

## INTERLOCAL COOPERATIVE PURCHASE AGREEMENT

This Interlocal Cooperative Purchase Agreement (hereinafter, the “agreement”) is made by and between the City of Vancouver, Washington, a municipal corporation under the laws of the State of Washington (hereinafter referred to as "Vancouver"), with its principal place of business at 415 W 6th Street in Vancouver, Washington, and the City of Camas, Washington, a municipal corporation under the laws of the State of Washington (hereinafter referred to as "Camas"), with its principal place of business at 616 NE 4th Avenue, Camas, Washington (collectively referred to as the "parties", and individually as a “party”).

WHEREAS, Vancouver has entered into job order contract #101036 for construction services (hereinafter referred to as the “JOC Contract”) with Halbert Construction Services, LLC (hereinafter referred to as “Contractor”) commencing on November 8, 2022; and

WHEREAS, Camas wishes to utilize the terms and conditions of the JOC Contract to perform various job order projects on Camas facilities; and

WHEREAS, the Parties hereto have the authority to enter into this agreement in accordance with Chapter 39.34 RCW, the Interlocal Cooperation Act.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants herein contained, the parties hereto agree as follows:

It is agreed by the parties as follows:

1. **Term.** The term of this agreement in respect to each party shall commence on the date of last signature by the parties hereto and shall remain in effect during the duration of the JOC Contract until terminated by a party as provided in paragraph 5 of this Agreement.
2. **Cooperative Purchase.** Vancouver authorizes a no cost change to the JOC Contract that the Contractor provide Camas with job order construction services on Camas facilities directly to Camas on the same terms and conditions of the JOC Contract, except that the obligations owed to the Vancouver under such agreement will be owed by Contractor to Camas including but not limited to obligations to provide performance and payment bonds for work performed and insurance endorsements that name Camas as additional insured. Contractor shall directly invoice Camas for any and all such work provided, and all work orders shall state "All work described herein provided directly to the City of Camas, Washington by the Contractor are subject to the terms and conditions of the JOC Contract, City of Vancouver Contract #101036 commencing, dated November 8, 2022. The City of Vancouver is not a party to, nor responsible for, performance of or payment for the work described in this invoice." Camas shall issue all job orders and perform all fiscal and program responsibilities for the projects to be identified by Camas. A true and correct copy of the JOC Contract agreement is attached hereto as Attachment "A" and incorporated in its entirety by this reference.
3. **Compensation and Payment.** The parties agree that the total value of all work orders issued under this agreement shall not exceed \$300,000.00 USD. The Contractor shall directly invoice Camas and Camas shall directly pay the Contractor pursuant to the payment and compensation terms identified within the JOC Contract.

4. **Financial Responsibility.** Camas shall be solely financially responsible for the payment of the purchase price of goods and services provided under the JOC contract and received by Camas under the terms of this agreement.
5. **Ownership.** Title to all items purchased by any party to this agreement shall remain in the name of such party.
6. **Termination.** Any party to this agreement may terminate its participation by giving the other party to the agreement thirty (30) days written notice of such intent to terminate.
7. **Limitations.** The parties shall not jointly acquire property or jointly budget funds under the authority of this agreement.
8. **Statutory Compliance.** Each party agrees to comply with any statutory requirements applicable to such party when acting under this agreement.
9. **Administration.** No new or separate legal or administrative entity is created to administer the provisions of this agreement. Pursuant to RCW 39.34.030(4)(a), the administrator for this Agreement shall be determined by Vancouver.
10. **Right to Contract – Independent Action Preserved.** Each party reserves the right to contract independently for the acquisition of goods or services without notice to the other party and shall not bind or otherwise obligate the other party to participate in the activity.
11. **Hold Harmless.** Camas specifically acknowledges that Vancouver shall have no liability or responsibility for the performance of the Contractor with respect to Camas job orders. Camas shall defend and hold Vancouver harmless from any and all claims, suits, losses, costs (including attorney's fees), and/or damages of any kind whatsoever arising out of or in any way resulting from Camas's issuance of job orders and performance by any party pursuant to same facilitated by this agreement. Vancouver makes no representations or warranties of any kind, including, without limitation regarding the contractors, performance, or terms and conditions of the JOC Contract.
12. **Entirety of Agreement.** This agreement contains or incorporates all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any parties hereto.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

