

**PUBLIC WORKS CONTRACT
FOR
2024 CITYWIDE STRIPING**

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 **Name of Contractor**, a _____ 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 Citywide Striping** 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 Citywide Striping** project. The Project includes, without limitation, constructing pavement markings on City streets throughout the City of Tumwater, traffic control, mobilization, and other work; as shown in the official Request for Quote (RFQ) , 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, The attached City of Tumwater Request for Quote (RFQ) 2024 Citywide Striping includes the following documents incorporated into this contract: City of Tumwater Bid Proposal, Citywide Striping Project, Schedule of Prices, Bid Signature Page as Attachment A; Statement of Bidder's Qualifications as Attachment B; Project Details Attachment D; Combined Affidavit and Certification Form as Attachment E; Non-Discrimination in Benefits Affidavit as Attachment F; Contractor's Non-Discrimination Certificate as Attachment G ; Certification of Compliance with Wage Payment Statutes as Attachment H. Public Works Contract to include 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; *WSDOT Standard Plans and Details for Road, Bridge and Municipal Construction, 2024 WSDOT Standard Specifications for Road, Bridge and Municipal Construction* ("Standard Specifications"), current State Prevailing Wage, Supplement, and Benefit Code Key attached as Appendix A;; 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 **eight (8)**

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 Request for Quote (RFQ) including the definition of "working days," 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 Engineer. 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 Engineer 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 Engineer 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.

Type/Print Name _____
 Notary Public in and for the State of Washington
 My commission expires: _____.

Exhibit A

CITY OF TUMWATER

NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT

Contractor:

Project:

The City of Tumwater has determined that the _____[Project]
has been Physically Completed per Section 1-08.5 of the Standard Specifications as of
_____, 20____, for all work that the contract requires.

This date shall constitute physical completion of the contract but shall not imply the City's acceptance of the work or contract.

Sincerely,

Manager

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Exhibit B

CONTRACT CHANGE ORDER AGREEMENT



DATE:	CHANGE ORDER NO:
PROJECT:	
PROJECT #:	ORIGINAL CONTRACT AMOUNT:
CONTRACTOR:	
	UNDER PAY ESTIMATE NO:

This change order agreement shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

ITEM	DESCRIPTION	Unit	Unit Price	Quantity	Increase	Decrease
SUB TOTAL					\$ -	\$ -
NET INCREASE/DECREASE			\$ -			
PREVIOUS CHANGE ORDER TOTALS						
TOTAL CHANGE ORDERS						\$ -
TOTAL NET			\$ -			
TOTAL CHANGE ORDER % OF ORIGINAL CONTRACT						

SUMMARY OF PROPOSED CHANGE:

Following describes the proposed change in the Work:

A.

B. The amount of working/calendar days that will be added to the total authorized contract days as a result of this _____

APPROVED BY:

CONTRACTOR: _____ DATE: _____

PW DIRECTOR _____ DATE: _____

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Exhibit C

**NOTICE TO LABOR UNIONS OR OTHER EMPLOYMENT ORGANIZATIONS OF
NONDISCRIMINATION IN EMPLOYMENT**

TO: ALL EMPLOYEES

AND TO: _____
(Name of Union or Organization)

The undersigned currently holds contract(s) with _____
involving funds or credit of the City of Tumwater, Washington, or (a) subcontract(s) with a
prime contractor holding such contract(s).

You are advised that, under the provisions of the above contract(s) or subcontract(s) and in
accordance with Section 202 of Executive Order 11246 dated September 24, 1965, the
undersigned is obliged not to discriminate against any employee or applicant of
employment because of race, religion, creed, color, national origin, sex, marital status,
disability, sexual orientation, age or other basis prohibited by state or federal law. This
obligation not to discriminate in employment includes, but is not limited to, the following:

EMPLOYMENT, UPGRADING, TRANSFER OR DEMOTION

RECRUITMENT AND ADVERTISING

RATES OF PAY OR OTHER FORMS OF COMPENSATION

SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF OR
TERMINATION

This notice is furnished to you pursuant to the provisions of the above contract(s) or
subcontractor(s) and Executive Order 11246.

Copies of this Notice will be posted by the undersigned in conspicuous places available to
employees or applicants for employment.

Complaints may be submitted to the City Engineer,
City of Tumwater, 555 Israel Road SW, Tumwater, WA 98501

Signed

(Contractor or Subcontractor)

Type/Print Name

Date

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Exhibit D

CERTIFICATE OF INSURANCE

This is to certify to the City of Tumwater, Washington that the following policies are in force for:

Name of Insured _____

Address _____

Contract Title and/or Description of Job _____

1. GENERAL LIABILITY

A. Commercial, General Liability Insurance, and Business Automobile Liability Insurance with limits of not less than:

- (1) Commercial General Liability insurance shall be written with limits no less than \$3,000,000 each occurrence, \$3,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit (or as allowed in Public Works Contract Section 9 affording total liability limits of not less than stated).
- (2) Business Automobile Liability Coverage (including any and all leased, owned, hired or non-owned vehicles used in any activities associated with this contract) with combined single limits of not less than One Million Dollars (\$1,000,000.00) for bodily injury, including personal injury or death, and property damage.

