

**CITY OF MERCER ISLAND  
PUBLIC WORKS CONTRACT  
FOR  
MERCER ISLAND METER REPLACEMENT PROGRAM**

THIS PUBLIC WORKS CONTRACT ("Contract") dated July 20, 2022, is effective on the date the Contract is fully executed by the Parties. The Parties to this Contract are the CITY OF MERCER ISLAND, a Washington municipal corporation ("City" or "Owner"), and Ferguson Enterprises, LLC dba Ferguson Waterworks, a Virginia Limited Liability Company ("Contractor").

A. The City desires to retain an independent contractor to furnish all labor and materials necessary to perform work within and throughout the City of Mercer Island, Washington ("Property"); and

B. The Contractor has the requisite skill and experience to perform such work and has submitted a proposal dated August 7, 2019 to complete such work ("Proposal").

NOW, THEREFORE, the parties ("Parties") agree to the following terms and conditions:

**1. SERVICES BY CONTRACTOR**

- 1.1 Description of Work. Contractor shall perform all work and furnish all tools, materials, supplies, equipment, labor and other items incidental thereto necessary for the construction and completion of the work, more particularly described in the Contract Documents for the Mercer Island Meter Replacement Program Project, including this Public Works Contract, the Contractor's completed Proposal, the City's General Terms and Conditions (May 2020 ed.), any Supplemental and/or Special Conditions, Technical Specifications, Drawings and Addenda, and Contractor's proposal, which documents are incorporated by this reference, ("Work"), which Work shall be completed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the City Manager or his or her designee.
- 1.2 Completion Date. The Work shall be commenced within ten (10) days of receipt by the Contractor of the City's Notice to Proceed and shall attain Final Completion by July 31, 2024 (the "Contract Time") as may be extended in accordance with the Contract Documents. In the event the Work is not completed within the time specified, Contractor agrees to pay to the City liquidated damages in the amount set forth in Section 1.3 of this Contract.
- 1.3 Liquidated Damages. TIME IS OF THE ESSENCE OF THIS CONTRACT. Delays inconvenience the residents of Mercer Island and cost taxpayers undue sums of money, adding time needed for administration, engineering, inspection and supervision. It is impractical for the City to calculate the actual cost of delays. Accordingly, the Contractor agrees to pay liquidated damages as follows: Liquidated damages for failure to achieve timely Substantial Completion shall be in the amount of \$200 per day.
- 1.4 Performance Standard. Contractor shall perform the Work in a manner consistent with accepted practices for highly skilled and competent contractors performing this type of work in this area.

- 1.5 Compliance with Laws. Contractor shall perform the Work in accordance with all applicable federal, state, and City laws, including but not limited to all City ordinances, resolutions, standards, or policies, as now existing or hereafter adopted or amended, and obtain all necessary permits and pay all permit, inspection or other fees, at its sole cost and expense.
- 1.6 Utility Location. Contractor is responsible for locating any underground utilities affected by the Work and is deemed to be an excavator for purposes of Chapter 19.122 RCW, as amended. Contractor shall be responsible for compliance with Chapter 19.122 RCW, including utilization of the "one call" locator system before commencing any excavation activities.
- 1.7 Air Environment. Contractor shall fully cover any and all loads of loose construction materials including without limitation, sand, dirt, gravel, asphalt, excavated materials, construction debris, etc., to protect said materials from air exposure and to minimize emission of airborne particles to the ambient air environment within the City of Mercer Island.

## 2. TERM

This Contract shall commence on the effective date of this Contract and continue until the Work is complete, and formally accepted by City, and all warranties have expired.

## 3. REQUISITE SKILL

The Contractor warrants that it has the requisite skill to complete the Work and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Mercer Island by obtaining a City of Mercer Island business registration. Contractor represents that it has visited the site and is familiar with all of the plans and specifications in connection with the completion of the Work.

## 4. COMPENSATION

- 4.1 Total Compensation. In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount not to exceed five million one hundred and one thousand seven hundred forty-four Dollars and seventy-five Cents (\$5,101,744.75), based on the Proposal submitted by Contractor dated August 7, 2019, and other Contract Documents.
- 4.2 Contractor Responsible for Taxes. Except as otherwise stated in the Contract Documents, the Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Contract.
- 4.3 Method of Payment. Payment by the City for the Work will only be made after the Work has been completed, a voucher or invoice is submitted in a form satisfactory to the City, and such invoice is approved by the appropriate City representative. Payment shall be made within forty-five (45) days of receipt of such invoice or voucher. The Contractor's acceptance of such payment for the Work shall constitute full compensation for the performance of the Work included on such invoice or voucher. Invoices shall be submitted to:

City of Mercer Island  
ATTN: Allen Hunter, Utilities Operations Manager  
9611 S.E. 36th Street  
Mercer Island, WA 98040

4.4 Retainage. Pursuant to Chapter 60.28 RCW, five percent (5%) of the Total Compensation shall be retained by the City to assure payment of Contractor's state taxes as well as payment of subcontractors, suppliers, and laborers. Upon execution of this Contract, Contractor shall complete, execute, and deliver to the City the Contractor's Retainage Agreement set forth in the Contract Documents. No payments shall be made by the City from the retained percentage fund ("Fund") nor shall the City release any retained percentage escrow account to any person, until the City has received from the Department of Revenue a certificate that all taxes, increases, and penalties due from the Contractor and all taxes due and to become due with respect to the Contract have been paid in full or that they are, in the Department's opinion, readily collectible without recourse to the State's lien on the retained percentage. Upon non-payment by the general contractor, any supplier or subcontractor may file a lien against the retainage funds, pursuant to Chapter 60.28 RCW. Subcontractors or suppliers are required to give notice of any lien within thirty (30) days of the completion of the Work and in the manner provided in RCW 39.08.030. Within sixty (60) days after completion of all Work on this Contract, the City shall release and pay in full the money held in the Fund, unless the City becomes aware of outstanding claims made against this Fund.

## **5. EQUAL OPPORTUNITY EMPLOYER**

In all Contractor services, programs, or activities, and all Contractor hiring and employment made possible by or resulting from this Contract, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, sexual orientation, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Contract by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

## **6. INDEPENDENT CONTRACTOR/CONFLICT OF INTEREST**

It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that the City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or any other insurance which is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Contract to an employment contract. It is recognized that Contractor may perform work during the Term of this Contract for other third parties; provided, however, that such performance of other work shall not conflict with or interfere with the

Contractor's ability to perform the Work. Contractor agrees to resolve any such conflicts of interest in favor of the City.

## **7. INDEMNIFICATION**

### **7.1 Indemnification and Hold Harmless.**

- A. The Contractor shall protect, defend, indemnify, and hold harmless City, its elected officials, officers, agents, and employees, from any and all third-party claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter "claims"), arising out of the performance of this Contract in whole or in part by or in any way resulting from the Contractor's officers', employees', agents', and/or subcontractors of all tiers', acts or omissions in performance of this Contract. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. The provisions of this section 7.1 shall survive the expiration or termination of this Agreement.
  
- B. The Contractor's obligations under this section shall include, but not be limited to:
  - i. The duty to promptly accept tender of defense and provide defense to City at the Contractor's own expense.
  
  - ii. The duty to indemnify and defend City, its elected officials, officers, agents and employees, from any such claims, demands, and/or causes of action brought by or on behalf of any of its employees, or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects City with a full and complete indemnity and defense of claims made by the Contractor's employees. The parties acknowledge that these provisions were mutually negotiated upon by them.
  
  - iii. To the maximum extent permitted by law, the Contractor shall indemnify and defend City, its elected officials, officers, agents and employees, from and be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such injury or damage is caused by negligence or alleged negligence of the Contractor or caused by the inherent nature of the work specified.
  
- C. City may, in its sole discretion withhold amounts sufficient to pay the amount of any claim for injury until one of the conditions set forth in subsection D below has been met.
  
- D. Any amount withheld will be held until the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim. In addition, the Contractor shall reimburse and otherwise be liable for any actual

claims costs incurred by City, including, without limitation, costs for claims adjusting services, attorneys, engineering, and administration.

- E. In the event City incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.
- F. This provision has been mutually negotiated by the City and the Contractor.

## 7.2 Survival

The provisions of this Section 7 shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

## 8. **INSURANCE**

8.1 The Contractor agrees to carry for the duration of this contract and for thirty (30) days after Final Acceptance, unless otherwise indicated herein, at a minimum, the following insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, employees or subcontractors with a carriers having a current A.M. Best rating of not less than A:VII:

- A. Workers' Compensation and Employer's Liability Insurance in amounts sufficient pursuant to the laws of the State of Washington.
- B. Commercial general liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 or coverage at least as broad and shall cover liability arising from premises, operations, independent contractors, products-completed operations for a period of three years following substantial completion of the work for the benefit of the City, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Commercial General Liability insurance policy with respect to the Work performed for the City using ISO Additional Insured endorsement CG 20 10 12 19 and Additional Insured Completed Operations endorsement CG 20 37 12 19 or substitute endorsements providing equivalent coverage with limits of no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate and a \$5,000,000 products-completed operations aggregate limit.
- C. Automobile liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage with combined single limits for bodily injury and property damage of not less than \$1,000,000 per accident.

8.2 The City shall be named as additional insured on all such insurance policies, with the exception of workers' compensation coverages. Contractor shall provide certificates of insurance, concurrent with the execution of this Contract, evidencing such coverage. All insurance policies shall contain a clause of endorsement providing that they may not be cancelled or terminated during the Term of

this Contract, except after thirty (30) days prior written notice to the City. Contractor shall require all subcontractors to furnish separate certificates and endorsements. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor. Contractor's failure to maintain such insurance policies shall be grounds for the City's immediate termination of this Contract.

Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

- 8.3 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, contractors or subcontractors as well as to any temporary structures, scaffolding and protective fences.
- 8.4 The provisions of this Section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

## **9. PERFORMANCE/PAYMENT BOND OR ADDITIONAL RETAINAGE**

Pursuant to RCW 39.08.010, Contractor shall provide Performance Bond and Payment Bond each in an amount equal to 100% of the amount of this Contract to cover the performance of all provisions of this Contract and the payment of all laborers and suppliers. The Contract bonds shall be in a form set forth in the Contract Documents. The Contract bond shall assure that the Contractor will faithfully perform all of the provisions of the Contract as well as pay all laborers, mechanic subcontractors, materialmen and suppliers. Contractor's obligations under this Contract shall not be limited to the bond amount.

Alternatively, pursuant to RCW 39.08.010, on contracts of Fifty-Five Thousand Dollars (\$55,000) or less, at the option of the Contractor, the City may, in lieu of a bond, retain ten percent (10%) of the Contract amount for a period of thirty (30) days after the date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

## **10. SAFETY**

Contractor shall take all necessary precautions for the safety of its employees on the work site and shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). Contractor shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the Work for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. Contractor shall protect from damage all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the execution of the Work. The Contractor shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same.

## **11. PREVAILING WAGES**

11.1 Wages of Employees. This Contract is subject to the minimum wage requirements of Chapter 39.12 of the Revised Code of Washington, as now existing or hereafter amended or supplemented. In the payment of hourly wages and fringe benefits to be paid to any of Contractor's laborers, work persons and/or mechanics, Contractor shall not pay less than the "prevailing rate of wage" for an hour's work in the same trade or occupation in the locality within the State of Washington where such labor is performed, as determined by the Industrial Statistician of the Department of Labor and Industries of the State of Washington. Prevailing wages paid pursuant to this Agreement shall be the prevailing wage rates which are in effect on the date when the bids, proposals, or quotes were required to be submitted to the City.

The State of Washington prevailing wage rates applicable for this public works project, which is located in King County, may be found at the following website address of the Department of Labor and Industries: <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>. A copy of the applicable prevailing wage rates is also available for viewing at the office of the City located at 9611 SE 36th St, Mercer Island, WA 98040. Upon request, the City will mail a hard copy of the applicable prevailing wages for this project.

11.2 Reporting Requirements. Contractor shall comply with all reporting requirements of the Department of Labor and Industries of the State of Washington. Upon the execution of this Contract, Contractor shall complete and file a Statement of Intent to Pay Prevailing Wages with the Department of Labor and Industries. If requested by the City, the Contractor shall provide certified payroll records for its employees and the employees of its subcontractors. Upon completion of the Work, Contractor shall complete and file an Affidavit of Wages Paid with the Department of Labor and Industries. Contractor shall deliver copies of both the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid, certified by the Department of Labor and Industries, to the City.

## **12. SUBCONTRACTOR RESPONSIBILITY**

Contractor shall verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in the Instructions to Bidders and possesses the necessary licenses required to perform the Work. This verification requirement must be included in every public works subcontract or every tier.

## **13. OWNERSHIP OF DOCUMENTS**

All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media, all finished or unfinished documents or material which are developed for the City while performing the Work shall become or remain the property of the City and shall be delivered to the City at its request.

## **14. CONFIDENTIALITY**

If it is necessary to provide proprietary information, the Contractor shall clearly mark the information on each page of the document(s) as "Proprietary and Confidential". The City is subject to laws regarding the

disclosure of public records and document. Proposals and other materials, submitted by the Contractor become public record and may be subject to public disclosure, in whole or in part, and may be released by the City in the event of a request for disclosure. In the event the City receives a public record request for information and the Contractor has marked the requested document as "Proprietary and Confidential," the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information; provided that the Contractor shall be solely responsible for all attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorneys fees or penalty assessments under Chapter 42.56 RCW for withholding or delaying public disclosure of such information.

## **15. BOOKS AND RECORDS**

The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract for a period of one (1) year following completion of its obligations under this contract, or as otherwise required by applicable law, and such accounting procedures and practices to assure proper accounting of all funds paid pursuant to this Contract. These records shall be subject upon prior written notice and a mutually agreeable date and time, at Contractor's relevant servicing location, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Contract.

## **16. CLEAN UP**

At any time ordered by the City and immediately after completion of the Work, the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. In the event the Contractor fails to perform the necessary clean up, the City may, but in no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Contractor to the City and/or the City may deduct its costs from any remaining payments due to the Contractor.

## **17. WARRANTY**

- A. **Installation Warranty.** Contractor warrants that installation services shall be performed in a professional and workmanlike manner and in accordance with manufacturer's installation instructions and local code requirements. The warranty period shall begin on the date on which the installation was performed and shall be in effect for one (1) year thereafter. Upon receipt of notice from the City that installation services were not performed in accordance with the warranty herein, Contractor shall re-perform the services to the City's satisfaction.
- B. **Product Warranty.** Full manufacturer's warranty and service obligations, if any, shall be for the benefit of the City and/or end user. Contractor shall coordinate manufacturer warranty service at the City's request. With respect to defects within the underlying products, the City's sole and exclusive warranty is that provided by the product's manufacturer.
- C. **Relation of Warranties.** The product warranties provided by the manufacturer(s) shall not reduce or eliminate Contractor's installation warranty responsibilities under the established in section 17.a above.

## **18. GENERAL PROVISIONS**



This Contract, the Contract Documents, and any supporting contract documents contain all of the agreements of the Parties with respect to any matter covered or mentioned in this Contract and no prior agreements or understandings shall be effective for any purpose. No provision of this Contract may be amended except by written agreement of the Parties. Any provision of this Contract which is declared invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect. The Contractor shall not transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the City. In the event the City consents to any such assignment or transfer, such consent shall in no way release the Contractor from any of its obligations or liabilities under this Contract. Subject to the preceding sentence, this Contract shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs, and assigns. In the event the City or the Contractor defaults on the performance of any terms in this Contract, and the Contractor or City places the enforcement of the Contract or any part thereof, or the collection of any monies due, in the hands of an attorney, or files suit, each Party shall pay all its own attorneys' fees and expenses. The venue for any dispute related to this Contract shall be King County, Washington. Failure of the City to declare any breach or default immediately upon occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. This Contract shall be governed by and interpreted in accordance with the laws of the State of Washington. Each individual executing this Contract on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute this Contract. Time is of the essence of this Contract and each and all of its provisions in which performance is a factor. Adherence to completion dates is essential to the Contractor's performance of this Contract.

#### **19. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE**

“Contract Documents” as the term is used throughout this Contract shall mean the documents listed below. Any inconsistency within the Contract Documents shall be resolved in the manner prescribed by Paragraph 1.2 of the City General Terms and Conditions (May 2020 edition).

1. This Contract, any addenda, and/or change orders
2. Contract Attachment A: City General Terms and Conditions (May 2020 edition)
3. Contract Attachment B: Retainage Agreement
4. Contract Attachment C: Performance and Payment Bonds
5. Contract Attachment D: Scope of Services
6. Contract Attachment E: Pricing
7. Contract Attachment F: Contract Schedule
8. Contract Attachment G: Product Warranty
9. The Contractor’s proposal (dated August 7, 2019), submitted in response to the City’s Request for Proposal
10. City’s Request for Proposal for Project No. WW120S (dated June 18, 2019)

#### **20. SAFEGUARDING OF PERSONAL INFORMATION**

The Contractor shall not use or disclose Personal Information, as defined in RCW 19.255.010, in any manner that would constitute a violation of federal law or applicable provisions of Washington State law. Contractor agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of Personal Information.

The Contractor shall ensure its directors, officers, employees, subcontractors, or agents use Personal Information solely for the purposes of accomplishing the services set forth in this Contract. The Contractor shall protect Personal Information collected, used, or acquired in connection with this Contract, against unauthorized use, disclosure, modification or loss.

The Contractor and its sub-contractors agree not to release, divulge, publish, transfer, sell or otherwise make Personal Information known to unauthorized persons without the express written consent of the City or as otherwise authorized by law. The Contractor agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of Personal Information.

The Contractor shall make the Personal Information available to amend as directed by City and incorporate any amendments into all the copies maintained by the Contractor or its subcontractors. Contractor shall certify its return or destruction upon expiration or termination of the Agreement and the Contractor shall retain no copies. If Contractor and the City mutually determine that return or destruction is not feasible, the Contractor shall not use the Personal Information in a manner other than those permitted or authorized by state and federal laws.

The Contractor shall notify the City in writing immediately upon becoming aware of any unauthorized access, use or disclosure of Personal Information. Contractor shall take necessary steps to mitigate the harmful effects of such use or disclosure. Contractor is financially responsible for notification of any unauthorized access, use or disclosure. The details of the notification must be approved by the City. Any breach of this clause may result in termination of this Contract and the demand for return of all Personal Information.

