



CITY OF EVERETT, WASHINGTON

JOB ORDER CONTRACT

THIS JOB ORDER CONTRACT by and between the City of Everett (City) and Burton Construction, Inc. (Contractor). This Contract was awarded pursuant to RFP 2024-084 Job Order Contracting for General Construction Services (RFP). City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 1 - WORK

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

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

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

SECTION 2 – CITY REPRESENTATIVES

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

SECTION 3 - CONTRACT TIME

- 3.1 The Base Term of the Contract is two (2) years.
- 3.2 There is one (1) bilateral Option Term. Both parties must agree to extend the Contract for the Option Term, which will be formalized as an amendment to this Contract. The duration of the Option Term is one year.
- 3.3 The City and the Contractor may agree to extend the Option Term, which will be formalized as an amendment to this Contract.

- 3.4 All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after the Contract term has expired. All terms and conditions of the Contract apply to each Job Order.
- 3.5 The Contractor shall commence work upon issuance of a Job Order and shall complete the Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

SECTION 4 - CONTRACT PRICE

- 4.1 City shall pay Contractor for completion of the Detailed Scopes of Work in accordance with the Contract Documents.
- 4.2 The Contract is an indefinite-quantity contract for general construction work and services. The Minimum Contract Value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract is Twenty-Five Thousand Dollars (\$25,000). The Estimated Annual Value is Four Million Dollars (\$4,000,000) for the City's Job Order Contracting Program. The City reserves the right to issue up to the maximum amount specified in RCW 39.10.40 of Four Million Dollars (\$4,000,000) per year or such greater amount that may be authorized by statute. The Maximum Contract Value shall not exceed the value set forth in the RCW.
- 4.3 The Contractor shall perform all work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:

Normal Working Hours Adjustment Factor

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

1.35.

Other Than Normal Working Hours Adjustment Factor

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

1.35.

Non-Prepriced Adjustment Factor:

1.18.

SECTION 5 - PAYMENT PROCEDURES

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

- 5.1 Progress Payments. City shall make progress payments on account of the Job Order Price on the basis of Contractor's Invoices as recommended by Project Manager and Contract

Administrator in accordance with Article 12.1 of the General Conditions. All progress payments will be on the basis of the progress of the Work as established in the General Conditions (and in the case of Unit Price Work based on the number of units completed).

- 5.2.1 Final Payment: Upon final completion and acceptance of the work in accordance with the General Conditions, City shall pay the remainder of the Job Order Price as recommended by Project Manager and Contract Administrator. A Certificate of Completion signed by the Project Manager is required prior to payment of any final invoice(s).
- 5.2.2 As determined by the Project Manager, progress payments shall be made per the Project Payment Schedule.
- 5.2.3 In accordance with RCW 39.10.450, for purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Job Order issued shall be treated as a separate contract. Contractor will provide the bonds as set forth in the RFP and in the General Conditions on the forms provided by the City. The alternate filing provisions of RCW 39.12.040(2) apply to each Job Order that otherwise meets the eligibility requirements of RCW 39.12.040(2).

SECTION 6 INDEMNIFICATION

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

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

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

C. As used in this section: (1) "City" includes the City's officers, employees, agents, and representatives; (2) "Claims" include all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, whether threatened, asserted or filed against the City, whether such Claims sound in tort, contract, or any other legal theory, whether such Claims have been reduced to judgment or arbitration award, irrespective of the type of relief sought or demanded (such as money or injunctive relief), and irrespective of the type of damage alleged (such as bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages); and (3) "Contractor" includes Contractor, its employees, agents, representatives and subcontractors.

D. Contractor waives any right of contribution against the City. It is agreed and mutually negotiated that in any and all claims against the City, its agents or employees, the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts any of them may be liable, the defense and indemnification obligations hereunder shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under industrial worker's compensation acts, disability benefit acts, or other employees' benefit acts. Contractor's and City's signatures hereto indicate specific waiver of Contractor's industrial insurance immunity in order to fulfill this indemnity. SOLELY FOR THE PURPOSE OF INDEMNIFICATION AND DEFENSE AS PROVIDED IN THIS CONTRACT, THE CONTRACTOR SPECIFICALLY WAIVES ANY IMMUNITY UNDER THE STATE INDUSTRIAL INSURANCE LAW, TITLE 51 RCW. THE CONTRACTOR EXPRESSLY ACKNOWLEDGES THAT THIS WAIVER OF IMMUNITY UNDER TITLE 51 RCW WAS THE SUBJECT OF MUTUAL NEGOTIATION AND WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115.

SECTION 7 - CONTRACTOR'S REPRESENTATIONS

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

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

SECTION 8 - CONTRACT DOCUMENTS

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

- 8.1 This Contract and its exhibits, if any. In a Federally Funded Job Order (as defined in the General Conditions) this Contract includes the applicable current Federal Contract Clauses, which the City will specifically designate in the Job Order. These Federal Contract Clauses are only applicable to that specific Federally Funded Job Order and have no force or effect with respect to any other Job Order. A Federally Funded Job Order may also include one-time changes to the Contract Documents specifically for that Job Order signed for the City by the Contract Administrator as necessary to coordinate the requirements of the applicable Federal Contract Clauses with the requirements of the Contract Documents.
- 8.2 General Conditions, attached hereto as Exhibit A, incorporated by reference.
- 8.3 Supplementary Conditions, incorporated by reference.
- 8.4 The RFP and all addenda, incorporated by reference.

- 8.5 Contractor's Proposal, incorporated by reference. If there is inconsistency between any provision of the Contractor's Proposal and any other Contract Document, then the provision imposing the more stringent requirement on the Contractor will control.
- 8.6 The Construction Task Catalog[®], incorporated by reference.
- 8.7 All Job Orders and related documents, including but not limited to, the Detailed Scope of Work with Drawings and/or Specifications, Request for Proposal, Price Proposal, Job Order Proposal, Notice to Proceed, submittals, record documents, and all required close-out documentation and warranties, incorporated by reference. If there is inconsistency between any provision of the documents listed in this Section 8.7 and any other Contract Document, then the provision imposing the more stringent requirement on the Contractor will control.

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

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

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

SECTION 9 – PREVAILING WAGE

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

SECTION 10 - MISCELLANEOUS


- 10.1 Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 10.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in an written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

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

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

CITY OF EVERETT, WASHINGTON

By: 
Cassie Franklin, Mayor

CONTRACTOR

Burton Construction, Inc.