B. The following coverages are included in both Primary and Excess Liability Contracts.

- | | |
|---|--|
| (1) Broad Form Property Damage Coverage | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (2) Blanket Broad Form Contractual | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (3) Stop-Gap Employer's Contingent Liability | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (4) Underground Damage, Collapse and Blasting
or Explosion | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (5) Contractor's Protective | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (6) Personal Injury Liability
(Libel, Slander, Defamation, etc.) | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (7) Products and Completed Operations | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (8) Non-owned and Hired Auto Coverage | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (9) Mobile Equipment | YES <input type="checkbox"/> NO <input type="checkbox"/> |
| (10) _____ | YES <input type="checkbox"/> NO <input type="checkbox"/> |

C. General Requirements of Policy(ies) shall include, but not be limited to:

- (1) City of Tumwater is an additional named insured by endorsement as respects this contract and such insurance as is carried by the contractor is primary.
- (2) In the event of non-renewal, cancellation or material change in the coverage provided, thirty (30) days written notice shall be furnished the City of Tumwater prior to the date of non-renewal, cancellation or change, such notice to be sent to City of Tumwater Risk Manager, 555 Israel Road SW, Tumwater, WA 98501.

- (3) City of Tumwater has no obligation to report occurrences unless a claim is filed with the City of Tumwater; and City of Tumwater has no obligation to pay premiums.
- (4) The contractor's insurance policies contain a "cross liability" endorsement substantially as follows:

The inclusion of more than one Insured under this policy shall not affect the rights of any Insured as respects any claim, suit or judgment made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.

<u>Insurance Company(ies)</u>	<u>Policy No.</u>	<u>Effective</u>	<u>Expires</u>

I, _____, hereby certify that I am an Authorized Representative of the above named insurance company(ies); that I have read the foregoing Certificate of Insurance and know the contents thereof; and that the policies of Insurance listed above provide the insurance coverage required by this Certificate of Insurance.

Authorized Representative

Type/Print Name

Subscribed and sworn to before me this _____ day of _____, 20____.

Type/Print Name
Notary Public in and for the State of Washington
My commission expires: _____

The undersigned further certifies that the above signed is his authorized insurance representative.

Contractor

Type/Print Name

2. COMPENSATION INSURANCE

The following coverages are provided as indicated:

A. Workman's Compensation Act of the State of Washington

(Account No. _____)

B. United States Longshoremen's and Harborworker's Compensation Act:

YES ☐ NO ☐

<u>Insurance Company(ies)</u>	<u>Policy No.</u>	<u>Effective</u>	<u>Expires</u>
_____	_____	_____	_____
_____	_____	_____	_____

I, _____, hereby certify that I am an Authorized Representative of the above named insurance company(ies); that I have read the foregoing Certificate of Insurance and know the contents thereof; and that the policies of insurance listed above provide the insurance coverage required by this Certificate of Insurance.

Authorized Representative

Type/Print Name

Subscribed and sworn to before me this ____ day of _____, 20____.

Type/Print Name
Notary Public in and for the State of Washington
My commission expires: _____

The undersigned further certifies that the above signed is his authorized insurance representative.

Contractor

Type/Print Name

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Exhibit E-1

**CITY OF TUMWATER
PERFORMANCE BOND**

KNOW ALL PEOPLE BY THESE PRESENTS:

We, the undersigned _____, (“Principal”) and _____, the undersigned corporation organized and existing under the laws of the State of _____ and legally doing business in the State of Washington as a surety (“Surety”), are held and firmly bonded unto the City of Tumwater, a Washington municipal corporation (“City”) in the penal sum of _____ Dollars and no/100 (\$_____) for the payment of which we firmly bind ourselves and our legal representatives, heirs, successors and assigns, jointly and severally.

This obligation is entered into pursuant to the statutes of the State of Washington and the ordinances, regulations, standards and policies of the City, as now existing or hereafter amended or adopted.

The Principal has entered into a Contract with the City dated _____, 2020 for the Brewery Tower Power Project.

NOW, THEREFORE, 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 shall indemnify and hold the City harmless from any damage or expense by reason of failure of performance as specified in the Agreement within a period of one (1) year after its final acceptance thereof by the City, then this obligation shall be void; but otherwise, if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or to the Work.

