

PO TERMS AND CONDITIONS FOR PUBLIC WORKS (CONSTRUCTION w/ ITQ)

The following terms and conditions apply to all procurement of Work by or on behalf of the City unless specifically provided on the front of this document and/or incorporated by reference herein.

1. SCOPE OF WORK:

1.1. Contractor shall perform and complete the work described on the front of this document or reasonably inferable there from, including all demolition and construction services, supervision, administration services, coordination of all Subcontractors, tests, inspections, and other items that are necessary to and appropriate for the furnishing, equipping and functioning of the facilities and structures, together with all additional, collateral and incidental work and services required for completion of the work ("Work").

1.2. As part of the Work, the Contractor shall furnish and assume full responsibility for everything required for the orderly progress and proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work including, but not limited to, materials, equipment, labor, transportation, construction, equipment and machinery, tools, appliance, fuel, power, light, heat, transportation, telephone, water, sanitary facilities, temporary facilities, utilities, and all other facilities and incidentals.

2. TERM:

2.1. Contractor will begin providing services upon issue date of the Agreement and will complete services on the date printed on the front of this document or upon satisfactory completion of the work described herein and final payment by the City.

2.2. Contractor shall not initiate, or otherwise begin any work covered by this Agreement until notification to proceed is provided by the City.

3. COMPLIANCE WITH LAWS:

3.1. At all times the Contractor shall comply with all current federal, state, and local laws and ordinances.

3.2. Governing Law. The Agreement will be governed by the laws of Washington. The Contractor irrevocably consents to the exclusive personal jurisdiction and venue of the federal and state courts located in King County, Washington.

4. WORKSITE CONDUCT:

4.1. All laborers and workers, while working in and around the Project, shall act in a professional manner. The Contractor shall enforce proper discipline and decorum among all laborers and workers on the Project.

4.2. The Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and local regulations, ordinances and codes.

4.3. The Contractor shall promptly remedy damage and loss other than damage or loss insured under property insurance provided or required by this Agreement to property at the site caused in whole or in part by the Contractor, their Subcontractor(s) or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

4.4. During the performance of all Work, Contractor shall at all times keep the Work site and such streets, highways, and roads, and properties which it may utilize free from waste materials, debris and/or rubbish and shall employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in any way, as reasonably determined by City, Contractor shall promptly remove them at its sole cost and expense.

4.5. At the completion of the Work, the Contractor shall remove all Project signs and all rubbish and temporary work, of every nature, from and about the Project and the Site. The

Contractor shall remove all tools, scaffolding and surplus materials and shall leave the Project Site broom clean or its equivalent. If the Contractor fails to clean up as required by this Agreement, the City may do so, and the costs associated with such cleanup shall be charged to the Contractor.

5. STANDARD OF PERFORMANCE

5.1. Contractor warrants and guarantees to the City that the Work shall be performed in a manner consistent with a high standard of construction practices for projects of a similar nature and in a workmanlike manner in accordance with industry standards. Contractor covenants and warrants that it shall be responsible for performing and completing, and for causing any Subcontractors to perform and complete the Work in a workmanlike manner in accordance with industry standards and in accordance with all laws.

5.2. All construction shall be subject to tests and inspections at all reasonable times and at all places prior to acceptance. The Contractor shall afford safe access to the Work Site upon reasonable request by the City or any governmental agency to perform tests, inspections or observations. Any such inspection or test shall be for the sole benefit of the City and shall not relieve the Contractor of the responsibility of assuring that the construction strictly complies with this contract and the law. Inspections and tests shall not be construed as constituting or implying acceptance of the construction.

5.3. Contractor warrants to the City that materials and equipment furnished will be of good quality and new, that the Work will be free from defects (other than those inherent in the quality required or otherwise permitted), will be fully compatible with existing materials and equipment and that the Work will conform with all requirements. Work not conforming to these requirements, including Substitution not properly approved and authorized may be considered defective.

5.4. Contractor shall be responsible at its sole cost and expense for correcting all defects in workmanship and/or materials discovered within one year after acceptance of the work.

5.5. In the event that the City determines that any portion of the construction is not in accordance with the requirements of this Agreement, and the City determines in its sole discretion that removal and replacement of the Defective Construction will adversely impact the Construction Schedule, the City may either 1) direct the Contractor to remove and replace the Defective Construction without cost to the City and without adjustment in the Contract Time or 2) accept the Defective Construction and issue a deductive Change Order reducing the Contract Sum by an amount which, in the City's reasonable discretion, is appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made and shall not require acceptance by the Contractor. In the event of non-performance by the Contractor, City, at its sole discretion, shall have the right to replace Contractor. Contractor will be liable to City for all costs and expenses incurred in procuring a replacement contractor and for any work required by the replacement contractor to ready the project for completion and to complete the Work, as reasonably amended for the replacement contractor.

