensation arising from its failure or alleged failure to comply with this statute or regulation.

10.09 NO PERSONAL LIABILITY

No employee or officer of Owner shall be personally liable to Contractor, its owners or affiliates, in the event of any default or breach by owner or for any amounts which become due to Contractor, its owners or Affiliates, or on any obligation under the terms of this Agreement.

10.10 NON-WAIVER OF GOVERNMENTAL RIGHTS

By entering into this Agreement, Owner is specifically not obligating any governmental agency with respect to any discretionary or regulatory action relating to development or operation of the Project, including, but not limited to, rezoning, variances, environmental approvals, regulatory plan review, code compliance or any other governmental agency approvals or regulatory actions which are or may be required or authorized. By entering into this Agreement, Owner is binding itself to the covenants in the Agreement and such other covenants as may be implied from this Agreement, but Owner is not otherwise limiting its governmental authority; provided that Owner's exercise of any rights pursuant to this Agreement are not to be considered its "governmental" authority for purposes of this Section.

10.11 PARTIAL INVALIDITY

The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability, or effect of the remaining parts and provisions of the Contract Documents.