For Vancouver,  
CITY OF VANCOUVER,  
a municipal corporation

For Camas,  
CITY OF CAMAS,  
a municipal corporation

\_\_\_\_\_  
Eric Holmes, City Manager

\_\_\_\_\_  
Signature

Attest:

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Natasha Ramras, City Clerk

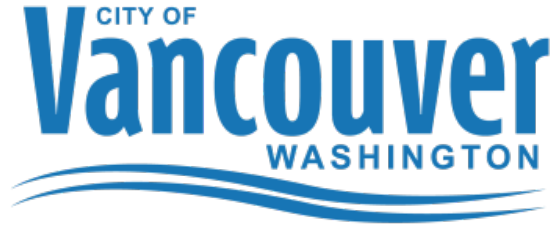
Approved as to form:

\_\_\_\_\_  
Jonathan J. Young, City Attorney

ATTACHMENT "A"

CITY OF VANCOUVER, WA  
JOB ORDER CONTRACT

CONTRACT #101036



CITY OF VANCOUVER, WA  
CONTRACT No. C-101036  
**For**

**JOB ORDER CONTRACTING SERVICES  
FOR GENERAL CONSTRUCTION**

Initial Agreement Term: November 1, 2022 through October 31, 2024

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

Between

CITY OF VANCOUVER, WASHINGTON

And

HALBERT CONSTRUCTION SERVICES LLC

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Exhibit #1 – JOC System License and Fee Agreement

Exhibit #2 – Special Provisions

Exhibit #3 – The Construction Task Catalog

Exhibit #4 – The Technical Specifications

Exhibit #5 – Modifications to the WSDOT Standard Specifications

Exhibit #6 – General Conditions for Facility Construction

Exhibit #7 – Supplemental to Wage Rates

Exhibit #8 – Section 3 Employment and Business Opportunity

Exhibit #9 – Washington State Non-Discrimination Clause – First Class Cities

Exhibit #10- Non-Collusion and Debarment Affidavit

Exhibit #11 - Certification for Federal-Aid Contracts

Exhibit #12 – Labor and Materials Bond and Performance Bond

## **JOB ORDER CONTRACTING SERVICES FOR GENERAL CONSTRUCTION**

This Contract is entered into by and between the City of Vancouver, a municipal corporation of the State of Washington (referenced herein as “Owner”), and Halbert Construction Services LLC (referenced herein as “Contractor”) hereinafter referred to as Parties. This Job Order Contract shall be the agreed basis of performing and compensating for all Owner issued Job Orders to Contractor.

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

This Job Order Contract is entered into pursuant to the provisions of the Revised Code of Washington (RCW) 39.10.430. In executing this Job Order Contract, the Parties acknowledge that the scope of work will be delegated by the Owner on the basis of Job Orders. Contractor has agreed to offer its services to perform said Work per Owner issued RFP No. 32-22, Contractor’s proposal to said RFP, and City Council’s approval on October 24, 2022 of Staff Report No. 153-22.

### **ARTICLE I: DEFINITIONS**

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

- 1.1 Adjustment Factor** - The Contractor’s competitively proposed price adjustment to the unit prices as published in RS Means. The contents and variations allowed in the Adjustment Factor are further defined in this Job Order Contract.
- 1.2 Base Term** - The initial period of the Contract and does not include any Option Terms.
- 1.3 Contract Award Amount** - The minimum dollar amount of total Job Orders Owner commits to spending.
- 1.4 Detailed Scope of Work** - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.
- 1.5 Estimated Annual Value** - An estimate of the value of Job Orders that could be issued by the Owner each year.
- 1.6 Job Order** - A written order issued by the Owner, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. The contents of the Job Order are further defined in this Job Order Contract and the General Conditions. A project may consist of one or more Job Orders.
- 1.7 Job Order Completion Time** - The time within which the Contractor must complete the Detailed Scope of Work.



