

**PUBLIC WORKS CONTRACT
FOR
2024 PALERMO SECURITY FENCING REPLACEMENT PROJECT**

THIS PUBLIC WORKS CONTRACT (“Contract”) is dated effective this ____ day of _____, 20__ and is made by and between the City of Tumwater, a Washington municipal corporation (“City or Owner”), and West Coast Fence Pros LLC, a Limited liability Corporation (“Contractor”).

A. The City desires to retain an independent contractor to furnish all labor and materials necessary to perform work necessary to complete the 2024 Palermo Security Fencing Replacement project; and

B. The Contractor has the requisite skill and experience to perform such work.

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 as the 2024 Palermo Security Fencing Replacement project. The Project includes, without limitation, demolition and removal of existing perimeter chain link security fencing, installation of a concrete maintenance footer, chain link security fencing, electric gate actuator, swing gates and other work; as shown on the Plans and as described in these Specifications, all in accordance with the Contract Documents (“Work”). Work shall be performed and completed as described in the Contract Documents, which include without limitation, this Contract, Subcontractor List as Attachment A; Non-Discrimination in Benefits Affidavit as Attachment B; Contractor's Non-Discrimination Certificate as Attachment C; Certification of Compliance with Wage Payment Statutes as Attachment D; Scope of Work attached as Attachment E; Notice of Completion of Public Works Contract attached as Exhibit A; Contract Change Order Agreement attached as Exhibit B; Notice to Labor Unions or Other Employment Organizations of Nondiscrimination in Employment attached as Exhibit C; Certificate(s) of Insurance Form attached hereto as Exhibit D; Performance Bond attached as Exhibit E-1; Payment Bond attached as Exhibit E-2; Contractor’s Retainage Agreement attached as Exhibit F; Retainage Bond to City of Tumwater attached as Exhibit G; Special Provisions; *WSDOT Standard Plans and Details for Road, Bridge and Municipal Construction, 2020 WSDOT Standard Specifications for Road, Bridge and Municipal Construction* (“Standard Specifications”), current State Prevailing Wage Rates attached as Appendix A; Federal Wage Rates attached as Appendix B; Federal Required Contract Provisions FHWA 1273 attached as Appendix C; incorporated herein by this reference (collectively the “Contract Documents”). 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 Administrator or his or her designee.

1.2 Completion Date. The Work shall commence within ten (10) days of the issuance by the City of the Notice to Proceed. The Work shall be completed within one hundred (100) working days which will begin the first day the Contractor begins work or ten (10) days after the Notice to Proceed is issued by the City, whichever occurs first. In the event the Work is not substantially completed within the time specified, Contractor agrees to pay to the City liquidated damages in the amount set forth in the formula included in Section 1.3 of this Contract. The Work shall not be deemed completed until the City has accepted the Work and delivered a written Notice of Completion of Public Works Contract in the form attached hereto as Exhibit A.

1.3 Liquidated Damages. Time is of the essence of the Contract. Delays inconvenience the public and cost taxpayers undue sums of money, adding time needed for administration, inspection, and supervision. It is impractical for the City to calculate the actual cost of delays. Accordingly, the Contractor agrees to pay liquidated damages calculated on the following formula for its failure to complete this Contract on time:

- (1) To pay (according to the following formula) liquidated damages for each working day beyond the number of working days established for completion, and
- (2) To authorize the City to deduct these liquidated damages from any money due or coming due to the Contractor.

LIQUIDATED DAMAGES FORMULA

$$LD = \frac{0.15C}{T}$$

Where: LD = Liquidated damages per working day
(rounded to the nearest dollar).

C = Original Contract amount.

T = Original time for completion.

When the Work is completed to the extent that the City has full and unrestricted use and benefit of the facilities, both from an operational and safety standpoint, the City may determine the Work is complete. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete this entire Contract.

1.4 Performance Standard. Contractor shall perform the Work in a manner consistent with accepted practices for other properly licensed contractors.