By: Jennifer Burton

Name: Jennifer Burton

Title: Vice President

Date: 10/30/2024

Attest:



Office of the City Clerk

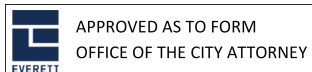


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ARTICLE 1 DEFINITIONS

1.1 Definition of Terms:

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

<u>Acceptance</u>	The official act of the City, Contract Administrator, or Project Manager as described in Article 12.
<u>Addenda</u>	Written or graphic instruments issued prior to the submittal of Contractor Proposals which clarify, correct or change the Proposal documents or the Contract Documents
<u>Contract (or Job Order Contract)</u>	The written agreement between City and Contractor.
<u>Application for Payment</u>	The form accepted by Project Manager which is to be used by Contractor in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.
<u>Bonds</u>	Performance and payment bonds and other instruments of security.
<u>Contract Administrator</u>	The authorized representative of the City who is assigned immediate charge of the administration of the Job Order Contract.
<u>Contract Documents</u>	All of the documents constituting the Contract.
<u>Contractor</u>	The individual, firm, partnership, corporation or combination thereof with whom City has entered into the Contract.
<u>City</u>	The City of Everett. Depending on the context, the term City may also include all of the City's elected officials, officers, employees and other authorized representatives.

Day

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

Defective

An adjective which when modifying the word Work refers to

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

Drawings

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

Effective Date of the Contract

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

Federally Funded Job Order

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

Federal Contract Clauses

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

Field Order

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

Final Completion

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

Final Payment

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

Hazardous Materials

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

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

Inspector

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

Liquidated Damages

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

Notice of Intent to Award

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

Notice to Proceed

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

Payment Bond

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

Performance Bond

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

Plans

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

**City Furnished
Materials or
Equipment**

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

Product Data

The illustrations, standard schedules, performance charts, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system.

Project

The collective improvements to be constructed by the Contractor pursuant to issuance of a Job order. A Project will consist of one Job order and any Supplemental Job Orders issued.

Project Manager

The authorized representative of the City who is assigned immediate charge of the work of the project.

Proposal

The offer or proposal of the Contractor submitted in response to the City's Request For Proposal for the selection of Contractor(s). Usually referred to as the Contractor's Proposal.

Proposer

Any individual, firm, partnership, corporation or combination thereof formally submitting a proposal for the work contemplated, or any portion thereof, acting directly or through an authorized representative.

Provide

The all-inclusive actions required to furnish, install, connect, adjust, test, and make ready for use or occupancy.

Punch List

Shall have the meaning set forth in Article 12.

RFP

The Request for Proposal issued by the City for the selection of the Contractor(s).

Samples

Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Schedule of Prices

Means the Unit Prices set forth in the Contract Documents.

Shop Drawings

All drawings, diagrams, illustrations, brochures, standard schedules, performance charts, instructions, and other data which are specifically prepared by Contractor, a Subcontractor, manufacturer, fabricator, supplier or distributor to illustrate some portion of the Work, material or equipment.

Specifications

Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, performance requirements and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor

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

Sub-Subcontractor

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

**Substantial
Completion**

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

**Supplementary
Conditions**

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

Supplier

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

Surety

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

Titles or Headings

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

Unit Prices

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

Work

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

1.1.1 Job Order Contracting Specific Definition of Terms:

Adjustment Factor

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

Base Term

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

Construction Task Catalog®

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

Detailed Scope of Work

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

Estimated Annual Value

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

Job Order

A written order issued by the City, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A

project may consist of one Job Order with one or more Supplemental Job Orders.

<u>Job Order Completion</u>	The time within which the Contractor must complete the Detailed Scope of Work.
<u>Time</u>	The time within which the Contractor must complete the Detailed Scope of Work.
<u>Job Order Price</u>	The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
<u>Job Order Price</u>	The value of the approved Price Proposal and the amount the Contractor will be paid for completing the Detailed Scope of Work within the Job Order Completion Time.
<u>Proposal</u>	A price proposal prepared by the Contractor that includes the Prepriced Tasks, Non-Prepriced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
<u>Job Order Proposal</u>	A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.
<u>Joint Scope Meeting</u>	A site meeting to discuss the work before the Detailed Scope of Work is finalized.
<u>Maximum Contract Value</u>	The estimated maximum value of Job orders that the Contractor may receive under this Contract.
<u>Minimum Contract Value</u>	The minimum value of Job orders that the Contractor is guaranteed the opportunity to perform under this Contract.
<u>Non-Prepriced Task</u>	A task that is not set forth in the Construction Task Catalog®.
<u>Normal Working Hours</u>	Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, except for City holidays.
<u>Notice to Proceed</u>	A written notice issued by the City directing the Contractor to proceed with construction activities.
<u>Option Term</u>	An additional period of time beyond the Contract Term which extends the termination date of the Contract.

<u>Other than Normal Working Hours</u>	Includes the hours of 4:01 p.m. to 6:59 a.m., Monday to Friday and all day Saturday, Sunday, and City Holidays.
<u>Proposal Criteria Figure</u>	The amount determined in the Proposal Criteria Figure Calculation section of the Price Proposal, which is used for the purposes of determining the lowest price.
<u>Prepriced Task</u>	A task described in and for which a unit price is set forth in the Construction Task Catalog®.
<u>Request for Proposal</u>	A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein. <u>Note:</u> For clarity, the Request for Proposal issued by the City for the selection of the Contractor is referred to as the "RFP".
<u>Supplemental Job Order</u>	A secondary Job Order (change order) developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
<u>Technical Specifications</u>	The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.2 Definitions/Abbreviations

AAR	Association of American Railroads
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute APA American Plywood Association
API	American Petroleum Institute
ARA	American Railway Association
AREA	American Railway Engineering Association ASCE American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials AWS American Welding Society

COE	City of Everett
CPM	Critical Path Method of Project Scheduling
CRSI	Concrete Reinforcing Steel Institute
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration FM Factory Mutual
FS	Federal Specification
FTA	Federal Transit Administration
IEEE	Institute of Electrical and Electronics Engineers ISO Insurance Service Office
JIC	Joint Industrial Council
NAAMM	National Association of Architectural Metal Manufacturers
NBFU	National Board of Fire Underwriters NEC National Electrical Code
NEMA	National Electrical Manufacturer's Association
NESC	National Electrical Safety Code
NIOSH	National Institute of Occupational Safety and Health
NFPA	National Fire Protection Association
OFCCP	Office of Federal Contract Compliance Programs
OSHA	Occupational Safety and Health Act
PCA	Portland Cement Association
PSCAAPCA	Puget Sound Clean Air Pollution Control Agency
SAE	Society of Automotive Engineers
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
SSPC	Steel Structures Painting Council