IN WITNESS WHEREOF, the Parties have executed this Contract the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CONTRACTOR:**

FERGUSON ENTERPRISES, LLC

By: \_\_\_\_\_  
[insert full legal name and title of signator]

Address:

Phone:  
Email:

**CITY:**

CITY OF MERCER ISLAND

By: \_\_\_\_\_  
Jessi Bon, City Manager

Attest:

By: \_\_\_\_\_  
Andrea Larson, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Bio Park, City Attorney

**ATTACHMENT A**  
**City General Terms and Conditions (May 2020 edition)**

**CITY OF MERCER ISLAND  
GENERAL TERMS AND CONDITIONS  
MAY 2020 EDITION  
TABLE OF CONTENTS**

<b>Article 1: GENERAL PROVISIONS .....</b>	<b>1</b>
1.1 Definitions .....	1
1.2 Intent and Interpretation of the Documents.....	4
1.3 Clarification of Drawings and Detail Drawings .....	5
<b>Article 2: CITY .....</b>	<b>5</b>
2.1 Authority .....	5
2.2 Information Supplied by City .....	6
2.3 Work by City or Separate Contractors .....	6
<b>Article 3: CONTRACTOR.....</b>	<b>6</b>
3.1 Contractor Representations .....	6
3.2 General Duties .....	7
3.3 Duty to Inspect Contract Documents .....	7
3.4 Contractor’s Supervision and Employees .....	8
3.5 Subcontractors and Suppliers .....	8
3.6 Schedule of Working Hours .....	9
3.7 Record Documents.....	9
3.8 Cost Records.....	10
3.9 Maintenance and Inspection of Documents .....	10
3.10 Maintenance and Site Cleanup .....	12
3.11 Protection of Existing Structures, Equipment, Vegetation, Utilities, and Improvements .....	13
3.12 Permits, Laws, Regulations and Taxes.....	13
3.13 Patents and Royalties.....	14
3.14 Contractor’s Certification .....	14
3.15 Deviation from Contract .....	15
3.16 Operations, Material Handling, and Storage Areas .....	15
3.17 Contractor’s Overall Responsibility For Protection of Work, Property, and Persons.....	15
3.18 Protection of Persons.....	16
3.19 Safety Program .....	16
3.20 Archaeological and Historical Preservation.....	17
3.21 Water Pollution Control Requirements.....	17
3.22 Easements.....	17
3.23 Title VI Compliance and Assurance .....	17
<b>Article 4: ADMINISTRATION OF THE CONTRACT .....</b>	<b>18</b>
4.1 Time of Essence.....	18
4.2 Work Progress .....	18
4.3 Schedule of Values .....	18
4.4 Project Schedule .....	19
4.5 Submittals.....	20
4.6 Requests for Information .....	21
4.7 Tests, Inspections, and Access to the Work.....	22
4.8 Correction of Work or Damaged Property .....	23
4.9 Substitution of Products & Processes.....	23
4.10 Increased or Decreased Quantities .....	24
<b>Article 5: CHANGES TO THE CONTRACT .....</b>	<b>25</b>
5.1 General.....	25
5.2 Contractor’s Request for a Change Order .....	26
5.3 Differing Site Conditions.....	27
5.4 Suspension of Work.....	28
5.5 Force Majeure .....	29
5.6 Change Orders.....	29

5.7	City Request for a Change Proposal.....	30
<b>Article 6: TIME AND PRICE ADJUSTMENTS .....</b>		<b>30</b>
6.1	Change in the Contract Time .....	30
6.2	Change in the Contract Price .....	31
6.3	Method to Calculate Adjustments to Contract Price .....	33
6.4	Allowable Costs .....	35
<b>Article 7: PAYMENT AND COMPLETION .....</b>		<b>37</b>
7.1	Applications for Payment .....	37
7.2	Payments .....	38
7.3	Payment Withheld.....	38
7.4	Title.....	39
7.5	Substantial Completion .....	39
7.6	Final Inspection .....	40
7.7	Requirements for Final Application For Payment.....	40
7.8	Completion/Final Acceptance .....	40
7.9	Warranty and Guaranty.....	41
7.10	Prior Occupation .....	41
<b>Article 8: TERMINATION .....</b>		<b>42</b>
8.1	City's Right to Terminate Contract .....	42
8.2	City's Right to Stop the Work for Cause .....	44
<b>Article 9: CLAIMS AND LITIGATION .....</b>		<b>44</b>
9.1	Contractor Claims .....	44
9.2	Contractor's Burden of Proof on Claim .....	46
9.3	Litigation .....	46
<b>Article 10: MISCELLANEOUS.....</b>		<b>46</b>
10.1	Compensation, Wages, Benefits and Taxes.....	46
10.2	Prevailing Wages .....	47
10.3	Successors and Assigns.....	47
10.4	Third Party Agreements.....	47
10.5	Nonwaiver of Breach.....	47
10.6	Notice to City of Labor Disputes.....	47
10.7	Headings .....	47
10.8	Choice of Law.....	47
10.9	Severability.....	48

## ARTICLE 1: GENERAL PROVISIONS

### 1.1 DEFINITIONS

- A. **“Addendum”** or **“Addenda.”** Alteration or clarification of the plans or specifications provided to bidders by City prior to bid time, which becomes part of the Contract Documents when the Contract is executed.
- B. **“Claim.”** A written demand by the Contractor seeking (1) a change to Contract Price; (2) a change of Contract Time; (3) a payment of money or damages; and/or, (4) any other relief arising out of or relating to this Contract.
- C. **“Change Order.”** A written instrument designated to be a Change Order which alters the Contract, and identifies the following: (1) a change in the Work; (2) a change in Contract Price; and/or (3) a change in Contract Time.
- D. **“Change Proposal.”** A document prepared by the Contractor at the request of City, which proposes changes to the Work and/or changes to the Contract Price and/or Contract Time. City initiates all requests for Change Proposals.
- E. The **“Contract”** or **“Contract Documents.”** The entire integrated agreement between City and the Contractor for the performance of the Work in accordance with the Contract Documents. The Contract Documents include the following:
  - 1. The signed Agreement between City and Contractor (the “Public Works Contract”);
  - 2. The Contractor’s completed Bid Form;
  - 3. The City’s General Terms and Conditions (May 2020 ed.);
  - 4. Any Supplemental or Special Conditions.
  - 5. Technical Specifications;
  - 6. Drawings;
  - 7. Addenda; and
  - 8. Any Change Orders.
- F. **“Contract Execution.”** occurs when City Manager or his/her designee signs the Contract, which shall only occur after the Contractor signs the Contract.
- G. **“Contract Price”** means the total amount payable by City to the Contractor for performance of the Work in accordance with the Contract.
- H. **“Contract Time.”** The number of days or the specific date set forth in the Contract to achieve Substantial Completion of the Work.
- I. **“Contract Work”** or **“Work.”** The labor, supervision, materials, equipment, supplies, services, other items, and requirements of the Contract necessary for the execution, completion and performance of all requirements of the Contract by the Contractor to the satisfaction of City.
- J. **“Contractor.”** The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with City to do the Contract Work.

- K. **“Critical Path.”** The longest, continuous sequence of interrelated activities that begins at the start of the Project (Notice to Proceed) and extends to Substantial Completion of the Project. These activities are critical because delay to an activity on this path will extend Contract Time.
- L. **“Day.”** A calendar day, unless otherwise specified.
- M. **“Differing Site Conditions.”** (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents (Type I), or (2) Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the construction activities of the character provided for in the Contract (Type II).
- N. **“Engineer.”** The City representative who administers the Contract for the City.
- O. **“Final Acceptance.”** Written acceptance of the Project by City.
- P. **“Force Majeure.”** An event that is unforeseeable at the time of Contract Execution and that is beyond the reasonable control of the Contractor and City and includes:
1. Natural Disaster declared by Governor of Washington or President of the United States, including but not limited to earthquakes;
  2. Acts or omissions of any government entity acting within its governmental capacity;
  3. Fire and/or flood for which the Contractor or its Subcontractors is not responsible;
  4. Quarantine or epidemic;
  5. Strike or defensive lockout;
  6. Unusually Severe Weather Conditions; and
  7. Acts of terrorism.
- Q. **“Hazardous Material.”** Any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any and all federal, state, City, or municipal statutes or laws and regulations promulgated thereunder, now or at any time hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U. S. C. §§ 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U. S. C. §§ 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U. S. C. §§ 6901, *et seq.*), the Federal Water Pollution Control Act (33 U. S. C. §§ 1251, *et seq.*), the Clean Air Act (42 U. S. C. §§ 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U. S. C. §§ 2601, *et seq.*), the Occupational Safety and Health Act (29 U. S. C. §§ 651, *et seq.*, and the Model Toxics Control Act (RCW 70.105), or similar state or local statute or code), as the laws have been amended and supplemented.
- R. **“City”** or **“Owner”** may be used interchangeably and refer to the City of Mercer Island.

- S. **“Notice.”** A written document issued by the Engineer or Contractor’s Representative which is submitted to the other party and delivered by:
1. Depositing in the U. S. Mail (or other method of commercial express mail), which notice shall be effective on the date of receipt;
  2. Service on the Parties’ representative or at the Contractor’s home office or field office, which notice shall be effective on the date of service; or,
  3. Facsimile to the Parties’ representative or Contractor’s home office or field office, which notice shall be effective upon receipt.
- T. **“Notice To Proceed.”** A written directive issued by City authorizing the Contractor to perform some or all of the Work.
- U. **“Overhead.”** Charges that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the physical Contract construction activity. Overhead includes Site or Field Overhead and Home Office Overhead.
1. **Site or Field Office Overhead**  
Site or Field Overhead costs are typically those costs that are related to, but are not limited to supervision, including general foremen and their supervisors, planners, schedulers, engineers, managers, etc. and the direct payroll costs of their project-related service, clerical salaries and their direct payroll costs, the costs of all vehicles, travel, meal and lodging costs associated with those personnel, Site or Field office and utility expense, expenses associated with all regulatory compliance, Hand and Other Small Tools provided by the Contractor for the use of its forces, all expendable supplies, and all other items incidental to or integral in supporting the physical completion of the Work.
  2. **Home Office Overhead**  
Home office Overhead costs are typically those that include all general office expenses. Such costs include, but are not limited to those associated with officer and office salaries and related payroll taxes and benefits, costs of office occupancy and maintenance, all supporting services (such as utilities, office machines computers, and related items and support) related to the home office function, business taxes and licenses, and all such other costs necessary to operate the business entity. Home office overhead includes unabsorbed home office overhead.
  3. In addition to the above, whether treated as Site or Field Overhead or as Home Office Overhead, costs of any and all bonds, insurance(s), and taxes associated with this Contract are to be considered as Overhead. All items as those identified above are to be treated as Overhead for this purpose regardless of how the Contractor chooses to account for them in its books of account.
  4. Under no circumstances shall City pay the Contractor for direct or allocated costs or charges for officer bonus and profit sharing, project personnel bonuses, charitable contributions, income taxes, or any costs relating to illegal activity.
- V. **“Parties.”** The Contractor and City.
- W. **“Project.”** All activity relative to this Contract including activity of the Contractor, its Subcontractors, and City.



- X. **“Request for Change Order.”** A document, designated as a Request for a Change Order, prepared by the Contractor requesting either (1) a change in Contract Price; (2) a change in Contract Time; (3) a change in t Work; (4) a payment of money or damages; and/or, (5) any other relief arising out of or relating to this Contract.
- Y. **“Request for Information.”** A request from the Contractor to City seeking an interpretation or a clarification of some requirement of the Contract Documents.
- Z. **“Site” or “Project Site.”** The location, at which construction, equipment or services furnished by the Contractor under the Contract will be performed, completed and/or delivered.
- AA. **“Subcontractor.”** An individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Contract. When City refers to Subcontractor(s) in this document, for purposes of this document and unless otherwise stated herein, the term Subcontractor(s) includes, at every level and/or tier, all subcontractors and subconsultants.
- BB. **“Supplier(s).”** Any person or firm who is not performing work or supplying labor on Site and is engaged in the business of supplying a manufactured product or resource to City, Contractor, or Subcontractors. The term Suppliers includes materialmen, manufacturers, and fabricators.
- CC. **“Substantial Completion.”** That stage in the progress of the Work where:
  1. City has full and unrestricted use and benefit of the Project for the purpose intended;
  2. All the systems and parts of the Contract Work are functional;
  3. Utilities are connected and operate normally;
  4. Only minor incidental work or correction or repair remains to complete all Contract requirements; and
  5. The City has received all certificates of occupancy and any other permits, approvals, licenses and other documents from any governmental authority with jurisdiction necessary for beneficial occupancy of the project.

## 1.2 INTENT AND INTERPRETATION OF THE DOCUMENTS

- A. The Contract Documents constitute the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral.
- B. The Contract Documents shall not be construed to create a contractual relationship between any parties other than City and the Contractor. No contract between City and a third party shall be construed to create any duty on the part of City or such third party to the Contractor. The Contractor is not an intended or incidental beneficiary of any promises made in City’s contract with a third party, if any.
- C. The Contract Documents are intended to be complementary. What is required by one part of the Contract shall be as binding as if required by all. Should any conflict or inconsistency be found in the Contract Documents, the provision imposing the more expensive duty or obligation on the Contractor shall take precedence.

- D. The words “similar,” “typical” (or other equivalents) shall mean nearly corresponding or having a likeness. Such words shall not be construed to mean that all parts of the Work referred to are identical or substantially identical, or that such elements of the Work are connected identically or substantially identically to the rest of the Work. The Contractor has the responsibility to determine all details of the Work in relation to their location and connection to other parts of the Work. The singular includes the plural and vice versa. Male includes female and vice versa.
- E. The organization of the specifications into divisions, provisions and articles and the organization of the drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

### **1.3 CLARIFICATION OF DRAWINGS AND DETAIL DRAWINGS**

- A. Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn out parts shall apply also to other similar portions of the Work. Where ornament or other detail is indicated by starting only, such detail shall be continued throughout the courses or parts in which it occurs and shall apply to all other similar parts of the Work, unless otherwise indicated.
- B. With regard to drawings the following shall apply:
  - 1. Written dimensions shall be followed; drawings may not be to scale.
  - 2. Figure dimensions on drawings shall govern over scale dimensions; and detail drawings shall govern over general drawings.

## **ARTICLE 2: CITY**

### **2.1 AUTHORITY**

- A. Unless City, in writing, indicates otherwise, the authority to (1) commit to or bind City to any Change Orders or change in the Work, Contract Price and/or Contract Time; or (2) sign the Contract or Change Orders rests solely in the City Manager or his or her designee.
- B. The Engineer shall have the authority to administer the Contract. Administration of the Contract by the Engineer includes but is not limited to:
  - 1. Receiving all correspondence and information from the Contractor;
  - 2. Issuing request for Change Proposals;
  - 3. Responding to Requests For Information;
  - 4. Reviewing the schedule of values, project schedules, submittals, testing and inspection reports, substitution requests, and other documentation submitted by the Contractor;
  - 5. Negotiating Change Proposals and Change Orders;
  - 6. Recommending Change Orders for approval by the City Manager or its designee;
  - 7. Issuing decisions with respect to Requests for Change Orders and Claims;
  - 8. Processing payment requests submitted by the Contractor, and recommending payment;

9. Monitoring the quality of the Work, rejecting noncompliant Work, and recommending acceptance of the Work;
  10. Transmitting executed Change Orders, amendments, and other Contract correspondence to the Contractor; and
  11. Performing all other contract administrative functions.
- C. All correspondence, questions, and/or documentation shall be submitted to the Engineer.
- D. The Engineer may designate representatives to perform functions under the Contract, such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical or administrative nature.

## **2.2 INFORMATION SUPPLIED BY CITY**

- A. Unless otherwise specifically provided in the Contract, surveys and site information provided by City are intended to describe the general physical characteristics of the Site. City does not represent that this information is complete or sufficient for the Contractor's performance of the Work.
- B. City shall furnish to the Contractor a copy of the Contract Documents. The Contractor shall pay City for any additional copies of Contract Documents.

## **2.3 WORK BY CITY OR SEPARATE CONTRACTORS**

City reserves the right to perform work not included in the Contract or to let other contracts in connection with this Project. The Contractor shall coordinate its Work with City and other City contractors and, at City's request, participate in meetings for the purpose of coordinating the Contractor's construction schedule with those of other contractors at no additional cost to City.

# **ARTICLE 3: CONTRACTOR**

## **3.1 CONTRACTOR REPRESENTATIONS**

The Contractor makes the following representations to City:

- A. Before submission of its bid, the Contractor has:
1. Carefully reviewed the Contract Documents, and visited and examined the Site;
  2. Become familiar with the general and local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of Contract Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and reasonably ascertainable subsurface conditions and other matters that may be encountered at the Site or affect performance of the Work or the cost or difficulty thereof;
  3. Become familiar with and satisfied itself as to the conditions bearing upon transportation, disposal, handling, and storage of materials; and
  4. Become familiar with and satisfied itself as to the availability of labor, water, electric power, and roads; and the uncertainties of access, traffic, parking and weather. Any failure of the Contractor to take the action described in this provision (3.0) or elsewhere in the Contract Documents will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of

successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to City.

- B. The Contract Price is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work as represented by the Contract, site visit, and the general conditions (including but not limited to weather, site, soil) known or reasonably anticipated for the Site.

### **3.2 GENERAL DUTIES**

- A. The Contractor shall give sufficient supervision to the Work, using its best skill and attention. The Contractor is on notice that City will be relying on the accuracy, competence and completeness of the Work. The Contractor shall supervise and be solely responsible for the proper performance of the Work in accordance with the Contract, including the construction means, methods, techniques, sequences, procedures, and for coordination of all portions of the Work.
- B. Unless specified elsewhere in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery, utilities, transportation, and other facilities and services (including federal and state tax, industrial insurance, social security liability and all other applicable taxes) necessary for the proper execution and completion of the Work.
- C. The Contractor shall also provide sufficient staffing and supervision to process Requests for Information, Change Proposals, Submittals, Change Orders, close out documentation, and to perform all other requirements of the Contract and all Work.
- D. The Contractor shall lay out its Work from baselines and benchmarks indicated in the Contract, if any, and shall be responsible for the accuracy of all field measurements and surveys used in the lay out.

### **3.3 DUTY TO INSPECT CONTRACT DOCUMENTS**

- A. The Contractor shall carefully study and compare all Contract Documents and check the conditions, dimensions, and instructions as stated therein. Contractor will not be required to provide professional services which constitute the practice of architecture and engineering except to the extent provided for in the technical specifications and drawings.
- B. The Contractor shall immediately notify City in writing of any:
  - 1. Error, inconsistency, or omission in the Contract Documents that a reasonable contractor knew or through the exercise of reasonable diligence should have discovered under the same and similar circumstances;
  - 2. Requirement in the Contract Documents that conflict with any local, state, and federal laws, regulations and/or permits, licenses, and easement conditions that a reasonable contractor knew or through the exercise of reasonable diligence should have discovered under the same and similar circumstances.
- C. The Contractor should not proceed with the work in question until the Contractor receives written direction from the Engineer.
- D. If the Contractor proceeds with the work in question without written direction from the Engineer, the Contractor shall be responsible for any costs or damages associated with:

1. Fines or penalties;
2. Demolition, tear out, removal, cleanup, remediation, or fixing the work in question; and
3. Delay, disruption, and loss of productivity.

### **3.4 CONTRACTOR'S SUPERVISION AND EMPLOYEES**

- A. Contractor shall provide qualified and competent people to administer the contract and perform all the Work.
- B. During performance of the Work the Contractor shall have supervisory personnel on-site and available to administer, manage and coordinate the Work. City shall not be responsible for the acts or omissions of the supervisory personnel or their assistants.
- C. The Contractor shall at all times enforce good order among all persons furnishing labor or materials on-site and shall only employ workers skilled in the work assigned. If requested by the Project Representative, Contractor shall provide the Project Representative with copies of licenses, registrations, and certifications.
  1. City shall have the right to require the Contractor to remove personnel from the Site that do not have the appropriate qualifications and experience to meet or uphold the requirements of the Contract. City shall also have the right to order the Contractor to replace personnel who demonstrate unprofessional behavior.
  2. Failure by City to require removal of any Contractor personnel shall not be deemed an admission that any such personnel are satisfactory, nor shall such failure relieve the Contractor from any contractual responsibility.

### **3.5 SUBCONTRACTORS AND SUPPLIERS**

- A. This Contract is between City and the Contractor.
  1. The Contractor's subcontracting shall not create a contract between City and the Subcontractor and Suppliers. Subcontractors and Suppliers are not intended as incidental third party beneficiaries to the Contract. The Subcontractor and Suppliers shall have no rights against City by reason of their agreements with the Contractor.
  2. The Contractor is responsible for performing all work required by the Contract. The Contract has not been written with the intent of, and City shall not be a party to, defining the division of work between the Contractor and its Subcontractors and Suppliers.
- B. **Selection of Subcontractors and Suppliers**
  1. Subcontractors and Suppliers shall be properly licensed, registered or certified, as applicable, and capable to perform the assigned work.
  2. If requested by City, the Contractor shall provide documentation that the proposed Subcontractors and Suppliers have adequate experience and skill.
  3. The Contractor shall require each Subcontractor and Supplier to comply with all provisions of this Contract. At the request of Subcontractors or Suppliers, Contractor shall make available for copying all Contract Documents.

**C. Responsibility for Work of Subcontractors and Suppliers**

The Contractor shall be responsible for the acts and omissions of Subcontractors and Suppliers. The Contractor shall also be responsible for the suitability of any materials, components, equipment or supplies furnished by a Subcontractor and/or Supplier irrespective of whether such were designated or approved by City.

**3.6 SCHEDULE OF WORKING HOURS**

- A. As specified in the Contract, the Contractor shall submit a schedule of working hours, including overtime to City for acceptance. This schedule shall comply with all Contract requirements. Except as permitted elsewhere in the Contract Documents or in the case of an emergency, all Work at the Site shall be performed between the hours of 7am and 6 pm Monday through Friday.
- B. The schedule of working hours accepted by City shall be the only schedule used by the Contractor during performance of the Contract, unless amended to maintain Work progress.
- C. The Contractor shall provide 48 hours advance written Notice of any intent to work outside of approved working hours. Any work at the Site performed outside approved working hours shall be performed without additional expense to City, except as otherwise provided in the Contract Documents. Contractor shall comply with Mercer Island Code Section 8.24.020 (Q) which prohibits construction related noise outside designated hours except in cases of emergency or demonstrated necessity.

**3.7 RECORD DOCUMENTS**

- A. The Contractor shall maintain an accurate, readable, and orderly set of drawings and specifications, updated as the job progresses to show all approved changes, options, alternates, and all actual deviations from the original Contract Documents. This set of drawings and specifications shall be the Record Documents.
  - 1. The Record Documents shall be maintained in hard copy.
  - 2. In addition to all approved changes, options, alternates, and all actual deviations from the original Contract Documents, the Record Documents shall be marked as follows:
    - a. Record all materials used where options, alternates and/or change orders were indicated, specified and/or authorized;
    - b. Accurate measurements referenced as required by the technical specifications shall be recorded to show the exact location and changes in direction of all underground services and utilities, as well as their depth below finished grade; and
    - c. Record all other requirements as specified in the Technical Specifications.
- B. The Record Documents shall be kept up-to-date and be available for review by City at all times, including but not limited to at each job progress meeting. Failure to have the record set up-to-date shall be sufficient reason for City to withhold payment in accordance with paragraph 7.2, *Payments Withheld*, until all such information is recorded.