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 Change Orders. The City may, at any time, without notice to sureties, order changes within the scope of the Work. Contractor agrees to fully perform any such alterations or additions to the Work. All such change orders shall be in the form of the Contract Change Order Agreement attached hereto as Exhibit B, which

shall be signed by both the Contractor and the City, shall specifically state the change of the Work, the completion date for such changed Work, and any increase or decrease in the compensation to be paid to Contractor as a result of such change in the Work. Oral change orders shall not be binding upon the City unless confirmed in writing by the City. If any change hereunder causes an increase or decrease in the Contractor's cost of, or time required for, the performance or any part of the Work under this Contract, an equitable adjustment will be made and the Contract modified in writing accordingly.

If the Contractor intends to assert a claim for an equitable adjustment hereunder, it shall, within five (5) days after receipt of a written change order from the City or after giving the written notice required above, as the case may be, submit to the City a written statement setting forth the general nature and monetary extent of such claim; provided the City, in its sole discretion, may extend such five (5) day submittal period upon request by the Contractor. The Contractor shall supply such supporting documents and analysis for the claims as the City may require to determine if the claims and costs have merit. No claim will be allowed for any costs incurred more than five (5) days before the Contractor gives written notice as required. No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Contract.

1.7 Work and Materials Omitted. The Contractor shall, when directed in writing by the City, omit work, services and materials to be furnished under the Contract and the value of the omitted work and materials will be deducted from the Total Compensation and the delivery schedule will be reviewed if appropriate. The value of the omitted work, services and materials will be a lump sum or unit price, as mutually agreed upon in writing by the Contractor and the City. If the parties cannot agree on an appropriate deduction, the City reserves the right to issue a unilateral change order adjusting the price and the delivery schedule.

1.8 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.

1.9 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.

2. TERM

This Contract shall commence on the effective date of this Contract and continue until the completion of the Work as described in the Plans and Specifications, and final acceptance by the City, and the expiration of all warranties contained in the Contract Documents ("Term").

3. WARRANTY

3.1 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 licensed to do

business in the City of Tumwater by obtaining a City of Tumwater business license. 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.

3.2 Defective Work. The Contractor shall, at its sole cost and expense, correct all Work which the City deems to have defects in workmanship and material discovered within one (1) year after the City's final acceptance of the Work as more fully set forth in the General Special Provisions. This warranty shall survive termination of this Contract. Conducting of tests and inspections, review of specifications or plans, payment for goods or services, or acceptance by the City does not constitute waiver, modification or exclusion of any express or implied warranty or any right under this Contract or law.

4. COMPENSATION

4.1 Total Compensation. In consideration of the Contractor performing the Work, the City agrees to pay the Contractor in accordance with Attachment A, Schedule of Prices, which amount shall constitute full and complete payment by the City ("Total Compensation").

4.2 Contractor Responsible for Taxes. 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 Nonpayment. The City shall have the right to withhold payment to the Contractor for any of the Work not completed in a satisfactory manner, in the City's sole discretion, which shall be withheld until such time as Contractor modifies or repairs the Work so that the Work is acceptable to the City.

4.4 Method of Payment. The basis of payment will be the actual quantities of work performed according to the contract and as specified for payment. Payments will be made for work and labor performed and materials furnished under the contract according to the price in the proposal unless otherwise provided. Partial payments will be made once each month, based on partial estimates prepared by the Project Manager. Failure to perform any obligation under this Contract may be adequate reason for the City to withhold payments until the obligation is performed.

Upon completion of all work and after final inspection, the amount due the Contractor under the contract will be paid based upon the Final Voucher made by the Project Manager and signed by the Contractor.

Payment to the Contractor for partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

5. NONDISCRIMINATION

A. The City is an equal opportunity employer.

B. Nondiscrimination in Employment.

The Contractor shall comply with the following nondiscrimination provisions, and the Contractor shall ensure the nondiscrimination provisions are included in all subcontracts:

(a) Nondiscrimination Requirement. During the term of this Contract, the Contractor, including all subcontractors, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, the Contractor, including all subcontractors, shall give

written notice of this nondiscrimination requirement to any labor organizations with which the Contractor, or subcontractor, has a collective bargaining or other agreement.