- 1.8 Job Order Price** - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
- 1.9 Job Order Price Proposal** - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non-Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- 1.10 Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractor; (d) Construction schedule; and (e) other requested documents.
- 1.11 Job Order Request** - An order issued by Owner to Contractor requesting a price for a proposed scope of work to be performed pursuant to a Job Order issued under this Job Order Contract.
- 1.12 Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- 1.13 Maximum Contract Value** - The maximum value of Job Orders that the Contractor may receive under this Contract.
- 1.14 Minimum Contract Value** - The minimum value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract.
- 1.15 Non Pre-priced Task** - A task that is not set forth in RS Means.
- 1.16 Normal Working Hours** - Includes the hours from 7:00 a.m. to 6:00 p.m. Monday through Friday, except for Owner holidays.
- 1.17 Notice to Proceed** - A written notice issued by the Owner directing the Contractor to proceed with construction activities to complete the Job Order.
- 1.18 Open Contract Sum** - The total sum of all open Job Orders.
- 1.19 Option Term** - An additional period of time beyond the Contract Term which extends the termination date of the Contract.
- 1.20 Other than Normal Working Hours** - Includes the hours of 6:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and Owner Holidays.
- 1.21 Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, RS Means.
- 1.22 Project** - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
- 1.23 Request for Job Order Proposal** - A written request to the Contractor to prepare a Job Order Proposal for the Detailed Scope of Work referenced therein.
- 1.24 RS Means** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- 1.25 Schedule of Values** - A written breakdown allocating the total Job Order Price to each category of Work, in such detail as requested by Owner.
- 1.26 Specifications** - That portion of the Contract Documents consisting of the written requirements for contract administration, materials, equipment, systems, standards and workmanship for the Job Order Work, and performance of related services, and including Divisions 0 (less Bidding Requirements) through Division 17.

- 1.27 Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- 1.28 Technical Specifications** - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.29 Unit Price** - The price published in RS Means for a specific construction or construction related work task. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.

## **ARTICLE II: CONTRACT DOCUMENTS, RELATIONSHIP OF PARTIES**

### **2.1 Contract Documents**

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

- a. Amendments to the Contract (later amendment takes precedence over previous)
- b. JOC Services for General Construction Contract
- c. Job Order Contract Purchase Order (including Detailed Scopes of Work, Job Order Proposals, and any additional conditions or specifications)
- d. Amendments to the WSDOT Standard Specifications
- e. WSDOT Standard Specifications for Road and Bridge Construction
- f. General Conditions for Job Order Contracts
- g. Addenda to Request for Proposal 32-22
- h. Request for Proposal 32-22
- i. Successful Proposer's Proposal
- j. RS Means
- k. Technical Specifications

### **2.2 General**

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

### **2.3 Submittal of Requested Information**

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

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

## **ARTICLE III: WORK OF THIS JOB ORDER CONTRACT**

### **3.1 General**

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

### **3.2 Minimum Contract Value**

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

The Estimated Annual Value for each Contract is \$4,000,000. The Contractor may be issued Job Orders totaling up to the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this value of Job Orders. It is merely an estimate. The Owner has no obligation to issue Job Orders in excess of the Minimum Contract Value.

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

### **3.3 Maximum Contract Value**

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

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

### **3.4 Assignment of Work and Award of Individual Job Orders**

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

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

### **3.5 Initiation of a Job Order**

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

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

- a. the general scope of the work;
- b. alternatives for performing the work and value engineering;
- c. access to the site and protocol for admission;
- d. hours of operation;
- e. staging area;
- f. requirements for catalog cuts, technical data, samples and shop drawings;

- g. requirements for professional services, sketches, drawings, and specifications;
- h. construction duration;
- i. liquidated damages;
- j. the presence of hazardous materials;
- k. date on which the Job Order Proposal is due;
- l. Whether or not additional general or special conditions may apply to the Job Order.