SWI	Steel Window Institute
UFC	Uniform Fire Code
UL	Underwriter's Laboratory
WISHA	Washington Industrial Safety & Health Act Administration

END ARTICLE 1

ARTICLE 2 PRELIMINARY MATTERS

2.1 *City Operations*

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

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

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

2.3 *Job Order Completion Time*

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

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

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

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

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

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

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

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

2.3.7 Progress and Completion

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

2.4 Extension of Time

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

2.5 Before Starting Work

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

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

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

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

2.6 *Preconstruction Conference*

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

END ARTICLE 2

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

3.1 *Intent*

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

3.2 *Correlation of the Contract Documents*

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

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

3.3 *No Warranties by the City*

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

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

END ARTICLE 3

ARTICLE 4 PHYSICAL CONDITIONS AND REFERENCE POINTS

4.1 *Unforeseen Physical Conditions*

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

END ARTICLE 4

ARTICLE 5 BONDS AND INSURANCE

5.1 *Performance Bond*

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

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

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

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

5.2 *Payment Bond*

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

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

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

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

5.3 Contractor's Liability Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.4 Contractor Pollution Liability

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

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

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

END ARTICLE 5

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

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

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

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

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

6.3 *Supervision*

- 6.3.1 Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Detailed Scope of Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of Work. Contractor shall be responsible to see that the finished Work complies accurately with the Detailed Scope of Work.
- 6.3.2 Contractor will provide a competent resident supervisor who understands the contract and the task being performed to continuously oversee the contract work. Supervisor will not be replaced without written notice to Project Manager except under extraordinary circumstances. The supervisor will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the supervisor shall be as binding as if given to Contractor.
 - a. Any supervisor who repeatedly fails to follow the Project Manager's written or oral orders, directions, instructions, determinations or has proven to be incompetent, careless or negligent shall be subject to removal from the work

site. Upon the written request of the Project Manager or Contract Administrator, the Contractor shall immediately remove such supervisor and name a replacement in writing.

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

6.4 Labor, Materials, and Equipment

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

6.5 Equivalent Materials and Equipment, "or Equal"

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

equipment proposed is equivalent to that named. The procedure for review by Project Manager will be as set forth in sections 6.5.2 below as supplemented in the General Requirements.

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

6.6 *Disposal of Demolished Materials*

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

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

- 6.6.2 The Contractor is solely responsible for the lawful managing and disposal of waste material and shall indemnify, defend and hold the City harmless from all liability, damages, claims, lawsuits, penalties and expenses, whether direct, indirect or consequential including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration arising from or in any way connected with, the demolition, removal or disposal of materials, except as specified for hazardous materials.

- 6.6.3 The value of waste materials, if any, shall be reflected in the total Job Order price.
- 6.6.4 During the course of the Work, if Contractor encounters site materials that it believes may be hazardous, potentially hazardous, infectious, toxic or dangerous, Contractor will immediately notify the Project Manager and Contract Administrator.
- 6.6.5 The City will retain title to all hazardous waste presently on-site encountered during demolition and removal. This does not include hazardous materials generated by the Contractor, such as used motor oils, lubricants, cleaners, etc. Contractor shall dispose of such hazardous waste according to the Detailed Scope of Work and the Contract Documents, following local, State, and Federal regulations. The City of Everett will be shown as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-contractor generated hazardous wastes. Nothing contained within these Contract Documents shall be construed or interpreted as requiring Contractor to assume the status of City or generator of hazardous waste substances for non-contractor generated hazardous wastes.
- 6.6.6 Contractor shall follow all Environmental Protection Agency (EPA) and all other regulations regarding reporting the disposal of all materials.

6.7 Subcontractors and Sub-Subcontractors

- 6.7.1 Mandatory Criteria: As required by RCW 39.06.020 and 39.04.350(1), all subcontractors must satisfy all of the following criteria:
- At the time of bid submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
 - Have a current state unified business identifier number;
 - If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
 - Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
 - If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and
- 6.7.2 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Project Manager may have reasonable objection. Acceptance of any Subcontractor, other person or organization by City or Project Manager shall not constitute a waiver of any

right of City to reject defective Work. If City after due investigation has reasonable objection to any Subcontractor other person or organization proposed by Contractor after the issuance of the Job Order, Contractor shall submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other person or organization against whom Contractor has reasonable objection.

- 6.7.3 Contractor shall be fully responsible for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between City or any contractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of City to pay or to see to the payment of any moneys due any contractor or other person or organization, except as may otherwise be required by law. City may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.
- 6.7.4 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of City. The City reserves the right to obtain copies of any Subcontractor and supplier agreements at any tier from the Contractor.
- 6.7.5 Contractor will pay Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Contractor has received from City on account of their work. Contractor will impose similar requirements on Subcontractors to pay those parties with whom they have contracted.

6.8 *Patent Fees and Royalties*

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

6.9 *Laws and Regulations*

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

6.10 *Taxes*

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

6.11 *Use of Premises*

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

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

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- 6.13.1 Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and provide the necessary protection to prevent damage, injury or loss to:
- a. All employees on the Work and other persons who may be affected thereby;
 - b. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and,
 - c. Other property at the site or adjacent thereto, including vegetation, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction;
 - d. It will be the Contractor's responsibility to protect the Work and repair any damages to the Work until after Final Acceptance, as defined in Article 12, has been achieved.
- 6.13.2 Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and will erect and maintain all necessary safeguards for such safety and protection. Contractor will notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of City or Project Manager or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor). Contractor's duties and responsibilities for the safety and protection of the Work will continue until such time as all the Work is completed and Project Manager has issued a notice to Contractor in accordance with these General Conditions that the Work is acceptable.
- 6.13.3 Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's supervisor unless otherwise designated in writing by Contractor to City.