(b) **Obligation to Cooperate.** The Contractor, including all subcontractors, shall cooperate and comply with any Washington state agency investigation regarding any allegation that the Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

(c) **Default.** Notwithstanding any provision to the contrary, the Contracting Agency may suspend the Contract in accordance with Section 1-08.6, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until the Contracting Agency receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event the Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), the Contracting Agency may terminate this Contract in whole or in part in accordance with Section 1-08.10(1), and in addition to the sanctions listed in Section 1-07.11(5), the Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. The Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

(d) **Remedies for Breach.** Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, the Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. The Contracting Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Contracting Agency for default under this Provision.

C. **Nondiscrimination in Services.** The Contractor will not discriminate against any recipient of any services or benefits provided for in this Contract on the grounds of race, religion, creed, color, national origin, sex, marital status, disability, sexual orientation, age or other basis prohibited by state or federal law.

D. **Nondiscrimination in Contractors / Subcontractors.** The City of Tumwater, in accordance with RCW 49.60.530 requires all covered contractors or subcontractors to actively pursue a diverse and inclusive workforce. Contractors and subcontractors are prohibited from all forms of discrimination listed in RCW 49.60.530.

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 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 or will be performing work during the Term for other 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. CITY'S RIGHT TO TERMINATE CONTRACT

7.1 Termination Without Cause. Prior to the expiration of the Term, this Contract may be terminated without cause upon oral or written notice delivered to Contractor from the City. Upon termination, all supplies, materials, labor and/or equipment furnished prior to such date shall, at the City's option, become its property. In the event Contractor is not in breach of any of the provisions of this Contract, Contractor will be paid for any portion of the Work which has been completed to the City's satisfaction, calculated by the percentage amount that portion of the Work completed and accepted by the City bears to the Total Compensation.

7.2 Termination For Cause. The City may immediately terminate this Contract, take possession of the Property and all materials thereon and finish the Work by whatever methods it may deem expedient, upon the occurrence of any one or more of the following events:

- (1) If the Contractor should be adjudged a bankrupt.
- (2) If the Contractor should make a general assignment for the benefit of its creditors.
- (3) If a receiver should be appointed on the account of insolvency of the Contractor.
- (4) If the Contractor should persistently or repeatedly refuse or fail to supply a sufficient number of properly skilled workmen or proper materials for completion of the Work.
- (5) If the Contractor should fail to complete the Work within the time specified in this Contract.
- (6) If the Contractor should fail to complete the Work in compliance with the plans and specifications, to the City's satisfaction.
- (7) If the Contractor should fail to make prompt payment to subcontractors or for material labor.
- (8) If the Contractor should persistently disregard laws, ordinances or regulations of federal, state, or municipal agencies or subdivisions thereof.
- (9) If the Contractor should persistently disregard instructions of the City Administrator or his or her representative.
- (10) If the Contractor shall be in breach or violation of any term or provision of this Contract, or
- (11) If the Work is not being performed pursuant to RCW 49.28.050 or 49.28.060.

7.3 Result of Termination. In the event that this Contract is terminated for cause by the City, the City may do any or all of the following:

- (1) Stop payments. The City shall cease any further payments to Contractor and Contractor shall be obligated to repay any payments it received under this contract.

(2) Complete Work. The City may, but in no event is the City obligated to, complete the Work, which Work may be completed by the City's agents, employees or representatives or the City may retain independent persons or entities to complete the Work. Upon demand, Contractor agrees to pay to the City all of its costs and expenses in completing such Work.

(3) Take Possession. The City may take possession of the Property and any equipment and materials on the Property and may sell the same, the proceeds of which shall be paid to the City for its damages.

(4) Remedies Not Exclusive. No remedy or election under this Contract shall be deemed an election by the City but shall be cumulative and in addition to all other remedies available to the City at law, in equity or by statute.

8. INDEMNIFICATION

8.1 Contractor Indemnification. The Contractor agrees to indemnify, defend, and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Contract to the extent caused by the negligent acts, errors or omissions of the Contractor, its partners, shareholders, agents, employees, or by the Contractor's breach of this Contract. Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs.