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

### **3.6 Preparation of a Job Order Proposal**

1. The Contractor's Job Order Proposal shall include, at a minimum:
  - a. Job Order Price Proposal;
  - b. Required drawings or sketches;
  - c. List of anticipated Subcontractors and Materialmen;
  - d. Construction schedule; preliminary subject to change with the approval of the project manager.
  - e. Other requested documents.Failure to submit the required documents listed above shall result in the proposal being rejected.
2. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
3. The Contractor will prepare Job Order Price Proposals in accordance with the following:
  - a. Pre-priced Task: A task described in, and for which a unit price is set forth in, RS Means.
  - b. Non Pre-priced Task: A task that is not set forth in the Construction RS Means.
  - c. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
    - i. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

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

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

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

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

**C** = Lowest of three independent quotes for all materials.

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

**For Non Pre-priced Tasks Performed by Subcontractors:**

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

**D** = Lowest of three Subcontractor Quotes

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

- iv. After a Non Pre-priced Task is used on two separate Job Orders, the Unit Price for such task will be established, following approval by the Owner, and fixed as a permanent Non Pre-Priced Task which will no longer require price justification.
  - v. The Owner's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
4. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Owner may permit the Contractor to be paid for such task as



a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred; provided, however, that there is no other work for the Contractor's trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.

5. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The costs of expediting services or equipment use fees are not reimbursable. The City, at its discretion, has the option to pay the filing or permit fees through a City funds transfer if so desired to keep these fees out of the JOC project costs.
6. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
7. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Job Order Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
8. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Job Order Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
9. By submitting a Job Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Job Order Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Owner.
10. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.

### **3.7 Review of the Job Order Proposal and Issuance of the Job Order**

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

### **3.8 Job Order Performance**

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

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

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

### **3.9 Quality Control**

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

### **3.10 Permits, Fees, and Notices**

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

### **3.11 Access to Work**

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

Agent, and/or its Representative shall be promptly made, and where practicable at source of supply.

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

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

## **ARTICLE IV: PRICING OF THE WORK**

### **4.1 General**

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

### **4.2 Job Order Price**

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

### **4.3 Contractor's Adjustment Factors**

The Adjustment Factor for work performed during Normal Working Hours is 1.2175 for this contract. This is fixed for a period of one year and may be adjusted per the ENR CCI Index according to the average of the twenty cities. The Adjustment Factor for work performed during Other than Normal Working Hours is set at 1.2480. The Adjustment Factor for non-pre-priced work is set at 1.2150. These Adjustment Factors includes business costs, construction costs, and price variations.

1. Business costs included in the Contractor's Adjustment Factors include:
  - a. Overhead costs, including, but not limited to: home office overhead, insurance, bonds, and indemnification, project meetings, training, management and supervision, mobilization and close-out for the contract and each Job Order, and project office staff and equipment.
  - b. Profit.
  - c. Subcontractor's overhead and profit.
  - d. All taxes for which a waiver is not available with the exception of the Washington Sales Taxes which will not be part of the adjustment factor(s) but rather a separate line item on each Job Order. However, the use tax on materials for WAC 458-20-171 projects shall be part of the adjustment factor(s).
  - e. Employee or Subcontractor's wage rates that exceed the prevailing wage rates.
  - f. Fringe benefits, payroll taxes, worker's compensation, insurance costs and any other payment mandated by law in connection with labor that exceeds the labor rate allowances.