- C. Record Documents may be used to assist City to verify the appropriate progress payment.
- D. Neither Final Acceptance nor Final Payment will be issued until a complete set of Record Documents is submitted and the Engineer is satisfied as to its quality and accuracy.

### **3.8 COST RECORDS**

- A. The Contractor, Subcontractors, and Suppliers shall maintain Project cost records by cost codes and shall segregate and separately record at the time incurred all costs (1) directly associated with each work activity and (2) directly or indirectly resulting from any event or condition for which the Contractor seeks an adjustment in the Contract Price, Contract Time, and/or damages.
  - 1. Any costs claimed to result from any such event or condition, including, but not limited to, delay and impact costs, acceleration costs, loss of productivity or efficiency, and increased or extended overhead shall be recorded at the time incurred and be fairly and reasonably allocated to each such event or condition and to other causes of such costs.
  - 2. City shall be provided with a detailed description of all such costs and the basis of allocation. The Contractor, Subcontractors, and Suppliers shall maintain a monthly summary of all costs and shall make all underlying cost records and monthly summary of costs available for review, inspection, and copying by City upon request.
  - 3. Any work performed for which the Contractor intends to seek an adjustment in Contract Price and/or Contract Time shall be recorded on the same day the work is performed and kept separate so as to distinguish it from Contract Work.
- B. In addition to the requirements set forth in Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*, the Contractor shall be entitled to extra compensation for an event or condition and/or the recovery of damages only to the extent that the Project cost records are kept in full compliance with all Contract requirements and the cost allocations support entitlement to such compensation.

### **3.9 MAINTENANCE AND INSPECTION OF DOCUMENTS**

- A. All Contractor's, Subcontractors', and Suppliers' documents and records relating to the Contract shall be open to inspection, audit, and/or copying by City or its designee:
  - 1. During the Contract Time; and
  - 2. For a period of not less than six years after the date of Final Acceptance of the Contract ("Preservation Period"); or if any Claim, audit or litigation arising out of, in connection with, or related to this Contract is initiated, all documents shall be retained until such Claim, audit or litigation involving the records is resolved or completed, whichever occurs later.
- B. The Contractor shall also guarantee that all Subcontractor and Supplier documents shall be retained and open to similar inspection, audit and/or copying during the Contract Time and also the Preservation Period. The Contractor, Subcontractor, and Supplier shall use its best efforts to cooperate with the inspection, auditing, and/or copying.

- C. Inspection, audit, and/or copying of all documents described herein, may be performed by City or its designee at any time with not less than seven (7) days' Notice. Provided however, if an audit or inspection is to be commenced more than sixty (60) days after the Final Acceptance date of the Contract, the Contractor will be given twenty (20) days' Notice of the date of the audit.
- D. The Contractor, Subcontractors, and Suppliers shall provide adequate facilities, acceptable to City, for inspection, auditing, and/or copying during normal business hours.
- E. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it shall immediately notify City and preserve such records, at its expense, as directed by City.
- F. The Contractor, Subcontractor, and Supplier, shall be subject to audit at any time with respect to this Contract. Failure to maintain and retain sufficient records to allow City to verify all costs or damages or failure to permit City 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.
- G. At a minimum, the following documents, including the machine readable electronic versions, shall be available for inspection, audits, and/or copying:
  - 1. Daily time sheets and all daily reports, Supervisor's reports, and inspection reports;
  - 2. Collective bargaining agreements;
  - 3. Insurance, welfare, and benefits records;
  - 4. Payroll registers;
  - 5. Earnings records;
  - 6. All tax forms, including payroll taxes;
  - 7. Material invoices and requisitions;
  - 8. Material cost distribution worksheet;
  - 9. Equipment records (list of Contractor's, Subcontractors', and Suppliers' equipment, rates, etc.);
  - 10. Contracts, purchase orders and agreements between the Contractor and each Subcontractor and Supplier;
  - 11. Subcontractors' and Suppliers' payment certificates;
  - 12. Correspondence, including email, with Subcontractors and/or Suppliers;
  - 13. All meeting notes by and between Contractor, Subcontractors, Suppliers and/or any third parties related to the Project;
  - 14. Canceled checks (payroll and vendors);
  - 15. Job cost reports, including monthly totals;
  - 16. Job payroll ledger;
  - 17. Certified payrolls;



18. General ledger;
  19. Cash disbursements journal;
  20. Take off sheets, and calculations used to prepare the bid and/or quotes;
  21. Take off sheets, calculations, quotes, other financial data to support change proposals, request for change order and/or claims;
  22. Financial statements for all years during the Contract Time. In addition, City may require, if it deems appropriate, additional financial statements for 3 years preceding execution of the Contract and 6 years following Final Acceptance of the Contract;
  23. Depreciation records on all Contractor's, Subcontractor's, and Supplier's equipment, whether these records are maintained by the Contractor, Subcontractors, and Suppliers involved, its accountant, or others;
  24. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
  25. All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;
  26. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, Suppliers, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
  27. Worksheets, software, and all other documents used (a) by the Contractor to prepare its bid and schedule(s) and/or (b) to prepare quotes and bids to the Contractor;
  28. All schedule documents, including electronic versions, planned resource codes, or schedules and summaries;
  29. All submittals; and
  30. All other documents, including email, related to the Project, Claims, or Change Orders.
- H. The Contractor shall mark any documentation it considers proprietary or confidential accordingly. Such information will be treated as such by City; however, City cannot ensure that this information will not be subject to release pursuant to a public records request. In the event City receives a request for such information, City will advise the Contractor and will not release the requested information for a period of not less than ten (10) days in order to give the Contractor an opportunity to obtain a court order prohibiting the release of the information in response to the public records request.

### **3.10 MAINTENANCE AND SITE CLEANUP**

- A. The Contractor shall at all times keep the Site, access points, and public rights-of-way free from accumulation of dirt, mud, waste materials or rubbish caused by the Contractor or Subcontractors. At the completion of the Contract Work, the Contractor shall remove and lawfully dispose of all its dirt, mud, waste materials,

rubbish, tools, scaffolding and surplus or partly used materials from the Site and shall leave the Site broom clean unless some stricter standard is specified in the Contract.

- B. The Contractor shall obey all applicable laws and regulations relating to the storage, use, and disposal of Hazardous Materials. The Contractor shall promptly notify City of all Contractor or Subcontractor caused spills or releases of Hazardous Materials, and pay the cost to promptly clean up all such spills or releases and any associated fines or penalties. The Contractor shall maintain documentation of the clean up and disposal all Contractor or Subcontractor caused spills or releases of Hazardous Materials.
- C. If the Contractor fails to adequately maintain or cleanup the Site, City may, after written Notice to the Contractor, sweep surfaces or remove the dirt, mud, waste materials, rubbish, or hazardous materials and charge all reasonable costs of such work to the Contractor.

### **3.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS**

- A. Contractor shall protect from damage all existing structures, curbs, gutters, sidewalks, equipment, improvements, utilities, trees, and vegetation not shown in the Contract Documents to be removed or modified at or near the Site. Contractor shall repair, at no cost to City, any such damage resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, City may have the necessary work performed and deduct or charge the cost to Contractor or exercise its rights under the Performance and Payment Bond. If there are insufficient funds remaining, excluding retention, the Contractor shall pay City for the costs associated with protection and repairing the damages.

### **3.12 PERMITS, LAWS, REGULATIONS AND TAXES**

- A. Except those permits, easements, and variances specified in the Contract as having been previously obtained by City, all permits, licenses, easements and variances necessary for the execution of the Work shall be secured and paid for by the Contractor. The Contractor shall identify, apply for, and pay for such permits and licenses at the earliest possible time so as to avoid any delay to the Work arising from the permitting and/or licensing process. No actions taken by City to aid the Contractor in securing any permit or license shall relieve the Contractor of any obligations to secure any such permit or license.
- B. The Contractor shall maintain all stamped permit sets of documents at the Site during construction, in good condition and as required by local ordinances.
- C. The Contractor shall perform the Work in full compliance with local, state and federal laws, ordinances, resolutions and regulations, and with permit, license, easement, and variance conditions pertaining to the conduct of the Work. The Contractor shall defend, indemnify, and hold City, its elected officials, officers, agents and employees harmless from any assessment of fines, penalties, or damages arising from violations of the same by the Contractor or Subcontractors. The Contractor shall pay and provide proof of payment for any assessments of fines, penalties or damages. The Contractor shall cooperate with all governmental entities regarding inspection of the Work and compliance with such requirements.

- D. The bid form may include a line item for sales tax on the whole amount, or on items which are not exempt from tax under Washington State Department of Revenue rules, including WAC 458-20-170 and WAC 458-20-171. Unless there are separate line items in the bid form for Washington State sales tax, Contractor shall include all sales tax in its lump sum bid or unit prices. The Contractor should contact the Washington State Department of Revenue for answers to questions in this area. The City will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability. Except as provided above, the Contractor is required to pay all applicable taxes. No adjustment will be made in the amount to be paid by City under the Contract because of any change in law or regulations covering any applicable taxes, or because of any misunderstanding by the Contractor as to its liability for or the amount of any taxes.

### **3.13 PATENTS AND ROYALTIES**

- A. The Contractor shall assume all costs or fees relating to royalties or claims for any patented invention, article, process or method that may be used upon or in a manner connected with the Work under this Contract or with the use of completed Work by City.

### **3.14 CONTRACTOR'S CERTIFICATION**

#### **A. Conflict of Interest**

The Contractor certifies (and shall require each Subcontractor to certify) that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives acquires such a conflict of interest, the Contractor shall immediately disclose such interest to City and take action immediately to eliminate the conflict or to withdraw from this Contract, as City may require.

#### **B. Contingent Fees and Gratuities**

The Contractor, by entering into this Contract with City to perform or provide work, services or materials, has thereby covenanted:

1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee may be paid; and
2. That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives, to any official member or employee of City or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending thereof, or the making of any determination with respect to the performance of this Contract. The Contractor certifies that it has not made any contributions to any person or entity as a condition of doing business with City and it has disclosed to City all attempts by any person to solicit such payments.

**3.15 DEVIATION FROM CONTRACT**

- A. The Contractor shall not make an alteration, variation, addition, deviation, or omission from the requirements of the Contract Documents without the prior written consent of the Engineer.
- B. Any alteration, variation, addition, deviation, or omission by the Contractor shall not result in any extra compensation or extension of time.

**3.16 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS**

**A. Temporary Buildings and Utilities**

Temporary buildings (including storage sheds, shops, and offices) and utilities may be erected by Contractor on the Site only with the consent of City and without expense to City. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by the Contractor at its expense upon completion of the Work.

**B. Disposal/Removal of Materials**

The Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal of all materials and components. The Contractor shall provide City with a copy of all manifests and receipts evidencing proper disposal when required by City or applicable law.

**C. Protection and Care of Contractor’s Materials and Equipment**

The Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Site. Materials and equipment may be stored on the Site at the Contractor’s own risk and with prior written approval from City. When the Contractor uses any portion of the Site as a shop, the Contractor shall be responsible for any repairs, patching, or cleaning arising from such use and for obtaining any necessary permits to establish such shop or temporary storage facilities.

**3.17 CONTRACTOR’S OVERALL RESPONSIBILITY FOR PROTECTION OF WORK, PROPERTY, AND PERSONS**

- A. The Contractor shall be responsible for conditions of the Site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Site and perform the Work in a manner which meets all statutory and common law requirements or other specific contractual requirements for the provision of a safe place to work and which adequately protects the safety of all persons and property on or near the Site. This obligation shall apply continuously and shall not be limited to normal working hours. City’s inspection of the Work or presence at the Site does not and shall not be construed to include review of the adequacy of the Contractor’s safety measures in, on or near the site of the Work.
- B. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including adequate safety training, in connection with the Work. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.
- C. The Contractor shall protect and be responsible for any damage or loss to the Work or to the materials and equipment associated with the Work until the date of

Substantial Completion. The Contractor remains responsible for any damage or loss caused directly or indirectly by the acts or omissions of the Contractor, Subcontractors, Suppliers, or third parties authorized or allowed on the Site by the Contractor until Final Acceptance.

- D. The Contractor shall also be solely and completely responsible for damages arising from the Work that affect property adjacent to the Site.
- E. The Contractor shall repair or replace without cost to City any damage or loss that may occur, except damages or loss caused by the acts or omissions of City.
- F. The Contractor shall erect and maintain adequate steel plates, signs, fencing, barricades, lights or security measures and persons to protect the Work until the Engineer authorizes in writing the removal of signs, fencing, barricades, lights or security measures.
- G. The Contractor shall conduct all operations with the least possible obstruction and inconvenience to the public. To disrupt public traffic as little as possible, the Contractor shall permit traffic to pass through the Project Site with the least possible inconvenience or delay. The Contractor shall maintain existing roads, streets, sidewalks and paths within the Project Site, keeping them open and in good, clean, safe condition at all times.

### **3.18 PROTECTION OF PERSONS**

- A. The Contractor shall take all reasonable precautions for the safety of all employees working on this Contract and all other persons who may be affected by such Work. The Contractor shall designate a responsible member of its organization at the Site whose duty shall be to manage and coordinate the safety programs and to prevent accidents of the Contractor and Subcontractors.
- B. Except as otherwise stated in the Contract, if the Contractor encounters, on the Site, material reasonably believed to be Hazardous Material that Contractor shall immediately stop work in the area affected and give Notice of the condition to City. Work in the affected area shall not be resumed without written direction by City.
- C. To protect the lives and health of persons performing work under this Contract, the Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries including, without limitation, all excavation, tunneling, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply. There is no acceptable deviation from these safety requirements, regardless of practice in the construction industry. Any violation of OSHA, WISHA or other safety requirements applicable to the Work may be considered a breach of this Contract.

### **3.19 SAFETY PROGRAM**

The Contractor shall prepare and maintain a written site specific "Safety Program" demonstrating the methods by which all applicable safety requirements of this Contract will be met. The Contractor shall ensure its Subcontractors and Suppliers have a written "Safety Program" or formally adopt the Contractor's site specific "Safety Program." The

Contractor shall conduct a weekly safety meeting with all Subcontractors and others on the Site to discuss general and specific safety matters.

### **3.20 ARCHAEOLOGICAL AND HISTORICAL PRESERVATION**

The Contractor shall comply fully with the requirements set forth in Chapter 27.53 RCW entitled Archaeological Sites and Resources. The Contractor shall immediately notify the City if any artifacts, skeletal remains or other archaeological resources (as defined under RCW 27.53.040 now and as hereinafter amended) are unearthed during excavation or otherwise discovered on the Site.

### **3.21 WATER POLLUTION CONTROL REQUIREMENTS**

The Contractor shall comply with and be liable for all penalties, damages and violations under Chapter 90.48 RCW including any regulations issued pursuant thereto in the performance of the Work.

### **3.22 EASEMENTS**

If the Contractor makes arrangements for use of additional public and/or private property, the Contractor, prior to using such property, shall provide the Engineer with written permission of the landowner, or duly authorized agent of such landowner, for such use.

### **3.23 TITLE VI / NONDISCRIMINATION ASSURANCES**

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

#### **1. Compliance with Regulations**

The contractor shall comply with the Regulations relative to non-discrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

#### **2. Non-discrimination**

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

#### **3. Solicitations for Sub-contracts, Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.

#### **4. Information and Reports**

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records,

accounts, other sources of information, and its facilities as may be determined by the contracting agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to WSDOT or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

#### **5. Sanctions for Non-compliance**

In the event of the contractor's non-compliance with the non-discrimination provisions of this contract, the contracting agency shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- Withholding of payments to the contractor under the contract until the contractor complies, and/or,
- Cancellation, termination, or suspension of the contract, in whole or in part.

#### **6. Incorporation of Provisions**

The contractor shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contractor or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request WSDOT enter into such litigation to protect the interests of the state and, in addition, the contractor may request the USDOT enter into such litigation to protect the interests of the United States.

### **ARTICLE 4: ADMINISTRATION OF THE CONTRACT**

#### **4.1 TIME OF ESSENCE**

All time requirements set forth in the Contract Documents are of the essence.

#### **4.2 WORK PROGRESS**

A. The Contractor shall be required to:

1. Prosecute the Work diligently with adequate forces;
2. Plan, coordinate, and layout the Work in advance so as to avoid delay; and
3. Achieve Substantial Completion of the Work and Final Acceptance in accordance with the requirements of Contract Documents.

#### **4.3 SCHEDULE OF VALUES**

A. Unless otherwise specified, within fourteen (14) days after the date of Contract Execution, the Contractor shall submit to City a detailed Schedule of Values that identifies the various activities of the Work and their values and quantities, including the overhead and profit for each activity. The Contractor warrants that the values identified in its Schedule of Values accurately reflect the value of each work activity. The Schedule of Values shall be used as a basis for calculating all Progress Payments. Payment for Contract Work shall be made only for and in accordance with those activities identified in the Schedule of Values.

- B. The Contractor shall not be entitled to, nor shall City be required to make, payment for any Contract Work until the Schedule of Values has been accepted by City. Such acceptance shall not be unreasonably withheld.
- C. City shall review and accept the Schedule of Values or provide the Contractor with a written explanation of why the Schedule of Values was not acceptable. City shall use reasonable efforts to review the Schedule of Values within thirty (30) days of City's receipt of the Contractor's submittal of its Schedule of Values. City's acceptance of the Schedule of Values shall not relieve the Contractor from its sole responsibility for the accuracy of the Schedule of Values and its compliance with all Contract requirements. The Contractor shall revise the Schedule of Values as necessary to accurately reflect Change Orders.
- D. Each Application for Payment shall include a current status of the Schedule of Values. No Application for Payment will be considered until the current status of the Schedule of Values has been submitted and accepted.
- E. The activities, which the Contractor identifies within its Schedule of Values, shall be specifically referenced within, and conform and be consistent with the activities set forth within the Project Schedule.

#### **4.4 PROJECT SCHEDULE**

- A. Unless otherwise specified, within fourteen (14) days after the date of Contract Execution, the Contractor shall submit to City a Project Schedule. The Project Schedule shall show the sequence in which the Contractor proposes to perform the Work, indicate the Critical Path, identify the dates on which the Contractor proposes to start and finish the scheduled activities of the Contract Work, indicate Substantial Completion within the Contract Time, indicate a date for Final Acceptance, and meet all the requirements as may be set forth in the Contract Documents.
- B. Within thirty (30) days of City's receipt of the Contractor's submittal of its Project Schedule or unless stated elsewhere in the Contract, City shall review the Project Schedule and provide the Contractor with written comments. City will review the Project Schedule only to determine whether the Project Schedule meets the requirements in the Technical Specifications on Project Schedule. To the extent the Project Schedule does not meet such Technical Specifications, the Contractor shall revise the Project Schedule to make it compliant.
- C. By reviewing the Project Schedule and providing written comments, City is not approving or adopting the Contractor's plan, schedule, means, methods, techniques, sequences, or procedures required to perform the Work. Review and comment by City of the Project Schedule shall not relieve the Contractor from the sole responsibility for the accuracy of a Project Schedule, and its compliance with all Contract requirements, and its responsibility to meet all required Contract completion dates. Failure by City to indicate items on the Project Schedule that do not conform with the Contract requirements shall not alter or waive the Contract requirements or relieve the Contractor from complying with all Contract requirements.
- D. The Contractor shall not be entitled to, nor shall City be required to make payment for any Contract Work until the Project Schedule complies with all Contract requirements.
- E. The Contractor shall schedule the Contract Work so that the Contract Work is completed within the Contract Time. Float in the project Schedule shall be defined as the period of time measured by the number of days each non-critical path



activity may be delayed before it and its succeeding activities become part of the Critical Path. Contractor and Owner may both utilize float to offset delays to the Work.

- F. The Contractor shall regularly enter the actual progress of the Work and Contract Time extensions, if any, approved by City on the Project Schedule. Updated Project Schedules shall reflect actual progress and completion within the Contract Time and shall be provided to City with each Application for Payment in format(s) as required by the Contract. Applications for Progress Payments will not be considered by City and the Contractor will not be paid until the Contractor complies with these requirements. The updated Project Schedule shall be used to assist City in verifying the appropriate payment.
- G. If, in the opinion of City, the Contractor falls behind in its progress of the Work due to acts or omissions of the Contractor, Subcontractors, and Suppliers, the Contractor shall take all necessary steps to improve its progress and bring its progress back in-line with the accepted Project Schedule, without additional cost to City. In this circumstance the Contractor shall, as necessary, increase the number of shifts, overtime operations, and/or days of work, both on and off the Site, and submit for acceptance any supplementary schedule or schedules as City deems necessary to demonstrate how the accepted rate of progress will be regained. Failure of the Contractor to comply with the requirements under these provisions shall be grounds for a determination by City that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, City may pursue any right it has under the law or the Contract, including but not limited to default termination.