The Surety hereby agrees that modifications and changes may be made in terms and provisions of the Contract without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Performance Bond in a like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without the consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Contract, the Surety shall make a written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the

City, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to the City's declaration of default by the Principal, the Parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of Washington Arbitration and Mediation Services - Tacoma ("WAMS"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Tacoma WAMS office, 3600 Port of Tacoma Road, Suite 304, Tacoma, WA 98424, www.usamwa.com. The Surety shall not interplead prior to completion of the mediation.

DATED this _____ day of _____, 2020.

CORPORATE SEAL OF PRINCIPAL: [PRINCIPAL]

By

Type/Print Name

Title

Address

CERTIFICATE AS TO CORPORATE SEAL

I hereby certify that I am the (Assistant) Secretary of the Corporation named as Principal in the within bond; that _____, who signed the said bond on behalf of the Principal, was _____ of the said Corporation; that I know his or her signature thereto is genuine, and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Type/Print Name

Secretary or Assistant Secretary

CORPORATE SEAL OF SURETY: [SURETY]

By: _____
Attorney-in-Fact
(Attach Power of Attorney)

Name of Person Executing Bond

Address

Phone

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

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Exhibit E-2

**CITY OF TUMWATER
PAYMENT BOND**

KNOW ALL PEOPLE BY THESE PRESENTS:

We, the undersigned _____, ("Principal") and _____, the undersigned corporation organized and existing under the laws of the State of _____ and legally doing business in the State of Washington as a surety ("Surety"), are held and firmly bonded unto the City of Tumwater, a Washington municipal corporation ("City") in the penal sum of _____ Dollars and no/100 (\$_____) for the payment of which we firmly bind ourselves and our legal representatives, heirs, successors and assigns, jointly and severally.

This obligation is entered into pursuant to the statutes of the State of Washington and the ordinances, regulations, standards and policies of the City, as now existing or hereafter amended or adopted.

The Principal has entered into a Contract with the City dated _____, 2020 for the Brewery Tower Power Project.

NOW, THEREFORE if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW in the manner and within the time period prescribed by the City, or within such extensions of time as may be granted under the Contract, this statutory Payment Bond shall become null and void, and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or to the Work.

The Surety hereby agrees that modifications and changes may be made in terms and provisions of the Contract without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Performance Bond in a like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without the consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Contract, the Surety shall make a written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the City, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the

Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to the City's declaration of default by the Principal, the Parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of Washington Arbitration and Mediation Services - Tacoma ("WAMS"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Tacoma WAMS office, 3600 Port of Tacoma Road, Suite 304, Tacoma, WA 98424, www.usamwa.com. The Surety shall not interplead prior to completion of the mediation.

DATED this _____ day of _____, 2020.

CORPORATE SEAL OF PRINCIPAL: [PRINCIPAL]

By

Type/Print Name

Title

Address

Exhibit F

CITY OF TUMWATER

**CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT
OF STATUTORY RETAINED PERCENTAGE**

(Choose ONLY One)

The owner shall withhold the retained percentage for this contract from time-to-time as such retained percentage accrues and in accordance with RCW 60.28.011, 021, and 051.

I hereby elect to have the retained percentage for this contract held in a fund by the owner until sixty (60) days following final acceptance of the work. (No interest will be earned on the retained percentage amount under this election).

Contractor

By

Type/Print Name

Date

➤ ➤ ➤ ➤ ➤ ➤ **OR** ➤ ➤ ➤ ➤ ➤ ➤ ➤

I hereby elect to have the owner deposit the retained percentage for this contract, from time-to-time, as such retained percentage accrues and in accordance with RCW 60.28.011, 021, and 051.

I hereby designate _____ as the depository for said funds, which shall be deposited in an interest earning account subject to joint control by owner and the contractor. All interest earned on said deposits shall belong to the contractor. If contractor fails to designate the depository, then the owner designates

_____, which is the owner's depository under contract between said bank and the City of Tumwater.

I hereby further agree to be fully responsible for payment of all costs or fees incurred as a result of establishing said depository account and depositing the retained percentage as authorized by statute. The owner shall not be liable in any way for any costs or fees in connection therewith.

Contractor

By

Type/Print Name

Date

➤ ➤ ➤ ➤ ➤ ➤ **OR** ➤ ➤ ➤ ➤ ➤ ➤ ➤

Complete, with appropriate signatures, the following ***Exhibit G RETAINAGE BOND TO CITY OF TUMWATER***, if choosing to bond for retainage.

CERTIFICATION FOR RELEASE OF CONTRACT RETAINAGE

Project Title:

I hereby certify that all work required by the above cited contract was completed on _____ and final acceptance by the City was granted on _____.