- g. Cost of financing the work.
  - h. Business risks such as the risk of a lower than expected volume of work, smaller than anticipated Job Orders, poor Subcontractor performance, and inflation or material cost fluctuations.
2. Construction costs included in the Contractor's Adjustment Factors include:
- a. Services required to obtain filings and permits.
  - b. Preparation and modification of proposals, sketches, drawings, submittals, as-built drawings, CADD drawings, microfilm, and other project records.
  - c. Incidental engineering and architectural services.
  - d. Office trailer and portable toilets for Contractor's use.
  - e. Construction vehicles such as pick-up trucks, utility trucks, vans, flatbed trucks, tractors, trailers, etc.
  - f. Storage devices or items such as gang boxes and containers for Contractor's tools, equipment and materials.
  - g. Personnel safety equipment (e.g., hard hats, safety harnesses with lifeline or cabling, protective clothing, safety glasses, face shields, etc.), basic safety and warning signage, railings, minor barricades, tape, roping, cable, markings, cones; including traffic control cones, barrels and basic traffic sign, etc.
  - h. Meeting Owner security requirements.
  - i. Excess waste including roofing, drywall, VCT, carpet, wall covering, ceiling tile, pipe, conduit, siding, concrete, etc. This list is not intended to be all inclusive, but descriptive of the types of construction materials that are typically sold in standard lengths, sizes and weights.
  - j. Removing and returning Owner's furniture and furnishings (e.g. chairs, tables, pictures, etc. but excluding modular furniture, wall or ceiling attached or fastened devices or furnishings, safes or other furniture requiring disassembly).
  - k. Sealing, windows, and openings with plastic to contain construction dust and debris within the work area.
  - l. Daily clean-up.
  - m. Final professional project clean-up.
  - n. Costs resulting from inadequate supply of building materials, fuel, electricity, or skilled labor.
  - o. Costs resulting from productivity loss.
  - p. Working in extreme temperatures (below or above normal) or adverse conditions such as excessive rain, wind, sleet or snow.
  - q. Differences in project size; complexity and location.
  - r. All costs for other than discreet items of work specifically required to complete a particular Job Order.

3. Price Variations:

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

1. General Costs:

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

Published Unit Price	X	Installation(or Demolition) Quantity	X	Appropriate Adjustment Factor
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- c. No additional payments of any kind whatsoever will be made. All costs not included in the unit prices must be part of the Adjustment Factors.

**4.4 Labor and Materials Bond and Performance Bond**

The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Vancouver a Labor and Materials Bond and a Performance Bond, on the forms provided by the Owner, in the amount of \$2,000,000 (one million dollars) executed by itself as principal and by a surety company authorized, licensed to do business in the State of Washington on the approved City of Vancouver form. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Revised Code of Washington, Chapter 39.08. The term of each Bond shall be one (1) year. In the event the parties agree to exercise the Contract extension, the Contractor shall deliver a new Labor and Materials Bond and a Performance Bond in the same manner.

**4.5 Retainage**

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

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

#### 4.6 Insurance

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

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

COVERAGE	LIMITS OF LIABILITY
<b>I. Commercial General Liability:</b>	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability Each Occurrence General Aggregate Per Occurrence Products & Completed Operations Aggregate Personal and Advertising Injury Blanket Contractual Liability	 \$1,000,000 \$2,000,000 \$2,000,000 \$1,000,000 \$1,000,000
<b>II. Commercial Automobile Liability</b>	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation, and maintenance of facilities under this agreement. Combined Single Limit	 \$1,000,000
<b>III. Workers' Compensation (applicable to the State of Washington)</b>	
Per Occurrence Employer's Liability Disease Each Employee Disease Policy Limit	Statutory \$1,000,000 \$1,000,000 \$1,000,000
Each Claim Annual Aggregate	\$1,000,000 \$2,000,000
<b>V. Builders Risk</b>	
Builder's "All Risk" Property Insurance a. Coverage to include personal property of others in the care, custody, and control of the contractor. Coverage should be written for 100% of the completed value. b. For additions or repairs of existing building structures, coverage to include contractor's interest in improvements, repairs, additions, alterations to completed buildings and subject to items described in "a".	\$1,000,000



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

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

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

City shall be listed as the Certificate Holder.