6.14 Emergencies

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

6.15 *Shop Drawings and Samples*

- 6.15.1 After checking and verifying all field measurements, Contractor will submit Shop Drawings to Project Manager for review and approval, as specified in the Job Order. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and like information to enable Project Manager to review the information as required.
- 6.15.2 Contractor will promptly submit to Project Manager for review and approval all samples required by the Job Order. All samples will have been checked by and stamped with the approval of Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.
- 6.15.3 At the time of sample & drawings submission, any identified deviations from the Detailed Scope of Work will be called in writing to the Project Manager's attention.
- 6.15.4 Project Manager will review Shop Drawings and samples within fifteen (15) days, but Project Manager's review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Detailed Scope of Work and will not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. Contractor will make any corrections required by Project Manager and return the required number of corrected copies of Shop Drawings and resubmit new samples for review and approval. Contractor will direct specific attention in writing to revisions other than the corrections called for by Project Manager on previous submittals. Contractor's stamp of approval on any Shop Drawing or sample shall constitute a representation to City and Project Manager that Contractor has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that Contractor has reviewed or coordinated each Shop Drawing or sample with the requirements of the Detailed Scope of Work and the Contract Documents.
- 6.15.5 Where a Shop Drawing or sample is required by the Job Order, no related Work shall be commenced until the submittal has been reviewed and approved by Project Manager.

6.16 *Continuing the Work*

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

6.17 *Warranties*

- 6.17.1 All Work will be of good quality, free from fault or defect, and in strict accordance with the requirements of the Detailed Scope of Work. Any Work not conforming to the foregoing warranty, including unapproved or unauthorized substitutions, shall be considered defective.
- 6.17.2 All Subcontractors', Sub-Subcontractors', manufacturers', and Suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and all materials used therein shall be obtained and enforced by the Contractor for the benefit of the City without the necessity of separate transfer or assignment thereof. When directed by the Project Manager or required by the Contract Documents, the Contractor shall require that Subcontractor, Sub-Subcontractor, manufacturers, and Suppliers execute separate warranties and guarantees in writing directly to the City. Warranty provisions which support to limit or alter the City's rights under the Contract Documents are null and void.
- 6.17.3 The Contractor warrants that title to all Work, materials and equipment covered by a request for a progress payment or final payment will pass to the City either by incorporation in the Work or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. The Contractor further warrants that no Work, materials, or equipment covered by a request for a progress payment or final payment will have been acquired by the Contractor, or by any other person performing Work at the project site or furnishing materials and equipment for the project, which Work, materials, or equipment are subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller of the same or is otherwise imposed by the Contractor or other person.

6.18 Not Used

6.19 Progress Schedule

Within ten (10) days after the effective date of the Notice to Proceed and prior to start of Work unless otherwise specified in the Job Order, Contractor will prepare and submit a Progress Schedule in a form satisfactory to the Project Manager. Failure to submit a proposed Progress Schedule within the allowed time will not constitute grounds for an extension of the Job Order Completion Time.

- 6.19.1 The Progress Schedule will consist of a network analysis of the Critical Path Method (CPM) in arrow diagram form showing an activity description, cost, and calendar day duration for all significant design, manufacturing, construction, and installation activities. An activity list will be included with each copy of the Progress Schedule.
- 6.19.2 Within thirty (30) calendar days after receipt, the City will review, add comments and return three (3) copies of the Progress Schedule to the Contractor. Review by the City of the proposed Progress Schedule does not constitute an approval of the Contractor's construction means, methods, sequences, or schedule.

- 6.19.3 The Progress Schedule shall outline the proposed operations, the interrelations of the various operations, and the order of performance in sufficient detail that progress of the Work can be evaluated accurately at any time during the performance of the Work. If abbreviations are used in the make-up of the Progress Schedule, a legend is to be provided to define all abbreviations.
- 6.19.4 If milestone completions are required by the Job Order, then those milestones are to be clearly defined on the Progress Schedule.
- 6.19.5 Should it become evident that the Contractor may fail to meet the scheduled dates as shown, the Project Manager may require the Contractor to submit a recovery schedule demonstrating its proposed plan to make up lag in scheduled progress and to ensure completion of the work within the Job Order Completion Time. The Contractor, upon request, will be required at Contractor's own expense to submit a revised Progress Schedule and to increase Contractor's work force and working hours (second and third shifts) as required to bring the actual completion dates of the activities into conformance with the Progress Schedule. Further, Contractor will submit a revised Progress Schedule at no cost to the City when, in the opinion of the Project Manager, Contractor's sequence of Work varies significantly from that shown on the Progress Schedule. The City reserves the right to withhold progress payments until such time as an approved modified Progress Schedule in a form satisfactory to the Project Manager has been provided by the Contractor.
- 6.19.6 Failure of the Contractor to substantially comply with the requirements of this section may be considered grounds for a determination by the City that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified, and to take whatever action the City deems necessary and appropriate under the terms of the Contract Documents.

6.20 On-Site Documents

- 6.20.1 The Contractor is to maintain at the Project site, in good order for ready reference by the Project Manager, one (1) complete record copy of the Detailed Scope of Work, including changes in the Work, Field Orders, and all working drawings, Progress Schedule, and other approved submittals.

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

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

- 6.21.1 The Contractor will review and submit all working drawings, product data, samples and other items required to be submitted to the City accompanied by a "shop drawing multi-transmittal" form. Such submittals will be given to the City

in a complete and final form at least thirty (30) days prior to any Contractor need for review response or such other longer time that may be needed to allow time for detailed review by the City or others. The Contractor should allow sufficient time for the possibility of rejection of the submittal, needed revisions, and resubmittal review time.

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

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

6.21.4 Any Work delayed by reason of a properly rejected submittal is deemed to be entirely the Contractor's risk and will not be the basis for a claim by the Contractor for additional compensation or an extension of Job Order Completion Time. Drawings marked "subject to change" or the like will not be reviewed. The City is not required to review submittals that depend for their review on other submittals not yet submitted.

6.21.5 When resubmitting a submittal, the Contractor is to direct specific attention, in writing or on the resubmittal itself, to all revisions it has made.

6.21.6 No portion of the Work requiring submittal of a working drawing, product data, or sample is to be commenced until the submittal has been approved by the City as provided in these General Conditions. All portions of the Work involving submittals shall be performed in accordance with the approved submittals.

6.22 Cutting, Fitting and Patching of Work

6.22.1 The Contractor will be responsible for all cutting, fitting, patching or such other altering as may be required to complete the Work, or to make its several parts fit together properly.

6.22.2 The Contractor will not damage or endanger any portion of the Work, other work of the City, or that of any separate Contractor's by cutting, fitting, patching or other altering of any work, or by excavation. The Contractor will not alter any of the work of the City or any separate Contractor without written authorization from the City.

Inspection of the Work

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

Uncovering of Work

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

6.22.5 If any other portion of the Work has been covered or completed, the Contractor will, upon the request of the Project Manager, remove or uncover such Work for the Project Manager's observation. The Contractor will subsequently restore that portion of the Work to the standard required by the Detailed Scope of Work at no additional costs to the City.