#### **4.5 SUBMITTALS**

- A. Submittals include shop drawings, setting and erection drawings, schedules of materials, product data, samples, certificates and other information prepared for the Work by the Contractor or a Subcontractor as set forth in the Technical Specifications ("Submittals"). The Contractor shall perform no portion of the Work requiring Submittals until the Submittals have been reviewed and returned by City with one of the following annotations: (1) no exceptions taken, or (2) note markings.
- B. When submitting information, the Contractor shall identify and state reasons for any alteration, variation, addition, deviation, or omission from the Contract. The Contractor shall not perform work that alters, varies, adds to, deviates from, or omits any requirement of the Contract Documents without prior specific written acceptance by City.
- C. The Contractor shall provide Submittals with reasonable promptness and in such sequence as to facilitate the timely completion of the Contract.
- D. City shall review the Contractor's Submittals and respond in writing with reasonable promptness so as not to unreasonably delay the progress of the Work. Unless otherwise agreed, no delay to the Work shall be attributable to the failure by City to respond to a Submittal until thirty (30) days after the Submittal is received by City, and then only if failure by City to respond is unreasonable and affects the Contract completion date.
- E. If the Contractor is required to resubmit a Submittal, any revisions on resubmittals shall be specifically identified in writing and the resubmitted Submittal shall be sequentially alpha denoted (for example: 22A followed by 22B, etc.) and note revisions in numerical order. The cost of the review of the initial Submittal and the first revised submittal shall be borne by City. The costs of all

additional revised Submittals shall be charged to the Contractor. The cost of review shall include, without limitation, administrative, design, and engineering activities directly related to review of Submittals. City may deduct these costs from any amounts due the Contractor.

- F. City shall review the Contractor's Submittals only for conformance with the design of the Work and compliance with the Contract. Review of the Submittals are not conducted to verify the accuracy of dimensions, quantities, or calculations, the performance of materials, systems, or equipment, or construction means, methods, techniques, sequences, or procedures, all of which remain the Contractor's responsibility. Failure by City to take exception to a Submittal shall not relieve the Contractor from any duty, including its responsibility for errors or omissions in Submittals, its duty to make Submittals and duty to perform the Work according to the requirements of the Contract. City's review of a Submittal shall not alter or waive the requirements of the Contract unless City has issued prior written approval of such change or alteration of the Contract requirements.
- G. The Contractor's failure to identify any error, deviation, or omission and subsequent acceptance of the Submittal by City shall not relieve the Contractor from complying with the Contract requirements.

#### **4.6 REQUESTS FOR INFORMATION**

- A. If the Contractor determines that some portion of the drawings, specifications or other Contract Documents require clarification or interpretation by City because of an apparent error, inconsistency, omission, or lack of clarity in the Contract, the Contractor shall promptly submit a Request For Information ("RFI") and, unless otherwise directed, shall not proceed with the affected work until City has responded to the RFI. The Contractor shall plan its work in an efficient manner so as to allow for timely responses to RFIs.
- B. City shall respond in writing with reasonable promptness to Contractor's RFI.
  - 1. At the request of the Engineer, the Contractor shall prioritize its RFIs, identify a date by which the Contractor prefers the RFI be answered, and reasons for such priority.
  - 2. If the Contractor submits a RFI on an activity less than thirty (30) days prior to the commencement of that activity, the Contractor shall not be entitled to any time extension or adjustment in Contract Price due to the time it takes City to respond to the RFI provided that City responds within fifteen (15) days. No delay to the Work or damages to the Contractor shall be attributable to the failure by City to respond to the RFI until fifteen (15) days after City's receipt of the RFI, and then only if the failure by City to respond is unreasonable and affects the Contract completion date.
- C. City's response to a RFI shall not be considered a change to the Contract requirements unless it is accompanied by a Request for Change Proposal. If the Contractor believes that City's response to the RFI constitutes changed work impacting Contract Price or Contract Time, the Contractor shall submit a Notice of Claim, Supplemental Information and a Request for Change Order to City in accordance with Articles 5, *Changes to the Contract*.

#### 4.7 TESTS, INSPECTIONS, AND ACCESS TO THE WORK

- A. Contractor shall be responsible for inspection and quality assurance of all the Work including all work performed by any Subcontractor. The Contractor shall document and maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract. The Contractor shall maintain all documentation related to testing and inspection and make such documentation available to City at its request. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to City, or with the appropriate public authority. If any governmental, regulatory, or permitting authority requires any portion of the Work to be inspected, tested, or approved, the Contractor shall make all arrangements for and cooperate with such inspections, tests, and approvals so as not to delay completion of the Work. The Contractor shall bear all related costs of tests, inspections, and approvals. The Contractor shall give City at least three (3) days' Notice of: (1) when the work is ready to be tested and inspected and (2) when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to City upon request.
- B. The Contractor shall cooperate with City in the performance of any tests and inspections of the Work. The Contractor has the duty to coordinate all tests and inspections in a manner, which does not negatively impact Contractor's compliance with the Contract.
- C. If any Work required to be inspected, tested, or approved is covered without such inspection, testing or approval being obtained, it must, if requested by City, be uncovered for observation, and such uncovering shall be at Contractor's expense.
- D. City may, at any reasonable time and at its own cost, conduct inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract. City shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract. City inspection and tests are for the sole benefit of City and do not:
1. Constitute or imply acceptance;
  2. Relieve Contractor of responsibility for providing adequate quality control measures;
  3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
  4. Relieve Contractor of its responsibility to comply with the requirements of the Contract; or
  5. Impair City's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
- E. Neither observations by an inspector retained by City, the presence or absence of such inspector on the Site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract. Inspectors are not authorized to change any term or condition of the Contract.
- F. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by City. City may charge

Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes reinspection or retest necessary. City shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

#### **4.8 CORRECTION OF WORK OR DAMAGED PROPERTY**

- A. If material, equipment, workmanship, or work proposed for, or incorporated into the Work, does not meet the Contract requirements or fails to perform satisfactorily, City shall have the right to reject such work by giving the Contractor written notice and may require the Contractor to promptly repair, replace or correct it at no cost to the City.
- B. If the Contractor does not repair, replace or correct and/or remove defective or non-conforming Work or repair damaged property as required by City, in manner and/or schedule, City or City's designee may repair, replace or correct and/or remove it and deduct the cost of such effort from any payment due the Contractor.
  - 1. If the remaining payments due the Contractor are not sufficient to cover City's cost of remedying the defective or non-conforming Work, the Contractor shall pay the difference to City.
- C. The Contractor shall be liable for all damages and costs incurred by City caused by defective or non-conforming work or workmanship, including but not limited to all special, incidental, or consequential damages incurred by City.

#### **4.9 SUBSTITUTION OF PRODUCTS & PROCESSES**

- A. Substitutions requested by the Contractor will be subject to City's prior written acceptance and at City's sole discretion.
- B. Requests for substitution must specifically identify:
  - 1. Material, equipment, and labor costs included in the Contractor's bid associated with the original item to be substituted;
  - 2. All costs for material, equipment, labor associated with the proposed substitution, including any impact costs;
  - 3. Proposed change to the Contract Price and/or Contract Time; and
  - 4. Compatibility with or modification to other systems, parts, equipment or components of the Project and Contract Work.
- C. Contractor shall provide all documentation supporting its request as requested by City.
- D. All costs of any redesign or modification to other systems, parts, equipment or components of the Project or Contract Work, which result from the substitution, shall be borne by the Contractor.
- E. When City approves a substitution proposed by the Contractor, the Contractor shall guarantee the substituted article or materials to be equal to, or better than, those originally specified and shall be compatible with all other systems, parts, equipment or components of the Project and Contract Work. City has the right to order an unaccepted, substituted article removed and replaced without additional cost to City.

- F. City has a right to a deductive Change Order if the substituted product or process is less costly than the contractually required product or process.
- G. If City does not accept the substitution proposal the Contractor shall proceed, without delay or cost to City, with the Contract Work as originally specified.

#### **4.10 INCREASED OR DECREASED QUANTITIES**

- A. Payment to the Contractor will be made only for the actual quantities of work performed and accepted in conformance with the contract. When the accepted quantity of work performed under a unit item varies from the original proposal quantity, payment will be at the unit contract price for all work unless the total accepted quantity of any contract item, adjusted to exclude added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25 percent from the original proposal quantity. In that case, payment for contract work may be adjusted as described herein:
  - 1. The adjusted final quantity shall be determined by starting with the final accepted quantity measured after all work under an item has been completed. From this amount, subtract any quantities included in additive change orders accepted by both parties. Then, to the resulting amount, add any quantities included in deductive change orders accepted by both parties. The final result of this calculation shall become the adjusted final quantity and the basis for comparison to the original proposal quantity.
    - a. Increased Quantities: Either party to the contract will be entitled to renegotiate the price for that portion of the adjusted final quantity in excess of 1.25 times the original proposal quantity. The price for excessive quantities will be determined by agreement of the parties, or, where the parties cannot agree, the price will be determined by the City based upon the actual costs to perform the work, including markup for overhead and profit in accordance with Paragraph 6.3, *Allowable Costs*.
    - b. Decreased Quantities: Either party to the contract will be entitled to an equitable adjustment if the adjusted final quantity of work performed is less than 75 percent of the original bid quantity. The equitable adjustment shall be based upon and limited to three factors:
      - i. Any increase or decrease in unit costs of labor, materials or equipment, utilized for work actually performed, resulting solely from the reduction in quantity;
      - ii. Changes in production rates or methods of performing work actually done to the extent that the nature of the work actually performed differs from the nature of the work included in the original plan; and
      - iii. An adjustment for the anticipated contribution to unavoidable fixed cost and overhead from the units representing the difference between the adjusted final quantity and 75% of the original plan quantity.
- B. The following limitations shall apply to renegotiated prices for increases and/or equitable adjustments for decreases:
  - 1. Labor, materials and equipment rates shall be actual costs but shall not exceed the rates set forth in Paragraph 6.3, *Allowable Costs* nor shall overhead and profit exceed the rates set forth in Paragraph 6.3, *Allowable Costs*.

2. No payment for consequential damages or loss of anticipated profits will be allowed because of any variance in quantities from those originally shown in the proposal form, contract provisions, and contract plans.
  3. The total payment (including the adjustment amount and unit prices for work performed) for any item which experiences an equitable adjustment for decreased quantity shall not exceed 75% of the amount original bid for the item.
- C. If the adjusted final quantity of any item does not vary from the quantity shown in the proposal by more than 25% then the Contractor and the City agree that all work under that item will be performed at the original contract unit price and within the original time for completion.
  - D. When ordered by the Engineer, the Contractor shall proceed with the work pending determination of the cost or time adjustment for the variation in quantities.
  - E. The Contractor and the City agree that there will be no cost adjustment for decreases if the City has entered the amount for the item in the proposal form only to provide a common proposal for bidders.

## **ARTICLE 5: CHANGES TO THE CONTRACT**

### **5.1 GENERAL**

- A. No provisions of the Contract may be amended or modified except by written agreement signed by the City.
- B. All Change Order work shall be performed in accordance with the original Contract requirements unless modified in writing by City.
- C. Any response to a Request For Information, or other directive, direction, instruction, interpretation, or determination (hereinafter referred to as "Direction" for the purposes of Article 5), provided by City is not considered a Change Order, a change to Contract requirements, and shall not constitute, in and of itself, entitlement to an adjustment in Contract Price and/or Contract Time.
- D. The Contractor shall not be entitled to any change in the Contract Price and/or Contract Time under the following conditions or events:
  1. They were reasonably foreseeable at the time the Contractor submitted its bid;
  2. They were caused by the acts of the Contractor, Subcontractor and/or Supplier, including but not limited to the choice of means, methods, techniques, sequences, or procedures for the Work, failure to provide labor, materials or equipment in a timely manner, and failure to take reasonable steps to mitigate delays, disruptions, or conditions encountered.
- E. The Contract requirements for time and price impacts related to Change Orders are set forth in Article 6, *Time and Price Adjustments*.
- F. If there is a bid item for "Minor Changes," payments or credits for changes that cost \$5,000 or less and do not affect time, may, at the discretion of the City, be made under that bid item in lieu of the procedures set forth in Sections 5.1 – 5.6. A Minor Change will be documented by a written Order for a Minor Change or by a notation confirming an oral agreement.

## 5.2 CONTRACTOR'S REQUEST FOR A CHANGE ORDER

- A. Notice of Claim and Supplemental Information. If the Contractor believes that it is entitled to additional compensation and/or time for any reason (other than for a differing site condition under Section 5.2), or if the Contractor disagrees with any written or oral direction, instruction, interpretation or determination from the City, the Contractor shall
- (1) Provide the Engineer with a written Notice of Protest before doing any work or incurring any costs for which it may seek additional compensation or time from the City.
  - (2) Supplement the written Notice of Protest within 14 days with a written statement that includes the following:
    - a. The date, circumstances, and basis of entitlement to additional compensation and/or time;
    - b. The estimated dollar cost of the protested work and a detailed breakdown showing how that estimate was determined;
    - c. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption;
    - d. Substantive basis of the Request;
    - e. If the protest is continuing, the information required above shall be supplemented upon request by the Engineer until the protest is resolved; and
    - f. The Contractor waives all claims for additional compensation and time if it fails to provide both a timely Notice of Claim and Supplemental Information with the information required by this Section.
- B. Request for Change Order.
1. A Request for a Change Order must be submitted in writing to the Engineer no later than thirty-five (35) days after the Contractor submitted its supplemental information pursuant to Paragraph 5.1(A)(2).
  2. The Request for a Change Order shall include:
    - a. Specific dollar amount covering all costs associated calculated in accordance with Article 6, *Time and Price Adjustments*;
    - b. Specific request for time extension (number of days) calculated in accordance with Article 6, *Time and Price Adjustments*;
    - c. A copy of the written Notice of intent, including all attachments;
    - d. All documentation supporting the Request for a Change Order, including but not limited to a cost proposal prepared using the forms provided by City, all cost records, schedule analysis, and the documents identified in §00700, ¶3.10, *Maintenance and Inspection of Documents*, that are in any way relevant to the Contractor's Request for Change Order; and
    - e. The Contractor waives all claims for additional compensation and time if it fails to provide a timely Request for Change Order with the information required by this Section.
- C. City's Response to Contractor's Request for Change Order.

1. City will make a written determination with respect to the Contractor's Request for Change Order within thirty (30) days of receipt of said Request, unless one of the following activities occurs.
    - a. City may request additional information and specify a time period for receipt of the information. The Contractor shall comply with City's request for additional information.
    - b. City may inform the Contractor that additional time is needed to review the Contractor's Request for Change Order and identify a date certain when a decision will be rendered.
  2. If City requests additional information, City will make a written determination within thirty (30) days receipt of Contractor's additional information.
  3. If City does not make a determination within the applicable time period, the Request For Change Order is deemed denied.
- D. Approval of Request for Change Order and Execution of Change Order. If City determines that a Change Order is necessary, the parties may negotiate acceptable terms and conditions and execute a Bilateral Change Order or City may issue a Unilateral Change Order.
- E. Contractor Procedure upon Denial or Deemed Denial of a Request for a Change Order. If the Contractor disagrees with the denial, the Contractor's sole remedy shall be to file a fully documented Claim within thirty (30) days of deemed denial or the Contractor's receipt of the denial in accordance with Article 9, *Claims and Litigation*.
- F. Contractor's Obligation to Continue to Work. Pending resolution of the Contractor's Request for a Change Order, the Contractor shall continue to perform all Work including, at the written request of City that work associated with the pending Request for Change Order. The Contractor shall maintain its progress with the Work.
- G. Waiver. Failure to follow the provisions set forth herein shall constitute a waiver of the Contractor's right to receive any additional time or money as a result of any alleged direction, instruction, interpretation, determination by City and/or the event or impact to the Project.

### 5.3 DIFFERING SITE CONDITIONS

- A. Immediate Written Notice to City. If the Contractor encounters a Differing Site Condition as defined in Article 1.0 the Contractor shall immediately, and before the conditions are disturbed, give written Notice to City of Differing Site Conditions.
- B. Request for Change Order based on Differing Site Condition. Unless otherwise agreed upon in writing by the Engineer, within forty-five (45) days of the Contractor's initial written notification of the Differing Site Condition to City, the Contractor shall provide a Request for Change Order that includes all elements required for such a request, including:
  1. A detailed description of the Differing Site Condition; and
  2. Substantive, contractual, and technical basis supporting the existence of the Differing Site Condition and its impacts.
- C. Waiver.



1. If the Contractor's actions disturb the Site such that City or City's designee cannot adequately and fully investigate the alleged differing site condition, the Contractor waives its right to receive any additional time or money as a result of the Differing Site Condition.
  2. Failure by the Contractor to provide either (a) immediate Notice or (b) Request for Change Order shall constitute a waiver of the Contractor's right to receive any additional time or money as a result of the Differing Site Condition.
  3. The Contractor shall be responsible for any and all costs or damages incurred by City resulting from the Contractor's failure to provide appropriate notice and/or the Detailed Description and Request for Change Order.
- D. City's Response to the Differing Site Condition Request for Change Order. City shall investigate the alleged Differing Site Conditions and respond to the Differing Site Condition in accordance with the Request for Change Order procedures set forth above.
- E. Contractor's Obligation to Continue to Work. The Contractor shall not disturb the condition until receipt of written authorization from the Engineer that work can resume at the location of the alleged Differing Site Condition. The Contractor shall continue with performance of all other Work.

#### **5.4 SUSPENSION OF WORK**

A. City Issues Directive Suspending Work

1. City may order the Contractor, in writing, to suspend all or any part of the Work of this Contract for the period of time that City determines appropriate for the convenience of City. The Contractor shall not suspend the Work without written direction from City specifically authorizing the Suspension of Work.
2. Upon receipt of a written Notice suspending the Work, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize costs attributable to such suspension. Within a period up to 120 days after the suspension notice is received by the Contractor, or within any extension of that period which City requires, City shall either:
  - a. Cancel the written notice suspending the Work; or
  - b. Terminate the Work for either default or convenience.
3. If a written notice suspending the Work is canceled or the period of the Suspension or any extension thereof expires, the Contractor shall resume Work as required by City.
4. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended by the written direction of City, the Contractor may be entitled to an adjustment in the Contract Time, or Contract Price, or both, for increases in the time or cost of performance directly attributable to the suspension and provided that the Contractor sufficiently documents all costs and time impacts attributable to the suspension. No adjustments to Contract Price and/or Contract Time shall be allowed unless the Contractor can demonstrate that the period of suspension caused by City impacted Critical Path and delayed the Contractor from completing the Work on time.

**B. Constructive Suspension of Work**

1. If the Contractor believes that some action or omission on the part of City constitutes constructive suspension of Work, the Contractor shall immediately notify City in writing that the Contractor considers the actions or omission a constructive suspension of Work.
- C. To the extent the Contractor believes it is entitled to any additional money or time as a result of the suspension of Work or constructive suspension, Contractor shall submit a Notice of Protest, Supplemental Information and Request for Change Order to City in accordance with Article 5, *Changes to the Contract*.
- D. Failure to comply with these requirements shall constitute a waiver of Contractor rights to any adjustment in Contract Time and/or Contract Price.
- E. No adjustment shall be made under this provision for any suspension to the extent that Contractor's performance would have been suspended, delayed, or interrupted as a result of actions, omissions, fault or negligence caused, in whole or in part, by the Contractor or any of its Subcontractors.

**5.5 FORCE MAJEURE**

- A. To the extent the Contractor believes it is entitled to any additional time as a result of Force Majeure, Contractor shall submit a Notice of Protest, Supplemental Information and Request for Change Order to City in accordance with Article 5, *Changes to the Contract*.
- B. Contractor shall not be entitled to a change in Contract Price resulting from an act of Force Majeure.
- C. Contractor is not entitled to an adjustment in Contract Time if the act of Force Majeure did not impact progress of the Work on the Critical Path and delay the Contractor from completing the Work within the Contract Time.
- D. When a Contractor experiences concurrent delay caused by either City or Contractor and an act of Force Majeure, the Contractor shall only be entitled to an change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.

**5.6 CHANGE ORDERS**

**A. Bilateral Change Orders**

1. If City and Contractor reach agreement on the terms and conditions of any change in the Work, including any adjustment in the Contract Price and Contract Time, such agreement shall be incorporated into a Change Order and signed by both Parties. Such Bilateral Change Orders shall represent full and complete payment and final settlement of all changes, Claims, damages or costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, stand-by, and any other costs or damages related to any work either covered or affected by the Change Order, or related to the events giving rise to the Bilateral Change Order.

B. Unilateral Change Order

1. City's Right to Issue Unilateral Change Order.

- a. City may unilaterally issue a Change Order at any time, without invalidating the Contract and without notice to the sureties, making changes within the general scope of this Contract.
- b. If any such Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Work, City may make an adjustment in the Contract Price, Contract Time, or both, in accordance with Articles 5, *Changes to the Contract*, and 6, *Time and Price Adjustments*.

2. Contractor Disagreement with Unilateral Change Order. If the Contractor disagrees with the adjustment to the Contract Price and/or Time as indicated in the Unilateral Change Order, the Contractor must submit a Notice of Protest, Supplemental Information and Request for Change Order to City in accordance with Article 5, *Changes to the Contract*.