#### **4.7 Items Not Found in RS Means**

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

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

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

#### **4.8 Hours of Work**

In addition to the Adjustment Factor for Work that is conducted during Normal Working Hours (7:00AM to 6:00PM, Monday through Friday), the Contractor may utilize a separate

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

#### **4.9 Payment of Labor**

1. For projects performed under this contract, the Contractor may be required to submit weekly/bi-weekly Certified Payrolls to Procurement Services upon request. The Job Order will specify if this is required.
2. The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the work of this Contract will be paid not less than the prevailing rate of wage for an hours work in accordance with the provisions of the Chapter 39.12 RCW, and all rules and regulations promulgated pursuant thereto. The State of Washington prevailing wage rates applicable for this public works project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvwagelookup.aspx>. Prevailing wage rate will be based on the date of the Job Order Proposal.
3. In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision therein shall be final and conclusive and binding on all parties involved in the dispute.
4. In connection with this Contract, for each issued Job Order, the Contractor and each subcontractor shall complete or have on file a current "Statement of Intent to Pay Prevailing Wages" (Form L&I Number F700-029-000) before payment will be made for work performed. An approved "Affidavit of Wages Paid" form must be filed upon completion of the project. These forms are available from Washington State Department of Labor & Industries and can be filed electronically at <http://www.lni.wa.gov/TradesLicensing/PrevWage/>. The Department of Labor and Industries charges a fee for such approval and certification, which fee shall be paid by the Contractor. Any change in the fee will NOT be grounds for revision in Job Order Price.

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

5. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, asphalt or other similar materials and all workers removing any materials from the construction site as required by the specifications are subject to the provisions of RCW chapter 39.12

and are entitled to the appropriate Prevailing Wage Rate. For purposes of this contract, such materials are for specified future use and per WAC 296-127-018, delivery and pick-up of the above listed materials constitutes incorporation.

#### **4.10 Payment to the Contractor**

Progress payments to the Contractor shall be made within 30 days of receipt of the fully executed pay estimate or invoice , as approved by the Owner and as long as all contractual requirements have been met by the Contractor.

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

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

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

**5.1 Contract Term**

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

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

**5.2 Commencement Date**

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

**5.3 Completion Date**

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

**5.4 Liquidated Damages**

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

## **ARTICLE VI: SUBCONTRACTING**

### **6.1 Statutory Requirements**

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

### **6.2 Subcontractor Responsibility Criteria**

2. The Contractor shall include the language of this section in each of its first-tier subcontracts and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.
3. At the time of subcontract execution, the Contractor shall verify that each of its first-tier subcontractors meets the following bidder responsibility criteria:
  - a. Have a current certificate of registration in compliance with Chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
  - b. Have a current Washington Unified Business Identifier (UBI) number;
  - c. If applicable, have:
    - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
    - ii. A Washington Employment Security Department reference number, as required in Title 50 RCW;
    - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;

- iv. An electrical contractor license, if required by Chapter 19.28 RCW;
  - v. An elevator contractor license, if required by Chapter 70.87 RCW.
- d. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
- e. Have received training on the requirements related to public works and prevailing wage under Chapter 39.04 RCW and Chapter 39.12 RCW;
- f. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

## **ARTICLE VII: MISCELLANEOUS**

### **7.1 Cooperative Purchasing**

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

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

### **7.2 E-Verify**

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

### **7.3 Employment of Labor**

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

### **7.4 Equal Opportunity**

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

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

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

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

#### **7.5 Joint Venture Contractor**

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

#### **7.6 Indemnity and Hold Harmless**

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

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

This indemnity and hold harmless shall include any claim made against the Owner by an employee of Contractor or subcontractor or agent of the Contractor, even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. To the extent that such liability arises from the concurrent negligence of both



the Owner and the Contractor, such cost, fees and expenses shall be shared between the Owner and the Contractor in proportion to their relative degrees of negligence. This indemnity and hold harmless shall NOT apply in the case where liability arises from the sole negligence of the Owner. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115.