Correction of Work

6.22.6 The Contractor will, at no additional expense to the City, promptly correct all Work which is defective or otherwise fails to conform to the requirements of the Detailed Scope of Work. Such Work is to be corrected even though it was previously inspected by the City, payment for it was included in a progress payment, whether or not it was completed, and whether or not it was observed before or after the date of Substantial Completion.

- 6.22.7 If, within one (1) year after Substantial Completion of the Work or within such longer period of time as may be prescribed by law or by the terms of any applicable additional warranty required by the Job Order, any of the Work is found to be defective or otherwise not in conformance with the Detailed Scope of Work, the Contractor will, at its cost, promptly correct such defective or non-conforming Work after receipt of written notice from the City. The obligation of this subsection shall survive termination of the Contract.
- 6.22.8 If the Contractor refuses or neglects to correct the defects as directed by the Project Manager, the City may obtain, use and employ materials, labor, tools and implements to do the same and the expense thereof shall be deducted from moneys which may otherwise be due or become due to the Contractor or the City. If the Contractor fails to promptly correct defective or non-conforming Work, the City may correct it as provided in section 6.25 or may terminate this Contract.
- 6.22.9 Work corrected by the Contractor pursuant to section 6.25 will also be subject to the provisions of this section to the same extent as Work originally performed and for an additional one-year period commencing upon City acceptance of corrected work.
- 6.22.10 Nothing contained in this section is to be construed to establish a period of limitation with respect to any other obligation imposed on the Contractor by the Contract Documents or law, including the obligations imposed by section 6.17. The establishment of the time period of one year after the date of Final Completion Acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Job Order relates only to the specific obligation of the Contractor to correct defective or non-conforming Work, and bears no relationship to the time within which the Contractor's obligation to comply with the Job Order may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to obligations imposed on it by the Contract Documents or as otherwise may exist in law.
- 6.22.11 The City may, at its sole option, elect to retain defective or nonconforming Work. In such case, the Contractor will reduce the Job Order Price in a reasonable amount to account for such defect or non-conformance.

Responsibility for Work

- 6.22.12 All Work performed under the Contract and all materials to be incorporated in the Work, whether in storage or on the Project site and whether under the care, custody and control of the Contractor, Subcontractor, or Sub-Subcontractor, shall be at the sole risk of loss and responsibility of the Contractor until Final Completion of the entire Project, except as may be limited by the Project Manager in writing for the period following Substantial Completion of the Work or designated portion thereof as provided in section 12.4. Damage from any cause to either permanent or temporary Work, utilities, materials, equipment,

existing structures, the Project site, and other property owned by the City or others, shall be repaired by the Contractor to the satisfaction of the Project Manager at no additional cost to the City. At no time during the execution of this Contract shall the Contractor direct City staff or City agents to assist in the execution of the Work.

Hazardous Materials

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

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

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

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

Removal of such Hazardous Materials will be undertaken within twenty-four (24) hours following City's demand for such removal. Removal will be undertaken by Contractor at its sole cost and expense and will be performed in accordance with all applicable laws. Any damage to the Work, the job site or any adjacent property resulting from the improper use, or any discharge or release of Hazardous Materials will be remedied by Contractor at its sole cost and expense, and in compliance with all applicable laws. Contractor will immediately notify City of any release or discharge of any Hazardous Materials on the job site. Contractor will be responsible for making any and all disclosures required under applicable "Community Right-to-Know" laws. Contractor will not clean or service any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue

and waste materials resulting from any such cleaning or servicing will be collected and moved from the job site in accordance with all applicable laws and regulations. Contractor will immediately notify City of any citations, orders or warnings issued to or received by Contractor, or of which Contractor otherwise becomes aware, which relate to any Hazardous Materials on the job site. Without limiting any other indemnification provisions pursuant to law or specified in this Contract, Contractor will indemnify, defend at Contractor's sole cost with legal counsel approved by City and hold City harmless from and against any and all such claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs and expenses in removing or remediating the effect of any Hazardous Materials on, under, from or about the job site, arising out of or relating to, directly or indirectly, Contractor's failure to comply with any of the requirements of Section 6.27.

Clean-up

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

Protection of Work During Suspension

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

Notice and Detailed Breakdown of Claim

- 6.22.19 Notice. If unforeseen conditions or changes in the Work arise for which the Contractor believes an equitable adjustment in time or money or any other adjustment in Job Order Completion Time or Job Order Price is or will be due, the Contractor will give the City immediate oral notice followed by written notice within seven (7) calendar days of such event. In all events, Notice must be given

and the Project Manager's direction received prior to performing the Work which Contractor believes entitles it to such adjustments. Notice must identify in detail the basis for the claim. The date such written notice is received by the City shall define the start of time for any purpose regarding the claim.

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

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

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

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

6.23 Prerequisite to Suit

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

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

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

6.24 Indemnification

6.24.1 The Contractor shall defend, indemnify and hold harmless the City and its agents from all liability, claims, damages, losses and expenses, whether direct, indirect or consequential (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of the performance of the Work, which is caused, or alleged to be caused, in whole or in part, by any negligent act or omission of the Contractor (which for the purposes of this Article 6.33 shall include the Contractor and all of its Subcontractors, Sub-Subcontractors, Suppliers, agents, any other person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable); provided, however, that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the City or its agents, and (2) the Contractor, it is expressly agreed that the Contractor's obligations of indemnity under this section shall be effective only to the extent of the Contractor's

negligence. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this section. This section shall not be construed so as to require the Contractor to defend, indemnify, or hold harmless the City from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the City or its agents.

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

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

No Federal Government Obligations to Third Parties

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

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

END ARTICLE 6

ARTICLE 7 ADDITIONAL WORK AND WORK BY OTHERS

7.1 Additional Work

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

END ARTICLE 7

ARTICLE 8 CITY'S RESPONSIBILITIES

8.1 Authority of the Project Manager

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

8.2 Administration of the Contract

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

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

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

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

8.3 City's Right to Carry Out Other Work

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

Officers and Employees of the City Have No Personal Liability.