3. Contractor's Obligation to Continue to Work. The Contractor is required to continue with performance of all Work, including work associated with the Unilateral Change Order.

**5.7 CITY REQUEST FOR A CHANGE PROPOSAL**

A. Request. City may request a written Change Proposal from the Contractor for a change in the Work.

B. Contractor's Proposal. Contractor shall submit its written Change Proposal within the time specified in City's request with the costs shown in a form acceptable to the City. The Change Proposal shall represent the Contractor's offer to perform the requested work, and the pricing set forth within the proposal shall represent full, complete, and final compensation for the proposed change and any impacts to any other Work, including any adjustments in the Contract Time.

C. City's Acceptance of Contractor Proposal. If City accepts the Change Proposal as submitted by the Contractor or as negotiated by the parties, City shall notify the Contractor in writing of its acceptance of the Proposal and direct that the change in the Work be performed.

D. Execution of a Bilateral Change Order. After acceptance of the Change Proposal or acceptance of the negotiated Change Proposal, City shall direct the Contractor to perform the work in accordance with the agreed upon terms; thereafter, the Parties shall execute a bilateral Change Order in accordance with the terms of the Change Proposal or negotiated Change Proposal.

E. Execution of Unilateral Change Order. If City does not accept the Change Proposal or the Parties cannot agree upon the appropriate price or terms for the Change Proposal, City may issue a unilateral Change Order.

**ARTICLE 6: TIME AND PRICE ADJUSTMENTS**

**6.1 CHANGE IN THE CONTRACT TIME**

A. The Contract Time shall only be changed by a Change Order.

- B. No change in the Contract Time shall be allowed to the extent the time of performance is changed due to the fault, act, or omission of Contractor, or anyone for whose acts or omissions the Contractor is responsible.
- C. Contractor is not entitled to a change in Contract Time unless the progress of the Work on the Critical Path is delayed and completion of the Contract Work within Contract Time is delayed.
- D. When a Contractor experiences concurrent delays which impact the Critical Path and are caused by (1) City and the Contractor; (2) City and an act of Force Majeure; or, (3) the Contractor and an act of Force Majeure, the Contractor shall only be entitled to a change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.
- E. A Request for Change Order that includes a request for an adjustment in the Contract Time shall:
  - 1. Be in writing and delivered to City within the appropriate time period specified in Article 5, *Changes in the Contract*.
  - 2. Include a clear explanation of how the event or conditions specifically impacted the Critical Path and overall Project Schedule and the amount of the adjustment in Contract Time requested.
  - 3. Be limited to the change in the Critical Path of a Contractor's Project Schedule, and any updates, attributable to the event or conditions, which caused the request for adjustment. No extension of time or compensation for damages resulting from delay will be granted unless the delay affects the timely completion of all Work under the Contract or timely completion of a portion of the Work for which time of completion is specific. Contractor shall be responsible for showing clearly on the Project Schedule, and any updates, that the event or conditions:
    - a. Had a specific impact on the Critical Path and was the sole cause of such impact;
    - b. Could not have been avoided by resequencing of the Work or other reasonable alternatives; and
    - c. Will prevent the Contractor from completing the Project within the current Contract completion date.
- F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

## **6.2 CHANGE IN THE CONTRACT PRICE**

- A. The Contract Price shall only be changed by a Change Order.
- B. No change in the Contract Price shall be allowed when:
  - 1. Contractor's changed cost of performance is due to the fault, acts, or omissions of Contractor, or anyone for whose acts or omissions Contractor is responsible, including its subcontractors and suppliers;
  - 2. The change is concurrently caused by Contractor and City; or
  - 3. The change is caused by an act of a third party or Force Majeure.

- C. City shall not be responsible for, and the Contractor shall not be entitled to any compensation for unallowable costs. Unallowable costs include, but are not limited to:
1. Interest or attorney's fees of any type other than those mandated by Washington state statute;
  2. Claim preparation or filing costs;
  3. The cost of preparing or reviewing Change Proposals or Requests for Change Orders;
  4. Lost profits, lost income or earnings;
  5. Costs for idle equipment when such equipment is not at the Site, has not been employed in the Work, or is not scheduled to be used at the Site;
  6. Lost earnings or interest on unpaid retainage;
  7. Claims consulting costs;
  8. The costs of corporate officers or staff visiting the Site or participating in meetings with City;
  9. Loss of other business; and/or
  10. Any other special, consequential, or incidental damages incurred by the Contractor, Subcontractor, or Suppliers.
- D. A Request for Change Order that includes a request for an adjustment in Contract Price shall:
1. Be in writing and delivered to City within the applicable time period specified in Article 5, *Changes to the Contract*.
  2. Identify the following information:
    - a. The event or condition which caused the Contractor to submit its request for an adjustment in the Contract Price;
    - b. The nature of the impacts to Contractor and its Subcontractors, if any; and
    - c. The amount of the adjustment in Contract Price requested calculated in accordance with Paragraph 6.3, *Allowable Costs*, and using forms provided by City.
  3. Any requests by Contractor for an adjustment in the Contract Price and in the Contract Time that arise out of the same event or conditions shall be submitted together.
- E. The adjustments to the Contract Price provided for in this Article represent full, final, and complete compensation for all work done in connection with the request for an adjustment in Contract Price and all costs related to, resulting from, or affected by such change in Work including, but not limited to, all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any work either covered or affected by the change in the Work, or related to the events giving rise to the change.

### **6.3 METHOD TO CALCULATE ADJUSTMENTS TO CONTRACT PRICE**

- A. One of the following methods shall be used to calculate damages and/or adjustments to the Contract Price that result from or relate to Change Proposal, Request for Change Order, and/or Claim.
- B. Determination of the method to be used to calculate adjustments in the Contract Price shall be at the sole discretion of City.
- C. One of the following methods shall be used:
  - 1. Unit Price Method;
  - 2. Firm Fixed Price Method (also known as Lump Sum); or
  - 3. Time and Materials Method.

#### **D. Unit Price Method**

- 1. The City may direct the Contractor to perform extra work on a Unit Price basis. Such authorization shall clearly state the:
  - a. Scope of work to be performed;
  - b. Applicable Unit Price; and
  - c. Not to exceed amount of reimbursement as established by City.
- 2. The applicable unit price shall include reimbursement for all direct and indirect costs of the work, including Overhead and profit, as limited by paragraph 6.3, *Allowable Costs*.
- 3. Contractor shall only be paid under this method for the actual quantity of materials incorporated in or removed from the Work and such quantities must be supported by field measurement statements verified by City.

#### **E. Firm Fixed Price Method**

- 1. The Contractor and City may mutually agree on a fixed amount as the total compensation for the performance of changed work.
- 2. The Contractor shall provide a detailed cost breakdown supporting the Contractor's requested adjustment to Contract Price and any other financial documentation requested by the Engineer, as limited by paragraph 6.3, *Allowable Costs*.
- 3. Any adjustments to the Contract Price using the Firm Fixed Price Method shall include, when appropriate all reasonable costs for labor, equipment, material, Overhead and profit. Such labor, equipment, material, Overhead and profit shall be calculated in accordance with paragraph 6.3, *Allowable Costs*.
- 4. Whenever City authorizes Contractor to perform changed work on a Firm Fixed Price Method, City's authorization shall clearly state:
  - a. Scope of work to be performed; and
  - b. Total Fixed Price payment for performing such work.

#### **F. Time and Materials Method**

- 1. Whenever City authorizes the Contractor to perform work on a Time and Material basis, City's authorization shall clearly state:

- a. Scope of work to be performed; and
  - b. A not to exceed amount of reimbursement as established by City.
2. Contractor shall:
- a. Cooperate with City and assist in monitoring the work being performed;
  - b. Substantiate the labor hours, materials and equipment charged to work under the Time and Materials Method by detailed time cards or logs completed on a daily basis before the close of business each working day;
  - c. Present the time card and/or log at the close of business each day to the Engineer so that City may review and initial each time card/log;
  - d. Perform all work in accordance with this provision as efficiently as possible;
  - e. Not exceed any cost limit(s) without City's prior written approval; and
  - f. Maintain all records of the work, including all records of the Subcontractor, Supplier, and Materialmen, and make such records available for inspection as required in paragraphs 3.8, *Record Documents*, 3.9, *Cost Records*, and 3.10, *Maintenance and Inspection of Document*.
3. Contractor shall submit costs and any additional information requested by City to support Contractor's requested price adjustment.
4. The Contractor shall only be entitled to be paid for reasonable costs actually incurred by the Contractor. The Contractor has a duty to control costs. If City determines that the Contractor's costs are excessive or unreasonable, City, at its discretion, shall determine the reasonable amount for payment.

**G. Deductive Changes to the Contract Price**

1. A deductive change to the Contract Price may be determined by taking into account:
- a. Costs incurred and saved by the Contractor as a result of the change, if any;
  - b. The costs of labor, material, equipment, and overhead saved and profit unearned by the deleted work. These costs shall be calculated following as closely as possible with the provisions identified in Article 6, Time and Price Adjustments; and/or,
  - c. At the discretion of City, costs set forth in the documents used by the Contractor to develop its bid.
2. Where City has elected not to correct incomplete or defective Work, the adjustment in the Contract Price shall take into account:
- a. The costs the City would have to expend to correct the Work;
  - b. The decreased value to City resulting from the incomplete or defective Work; and,
  - c. The increased future costs which City may incur by reason of the incomplete or defective Work.

## H. Full Compensation

An adjustment calculated in accordance with the provisions of this Article shall be full and complete payment and final settlement of all changes, claims, damages and costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, inconvenience, disruption of schedule, impact, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, standby, and/or any other costs or damages related to any Work either covered or affected by the changed Work, or related to the events giving rise to the change.

### 6.4 ALLOWABLE COSTS

- A. Any adjustments to the Contract Price shall be based on the following categories and shall incorporate markups for Overhead and profit as provided herein.
1. **Labor.** For all labor, including foreman supervision but excluding superintendents and other project management and consultants, the Contractor shall be reimbursed for labor costs provided herein. The labor cost of an event or condition shall be calculated as the sum of the following:
    - a. **Labor Rate.** The Labor Rate is the actual reasonable wage paid to the individual plus the actual reasonable costs incurred by the Contractor to cover costs associated with Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUCA), industrial insurance, fringe benefits, and benefits paid on behalf of labor by the Contractor. The applicable Labor Rates shall be multiplied by the number of hours reasonably expended in each labor classification because of the event or condition to arrive at a total cost of labor.
    - b. **Travel Allowance and/or Subsistence.** The labor calculation shall include the actual costs of travel and/or subsistence paid to the Contractor's employees engaged upon the Work when said payments are required by a labor agreement.
  2. **Materials.** The cost of materials resulting from an event or condition shall be calculated in one or more of the following methods, at City's election:
    - a. **Invoice Cost.** The Contractor may be paid the actual invoice cost of materials including actual freight and express charges and applicable taxes less all available discounts, rebates, and back-charges,. This method shall be considered only to the extent the Contractor's invoice costs are reasonable and the Contractor provides copies of vendor invoices, freight and express bills, and other evidence of cost accounting and payment satisfactory to City. As to materials furnished from the Contractor's stocks for which an invoice is not available, the Contractor shall furnish an affidavit certifying its actual cost of such materials and such other information as City may reasonably require;
    - b. **Wholesale Price.** The Contractor may be paid the lowest current wholesale price for which the materials are available in the quantities required, including customary costs of delivery and all applicable taxes less all available discounts, rebates, and back-charges; or



- c. **City Furnished Material.** City reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no Claim for any costs, Overhead or profit on such materials. However, should the Contractor be required to pick up, transport and/or unload such materials the Contractor will be reimbursed for reasonable costs thereof.
- 3. **Equipment.** The additional cost, if any, of machine-power tools and equipment usage shall be calculated in accordance with the following rules:
  - a. **Equipment Rates.** The Contractor's own charge rates may be used if verified and approved by City and based on the Contractor's actual ownership and operating cost experience. Rental rates contained in published rate guides may be used if their cost formulas and rate factors are identifiable, reflect the Contractor's historical acquisition costs, utilization, and useful life, and do not include replacement cost, escalation contingency reserves, general and administrative expense, or profit. Rates shall be based on the Contractor's actual allowable costs incurred or the rates established according to the Rental Rate Blue Book for Construction Equipment, published by Equipment Watch, PRIMEDIA, whichever is less. The Rental Rate Blue Book established hourly equipment rate shall be the monthly rental rate for the equipment plus the monthly rental rate for required attachments, divided by 176 work hours per month, multiplied by the appropriate regional adjustment factor, plus the hourly operating cost. The established equipment rate shall apply for actual equipment usage up to eight hours per day. For all hours in excess of eight hours per day or 176 hours per month, the established equipment rate shall be the monthly rental rate plus the monthly rental rate for required attachments, divided by 352, multiplied by the regional adjustment factor, plus the hourly operating cost.
  - b. **Transportation.** If the necessary equipment is not already at the Site and it is not anticipated that it would be required for the performance of other work under the terms of the Contract, the calculation shall include a reasonable amount for the costs of the necessary transportation of such equipment.
  - c. **Standby.** The Contractor shall only be entitled to standby equipment costs if (a) the equipment is ready, able, and available to do the Work at a moment's notice; (b) Contractor is required to have equipment standby because of an event or condition solely caused by City and (c) the Contractor can demonstrate that it could have and intended to use the equipment on other projects/jobs. The Contractor shall be compensated at 50% of the monthly rental rate for the equipment, divided by 176, and multiplied by the appropriate regional adjustment factor, as identified in the Rental Rate Blue Book for Construction Equipment, published by Machinery Information Division of PRIMEDIA Information Inc. Standby shall not be paid during periods of Contractor-caused delay, concurrent delay, Force Majeure, during any seasonal shutdown, routine maintenance, down-time or broken equipment, late delivery of equipment or supplies, or other anticipated occurrence specified in the Contract Documents. No payment shall be made for standby on any piece of equipment, which has been used on the Project in any 24 hour period. Standby costs shall not be paid for weekends, holidays, and any time the equipment was not intended to be used on the Project as demonstrated by the Project Schedule.

4. **Subcontractor & Supplier.** Direct costs associated with Subcontractors and Suppliers shall exclude Overhead and Profit markups and shall be calculated and itemized in the same manner as prescribed herein for Contractor. Contractor shall provide detailed breakdown of Subcontractor and Supplier invoices.
5. **Overhead and Profit Markup.**
  - a. On a change to the Contract Price or any other claim for money by the Contractor, City will only pay Overhead, including Home Office Overhead, Site or Field Office Overhead, and unabsorbed home office overhead, and Profit pursuant to the Overhead and Profit Markups set forth herein. The Overhead and Profit Markups cover all overhead regardless of how the Contractor chooses to account for various costs in its books of account.
  - b. Overhead and Profit markups shall not be applied to freight, delivery charges, express charges, and sales tax.
  - c. The allowed Overhead and Profit markup shall not exceed the following:
    - i. If the Contractor is self-performing work: 18% combined Overhead and Profit markup on the Contractor's Direct Costs;
    - ii. If a Subcontractor or Supplier is performing work: 18% for the Subcontractor's Direct Cost for performing the work and 7% on the Direct Costs of the Subcontractors' or Suppliers'; provided that the 7% is to be divided among upper tier Subcontractors and the Contractor when a Subcontractor or Supplier is performing the work;
    - iii. If the value of material and equipment is greater than 50% of the total value of the change, the Overhead and Profit Markup shall only be 10% for material and equipment; and
    - iv. In no event shall the total combined Overhead and Profit markup for the Contractor and all Subcontractors and Suppliers of any tier exceed 25% of the Direct Cost to perform the Change Order work.

## **ARTICLE 7: PAYMENT AND COMPLETION**

### **7.1 APPLICATIONS FOR PAYMENT**

- A. On or about the first day of each month, the Contractor shall submit to City an Application for Payment. Each application shall be completed on a form acceptable to City and designated as an "Application for Payment."
- B. The Contractor is not entitled to payment for any work unless the Application for Payment includes all required documentation. City reserves the right to withhold payment pursuant to paragraph 7.2, *Payments Withheld* if it is subsequently determined that all required documentation was not provided by the Contractor or is in error.
- C. The application shall correlate the amount requested with the Schedule of Values and with the state of completion of the Work.
- D. The Contractor shall submit a breakdown of the cost of lump sum items to enable the Engineer to determine the Work performed on a monthly basis. Lump sum breakdowns shall be submitted prior to the first progress payment that includes

payment for the Bid Item. Absent a lump sum breakdown, the Engineer will make a determination based on information available.

## **7.2 PAYMENTS**

- A. City shall comply with RCW 39.76, as amended, and promptly review each Application for Payment and identify in writing any cause for disapproval within 8 working days. In addition to withholding payment for unsatisfactory performance or failure to comply with Contract requirements, if the Contractor's Application for Payment fails to recognize any back-charges, off-sets, credits, change orders, or deductions in payment made in accordance with paragraph 7.2, *Payments Withheld*, City shall have the right to revise or disapprove Contractor's Application For Payment because the Application for Payment is not considered a properly completed invoice.
- B. The City shall withhold retainage from each Application for Payment as required by RCW 60.28, as amended.
- C. If an Application for Payment is accepted by City, it shall be paid within thirty (30) days of City's receipt of the properly prepared invoice (Application for Payment).

## **7.3 PAYMENT WITHHELD**

- A. In addition to retainage withheld pursuant to RCW 60.28 and without waiver of any other available remedies, City has the right to withhold, nullify, or back-charge, in whole or in part, any payment or payments due or that have been paid to the Contractor as may be necessary to cover City's costs or to protect City from loss or damage for reasons including but not limited to:
  - 1. Failure of the Contractor to submit or obtain acceptance of a Progress Schedule, Schedule of Values, and any updated Schedules;
  - 2. Defective or non-conforming Work;
  - 3. Costs incurred by City to correct, repair or replace defective or non-conforming Work, or to complete the Work;
  - 4. A reasonable doubt that the Contract can be completed for the balance then unpaid;
  - 5. A reasonable concern by City that the materials, equipment or component parts are not in proper operating condition;
  - 6. Assessment of Liquidated Damages;
  - 7. Failure to perform in accordance with the Contract;
  - 8. Cost or liability that may occur to City as the result of the Contractor's or Subcontractor's acts, omissions, fault, or negligence;
  - 9. Deduction in the Work;
  - 10. Failure of Contractor to repair damaged materials, equipment, property, or Work;
  - 11. Failure of the Contractor to obtain approval of Submittals pertinent to the work accomplished;
  - 12. Failure to pay Subcontractors, Suppliers, employees or other obligations arising out of the Work;

13. Failure to keep Record Documents up to date;
  14. Failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
  15. Failure to obtain and maintain applicable permits, insurance, and bonds; and
  16. Failure to provide Statement of intent to Pay Prevailing Wage and/or Affidavits of Wages Paid and, if requested, Certified Payroll Records for the Contractor and for Subcontractors of any tier.
- B. The withholding, nullification, or back-charge of any payment(s) by City shall in no way relieve the Contractor of any of its obligations under this Contract.

#### **7.4 TITLE**

Title to all Work and materials covered by an accepted and paid Application For Payment shall pass to City at the time of such payment, free and clear of all liens, claims, security interest, and encumbrances. Passage of title shall not, however, (1) relieve Contractor from any of its duties and responsibilities for the Work or materials, including protection thereof, (2) waive any rights of City to insist on full compliance by Contractor with the Contract requirements, or (3) constitute acceptance of the Work or materials.

#### **7.5 SUBSTANTIAL COMPLETION**

- A. When the Contractor has achieved Substantial Completion (as defined in Section 1 above), the Contractor shall give written Notice to City.
1. City shall promptly inspect the Work and prepare a Punch List (list of items to be completed or corrected).
    - a. City reserves the right to add to, modify, or change the Punch List.
    - b. Failure by City to include any items on such list does not alter the responsibility of the Contractor to complete or correct the Work in accordance with the Contract.
- B. At the Contractor's request, City may identify those Punch List items that must be completed or corrected in order for the Contractor to achieve Substantial Completion.
1. When City determines that those Punch List items have been completed or corrected by the Contractor, City shall make a determination that the Work is Substantially Complete.
  2. A Certificate of Substantial Completion will be issued by City, which shall establish the date of Substantial Completion.
  3. This Certificate of Substantial Completion shall state the responsibilities of City and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance.
- C. City shall assess liquidated damages for the Contractor's failure to Substantially Complete the Work within the Contract Time. The liquidated damage amounts, set forth elsewhere in the Contract Documents, will be assessed for Contractor's failure to achieve Substantial Completion within the Contract Time. These Liquidated Damages are not a penalty, but will be assessed against the Contractor for failure to achieve these Contract requirements. These Liquidated Damage amounts are

fixed and agreed upon by and between the Contractor and City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages City would in such events sustain. These amounts shall be construed as the actual amount of damages sustained by City, and may be retained by City and deducted from payments to the Contractor. Assessment of Liquidated Damages shall not release the Contractor from any further obligations or duties pursuant to the Work.