8.2 City Indemnification. The City agrees to indemnify, defend, and hold the Contractor, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licenses, or representatives, arising from, resulting from or connected with this Contract to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees or agents.

8.3 Survival. 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. INSURANCE

9.1 Minimum Limits. The Contractor agrees to carry as a minimum, the following insurance, in such forms and with such carriers who have a rating which is satisfactory to the City:

(1) Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

(2) Commercial General Liability insurance shall be written with limits no less than \$3,000,000 each occurrence, and, per project, in the aggregate for each period (may be substituted with \$2,000,000 Commercial General Liability insurance per occurrence and in the aggregate with a minimum of

\$1,000,000 Excess or Umbrella Liability insurance per occurrence and in the aggregate as detailed in APWA GSP Section 1-07.18(5)D included in these Contract Documents);

(3) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

9.2 Endorsements. Each insurance policy shall contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, officials, employees, volunteers and agents shall each be named as additional insured.

(2) Coverage may not be terminated or reduced in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, to the City.

(3) Coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of Contractor's insurance.

(4) Coverage shall apply to each insured separately against whom claim is made or suit is brought.

(5) Coverage shall be written on an "occurrence" form as opposed to a "claims made" or "claims paid" form.

9.3 Verification. Contractor shall furnish the City with certificates of insurance on an ACORD™ Certificate of Liability Insurance form or an equivalent format attached hereto as Exhibit F, which certificate must be executed by a person authorized by the insurer to bind coverage on its behalf. The City reserves the right to require complete certified copies of all required insurance policies, at any time.

9.4 Subcontractors. Contractors shall include all subcontractors as additional insured under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

9.5 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be disclosed by Contractor and approved in writing by the City. At the option of the City, Contractor shall either reduce or eliminate such deductibles or self-insured retentions or procure a bond guaranteeing payment for any amounts not covered by the insurance by reason of such deductibles or self-insured retentions.

9.6 Asbestos Abatement or Hazardous Materials. If asbestos abatement or hazardous materials work is performed, Contractor shall review coverage with the City's Risk Manager and provide scope and limits of coverage that are appropriate for the scope of Work and are satisfactory to the City. Contractor shall not commence any Work until its coverage has been approved by the Risk Manager.

9.7 Termination. The Contractor's failure to provide the insurance coverage required by this Section shall be deemed to constitute non-acceptance of this Contract by the Contractor and the City may then award this Contract to the next lower bidder.

10. PERFORMANCE AND PAYMENT BONDS

Pursuant to RCW 39.08.010, Contractor shall post both a Performance Bond, attached to this Contract as Exhibit E-1, and a Payment Bond, attached to this Contract as Exhibit E-2, in favor of the City, and incorporated by this reference, in a dollar amount satisfactory to the City; to guarantee Contractor's performance of the Work to the City's satisfaction; to insure Contractor's performance of all of the provisions of this Contract; and to guarantee Contractor's payment of all laborers, mechanics, subcontractors and material persons. Contractor's obligations under this Contract shall not be limited to the dollar amount of the bonds.

11. SAFETY

Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state and 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 any known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. Contractor shall protect from danger 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.

12. PREVAILING WAGES

12.1 Wages of Employees. This contract is subject to the minimum wage requirements of Chapter 39.12 RCW and Chapter 49.28 RCW (as amended or supplemented). On Federal-aid projects, Federal wage laws and rules also apply. The Hourly minimum rates for wages and fringe benefits are listed in Appendix A. When Federal wage and fringe benefit rates are listed, the rates match those identified by the U.S. Department of Labor's "Decision Number" shown in Appendix A.

The Contractor, any subcontractor, and all individuals or firms required by Chapter 39.12 RCW, Chapter 296-127 WAC, or the Federal Davis-Bacon and Related Acts (DBRA) to pay minimum prevailing wages, shall not pay any worker less than the minimum hourly wage rates and fringe benefits required by Chapter 39.12 RCW or the DBRA. Higher wages and benefits may be paid.