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

8.4 Gratuities

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

8.5 Service of Notices on the Contractor

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

ARTICLE 9 PROJECT MANAGER'S STATUS DURING WORK

9.1 City's Representative

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

9.2 Clarifications and Interpretations

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

9.3 Rejecting Defective Work

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

9.4 *Not Used*

9.5 Decisions on Disagreements

- 9.5.1 The Contract Administrator will be the initial interpreter of the Contract Documents while the Project Manager will be the initial interpreter of the requirements of the Job Order and judge of the acceptability of the Work. Additional disputes relating to the acceptability of the Work or the interpretation of the requirements of the Detailed Scope of Work or Contract Documents pertaining to the execution and progress of the Work shall be referred to the Contract Administrator in writing with a request for a formal decision in accordance with this section, which Contract Administrator will render in writing within a reasonable time. Written notice of each such dispute shall be delivered by the claimant to Contract Administrator within fifteen (15) calendar days of the occurrence after the event giving rise thereto and written supporting data will be submitted to Contract Administrator within forty-five (45) calendar days of such occurrence unless the Contract Administrator allows an additional period of time to ascertain more accurate data.
- 9.5.2 The rendering of a decision by Contract Administrator pursuant to section 9.6.1 with respect to any such dispute (except any which have been waived by the making or acceptance of final payment as provided in section 12.8) will be a condition precedent to any exercise by City or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or at law in respect of any such dispute.

9.6 Limitations on Project Manager's Responsibilities

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

9.7 *Not Used*

9.8 Requests for Instruction

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

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

END ARTICLE 9

ARTICLE 10 CHANGES IN THE WORK

10.1 Changes to Contract Documents

Non-Job Order Specific Contract Documents.

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

Job-Order Specific Contract Documents.

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

10.2 Change Order and Supplemental Job Order

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

The City, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.

Credits for Prepriced and Non-Prepriced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Price Proposal.

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

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

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

Contractor may request a Supplemental Job Order to reflect modifications to the Work resulting from unforeseen site conditions. If Project Manager determines that such unforeseen site conditions require a modification of the Work, Project Manager will prepare a Supplemental Job Order for execution by the Contract Administrator incorporating such modifications as necessary to proceed with and complete the Work. The Contractor shall be responsible for reallocation of its work force when work cannot be continued in an area due to unforeseen conditions. In no event will the

City reimburse the Contractor for charges caused by delays unless prior written authorization is provided by the City.

10.3 Job Order Price

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

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

10.4 Job Order Completion Time

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

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

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

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

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

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

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

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

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

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

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

END ARTICLE 10

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

11.1 Warranty and Guarantee

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

11.2 Access to Work

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

11.3 Tests and Inspections

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

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

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

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

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

11.4 City May Stop the Work

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

11.5 Correction or Removal of Defective Work

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

11.6 Acceptance of Defective Work

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

11.7 City May Correct Defective Work

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

ARTICLE 12 PAYMENTS TO CONTRACTOR AND COMPLETION

12.1 Application for Progress Payment

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

12.2 Contractor's Warranty of Title

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

12.3 Review of Applications for Progress Payment

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

12.3.2 Not Used

12.3.3 Not Used

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

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

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

12.4 Substantial Completion

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

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

12.5 Partial Utilization

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

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

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

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

12.6 Final Inspection

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

12.7 Final Application for Payment

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

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

12.8 Final Payment and Acceptance

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

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

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

12.9 Contractor's Continuing Obligation

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

12.10 Waiver of Claims

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

END ARTICLE 12

ARTICLE 13 SUSPENSION OF WORK AND TERMINATION

13.1 *Suspend the Work*

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

13.2 *City May Terminate*

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

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

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

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

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

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

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

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

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

13.3 Termination for Convenience

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

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

13.3.3 The total sum to be paid to Contractor under this Section 13.3 shall not exceed the Job Order Price(s) outstanding at the time of termination, as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to Contractor shall exclude the fair value of property not under City's control which is destroyed, lost, stolen or damaged so as to become undeliverable to City.

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

13.4 Minimum Contract Value Not Achieved

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

13.5 Contractor May Stop Work or Terminate

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

END OF ARTICLE 13

ARTICLE 14 NOT USED

END OF ARTICLE 14

ARTICLE 15 MISCELLANEOUS

15.1 General Requirements

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

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

15.2 Giving Notice

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

15.3 Computation of Time

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

15.5 Non-Discrimination

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

END ARTICLE 15

ARTICLE 16 JOC PROCEDURE FOR ORDERING WORK

16.1 *Initiation of a Job Order.*

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

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

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

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

16.2 Preparation of the Price Proposal.

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

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

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

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

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

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

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

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

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

C = Lowest of three (3) independent quotes for all materials.

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

For Non-Prepriced Tasks Performed by Subcontractors:

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

D = Lowest of three (3) Subcontractor Quotes

Total Cost for Non-Prepriced Tasks performed by Subcontractors

= D x Non-Prepriced Task Adjustment Factor

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

16.2.5 Contractor will make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid for which a receipt is obtained will be treated as a Reimbursable Task to be paid without markup.

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

16.2.7 The Contractor's Job Order Proposal is to be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven (7) and fourteen (14) days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

16.2.8 In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal.

16.2.9 By submitting a Job Order Proposal to the City, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the City.

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

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

16.3.1 The City will evaluate the entire Price Proposal and compare these with the City's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.

16.3.2 The Contractor may choose the means and methods of construction; subject however, to the City's right to reject any means and methods proposed by the Contractor that:

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

16.3.3 The City reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The City also reserves the right not to issue a Job Order if it is determined to be in the best interests of the City. The City may perform such work by other means. The Contractor will not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal including incidental architectural and engineering services, subcontractor costs, and the costs to review the Job Order Proposal with the City.

16.3.4 By submitting a Job Order Proposal to the City, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non-Prepriced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the City.

16.3.5 Each Job Order provided to the Contractor will reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the City and delivered to the Contractor constitutes the City's acceptance of the Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to the Contractor.

16.4 Federally Funded Job Orders

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

END ARTICLE 16

ARTICLE 17 ENGINEERING NEWS RECORDS CONSTRUCTION COST INDICES ADJUSTMENT OF THE ADJUSTMENT FACTORS

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

- 17.5 Under all circumstances, should the Contractor submit a Job Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Job Order Price submitted in the Job Order Proposal.
- 17.6 The Contractor cannot delay submission of the Job Order Proposal past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 17.7 The Adjustment Factor for Non-Prepriced Tasks will remain constant for the duration of the Contract.

END ARTICLE 17

ARTICLE 18 Software, JOC System License, and Cooperative Purchasing

18.1 JOC System License

18.1.1 The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Information Management System ("JOC IMS"), construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the Owner. The Contractor shall be required to execute Gordian's General Terms of Use and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms of this Contract. The Contractor shall include the JOC System License Fee in the Adjustment Factors. A copy of the license agreement is attached and is included by reference.