- D. As provided in the Contract Documents, City may grant Substantial Completion to specific subsystems or portions of the Work. The dates of Substantial Completion shall be determined, in writing, by City.

## **7.6 FINAL INSPECTION**

- A. The Contractor shall correct all remaining Punch List items and complete all remaining Work within the time period stated in the Certificate of Substantial Completion or within 30 days, whichever is less. When all Punch List items have been successfully corrected and the work is complete the Contractor's shall give written notice to the City that the Work ready for final inspection. After verification by City that such completion was satisfactory, the Contractor shall submit a Final Application for Payment.

## **7.7 REQUIREMENTS FOR FINAL APPLICATION FOR PAYMENT**

- A. In addition to any other requirement identified in the Contract Documents, the Final Application for Payment shall include the following documents:
  - 1. Affidavit of Wages Paid for Contractor and all Subcontractors in accordance with state law;
  - 2. Contractor's release of claims against City, except for Claims specifically described in the release document and submitted in accordance with Article 9, *Claims and Litigation*; and
  - 3. Contractor certification that all Subcontractors and Suppliers have been paid and there are no outstanding liens.

## **7.8 COMPLETION/FINAL ACCEPTANCE**

- A. Completion/Final Acceptance shall be achieved when all the obligations of the Contract have been successfully performed by the Contractor in accordance with the Contract and accepted by City. Should Contractor fail to achieve Final Acceptance within the required time the City may assess actual damages caused by its failure to do so.
- B. Neither Final Acceptance, nor Final Payment, shall release Contractor or its sureties from any obligations under this Contract or the Performance and Payment Bonds, or constitute a waiver of any claims by City arising from or related to Contractor's performance or failure to perform the Work and to meet all Contractual obligations in accordance with the Contract, including but not limited to:
  - 1. Unsettled liens, security interests or encumbrances;
  - 2. Damaged, non-conforming, or defective Work discovered by City;
  - 3. Terms of any warranties or guarantees required by the Contract; and
  - 4. Payments made in error.

- C. Except for any Claims properly submitted in accordance with Article 9, *Claims and Litigation*, acceptance of Payment on the Final Application for Payment by the Contractor shall, on behalf of itself and its Subcontractors or Sureties, forever and unconditionally release and discharge City, its officers, agents, employees, from:
  - 1. Any and all disputes or claims, including but not limited to claims for damages, fines, interest, taxes, attorney fees, or costs, demands, rights, actions or causes of actions, known or unknown, arising out of or in any way related to the parties' performance under the Contract and/or Project; and
  - 2. Any and all known and/or unknown liabilities, obligations, demands, actions, suits, debts, charges, causes of action, requests for money and/or payment under the Contract, outstanding invoices, or claims directly or indirectly arising out of or related to the Contract and/or Project.

## **7.9 WARRANTY AND GUARANTY**

- A. In addition to any special warranties provided elsewhere in the Contract, Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors and Suppliers.
- B. The warranty period shall be for the longer period of: one year from the date of Final Acceptance of the entire Project or the duration of any special extended warranty offered by a supplier or common to the trade.
- C. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract, Contractor shall:
  - 1. Obtain all warranties that would be given in normal commercial practice from the supplier and/or manufacturer;
  - 2. Prior to Final Acceptance require all warranties be executed, in writing, for the benefit of City;
  - 3. Enforce all warranties for the benefit of City; and
  - 4. Be responsible to enforce any warranty of a Subcontractor, manufacturer, or Supplier, should they extend beyond the period specified in the Contract.
- D. If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written Notice from City to do so. In the event City determines that Contractor corrective action is not satisfactory and/or timely performed, then City has the right to either correct the problem itself or procure the necessary services, recommendations, or guidance from third parties. All damages incurred by City and all costs for City's remedy shall be reimbursed by the Contractor.
- E. The warranty provided in this provision shall be in addition to any other rights or remedies provided elsewhere in the Contract or by applicable law.

## **7.10 PRIOR OCCUPATION**

City shall have the right to occupy such part or parts of the Project in or upon which the Work is being done, as it may see fit, and such occupation shall not be construed as acceptance by City of the Work or constitute Substantial Completion of the Work.

## ARTICLE 8: TERMINATION

### 8.1 CITY'S RIGHT TO TERMINATE CONTRACT

#### A. Termination for Default

1. City may terminate, without prejudice to any right or remedy of City the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:
  - a. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
  - b. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Final Acceptance of the Work in a timely manner;
  - c. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
  - d. Contractor fails in a material way to repair, replace or correct Work not in conformance with the Contract;
  - e. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
  - f. Contractor repeatedly fails to make prompt payment to its employees or Subcontractors;
  - g. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, permits, easements or orders of any public authority having jurisdiction;
  - h. Contractor fails to comply with all Contract safety requirements; or
  - i. Contractor is otherwise in material breach of any provision of the Contract, including but not limited to quality control, environmental requirements, administrative requirements, coordination and supervision.
2. If City reasonably believes that one of the aforementioned events has occurred, City will provide the Contractor with written Notice of its intent to terminate the Contractor for default, specifying within such notice the ground(s) for such termination. City, at its option, shall require the Contractor to either promptly correct the deficiencies noted in City's intent to terminate or provide City with a corrective action plan as to how such deficiencies will be remedied or cured in a timely fashion. However, if after receipt of the proposed remedy, City has a reasonable basis for concluding that the Contractor has (a) failed or is unwilling to repair, replace or correct the deficiencies, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, City shall thereafter have the right to terminate this Contract for default.
3. Upon termination, City may at its option:
  - a. Take possession of the Site and possession of or use of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and/or

- b. Finish the Work by whatever other reasonable method it deems expedient; or
  - c. Call upon the surety to perform its obligations under the performance and payment bonds, if applicable.
4. The Contractor and its sureties shall be liable for all damages and costs, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; (2) any other costs or damages incurred by City in completing and/or correcting the Work; and (3) any other special, incidental or consequential damages incurred by City which results or arises from the breach or termination for default.
  5. In the event of termination for default City shall only pay the Contractor for Work successfully completed and accepted by City prior to the date of termination. City shall not be responsible for any other Contractor costs, expenses, or damages including any consequential, special, or incidental damages or lost profits associated with this Contract. In no event shall City reimburse the Contractor for any costs directly or indirectly related to the cause of this termination for default.
  6. If, after termination for default, it is determined that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of City.
  7. The rights and remedies of City in this provision are in addition to any other rights and remedies provided by law or under this contract.

**B. Termination for Convenience**

1. Upon written Notice City may terminate the Work, or any part of it, without prejudice to any right or remedy of City, for the convenience of City.
2. If City terminates the Work or any portion thereof for convenience, Contractor shall recover as its sole remedy:
  - a. Reasonable costs for all Work completed prior to the effective date of the termination and not previously paid for by City; and
  - b. A reasonable allowance for Overhead and profit for Work actually performed prior to the date of termination and accepted by City, at a rate not to exceed the percentage amount set forth in the Contract and in paragraph 6.3, *Allowable Costs*, subparagraph A.5, *Overhead and Profit*. The Contractor waives all other claims for payment and damages including without limitation, anticipated profit and overhead on work not performed and accepted by City.
3. The Contractor shall not be entitled to any other costs or damages, whatsoever. The total sum payable upon termination shall not exceed the Contract Price reduced by prior payments. Contractor shall be required to make its request for adjustment in accordance with Article 5, *Changes to the Contract*, and Article 6, *Time and Price Adjustments*.
4. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, City shall not reimburse Contractor any profit for the Work completed and shall reduce the settlement to reflect the indicated rate of loss.



### C. Contractor's Obligations During Termination

Unless City directs otherwise, after receipt of a written Notice of termination for default or termination for convenience, Contractor shall promptly:

1. Stop performing Work on the date and as specified in the Notice of termination;
2. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work not terminated;
3. Cancel all orders and subcontracts, upon terms acceptable to City, to the extent that they relate to the performance of Work terminated;
4. Assign as specifically requested by City all of the rights, title, and interest of Contractor in all orders and subcontracts;
5. Take such action as may be necessary or as directed by City to preserve and protect the Work, Site, and any other property related to this Project in the possession of Contractor in which City has an interest;
6. Continue performance of Work only to the extent not terminated; and
7. Take any other steps required by City with respect to this Project.

### 8.2 CITY'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract, City may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to any adjustment in the Contract Time and/or Contract Price for any increased cost or time of performance attributable to Contractor's failure or refusal to perform its obligations under the Contract.

## ARTICLE 9: CLAIMS AND LITIGATION

### 9.1 CONTRACTOR CLAIMS

#### A. Condition Precedent to Filing a Claim.

1. The following actions are a condition precedent to filing a Claim:
  - a. The Contractor submitted a timely Notice of Protest, Supplemental Information and Request for Change Order as required by paragraph 5.1;
  - b. The Request for Change Order has been denied or deemed denied by City;  
or
  - c. A Unilateral Change Order is issued by City.

#### B. Failure to file a Timely Claim.

1. At least seven (7) days prior to appropriate time to file a Claim, the Contractor may request an extension of time for filing its Claim. The Contractor shall state the reasons for the request and identify a date certain when the Contractor shall provide a fully documented Claim. Unless otherwise agreed to in writing by the Engineer, a fully documented Claim shall be received by the City within thirty (30) days after:
  - a. Denial or deemed denial of a Request for Change Order; or

- b. Contractor's receipt of an Executed Unilateral Change Order.
- 2. Failure to comply with the time requirements set for filing a Claim shall constitute acceptance by the Contractor, on behalf of itself and its Subcontractors and Suppliers, of the Unilateral Change Order and/or City's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Change Order and/or Unilateral Change Order.
- C. Contractor's Obligation to Continue to Work. Pending final decision of a Claim hereunder, the Contractor shall proceed diligently with the performance of the Contract Work, including that work associated with the Claim, and maintain its progress with the Work.
- D. Information required in a Fully Documented Claim. Every Claim must be submitted by the Contractor, in writing and clearly designated by the Contractor as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:
  - 1. A detailed factual statement of the Claim providing all necessary details, locations, and items of Contract Work affected;
  - 2. The date on which facts arose that gave rise to the Claim;
  - 3. The name of each person employed or associated with the Contractor, Subcontractor, Supplier, and/or City with knowledge about the event or condition which gave rise to the Claim;
  - 4. Copies of documents and a written description of the substance of any oral communications that concern or relate to the Claim;
  - 5. The specific provisions of the Contract Documents on which the Claim is based;
  - 6. If an adjustment in the Contract Price is sought, the exact amount sought, calculated in accordance with the Contract including paragraph 6.3, *Allowable Cost* and accompanied by (a) all records supporting the Claim and (b) all records meeting the requirements of paragraph 3.10, *Cost Records*;
  - 7. If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reason the Contractor believes an adjustment in the Contract Time should be granted; and the Contractor's analyses of its Progress Schedule, any specific Schedule analysis as required by the Contract Documents, and all updates to demonstrate the reason for the adjustment in Contract Time; and
  - 8. A statement certifying, under penalty of perjury, that after the exercise or reasonable diligence and investigation the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of the Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Price or Contract Time for which the Contractor believes City is liable.
- E. Contractor's Duty to Cooperate. The Contractor shall cooperate with City or its designee in the evaluation of its Claim and provide all information and documentation requested by City, its auditors or its designee.

F. City's Evaluation of the Claim.

1. To assist City in the review of the Contractor's Claim, City or its designee may visit the Site, request additional information and/or documentation in order to fully evaluate the issues raised in the Claim and/or audit the Claim.
2. After the Contractor has submitted a fully documented Claim that complies with this provision, City shall respond, in writing, to the Contractor within sixty (60) days from the date the fully documented Claim is received with either:
  - a. A decision regarding the Claim; or
  - b. Written Notice extending for another thirty (30) days City's time to respond to the Claim.
3. Absent a thirty (30) day extension, the Claim shall be deemed denied upon the sixty-first (61st) day following receipt of the Claim by City. If City had a thirty (30) day extension, the Claim shall be deemed denied upon the ninety-first (91st) day following receipt of the Claim by City.

**9.2 CONTRACTOR'S BURDEN OF PROOF ON CLAIM**

- A. The Contractor shall have the burden of proof to demonstrate entitlement and damages.
- B. If the Contractor, on behalf of itself or its Subcontractors and Suppliers seeks an adjustment in the Contract Price or Contract Time not supported by Project cost records meeting the requirements of ¶3.10, *Cost Records*, the Claim is waived.
- C. Compliance with the record keeping requirements set forth in this Contract is a condition precedent to recovery of any costs or damages related to or arising from performance of the Contract Work. If City establishes non-compliance of the record-keeping requirement set forth in ¶ 3.10, *Cost Records*, no adjustment shall be made to the Contract Price and/or Contract Time with respect to that Claim.

**9.3 LITIGATION**

- A. As a mandatory condition precedent to the initiation of litigation by the Contractor against City, Contractor shall comply with all provisions set forth in this Contract including those stated in Article 5 and Article 9.
- B. Any litigation brought against City shall be filed and served on City within 365 days from either the issuance of the Certificate of Substantial Completion for the entire Contract or Final Acceptance if no Certificate of Substantial Completion of the entire Contract is issued.
- C. Venue and jurisdiction shall vest solely in the King County Superior Court.
- D. Failure to comply with these mandatory condition time requirements shall constitute a waiver of the Contractor's right to pursue judicial relief from or against the City.

**ARTICLE 10: MISCELLANEOUS**

**10.1 COMPENSATION, WAGES, BENEFITS AND TAXES**

City assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold City, its elected officials, officers, agents and employees, harmless

against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

## **10.2 PREVAILING WAGES**

The Contractor shall comply with the minimum wage requirements of RCW 39.12, as amended, including the obligation to pay at least the hourly minimum wage and fringe benefits to workers as required by RCW 39.12. The Contractor shall also post all notices required by the Washington Department of Labor & Industries on forms provided by the Department of Labor & Industries. The Contractor shall timely provide a "Statement of Intent to Pay Prevailing Wages" and timely provide an "Affidavit of Prevailing Wages Paid."

## **10.3 SUCCESSORS AND ASSIGNS**

City and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other with respect to all covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of City.

## **10.4 THIRD PARTY AGREEMENTS**

Except as otherwise may be provided, the Contract shall not be construed to create a contractual relationship of any kind between: any architect, engineer, construction manager, Subcontractor, Supplier, or any persons other than City and Contractor.

## **10.5 NONWAIVER OF BREACH**

No action or failure to act by City shall constitute a waiver of any right or duty afforded to City under the Contract; nor shall any such action or failure to act by City constitute an approval of or acquiescence in any breach hereunder, except as may be specifically stated by City in writing.

## **10.6 NOTICE TO CITY OF LABOR DISPUTES**

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

## **10.7 HEADINGS**

The headings used in the Contract are for convenience only and shall not be considered a part of or affect the construction or interpretation of any contractual provision therein.

## **10.8 CHOICE OF LAW**

In the event that either party shall bring a lawsuit or action related to or arising out of this Contract, such lawsuit or action shall be brought in the Superior Court, King County,

Washington. This Contract shall be governed by, and construed and enforced in accordance with the laws of the State of Washington.

**10.9 SEVERABILITY**

The provisions of this Contract shall be effective in all cases unless otherwise prohibited by Washington State Law or applicable Federal Law. The provisions of this Contract are separate and severable. The invalidity of any sentence, paragraph, provision, section, Article, or portion of this Contract shall not affect the validity of the remainder of this Contract.

**ATTACHMENT B**  
**Retainage Agreement**

RETAINAGE AGREEMENT

Contract Title \_\_\_\_\_  
 \_\_\_\_\_  
 Contract Date \_\_\_\_\_  
 Contractor Name \_\_\_\_\_  
 Contractor Address \_\_\_\_\_  
 \_\_\_\_\_  
 Contractor Phone \_\_\_\_\_  
 Contractor Federal ID # \_\_\_\_\_

State Law on How Contract Retainage Monies can be Reserved:

RCW 60.28.010 Retained percentage, labor and material Contracts for public improvements or work other than for professional services, provides that there shall be reserved by the city from the monies earned by the contractor on estimates during the progress of the improvement or work, a sum of five percent of such estimates, said sum to be retained by the city as a trust fund for the protection and payment of any persons performing work or supplying provisions or supplies during the work. The monies reserved for contract retainage may be reserved by the contractor choosing one of the following four options:

**All investments selected below are subject to City approval.**

Contractor Options (Contractor shall place an "x" in one of the boxes below.)

- (a) Retained in a non-interest bearing fund by the public body until released in accordance with applicable state statutes;
- (b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until released in accordance with applicable state statutes, provided that interest on such account shall be paid to the contractor;
- (c) Placed in escrow with a bank or trust company by the public body until released in accordance with applicable state statutes. The cost of the investment program and the risk thereof is to be borne entirely by the contractor.
- (d) Contractor may submit a Retainage Bond equal to 5% of the total awarded bid amount for all schedules to be held by the public body until released in accordance with applicable state statutes.

Contractor's Bank

If Contractor selects options (b) or (c) above, Contractor shall designate below the bank in which the retainage is to be deposited:

ACCOUNT NO. \_\_\_\_\_  
 BANK NAME \_\_\_\_\_  
 BANK ADDRESS \_\_\_\_\_  
 \_\_\_\_\_  
 BANK PHONE # \_\_\_\_\_

Agreement

Contractor and City agree that all or part of the monies in the account can only be approved for disbursement by Bank to Contractor upon written authorization of the City Finance Director, or his/her authorized designee.

By \_\_\_\_\_ By \_\_\_\_\_  
 City of Mercer Island Contractor

Date \_\_\_\_\_ Date \_\_\_\_\_

**ATTACHMENT C**  
**Performance and Payment Bonds**



**PERFORMANCE BOND**  
**To City of Mercer Island, WA**

Bond No. \_\_\_\_\_

The City of Mercer Island, Washington has awarded to \_\_\_\_\_ (Principal), a contract for the construction of the project designated as \_\_\_\_\_, Project No. \_\_\_\_\_, in Mercer Island, Washington (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and \_\_\_\_\_ (Surety), a corporation, organized under the laws of the State of \_\_\_\_\_ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City, in the sum of \_\_\_\_\_ US Dollars (\$ \_\_\_\_\_) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond may be executed in two (2) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the office executing on behalf of the surety.

**PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Principal Signature Date

\_\_\_\_\_  
Surety Signature Date

\_\_\_\_\_  
Printed Name Date

\_\_\_\_\_  
Printed Name Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Name, address, and telephone of local office/agent of Surety Company is:

07/17/17



**ATTACHMENT D**  
**Scope of work**

## DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract Documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

**Acceptance or Accepted:** Written documentation of the City's determination that the Supplier's work has been completed in accordance with the Contract.

**AMR:** Automated Meter Reading System. For the purpose of these Contract Documents, this refers to the AMR system provided by Sensus Metering Systems, consisting of all FlexNet system components, tower gateway BaseStation, regional network interface, meter transmitters, installation tools and equipment, licensed software (including Sensus' Logic), and all other related components.

**Available Meter:** A City meter connected to a fully functioning meter transmitter (also known as an endpoint or SmartPoint), that is used in calculating the read rate during a Billing Window. An available meter satisfies all of the following criteria:

- a. It is installed in compliance with the procedures and specifications approved by and provided to the City in writing by the Supplier.
- b. It functions properly, is not damaged, and does not fail to transmit meter reading information during a Billing Window.
- c. It is serviced by a TGB, FNP, or other network equipment that has not been subjected to a power failure greater than eight (8) continuous hours during a Billing Window.
- d. Neither it, nor the TGB, FNP, or any other network equipment that serves that meter has been affected by a Force Majeure event.
- e. Interference or jamming of the radio spectrum is not preventing or interfering with radio communication to and from the meter transmitter, provided the Supplier is diligently working to effect a cure and provides a weekly status report.
- f. It is installed in a mutually agreed upon coverage area of the City, as defined in the Supplier's propagation study.
- g. It has not been reported by the City under the maintenance service agreement with the Supplier, unless the Parties agree that the reason for the report was resolved before the Billing Window opened or that the meter is functioning normally.
- h. Its functioning or performance has not been adversely affected by a failure of the City to perform its obligations or tasks for which it is responsible, or to properly maintain network equipment owned by the City.

**Billing Window:** A three-to-four-day period beginning one to two days prior to, and ending two days following, the City's preferred billing day for a particular meter.

**Change Documentation:** A written document agreed upon by the Supplier and the City, which if it creates a material change to the Contract terms or Specifications shall be executed as a Change Order.

**Change Order:** A written change to the Contract modifying, deleting or adding to the terms, conditions, or scope of work, signed by the City with or without notice to the sureties.

**City:** City of Mercer Island, an optional code city, as the party contracting with the Supplier to receive the Equipment and Services or the Work under this Contract.

**Commissioning Period:** The period beginning with training and concluding with performance testing and final acceptance.