When the project is subject to both State and Federal hourly minimum rates for wages and fringe benefits and when the two rates differ for similar kinds of labor, the Contractor shall not pay less than the higher rate unless the State rates are specifically preempted by Federal law.

The Contractor shall ensure that any firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of Chapter 39.12 RCW because of the definition "Contractor" in Chapter 296-127-010 WAC, complies with all the requirements of Chapter 39.12 RCW.

12.2 Exemptions to Prevailing Wage. The prevailing wage requirements of Chapter 39.12 RCW, and as required in this Contract, do not apply to:

- (1) Sole owners and their spouses;
- (2) Any partner who owns at least 30% of a partnership;
- (3) The President, Vice President and Treasurer of a corporation if each one owns at least 30% of the corporation.

12.3 Reporting Requirements. On forms provided by the Industrial Statistician of State L&I, the Contractor shall submit to the Project Manager the following for itself and for each firm covered under Chapter 39.12 RCW that provided work and materials of the contract:

- (1) A copy of an approved "Statement of Intent to Pay Prevailing Wages" State L&I form number F700-029-000. The City will make no payment under this contract for the work performed until this statement has been approved by State L&I and a copy of the approved form has been submitted to the City.
- (2) A copy of an approved "Affidavit of Prevailing Wages Paid," State L&I form number F700-007-000. The City will not release to the Contractor any funds retained under Chapter 60.28.011 RCW until all of the "Affidavit of Prevailing Wages Paid" forms have been approved by State L&I and a copy of all the approved forms have been submitted to the City.

The Contractor shall be responsible for requesting these forms from the State L&I and for paying any approval fees required by State L&I.

Certified payrolls are required to be submitted weekly by the Contractor to the City, for the Contractor and all subcontractors or lower tier subcontractors.

12.4 Disputes. In the event any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be resolved by the City and the Contractor, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State of Washington and the decision therein shall be final and conclusive and binding on all parties involved in the dispute.

13. FAILURE TO PAY SUBCONTRACTORS

In addition to any other remedies provided herein, in the event the Contractor shall fail to pay any subcontractors or laborers, fail to pay for any materials, or fail to pay any insurance premiums, the City may terminate this Contract and/or the City may withhold from the money which may be due the Contractor an amount necessary for the payment of such subcontractors, laborers, materials or premiums.

14. 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 may be produced or modified by Contractor while performing the Work shall become the property of the City and shall be delivered to the City at its request.

15. CONFIDENTIALITY

Any records, reports, information, data or other documents or materials given to or prepared or assembled by the Contractor under this Contract will be kept as confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

16. 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 and such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Contract. These records shall be subject at all reasonable times 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.

17. 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.

18. GENERAL PROVISIONS

18.1 Entire Contract. The 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 pertaining to any such matters shall be effective for any purpose.

18.2 Modification. No provisions of this Contract, including this provision, may be amended or added to except by agreement in writing signed by the Parties or their respective successors in interest.

18.3 Full Force and Effect. 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.

18.4 Assignment. 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.

18.5 Successors in Interest. Subject to the preceding Subsection, this Contract shall be binding upon and inure to the benefit of the Parties' successors in interest, heirs and assigns.

18.6 Attorney Fees. 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, or to become due hereunder, or recovery of possession of any belongings, in the hands of an attorney, or file suit upon the same, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Contract shall be Thurston County, Washington.

18.7 No Waiver. 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. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

18.8 Governing Law. This Contract shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

18.9 Authority. Each individual executing this Contract on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Contract on behalf of the Contractor or City.

18.10 Notices. Any notices required to be given by the City to the Contractor or by the Contractor to the City shall be delivered to the Parties at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

18.11 Captions. The respective captions of the Sections of this Contract are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Contract.

18.12 Performance. 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.

18.13 Conflicting Provisions. In the event of a conflict between the terms and provisions of any of the Contract Documents, the City Administrator or his or her designee shall issue an interpretation of the controlling document, which interpretation shall be final and binding.

Signatures on the following page