18.2 Cooperative Purchasing

18.2.1 Contractor hereby agrees that other agencies or members of cooperative purchasing entities may purchase construction services from the Contractor utilizing this Contract. To utilize the construction services from the Contractor under this Contract, the agency or entity must first execute with the City an Intergovernmental Purchasing Agreement (or other form of agreement) acceptable to the City and agree to pay Gordian's fee directly. For the purposes of this Section 18, the other public agency or entity is referred to as the "User Agency."

- If the Contract is utilized by a User Agency, the Contractor agrees to pay Gordian the 1% JOC System License Fee.
- Job order construction services for User Agency job orders will be provided by Contractor directly to the User Agency on the same terms and conditions as this Contract, except that for User Agency job order construction services: (a) the City will not be a party to the contract between User Agency and Contractor for such services; (b) the obligations owed by Contractor to the City under the terms and conditions of the Contract will instead be owed by Contractor to the User Agency, including but not limited to obligations to provide performance and payment bonds to User Agency for work performed for the User Agency and to provide insurance endorsements that name the User Agency as additional insured; and (c) the obligations owed by the City to Contractor under the terms and conditions of this Contract will instead be owed by the User Agency to Contractor, including but not limited to obligations to pay for construction services rendered by Contractor.
- Contractor specifically agrees that the City shall have no liability or responsibility whatsoever for the User Agency's use of the terms and conditions of this Contract or for the performance of the User Agency with respect to User Agency job orders. The City will not pay Contractor for any services related to User Agency job orders. The City

makes no representations or warranties of any kind, including without limitation no representations or warranties regarding whether the User Agency will pay Contractor for job order construction services rendered and no representations or warranties regarding the enforceability of the terms and conditions of this Contract against the User Agency. Contractor accepts job orders from the User Agency solely at Contractor's own risk. Contractor will solely look to the User Agency, and not the City, for all matters relating to job order construction services rendered to the User Agency.

- The Contractor releases and shall indemnify, defend and hold harmless the City and its officers, employees and agents (each such person, an "Indemnitee") from and against any and all claims, actions, damages, liability, costs and expenses, including attorney's fees, arising out of or relating to (a) Contractor's provision of services to the User Agency and (b) job orders issued by User Agency to Contractor. The foregoing indemnity, defense, and hold harmless obligation includes without limitation indemnity, defense, and hold harmless for each Indemnitee from and against any request, claim or demand for payment by Contractor or Contractor's contractors or Contractor's suppliers or Contractor's employees in connection with User Agency job orders. This Section is specifically and expressly intended to constitute a waiver of the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide each Indemnitee with a full and complete indemnity from claims made by the Contractor and its employees, to maximum extent allowed by law. CONTRACTOR AND CITY ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

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

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

18.2.4 The City and Gordian may request records from the Contractor for all cooperative purchasing and payments of all JOC System License Fees through this contract. The Contractor hereby agrees and authorizes the City and/or User Agency to provide Gordian with purchase order and/or invoice copies. If discrepancies exist between cooperative purchasing activity and License Fees paid, Gordian will provide written notification to the Contractor of discrepancies and allow the Contractor ten (10) days from the date of notification to resolve the

discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of Gordian, Gordian reserves the right to engage a third party to conduct an independent audit of the Contractor's records and in the event Contractor is not in compliance with this Contract, Contractor shall reimburse the appropriate party for the cost and expense related to such audit.

END ARTICLE 18

ARTICLE 19 COMPLIANCE WITH THE JOC RCW REQUIREMENTS

19.1 CONTRACTOR'S RESPONSIBILITY

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

19.2 MAXIMUM JOB ORDER VALUE/APPRENTICE UTILIZATION

The maximum dollar amount for an individual Job Order is five hundred thousand dollars (\$500,000) pretax, as may be adjusted by amendments to statute. 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 dollar limit on Job Orders.

Unless otherwise allowed by statute, a Job Order issued for a particular project may not exceed \$500,000 excluding sales tax and Gordian fees. As required by RCW 39.10.450(3), no more than twenty percent of the dollar value of a Job Order may consist of items of work not contained in the unit price book. As required by RCW 39.10.450(4), any new stand-alone permanent structure constructed under a Job Order shall not exceed three thousand gross square feet.

Any Job Order over three hundred fifty thousand dollars (\$350,000), excluding Washington state sales and use tax, and including over six hundred single trade hours shall utilize a state registered apprenticeship program for that single trade in accordance with RCW 39.04.320. The City may adjust this requirement for a specific Job Order for the following reasons:

- (a) The demonstrated lack of availability of apprentices in specific geographic areas;
- (b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;
- (c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310; or
- (d) Other criteria the awarding entity deems appropriate.

19.3 ADJUSTMENT FACTORS AND CONSTRUCTION TASK CATALOG®

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

19.4 PREVAILING WAGE RATES TO BE PAID

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

19.5 EXECUTED OMWBE PLAN

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

19.6 SUBCONTRACTING/RETAINAGE BOND/NOTIFICATION OF INTENT

- A. At least ninety percent (90%) of all work contained in a Job Order Contract must be subcontracted to entities other than the Contractor. The Contractor must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.
- B. The City requires each Contractor to provide a Retainage Bond in the penal sum equal to \$100,000. If the cumulative amount of required retainage under Chapter 60.28 RCW exceeds this amount, the Contractor shall deliver a new Retainage Bond as required by the City. The Contractor must use the Retainage Bond form provided by the City.
- C. The 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. The job order Contractor is encouraged to post the notification of intent to perform public works projects in other areas, such as websites for business associations, the office of

minority and women's business enterprises, and other locations and mediums that will further publicize subcontractor opportunities.