**Contract or Contract Documents:** The writings and drawings embodying the legally binding obligations between the City and the Supplier for completion of the Work under the Contract.

**Contract Price:** The total amount payable by the City to the Supplier for performance of the Work in accordance with the Contract.

**Contract Schedule:** The schedule for the Supplier's provision of the Equipment and Services, and attached as Attachment C.

**Contract Time:** The total time for the Supplier to perform the Work as set out in the Contract Schedule.

**Day:** Calendar day.

**Documentation:** Technical publications relating to the use of the software or services to be provided by the Supplier under this Contract, such as reference, user, installation, systems administration, and technical guides, delivered by the Supplier to the City.

**Equipment and Implementation Services:** The furnishing of materials, equipment, custom software, consulting, design, labor, time, and effort by the Supplier during the installation and initial operation of the supplied AMR system during the contract term.

**Ferguson or The Supplier:** The corporation contracting with the City to provide the Equipment and Services or perform the Work under this Contract.

**Final Acceptance:** The date as of when the City acknowledges in writing that the Supplier has performed the Work through installation as defined herein.

**FlexNet:** The AMR system provided by Sensus Metering Systems.

**FlexNet Network Portal (FNP):** Also referred to as a repeater. A pole-mounted unit with simple store and forward capability that communicates directly to a TGB.

**Force Majeure:** Means an event that is unforeseeable as of the Effective Date and that is beyond the reasonable control of the Supplier and the City that prevents one or more parties from meeting their obligations under the Contract. The term force majeure may include but is not limited to:

- Natural disasters declared by the governor of Washington or President of the United States, including but not limited to earthquakes.
- Acts or omissions of any government entity acting within its governmental capacity.
- Fire or other casualty for which the Supplier or its Subcontractors and/or Suppliers are not responsible.
- Quarantine or epidemic.
- Strike or defensive lockout; and,
- Unusually Severe Weather Conditions.

**Integration Specialist:** Individual designated by Ferguson to work with Sensus, InHANCE, and the City to integrate import/export files to facilitate the population of information into Sensus

Analytics as well as provide files to facilitate the transfer of reads into InHANCE for the purpose of providing water billing.

**Meter Transmitter:** Also referred to as a transmitter unit, an endpoint, or a Sensus SmartPoint. The radio transmitter installed at a given meter location to transmit information from the meter register to the FlexNet system.

**Person:** Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

**Project Manager:** The individuals designated by the City and the Supplier, as applicable, to manage the project on a daily basis and who may represent the City and the Supplier respectively for Contract administration.

**Proposal:** The Supplier's direct proposal (cover letter dated August 7,2019) to the City and all submissions by the Supplier and Sensus Metering Systems in response to the City's RFP.

**Provide:** Furnish without additional charge.

**RCW:** The Revised Code of Washington.

**Regional Network Interface (RNI):** Equipment and Sensus' Logic software used to gather, store, and report data collected from meter transmitters and TGBs that are part of the FlexNet system. The Logic software operates on the RNI.

**RFP:** Request for Proposals - the solicitation documents (dated June 26,2019) issued by the City to select the Supplier, including any addenda.

**Subcontractors:** A subcontractor shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Supplier, or with any Subcontractor of any tier for the performance of any part of the Contract. When the City refers to Subcontractor(s) in the Contract Documents, for the purposes of the Contract Documents and unless otherwise stated herein, the term "Subcontractor(s)" includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materials men. The Supplier shall identify all Subcontractors that the Supplier proposes to perform any portion of the Work which shall be subject to the City's prior written approval, such approval to be given in the City's sole discretion.

**Specifications:** A section of the Contract consisting of written descriptions of Services to be performed, or the Equipment to be provided or the technical requirements to be fulfilled under this Contract and the Contract Documents.

**Touch Coupler:** An inductive coupler connection from a water meter register to the meter transmitter.

**Tower Gateway Basestation (TGB):** The hardware, firmware, and software installed at a tower site and used to communicate by radio with meter transmitters and the RNI.

**Unread Meter:** Any available meter that is not read by the FlexNet system during a Billing Window.

**Work:** Everything to be provided and done for the fulfillment of the Contract and shall include all Equipment, software, hardware and services specified under this Contract, including Change Orders, also referred to as "Equipment and Services."

## **SCOPE OF SERVICES**

### **Background**

Incorporated into this Contract by reference is the following document, which the Supplier submitted in response to the City's request for proposals (RFP, dated December 6, 2019) and which provides detailed information related to the equipment and services to be furnished by the Supplier under this Contract:

"Proposal for an Advanced Metering Reading System for City of Mercer Island (Project No. 4-12), cover letter dated August 7, 2019". Throughout this Scope of Services, this document will be referred to as the "Proposal".

Where this Contract Scope of Services differs from information presented in the Proposal and the RFP, this Contract Scope of Service shall take precedence.

### **Summary of Work**

This project includes work and equipment required to implement an Advanced Metering Reading (AMI) System, as set forth in detail in the Proposal. This includes the following components:

1. Furnish and install FlexNet AMI system, provided by Sensus Metering Systems.
2. Furnish and install Tower Gateway Basestations (TGBs) (and Repeaters if required).
3. Furnish and install replacement Sensus Water Meters at all water service meter locations (list and/or map of locations to be provided by the City).
4. Furnish and install Meter Transmitters (i.e., SmartPoints).
5. Furnish and install a Regional Network Interface (RNI), comprised of a Cloud Based environment interfaced with City's billing system.
6. Furnish and install the backhaul communication system capable of transferring data from the TGBs to the RNI.
7. Furnish and install data hosting capabilities.
8. Obtain all Federal, State, and local permits required for installation and operation of the system.
9. Provide technical and installation support to the City during deployment.
10. Provide training sufficient to enable City personnel to operate and maintain the system.
11. Enter into an annual maintenance agreement for the ongoing maintenance of the system.

The Supplier will provide backup documentation of work products as appropriate to adequately record the Supplier's work, including assumptions made, regulation interpretations, methodology used, calculations, rationale supporting recommendations, and meeting or conversation records. Standards for the design deliverables will be as determined by the City.



1. General Project Requirements

- a. Sensus meters and Smartpoints shall be provided to meet all national standards and be identified by unique serial numbers.
- b. All equipment will be supplied to communicate with an AMI system that will enable it to obtain timely, accurate, and automated meter readings.
- c. The data Analytics system will be capable of extracting and analyzing water consumption stored in the Meter Data Management System for review, analysis and use by City Staff.

2. General Project Roles and Responsibilities

The Supplier shall:

- a. Provide a project manager acceptable to the City to coordinate all Sensus FlexNet installation activities with the City and be the main contact point between the Supplier and the City during system deployment. The project manager will also coordinate all installation activities with the Sensus field engineers and contract installation crews hired by the Supplier to install equipment that is the responsibility of the supplier.
- b. Conduct a propagation study to confirm the locations best suited for installation of the TGBs and possible Repeaters, and to ensure proper communications between the meter transmitters and the RNI.
- c. Install TGB mounting poles for those locations where said poles will be owned and maintained by the City.
- d. Install the TGBs (and Repeaters if necessary) equipment and run all data and power cables between the antennae and the TGBs/Repeaters.
- e. Provide access to RNI Launch Pad in the cloud. Provide training to operate the software and manage the RNI to identified personnel at the City's location.
- f. Furnish secure direct link to hosted RNI system. Provide Cloud based access to City preapproved users.
- g. Stage all software and configure the RNI for operation with the Sensus FlexNet network.
- h. Furnish the communications link between the RNI and the TGBs.
- i. Test and verify proper configuration of the RNI and access the TGBs.
- j. Set up the software application to export billing data from Sensus Analytics to a file that can be imported to the City's InHANCE billing system.
- k. Install replacement meters, replacement meter registers, and meter transmitters.

The City shall:

- a. Provide a secured area at each TGB site owned by the City, for installation of the TGB cabinet, Installation type to be determined.
- b. Provide padlocks at TGB locations for security purposes.
- c. Provide a 240 VAC power source at each TGB site from which the Supplier shall convey power to the TGB.
- d. Provide a main point of contact and contact information for project management activities to work with the Supplier project manager to help facilitate timely installation of the FlexNet system.
- e. Pay monthly fees associated with the network access for all sites where network access is needed.
- f. Allow a minimum of thirty (30) to forty-five (45) days from the time the TGBs, RNI, and sufficient meter transmitters have been operational before requiring that data be used for billing purposes.

- g. Perform system backup on a regular basis as recommended by Sensus.
- h. Provide remote network access to the RNI computer and TGB network by authorized Sensus AMI Technical Services personnel for the purpose of performing system maintenance, troubleshooting and system monitoring. (Note: Sensus personnel shall coordinate with City IT staff to have a remote login port opened only during the period Sensus requires access.)

3. TGB Site Responsibilities

The TGB configuration for this project is outdoor TGB units at seven locations as summarized in the table below.

<b>TGB Site No.</b>	<b>Location</b>	<b>Mounting Structure</b>
1	City Hall / Shops	New Pole (City Owned)
2	Water Reservoir / Pump Station Site	Existing Tower
3	Island Crest Ballfield	Existing Light Pole
4	South Point Landing; 85th	Replaced Utility Pole (PSE, Lumen, or Comcast)
5	East Side; 72nd	Replaced Utility Pole (PSE or Lumen)
6	South Mercer Playfield	New Pole (City Owned)
7	Roanoke Park	Replaced Utility Pole (PSE)

The Supplier shall:

- a. Provide the TGBs and antennas sufficient to receive meter data and provide the meter data to the RNI at all seven (7) sites.
- b. Provide the following ancillary site work:
  - i. Install new wood poles at Sites 1 and 6.
  - ii. Install TGB cabinets and antennas at sites 1,2,3, and 6.
  - iii. Install TGB cabinets only at sites 4,5 and 7. PSE to install Antenna
  - iv. Obtain all required permits, excluding those associated with joint facilities arrangements made with other utilities (e.g., PSE, Lumen, and Comcast), for which the City will be responsible.
  - v. Contract a private locator to locate underground utilities not located by One-Call.
- c. Make all data and power terminal, and antenna connections at the TGB cabinets. This includes the connection to the power source, and connection to the data line from the network access point.
  - i. Provide all bracketing needed to mount the antennas to structure to be determined.
  - ii. Mount TGB cabinets per item 1 above.
  - iii. Provide all strapping hardware needed to run the data and power cables from the base of the TGB sites to the antennas.
  - iv. Connect to a ground field to properly ground the TGB and antenna equipment.

The City shall:

- a. Provide an area at TGB sites 1, 2, 3, and 6 for installation of the TGB cabinet.
- b. Coordinate with other utilities (e.g., PSE, Lumen, or Comcast) for provision of an area for TGB cabinet installation at TGB sites 4, 5, and 7.
- c. Provide padlocks at TGB locations for security purposes.
- d. Provide a 240 VAC power source at each TGB site from which the Supplier shall convey power to the TGB

4. Project Management

- a. Ferguson will assign a Project Manager (PM) acceptable to the City who is responsible for the overall planning and execution of the FlexNet project, employing Sensus processes. This position is also responsible for business planning, network deployment, optimization, systems acceptance testing, and customer acceptance. The Ferguson Project Manager (PM) will interact with installation professionals throughout the City's Advanced Metering Infrastructure project, supervise on-site Sensus personnel, and coordinate activities related to the FlexNet deployment project. This position will help develop, and adhere to, cost, quality, and schedule parameters. The Project Manager will schedule and conduct periodic reviews and impose scheduled maintenance and operational tests to ensure system performance. The Project Manager (PM) will develop topics for and conduct routine meetings with the City and vendors associated with the deployment project, reviews with corporate headquarters, and conduct special meetings as necessary. Project Managers are responsible for daily activities for the deployment project and are assigned to work with customers upon project award and after initial scoping exercises.
- b. The City will be asked to assign a Project Manager to act as the single point of Contact to Ferguson's Project Manager to assist in relaying information between Contractors and the City.

5. Phased Deployment:

- a. Phase 1: Initial Deployment
  - i. Network Design and Installation
    - a) Antenna and TGBs will be installed based on the Propagation Study results.
  - ii. RNI Established
    - a) RNI will be Configured by Ferguson to the City's unique profile.
  - iii. Software Integration
    - a) Ferguson and Sensus will work directly with InHANCE and the City to provide a custom integration between Sensus Analytics and InHANCE.
  - iv. Endpoint Installation
    - a) 400-650 water service connection endpoints
    - b) 80-100 additional Smartpoints to be installed at the end of Phase 1 (connected to Sensors.)
  - v. Phase 1 Acceptance Criteria
 

Network deployment is achieved when: 1) all necessary TGBs have been installed; 2) all necessary REPEATERS have been installed; 3) the RNI has been Commissioned and receiving signal to and from Smartpoints; and 4) the FlexNet system is providing coverage for the entire water service area as defined in the RFP. Acceptance of Milestone 1 will occur when the network is performing successfully according to a Supplier-provided and City-approved testing plan.
- b. Phase 2: Mass Deployment
  - i. Endpoint Installation – See RFP Section VI, Part F
  - ii. Customer Portal Set up

- a) Customer Portal is web based so customers can access at their convenience at any time. The Portal is linked with the City's interface to provide real time account information as well as any other notices the City wishes to have available. English and Spanish are provided by default and other languages are available if required.
  - b) Notifications can be scheduled or pushed out on demand to the entire customer base or a small subset. Each notification can be sent in the default language of the customer portal user and can be displayed on the website, SMS Test, Email or any combination herein. Expiration of a notification can also be set to manage messaging that is displayed on the site directly.
- iii. Phase 2 Acceptance Criteria
- a) System acceptance will be determined on an individual route basis. A complete route will be installed, optimized, and then evaluated for acceptance (per the approach and calculation set forth below) and accepted before proceeding to the next route installation. Acceptance of a route will occur when system performance has reached or exceeded a reading rate of 99.5% during a three-day reading period. The reading rate is defined as the number of meter transmitters installed on the AMI system that successfully provide a reading during the defined reading period, divided by the total number of meter transmitters installed on the system at that time. A meter transmitter will not be included in the reading rate calculation if any of the following situations apply:
    - A. The unit is adversely affected by a Force Majeure event or an Act of God.
    - B. The unit cannot communicate with the system due to an object being placed over it (e.g., a parked automobile).
    - C. The unit is removed from service during the reading period.
    - D. The unit's daily reads are lost due to a TGB power failure that lasts more than 24 hours.
    - E. The unit is damaged or tampered with.
    - F. The unit is installed in an area outside of the water service area.
  - b) By accepting a route, both the City and the Supplier will be acknowledging the following, with regard to all initial system elements (including meter transmitters):
    - A. The system elements have been installed in compliance with the procedures and specifications approved and provided by the Supplier.
    - B. Their performance or functioning has not been adversely affected by a failure of the City to perform its obligations or tasks for which it is responsible.

## 6. Work order Management

During meter deployment, PMI (the installation contractors) will utilize a Work order management program that will collect predefined information regarding each installation. This information will include unique identifying serial numbers to load into Mercer Island's InHANCE billing system.

- a. With the assistance of an InHANCE programmer, Mercer Island will determine the required InHANCE data fields needed to process a meter replacement in the InHANCE billing system. Certain specific data is required in the InHANCE Billing system; if the data is not needed by PMI's system, the data must still be stored by PMI and imported back into InHANCE upon completion of EACH meter change out.

The InHANCE programmer has created three files that will automate the meter change-out process for billing.

- b. The “Export from InHANCE” file will include data needed by PMI and InHANCE. If any data is missing and needed for PMI (and data resides in InHANCE) the file can be modified.
- c. During the MERCER ISLAND Pre-Testing (Step 1) PMI shall provide programming expertise to thoroughly create, configure, and test the use of these program files during the electronic data transfers between PMI’s system and the City’s InHANCE billing system. This process shall be a team approach between the City, PMI and InHANCE. PMI shall provide the City as much telephone and/or web session access to PMI’s programmers as necessary in the City’s sole discretion to perfect the automated process of updating of all InHANCE accounts for accurate billing.

7. Training and Documentation

- a. Field training shall be provided for City staff throughout the project. The staff will be training on “best practices” on installing and activating a Smartpoint. In addition, they will be trained on how to trouble shoot in the field.
- b. Once the City has Meters and SmartPoints installed and communicating with the FlexNet Base- Stations, the data is entered into the CIS System. A VFLEX File is passed to the SFTP server and processed in Sensus Analytics so that there is data in the Software for training.
- c. The Ferguson Enterprises, Inc. Integration Specialist and Project Manager are available throughout the project to assist with any training issues or system questions that may arise from City of Mercer Island personnel at any time. An AMI system is a giant leap in technology for any utility and Ferguson represents it is always available to assist City of Mercer Island through the process of system operations until City staff are completely comfortable operating the system.
- d. Training is scheduled once the Software Integration has been completed and validated by both Sensus and the City of Mercer Island. The trainer will be available for 2-3 days as necessary for the City of Mercer Island. When Possible, training will be onsite. However, remote training may be required in lieu of onsite training. Training covers both the Administrator Responsibilities and functions as well as the Operator Responsibilities and functions. There are Job Aids to assist with daily prioritizing of system work or monitoring. A detailed training agenda will be provided by the trainer and coordination as to the timing of the event as well as determining who should attend what sessions.
- e. Training Manuals are provided for all attendees. Included in the manuals are the specific Job Aids for each Administrator and Operator role.

8. Project Completion and Closeout Activities

- a. Project is considered complete when:
  - i. System is fully deployed and achieves a Read Interval Success Rate of 99.5% or above over a 3-day window, and system has been accepted by the City.
  - ii. Integration is completed and a successful read is performed using Analytics.
  - iii. RNI and Analytics training is completed, and manuals are provided.
  - iv. All deliverables have been provided and accepted by the City.

**ATTACHMENT E**  
**Pricing**

## PRICING NOTES

Prices include all applicable WA state taxes. All wages will comply with WA State L&I requirements.

Prices are to remain firm through the term of the contract, with the following exception:

- Prices for labor associated with installation of water meters, registers, and transmitters furnished under this Contract shall remain firm through one year after the date of Contract execution. If the installation schedule exceeds this time frame due to unforeseen circumstances, pricing related to labor to be provided beyond that time frame associated with installation of water meters, registers, and transmitters will increase following the published Consumer Price Index for All Urban Consumers (CPI-U) for the Seattle-Tacoma-Bremerton area, up to a maximum allowed annual increase of ten (10) percent. The price increases will apply to the installation unit costs shown in Table 6 (Installation of Water Meters, Registers, and Transmitters) and will be calculated every six (6) months, beginning one year after the date of Contract execution. The calculation approach will be as follows, with “July 2023” being used in the example below as the example month, reflecting a Contract execution date in July 2022 (dates are to be modified if Contract execution occurs in a month other than July 2022).
  - The percent increase effective beginning one year after the date of Contract execution (e.g., July 2023) will be determined as:  $\left(\frac{\text{CPI-U June 2023}}{\text{CPI-U June 2022}} - 1\right) * 100$ . If this value is greater than 10, then 10 shall be used. This value represents the percent change allowed in labor unit pricing and will be applied to the installation unit costs shown in Table 6.
  - The percent increase effective beginning six months after one year after the date of Contract execution (e.g., January 2024) will be determined in similar fashion to that above, as:  $\left(\frac{\text{CPI-U December 2023}}{\text{CPI-U June 2023}} - 1\right) * 100$ . If this value is greater than 5 (reflecting a half-year period of maximum increase), then 5 shall be used. This value represents the percent change allowed in labor unit pricing and will be applied to the previously-increased installation unit costs.
  - Additional price increases will be calculated every six (6) months thereafter, following the above methodology.
  - At no time will a price decrease be calculated. If the CPI-U decreases over a calculation period, unit prices will hold constant.

**AMI PRICING SUMMARY**

<b>Table No.</b>	<b>Description</b>	<b>Total Cost</b>
1	Electronic Meters	\$1,583,188.25
2	Transmitter Units – AMI	\$ 1,036,502.82
3	Data Collection/Communication System - AMI	\$347,000.00
4	MDMS/Data Analytics – Data Hosting (Up Front Costs)	\$30,859.37
5	Customer Portal (Up Front Costs)	\$9,088.54
6	Installation of Water Meters, Registers, and Transmitters	\$1,475,617.43
7	Project Management Training (upfront and during deployment)	\$77,700.00
NA	Minor Changes	\$73,780.87
	<b>Subtotal</b>	<b>\$4,633,737.28</b>
	<b>Estimated taxes at 10.1%</b>	<b>\$468,007.47</b>
	<b>Total</b>	<b>\$5,101,744.75</b>

**AMI PRICING DETAILS**

**Table 1. Electronic Meters**

<b>Meter Size</b>	<b>QTY</b>	<b>Unit</b>	<b>Total</b>
5/8"	2963	\$ 133.33	\$ 395,056.79
¾"	2116	\$ 139.58	\$ 295,351.28
1"	1868	\$ 203.12	\$ 379,428.16
1.5"	661	\$ 468.33	\$ 309,566.13
2"	231	\$ 657.11	\$ 151,792.41
3"	19	\$ 1,580.60	\$ 30,031.40
4"	8	\$ 2,745.26	\$21,962.08
<b>Total</b>			<b>\$ 1,583,188.25</b>

**Table 2. Transmitters**

	<b>Qty</b>	<b>Unit</b>	<b>Total</b>
Smartpoints	7866	\$ 131.77	\$ 1,036,502.82
<b>Total</b>	7866		<b>\$1,036,502.82</b>



**Table 3. AMI System Reading Equipment Services**

<b>Equipment Description</b>	<b>Quantity to be supplied</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Fixed data collection units, including firmware and installation	7	\$48,500.00	\$339,500.00
Backhaul communications infrastructure. Backhaul service by the City.	5	\$ 1,500.00	\$7,500.00
Other (describe)			
<b>Total:</b>	---	-	<b>\$347,000.00</b>

Notes: Installation cost of Collectors could change as the final system design requires assistance from PSE and Lumen altering original scope. Additional costs may include any special permitting and or engineering drawings.