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

#### **7.7 Ownership of Records and Documents**

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

#### **7.8 Public Disclosure**

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

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

#### **7.9 City Business License**

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

**7.10 Governing Law**

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

**7.11 Compliance with the Law**

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

**7.12 Relation to Parties**

The Contractor, its subcontractors, agents and employees are independent contractors performing services for the Owner and are not employees of the Owner; shall not, as a result of this Contract, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees; and, shall not have the authority to bind the Owner in any way except as may be specifically provided in the Statement of Work.

**7.13 Use of City's Name**

Contractor may not use any of Owner's name, trademark, service marks, or logo in connection with the services contemplated by this Contract or otherwise without the prior written permission of the Owner, which permission may be withheld for any or no reason and may be subject to certain conditions.

**7.14 Non-Discrimination and Equal Employment Opportunity**

During the term of this Contract, Contractor will not discriminate against any employee or applicant for employment in accordance with RCW Chapter 49.60, including, but limited to creed, religion, race, color, age, sex, marital status, sexual orientation, sexual identity, pregnancy, military status, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure the applicants and employees are treated fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation, and benefits, including apprenticeship.

**7.15 Disputes**

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

**7.16 Audit**

Contractor agrees and shall grant Owner or its representative access to records relating to Work under this Contract for auditing purposes. Auditing shall be at the Owner's

discretion. Audits shall be performed in accordance with all Local, State and Federal requirements/statutes. Agencies not covered by Federal single audit requirements may be responsible for an independent agency audit, which meets general accepted auditing standards.

**7.17 Assignment**

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

**7.18 Contract Amendment**

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

**7.19 Termination for Convenience**

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

**7.20 Termination for Cause**

In the event the Contractor is, or has been, in violation of the terms of this Contract, including the solicitation, the Owner reserves the right, upon written notice to the Contractor, to cancel, terminate, or suspend this contract in whole or in part for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for services performed in accordance with the manner of performance set forth in the Contract.

If it is later determined by the Owner that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Contractor, the Owner after setting up a new delivery or performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

**7.21 Opportunity to Cure**

The Owner at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by Owner and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the Owner shall have the right to terminate the Contract without any further obligation to the Contractor. Any such

termination for default shall not in any way operate to preclude the Owner from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

**7.22 Waiver and Remedies**

City's failure to enforce the terms or conditions herein or to exercise any right or privilege, or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type. Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

**7.23 Future Non-Appropriation of Funds**

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

**7.24 Debarment and Suspension**

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

**7.25 Entire Agreement**

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

**7.26 Binding Effect**

The provisions, covenants and conditions in this Contract bind the parties, their legal heirs, representatives, successors, and assigns.

**7.27 Ratification**

Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.

**7.28 Notices**

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

Owner: Anna Vogel  
Procurement Manager  
City of Vancouver  
415 W 6th St.  
P O Box 1995  
Vancouver WA 98668-1995  
[Anna.vogel@cityofvancouver.us](mailto:Anna.vogel@cityofvancouver.us)


Contractor: Tracey Malone  
Vice President/Member  
Halbert Construction Services LLC  
12013 NE 99<sup>th</sup> Street, Ste 1630  
Vancouver, WA 98682  
[tracey@halbertconstruction.com](mailto:tracey@halbertconstruction.com)

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

**CITY OF VANCOUVER**  
A municipal corporation


**CONTRACTOR:**  
Halbert Construction Services LLC

DocuSigned by:  
  
75A9183483CA487...  
Eric Holmes, City Manager


DocuSigned by:  
  
BAE30BAC3A07452...  
Signature

11/2/2022  
Date

Tracey Malone vice President  
Printed Name /Title

Attest:  
  
DocuSigned by:  
  
BCF6734E40E94AE...  
Natasha Ramras, City Clerk

10/26/2022  
Date

Approved as to form:  
  
DocuSigned by:  
  
9A7DC2E31F694AZ...  
Jonathan Young, City Attorney