19.7 PUBLIC RECORDS

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

19.8 AUDITS AND RETENTION OF RECORDS

- A. All of the Project Records related to this Contract shall be open to inspection, audit, and/or copying by the City:
 - i. During the Contract Time;
 - ii. For a period of not less than six (6) years after the date of Final Acceptance of the last Work or termination of the Contract. The Contractor shall also ensure that the wage, payroll and cost records of all Subcontractors and Suppliers at all tiers is retained and open to similar inspection or audit for the period required above by incorporating the provisions of this Audit section into any agreements with Subcontractors or Suppliers related to this Contract; and
 - iii. If any Claim, audit, or litigation arising out of, in connection with, or related to this Contract is initiated, all documents and records shall be resolved or completed, whichever occurs later.
- B. The Contractor, its Subcontractors and Suppliers will make a good faith effort to cooperate with the City when the City gives notice of its need to inspect or audit Project Records. Cooperation will include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation will also include establishing a specific mutually agreeable timetable for making the records available for inspection by the City and its designee. Unless otherwise agreed, if the Contractor, its Subcontractors and Suppliers cannot make at least some of the relevant records available for inspection within fourteen (14) days of the City's written request, cooperation will necessarily entail providing the City with a reasonable explanation for the delay in production of records. Failure to cooperate will impact future responsibility determinations.
- C. The Contractor agrees that no Claim will be made against the City for the Work described herein unless the Contractor makes available to the City all documents and records. Failure to maintain and retain sufficient records to allow the City to verify all costs or damages or failure to permit the City or its designee access to the books and records shall constitute a waiver of the rights of

the Contractor, Subcontractor, and Supplier to claim or be compensated for any damages, additional time or money under this Contract and shall bar any recovery there under.

- D. Inspection, audit, and/or copying of Project Records may be performed by the City at any time with not less than fourteen (14) days written notice; provided however, if an audit is to be commenced more than sixty (60) days after Final Acceptance of the Contract, the Contractor will be given thirty (30) days' notice of the time when the audit or inspection is to begin.
- E. The Contractor and its Subcontractors and Suppliers shall provide adequate facilities, acceptable to the City, for inspection, auditing, and/or copying during normal business hours.
- F. No additional compensation will be provided to the Contractor, its Subcontractors, or Suppliers for time or money spent in complying with the requirements of this Audit section. If the Contractor is formally dissolved, assigns, or otherwise divests itself of its legal capacity under this Contract, then it will immediately notify the City and preserve such records at its expense, as directed by the City.
- G. This Audit Section shall survive for six (6) years after the termination or expiration of this Contract, or conclusion of all Claims, audits or litigation, whichever occurs later.
- H. At a minimum the following documents shall be considered Project Records and made available for inspection, auditing, and copying:
 - i. Daily time cards, time-sheets, daily reports, inspection reports, and supervisor's reports;
 - ii. Insurance, welfare, and benefits records;
 - iii. Payroll registers;
 - iv. Earnings records;
 - v. All relevant tax forms and records, including any state and federal payroll tax rate schedules governing the employer's payroll tax rates paid on behalf of employees that work on the project and any payroll tax forms summarizing the amounts paid;
 - vi. Material invoices and requisitions;
 - vii. Material cost distribution worksheets;
 - viii. Equipment records including a list of company-owned equipment and an equipment distribution report containing equipment descriptions, equipment number, equipment rates, recorded equipment hours, phase or cost codes, dates, and any other relevant information as related to how the equipment was recorded to the project;
 - ix. Contractors' rental agencies', Subcontractors', and lower tier subcontractors' invoices;
 - x. Contracts, purchase orders and agreements between the Contractor and each of its Subcontractors, and all lower tier subcontractor contracts and supplier contracts;
 - xi. Subcontractor's and lower tier subcontractors' payment certificates/payment applications;

- xii. Canceled checks, payroll and Contractors;
- xiii. Job cost reports, including both a job cost summary report comparing budgeted amounts to recorded amounts by cost type and phase or cost code and a job cost history/detail/transaction report listing each individual transaction by phase or cost code;
- xiv. General Ledger;
- xv. Cash disbursements journal;
- xvi. All documents which relate to each and every claim together with all documents which support the amount of damages to each claim;
- xvii. All schedule documents, including man-loaded schedules, work plans, planned resource codes, phasing documents and summaries;
- xviii. All other documents, including email, related to the Project, Claims, or Change Orders;
- xix. Any documentation or information relied upon for the purposes of translating the bid amounts to original budget amounts;
- xx. Original budget and updated budgets used for tracking job performance throughout the project;
- xxi. Labor distribution reports summarizing straight time, overtime, and double time by employee and also separately summarizing base wage amounts versus labor burden and benefit amounts;
 - xxii. Copies of all draft and approved change orders including a supplementary documentation or information relied upon for the purposes of pricing the change orders;
 - xxiii. To the extent any of the above-referenced records exist in machine readable format, Contractor will make them available in that form. This requirement specifically includes but is not limited to an obligation to provide the information and access in the native format in which it is maintained by Contractor. The Contractor will, as reasonably requested by the City, provide read-only access to and reasonable technical support necessary to make use of any enterprise or legacy software utilized by the Contractor to manipulate and/or store the relevant data.

19.9 PUBLIC NOTICE REQUIREMENTS

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

19.10 PUBLIC INSPECTION OF CERTAIN RECORDS-PROTECTION OF TRADE SECRETS

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

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

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

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

1. Proprietary information and trade secrets must be clearly identified as "CONFIDENTIAL."
2. If any document or record does not clearly identify the "CONFIDENTIAL" portions, the City will not notify the Contractor that such documents and records will be made available for inspection and copying, and the City may publicly disclose such non-clearly identified portions without notice and with no liability whatsoever to the Contractor.
3. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL," the City will determine whether the material should be made available under the law. If the City determines that the material is subject to disclosure, the City will seek to notify the Contractor of the request and allow the proposer ten (10) business days after such notification to take appropriate legal action in Snohomish County Superior Court at the Contractor's sole expense and liability. If the Contractor does not within ten (10) business days serve the Office of the City Attorney with a copy of an order entered by the Superior Court that expressly prohibits the City from disclosure of the material marked "CONFIDENTIAL," then the proposer will be deemed to have consented to the public disclosure of the material marked "Confidential" and the City may publicly disclose such material without any liability whatsoever to Contractor.
4. To the extent that the City withholds from disclosure all or any portion of Contractor's material marked "CONFIDENTIAL", the Contractor shall indemnify, defend and hold harmless the City of Everett from all lawsuits, liabilities, losses, damages, penalties, attorneys' fees and costs the City incurs arising from or relating to such withholding from disclosure.

END OF SECTION 19

License and User Agreement (Attachment to General Conditions)

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

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

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

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

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

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

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

Either party may terminate this Agreement in the event of: (1) any breach of a material term of this Agreement by the other party which is not remedied within ten (10) days after written notice to the breaching party; or (2) the other party's making an assignment for the benefit of its creditors, or the filing by or against such party of a petition under any bankruptcy or insolvency law, which is not discharged within thirty (30) days of such filing. Licensee acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and

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

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

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












2024-084 JOC Award Burton_SD2

Final Audit Report

2024-10-30

Created:	2024-10-28
By:	Marista Jorve (mjorve@everettwa.gov)
Status:	Signed
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