6. INSURANCE: The Contractor shall maintain insurance as set forth in Attachment "B".

7. INDEMNIFICATION:

7.1. The Contractor shall protect, defend, indemnify, and save harmless the City, its officers, employees, and agents

from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Contractor, its officers, employees, and/or agents in performing this agreement. The Contractor agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Contractor, by mutual negotiation, hereby waives, as respects to the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the City incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.

7.2. The City shall protect, defend, indemnify, and save harmless the Contractor, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the City, its officers, employees, and/or agents in performing this agreement. The City agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City, by mutual negotiation, hereby waives, as respects the Contractor only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the Contractor incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the City.

7.3. The Contractor will indemnify, defend, and hold the City (and its elected officials, officers, employees, successors, assigns, insurers, licensees, distributors, independent Contractors, and agents) harmless from all claims, damages, losses, and expenses (including reasonable attorney's fees incurred on such claims and in proving the right to indemnification) arising out of or resulting from any claim, action, or other proceeding that is based upon (a) the Contractor's breach of any obligations, representations, or warranties under the Agreement, (b) the Contractor's outside business activities, or (c) the infringement or misappropriation by the Contractor of any foreign or United States patent, copyright, trade secret, or other proprietary right in results, and any claim of the same.

8. DRAWINGS AND DOCUMENTS: Any drawings, survey data, reports, studies, specifications, estimates, maps, computation, and other document required to be prepared by Contractor for the Project shall be the property of the City. Any drawing and other documents prepared by the Contractor for the Project shall not be made available to any individual or organization by the Contractor without prior written approval of the City of by court order.

9. RESPONSIBILITY OF CONTRACTOR:

9.1. Nondiscrimination/Affirmative Action. The Contractor agrees not to discriminate against any employee or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability or other circumstances as may be defined by federal, state or local law or ordinance, except for a bona fide occupation qualification.

9.2. Independent Contractor. The Contractor is and shall be at all times during the term of the Agreement an independent contractor and not an employee of the City. Any and all employees of the Contractor, while engaged in the performance of any Work required by the Contractor, shall be considered employee of the Contractor only and not of the

City. Any and all claims that may arise on behalf of said employees or third party, while so engaged, shall not be the obligation of the City.

9.3. Low Responsible Bidder – It is the intent of the City to award a contract to the low responsible bidder. Before award, the bidder must meet the bidder responsibility criteria listed in RCW 43.19.1911.

9.4. Subcontractor Responsibility – At the time of execution of any subcontract, the Contractor shall verify that each subcontractor also meet the bidder responsibility criteria listed in RCW 43.19.1911.

10. CLAIMS: Any claim against the City for damages, expenses, costs or extras arising out of this Agreement must be made in writing to the City within thirty (30) days after the discovery of such damage, expense or loss, and in no event later than the time of approval by the City for final payment.

11. SAVINGS CLAUSE: If any provision of the Agreement, or the application of such provision, shall be rendered or declared invalid by a court, the remaining parts or portions of this Agreement shall remain in full force and effect.

12. TERMINATION: The City may terminate the Agreement and take possession of the premises and all material thereon and finish the work by whatever methods it may deem expedient by giving 10 days written notice. In the event, this Agreement is terminated by the City the Contractor shall not be entitled to receive any further amounts due and will be liable to the City as provided in this Agreement or under applicable law.

13. NON WAIVER OF RIGHTS: Any failure by the City to enforce strict performance of any provision of the Agreement will not constitute a waiver of the City's right to subsequently enforce such provision or any other provision of the Agreement.

14. ENTIRE AGREEMENT: This Agreement, together with any attachments and/or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representation or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly agreed to by both parties.

15. FINAL COMPLETION AND PAYMENT:

15.1. When the Work is complete and the Contractor is ready for a final inspection, Contractor shall notify the City in writing. Thereupon, the City will perform a final inspection of the Project. If the City confirms that the Project is complete in full accordance with this Agreement and that the Contractor has performed all of its obligations to the City, the City will furnish a final approval for payment.

15.2. Contractor shall maintain time and expense records, which may be requested by the City. The Contractor shall submit invoices to the City for payment for work performed. All invoices must reference the City's Purchase Order number. Invoices shall be in a format acceptable to the City.

15.3. The City shall pay all invoices from the Agreement by mailing a City warrant within 30 days of receipt of a properly completed invoice including compliance with all required public works and prevailing wage processes.

15.4. Contractor shall keep all records and accounts pertaining to this Agreement for a period of three (3) years after final payment. Copies shall be made available to the City upon request.

15.5. If during the course of the Agreement, the Work performed does not meet the requirements set forth in the Agreement, the Contractor shall correct or modify the Work to comply. The City has the right to withhold payment for such work until it meets the requirements of the Agreement.