**Table 4. MDMS/Data Analytics- Data Hosting Upfront costs**

<b>Equipment Description</b>	<b>Quantity to be supplied</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Meter Data Management	1	\$30,859.37	\$30,859.37
Other (describe)			
<b>Total:</b>	---		<b>\$30,859.37</b>

**Table 5. Customer Portal – Upfront Costs**

<b>Description</b>	<b>Quantity to be supplied</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Customer Portal	1	\$9,088.54	\$9,088.54
Other as needed to meet the requirements (describe)			
<b>Total:</b>	---	---	<b>\$9,088.54</b>

**Table 6. Installation of Water Meters, Registers and Transmitters**

Size/Description	Quantity	Unit Cost	Total Cost
<b>Meter/Transmitter Installation (full meter replacement)</b>			
5/8"	2,963	\$ 122.65	\$ 363,411.95
3/4"	2,116	\$ 122.65	\$ 259,527.40
1"	1,868	\$ 133.61	\$ 249,583.48
1.5"	661	\$ 355.55	\$ 235,018.55
2"	231	\$ 355.55	\$ 82,132.05
3"	19	\$ 1,155.90	\$ 21,962.10
4"	8	\$ 1,609.98	\$ 12,879.84
<b>Meter Box/Lid Modifications</b>			
Full Box Replacement	400	\$ 67.41	\$ 26,964.00
Lid Replacement	4,000	\$ 8.14	\$ 32,560.00
Lid Hole Drilling	3,466	\$ 15.73	\$ 54,520.18
<b>Salvage Value of Replaced Meters</b>			
Meter Salvage	7,866	\$ (1.00)	\$ (7,866.00)
<b>Additional Installation Services/Requirements</b>			
Staging Area	1	\$ 45,000.00	\$ 45,000.00
Installation Program Management	1	\$ 28,500.00	\$ 28,500.00
<b>Total Installation Cost:</b>			<b>\$ 1,475,617.43</b>

**Table 7. Project Management Training (upfront and during deployment)**

Item Description	Quantity to be supplied	Unit Cost	Total Cost
Initial and 6-month and 12-month follow-up on-site training. Includes all travel costs.	9	\$ 1,300.00	\$ 11,700.00
	(days)		
Subsequent training, 8 hour days. Includes all travel costs.	(days)		
Ferguson System Optimization (per month)	12	\$ 5,500.00	\$ 66,000.00
Other (describe)			
<b>Total:</b>			<b>\$ 77,700.00</b>

**ATTACHMENT F**  
**Project Schedule**

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Resource Names	Apr 3, '22										
								T	F	S	S	M	T	W	T	F		
1		Contract from Mercer Island			Mon 6/27/22													
2		City Council			Fri 4/1/22													
3		Utility board Mtg			Tue 7/19/22													
4		Signed contract from Mercer Island			Fri 7/29/22													
5		Order Basestation	16 wks	Mon 8/1/22	Fri 11/18/22													
6		Project Kick off Meeting	1 day	Thu 11/3/22	Thu 11/3/22													
7		Begin Integration	8 wks	Thu 11/3/22	Wed 12/28/22													
8		Install basestation	2 wks	Mon 11/21/22	Fri 12/2/22													
9		Commission and Optimization	120 days	Mon 12/5/22	Fri 5/19/23													
10		RNI training	2 days	Tue 1/3/23	Wed 1/4/23													
11		Analytics training	2 days	Mon 1/9/23	Tue 1/10/23													
12		Book 1 (694)	17 days	Tue 4/4/23	Wed 4/26/23													
13		Book 2 (934)	20 days	Thu 4/27/23	Wed 5/24/23	12												
14		Book 3 (916)	16 days	Thu 5/25/23	Thu 6/15/23	13												
15		Book 4 (916)	14 days	Fri 6/16/23	Wed 7/5/23	14												
16		Book 5 (705)	12 days	Thu 7/6/23	Fri 7/21/23	15												
17		Book 6 (736)	13 days	Mon 7/24/23	Wed 8/9/23	16												
18		Book 7 (777)	13 days	Thu 8/10/23	Mon 8/28/23	17												
19		Book 8 (637)	10 days	Tue 8/29/23	Mon 9/11/23	18												
20		Book 9 (668)	12 days	Tue 9/12/23	Wed 9/27/23	19												

Project: Mercer Island revised S  
Date: Thu 6/23/22

Task		Inactive Summary		External Tasks	
Split		Manual Task		External Milestone	
Milestone		Duration-only		Deadline	
Summary		Manual Summary Rollup		Progress	
Project Summary		Manual Summary		Manual Progress	
Inactive Task		Start-only			
Inactive Milestone		Finish-only			

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Resource Names	Apr 3, '22							
								T	F	S	S	M	T	W	T
21		Book 10 (683)	13 days	Thu 9/28/23	Mon 10/16/23	20									
22		Book 24 (59)	5 days	Tue 10/17/23	Mon 10/23/23	21									
23		PSE Installation TBD													
24		Project Close out TBD													



Project: Mercer Island revised S Date: Thu 6/23/22	Task		Inactive Summary		External Tasks	
	Split		Manual Task		External Milestone	
	Milestone		Duration-only		Deadline	
	Summary		Manual Summary Rollup		Progress	
	Project Summary		Manual Summary		Manual Progress	
	Inactive Task		Start-only			
	Inactive Milestone		Finish-only			

**ATTACHMENT G**  
**Sensus Product Warranty**

# Sensus Limited Warranty

**1. General Product Coverage.** Unless otherwise provided herein, Sensus USA Inc. ("Sensus") warrants its products and parts to be free from defects in material and workmanship for one (1) year from the date of Sensus shipment and as set forth below. All products are sold to customer ("Customer") pursuant to Sensus' Terms of Sale, available at: [sensus.com/TC](http://sensus.com/TC) ("Terms of Sale").

**2. SR II® and accuSTREAM™ 5/8", 3/4" & 1" Meters** are warranted to perform to new meter accuracy level set forth in the SR II and accuSTREAM Data Sheets available at [sensus.com](http://sensus.com) for five (5) years from the date of Sensus shipment or until the registration shown below, whichever occurs first. Sensus further warrants that the SR II and accuSTREAM meters will perform to at least AWWA Repaired Meter Accuracy Standards for fifteen (15) years from the date of Sensus shipment or until the registration shown below, whichever occurs first:

	New Meter Accuracy	Repair Meter Accuracy
5/8" SR II Meter and accuSTREAM Meter	500,000 gallons	1,500,000 gallons
3/4" SR II Meter and accuSTREAM Meter	750,000 gallons	2,250,000 gallons
1" SR II Meter and accuSTREAM Meter	1,000,000 gallons	3,000,000 gallons

**3. ally® Meters** that register water flow are warranted to perform to the accuracy level set forth in the ally Data Sheet available at [sensus.com](http://sensus.com) for fifteen (15) years from the Date of Installation, but no longer than sixteen (16) years from date of manufacture, not including the meter's sensors, valve, and gear motor, which are warranted under different terms described below. As used herein, "Date of Installation" means the date after which the ally Meter has been out of empty pipe for seven (7) consecutive days, as those days are measured by the ally Meter and stored in the meter's nonvolatile memory.

**4. iPERL® Meters** that register water flow are warranted to perform to the accuracy levels set forth in the iPERL Data Sheet available at [sensus.com](http://sensus.com) for twenty (20) years from the date of Sensus shipment. The iPERL System Component warranty does not include the external housing.

**5. SR II maincases** are warranted to be free from defects in material and workmanship for twenty-five (25) years from the date of Sensus shipment. accuSTREAM maincases will be free from defects in material and workmanship for fifteen (15) years from the date of Sensus shipment.

**6. Sensus OMNI™ Meters and Propeller Meters** are warranted to perform to as set forth in OMNI and Propeller data sheets for one (1) year from the date of Sensus shipment.

**7. Sensus accuMAG™ and Hydroverse™ Meters** are warranted to be free from defects in material and workmanship, under normal use and service, for 18 months from the date of Sensus shipment or 12 months from startup, whichever occurs first.

**8. Sensus Registers** are warranted to be free from defects in material and workmanship from the date of Sensus shipment for the periods stated below or until the applicable registration for AWWA Repaired Meter Accuracy Standards, as set forth above, are surpassed, whichever occurs first:

5/8" thru 1" SR II, accuSTREAM Standard Registers	25 years
5/8" thru 1" SR II, accuSTREAM Encoder Registers	10 years
All HSPU, IMP Contactor, R.E.R. Elec. ROFI	1 year
Standard and Encoder Registers for Propeller Meters	1 year
OMNI and OMNI+ Registers with Battery	10 years

**9. Sensus Electric and Gas Meters** are warranted pursuant to the General Limited Warranty available at [sensus.com/TC](http://sensus.com/TC).

**10. Batteries, iPERL System Components, AMR and FlexNet® Communication Network AMI Interface Devices** are warranted to be free from defects in material and workmanship from the date of Sensus shipment for the period stated below:

Electronic TouchPad	10 years
Act-Pak® Remote Monitoring Instruments	1 year
Gas SmartPoint® Modules and Batteries	20 years <sup>1</sup>
6500 series Hand-Held Device	2 years
Vehicle Gateway Base Station (VGB) and other AMR Equipment	1 year
EasyLink Reader	1 Year
CPTP100	20 Years <sup>2</sup>
FlexNet Base Station (including the R100NA and M400 products)	1 year
RM4160	1 Year
iPERL System Battery and iPERL System Components	20 years <sup>3</sup>

<sup>1</sup> Sensus will repair or replace non-performing Gas SmartPoint Modules (configured to the factory setting of six transmissions per day under normal system operation of up to one demand read to each SmartPoint Module per month and up to five firmware downloads during the life of the product) and batteries.

<sup>2</sup> Sensus will repair or replace non-performing CPTP100 modules (configured at factory setting of four transmissions per day under normal system operations of up to one demand read per month and up to five firmware downloads during the life of the product) and batteries.

Sensus® Electronic Register+™	20 years <sup>4</sup>
Sensus® Smart Gateway Sensor Interface	1 year <sup>5</sup>
SmartPoint® 510M/520M/515M/512M Modules and Batteries	20 years <sup>3</sup>

**11. ally® Meter Batteries and Components, including SmartPoint 510M/520M Modules** are warranted to be free from defects in material and workmanship from the Date of Installation, as defined in Section 3, for the period stated below:

Batteries	15 years <sup>6</sup>
Sensors	5 years
Valve & Gear Motor	5 years <sup>7</sup>
SmartPoint 510M/520M Modules and Batteries in service w/ally	15 years <sup>6</sup>

<sup>3</sup> Sensus will repair or replace non-performing:

- iPERL System Batteries, and/or the iPERL System flowtube, the flow sensing and data processing assemblies, and the register ("iPERL System Components") with hourly reads,
- SmartPoint 510M/520M/515M/512M-PLS Modules (configured to the factory setting of six transmissions per day under normal system operation of up to one demand read to each SmartPoint Module per month and up to five firmware downloads during the life of the product) and batteries, unless the SmartPoint 510M/520M Module is ever paired with an ally Meter, which event immediately amends the warranty terms to those described in Section 11;

at no cost for the first fifteen (15) years from the date of Sensus shipment, and for the remaining five (5) years at a prorated percentage, applied towards the published list price in effect for the year the product is accepted by Sensus under the warranty conditions according to the following schedule:

Years	Replacement Price
1 – 15	0%
16	30%
17	40%
18	50%
19	60%
20	70%
>20	100%

<sup>4</sup> Sensus will repair or replace non-performing Sensus Electronic Register+ with hourly reads for the first ten (10) years from the date of Sensus shipment, and for the remaining ten (10) years, at a prorated percentage, applied towards the published list price in effect for the year product is accepted by Sensus under warranty conditions according to the following schedule:

Years	Replacement Price	Years	Replacement Price
1 – 10	0%	16	55%
11	30%	17	60%
12	35%	18	65%
13	40%	19	70%
14	45%	20	75%
15	50%	>20	100%

<sup>5</sup> Sensus® Smart Gateway Sensor Interface warranty valid only for analog Meter Sample Rates of four times per hour with a Standard Transmit Rate of hourly or greater for the analog channel(s).

<sup>6</sup> If applicable, any SmartPoint 510M/520M Modules ever paired with an ally Meter are warranted with the following limitations:

- When configured to the default installation setting of six transmissions of metrology and pressure per day and one update of temperature per day, the SmartPoint is warranted to perform up to five (5) firmware upgrades for the SmartPoint Module and up to five (5) firmware upgrades for the ally Meter;
- 2500 Operational Commands, where "Operational Commands" include on demand reads (such as consumption, pressure, temperature), an ally valve command, or a configuration command; and

15 Diagnostic Commands, which includes two-way communications tests and installations for the first ten (10) years from Date of Installation at no cost. For the remaining five (5) years, Customer will pay the reduced Replacement Price of the then-current list price in effect at the time the product is accepted for return in accordance with the following schedule:

Years	Replacement Price	Years	Replacement Price
1 – 10	0%	14	65%
11	35%	15	75%
12	45%	>15	100%
13	55%		

<sup>7</sup> Notwithstanding the foregoing, valve and gear motor components of ally Meters are not warranted beyond two thousand (2000) Valve State Operations, even if the warranty period provided herein has not yet expired. As used herein, "Valve State Operations" means adjustments of the Meter to open, close, or reduce flow.

**12. iPERL and ally Connectors and Cables** are warranted to be free from defects in materials and workmanship, under normal use and service, for ten (10) years from the date of Sensus shipment. Nicor or Itron connectors included with a Sensus product are warranted according to the terms for Third-Party Devices in Section 13.

**13. Third-Party Devices** are warranted to be free from defects in materials and workmanship, under normal use and service, for one (1) year from the date of Sensus shipment. As used in this Sensus Limited Warranty, "Third Party Devices" means any product, device, or component part used with a Sensus product that is manufactured or sold by any party that is not Sensus. Failure of a Third Party Device which subsequently causes failure to a Sensus device shall be the responsibility of the manufacturer of the Third Party Device.

**14. Software.** Software supplied and/or licensed by Sensus is supported according to the terms of the applicable software license or usage agreement. Sensus warrants that any network and monitoring services shall be performed in a professional and workmanlike manner.

**15. Return.** Sensus' obligation, and Customer's exclusive remedy, under this Sensus Limited Warranty is, at Sensus' option, to either (i) repair or replace the product, provided the Customer (a) returns the product to the location designated by Sensus within the warranty period; and (b) prepays the freight costs both to and from such location; or (ii) deliver replacement components to the Customer, provided the Customer installs, at its cost, such components in or on the product (as instructed by Sensus), provided, that if Sensus requests, the Customer (a) returns the product to the location designated by Sensus within the warranty period; and (b) prepays the freight costs both to and from such location. In all cases, if Customer does not return the product within the time period designated by Sensus, Sensus will invoice, and Customer will pay within thirty days of the invoice date, for the cost of the replacement product and/or components.

The return of products for warranty claims must follow Sensus' Returned Materials Authorization (RMA) procedures. Water meter returns must include documentation of the Customer's test results. Test results must be obtained according to AWWA standards and must specify the meter serial number. The test results will not be valid if the meter is found to contain foreign materials. If Customer chooses not to test a Sensus water meter prior to returning it to Sensus, Sensus will repair or replace the meter, at Sensus' option, after the meter has been tested by Sensus. The Customer will be charged Sensus' then current testing fee. All product must be returned in accordance with the RMA process. For all returns, Sensus reserves the right to request meter reading records by serial number to validate warranty claims.

For products that have become discontinued or obsolete ("Obsolete Product"), Sensus may, at its discretion, replace such Obsolete Product with a different product model ("New Product"), provided that the New Product has substantially similar features as the Obsolete Product. The New Product shall be warranted as set forth in this Sensus Limited Warranty.

THIS SECTION 15 SETS FORTH CUSTOMER'S SOLE REMEDY FOR THE FAILURE OF THE PRODUCTS, SERVICES OR LICENSED SOFTWARE TO CONFORM TO THEIR RESPECTIVE WARRANTIES.

**16. Warranty Exceptions and No Implied Warranties.** This Sensus Limited Warranty does not include costs for removal or installation of products, or costs for replacement labor or materials, which are the responsibility of the Customer. The warranties in this Sensus Limited Warranty do not apply to and Sensus has no liability for goods that have been: installed improperly or in non-recommended installations; installed to a socket that is not functional, or is not in safe operating condition, or is damaged, or is in need of repair; tampered with; modified or repaired with parts or assemblies not certified in writing by Sensus, including without limitation, communication parts and assemblies; improperly modified or repaired (including as a result of modifications required by Sensus); converted; altered; damaged; read by equipment not approved by Sensus; for water meters, used with substances other than water, used with non-potable water, or used with water that contains dirt, debris, deposits, or other impurities; subjected to misuse, improper storage, improper care, improper maintenance, or improper periodic testing (collectively, "Exceptions"). If Sensus identifies any Exceptions during examination, troubleshooting or performing any type of support on behalf of Customer, then Customer shall pay for and/or reimburse Sensus for all expenses incurred by Sensus in examining, troubleshooting, performing support activities, repairing or replacing any Equipment that satisfies any of the Exceptions defined above. The above warranties do not apply in the event of Force Majeure, as defined in the Terms of Sale.

**THE WARRANTIES SET FORTH IN THIS SENSUS LIMITED WARRANTY ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO THE GOODS, SOFTWARE, SOFTWARE LICENSES AND SERVICES SOLD OR OTHERWISE PROVIDED BY SENSUS. SENSUS EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER IN CONNECTION WITH THIS SENSUS LIMITED WARRANTY OR WITH THE TERMS OF SALE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND TITLE.**

**SENSUS ASSUMES NO LIABILITY FOR COSTS OR EXPENSES ASSOCIATED WITH LOST REVENUE OR WITH THE REMOVAL OR INSTALLATION OF EQUIPMENT. THE FOREGOING REMEDIES ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR THE FAILURE OF EQUIPMENT, LICENSED SOFTWARE OR SOFTWARE SERVICES, AND OTHER SERVICES TO CONFORM TO THEIR RESPECTIVE WARRANTIES.**

**17. Limitation of Liability.** SENSUS' AGGREGATE LIABILITY IN ANY AND ALL CAUSES OF ACTION ARISING UNDER, OUT OF OR IN RELATION TO THIS AGREEMENT, ITS NEGOTIATION, PERFORMANCE, BREACH OR TERMINATION

(COLLECTIVELY "CAUSES OF ACTION") SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO SENSUS UNDER THIS AGREEMENT. THIS IS SO WHETHER THE CAUSES OF ACTION ARE IN TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY, IN CONTRACT, UNDER STATUTE OR OTHERWISE.

AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, SENSUS' LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES. SENSUS SHALL NOT BE LIABLE FOR: (I) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; NOR (II) ANY REVENUE OR PROFITS LOST BY CUSTOMER OR ITS AFFILIATES FROM ANY END USER(S), IRRESPECTIVE OF WHETHER SUCH LOST REVENUE OR PROFITS IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE; NOR (III) ANY IN/OUT COSTS; NOR (IV) MANUAL METER READ COSTS AND EXPENSES; NOR (V) DAMAGES ARISING FROM MAINCASE OR BOTTOM PLATE BREAKAGE CAUSED BY FREEZING TEMPERATURES, WATER HAMMER CONDITIONS, OR EXCESSIVE WATER PRESSURE. "IN/OUT COSTS" MEANS ANY COSTS AND EXPENSES INCURRED BY CUSTOMER IN TRANSPORTING GOODS BETWEEN ITS WAREHOUSE AND ITS END USER'S PREMISES AND ANY COSTS AND EXPENSES INCURRED BY CUSTOMER IN INSTALLING, UNINSTALLING AND REMOVING GOODS. "END USER" MEANS ANY END USER OF ELECTRICITY/WATER/GAS THAT PAYS CUSTOMER FOR THE CONSUMPTION OF ELECTRICITY/WATER/GAS, AS APPLICABLE.

The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.