I also certify that no liens have been received within 60 days from the above date from any person, persons, mechanics, subcontractors or materialmen who has performed any work or provided any material of subject contract.

Contract Manager

Type/Print Name

Department Director

Type/Print Name

Also, please find attached certifications by the applicable state agencies of the receipt of: 1) Washington State Business Taxes (Washington State Dept. of Revenue); 2) Industrial Insurance Premiums (State Dept. of Labor & Industries); and 3) Employment Security, Unemployment Insurance Premiums (State of Washington Employment Security Dept.)

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Exhibit G

RETAINAGE BOND TO CITY OF TUMWATER

KNOW ALL PERSONS BY THESE PRESENTS that we, the undersigned,
_____, as principal ("Principal"), and _____,
_____, a Corporation organized and existing under the laws of
the State of _____, as a surety Corporation, and qualified under the laws of the State of
Washington to become surety upon bonds of Contractors with Municipal Corporations, as surety
("Surety"), are jointly and severally held and firmly bonded to the City of Tumwater ("City") in the
penal sum of:

_____ (\$ _____) for the payment of which sum we
bind ourselves and our successors, heirs, administrators or personal representatives, as the case
may be.

A. This obligation is entered into in pursuant to the statutes of the State of Washington and the
ordinances, regulations, standards and policies of the City, as now existing or hereafter amended or
adopted; and

B. Pursuant to proper authorization, the Mayor is authorized to enter into a certain contract
with the Principal, providing for the _____ project, which contract is
incorporated herein by this reference ("Contract"), and

C. Pursuant to State law, Chapter 60.28 RCW, the City is required to reserve from the monies
earned by the Principal pursuant to the contract, a sum not to exceed five percent (5%), said sum to
be retained by the City as a trust fund for the protection and payment of any person or persons,
mechanic, subcontractor or materialmen who shall perform any labor upon such contract or the
doing of such work, and all persons who shall supply such person or persons or subcontractors with
provisions and supplies for the carrying on of such work, and the State with the respect to taxes
imposed pursuant to Title 82 RCW which may be due from said Principal. Every person performing
labor or furnishing supplies towards completion of said improvement or work shall have a lien on
said monies so reserved, provided that such notice of the lien of such claimant shall be given in the
manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any
amendments that may hereafter be provided thereto; and

D. State law further provides that with the consent of the City, the Principal may submit a bond
for all or any portion of the amount of funds retained by the public body in a form acceptable to the
public body conditioned upon such bond any proceeds therefrom being made subject to all claims
and liens and in the same manner and priority as set forth retained percentages pursuant to
Chapter 60.28 RCW; and

E. The Principal has accepted, or is about to accept, the Contract, and undertake to perform the
work therein provided for in the manner and within the time set forth, for the amount of \$ _____
_____; and

F. The City is prepared to release any required retainage money previously paid by the
Principal prior to acceptance and successful operation and fulfillment of all other terms of said
contract upon being indemnified by these presents,

NOW, THEREFORE, if the Principal shall perform all the provisions of the Contract in the
manner and within the time period prescribed by the City, or within such extensions of time as may
be granted under the Contract, and shall pay all laborers, mechanics, subcontractors and material
men or women, and all persons who shall supply the Principal or subcontractors with provisions and
supplies for the carrying on of said work, and if the Principal shall pay to the State all taxes
imposed pursuant to Title 82 RCW which may be due from such Principal as a result of this contract

then and in the event this obligation shall be void; but otherwise it shall be and remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Contract or to the Work.

The Surety hereby agrees that modifications and changes may be made in the terms and provisions of the Contract without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Retainage Bond in a like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Contract, the Surety shall make written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the City, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to the City's declaration of default by the Principal, the Parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of Washington Arbitration and Mediation Services - Tacoma ("WAMS"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Tacoma WAMS office, 3600 Port of Tacoma Road, Suite 304, Tacoma, WA 98424, www.usamwa.com. The Surety shall not interplead prior to completion of the mediation.

The parties have executed this instrument under their separate seals this ____ day of _____, 2019, the name and corporate seal of each corporate party hereto affixed, and these presents duly signed by its undersigned representatives pursuant to authority of its governing body.

CORPORATE SEAL OF PRINCIPAL: [PRINCIPAL]

By: _____

Type/Print Name

Title: _____

Address: _____

CORPORATE SEAL OF SURETY: [SURETY]

By: _____

Attorney-in-Fact
(Attach Power of Attorney)

Type/Print Name

Title: _____

Address: _____

CERTIFICATE AS TO CORPORATE SEAL

I hereby certify that I am the (Assistant) Secretary of the Corporation named as Principal in the within bond; that _____, who signed the said bond on behalf of the Principal, was _____ of the said Corporation; that I know his or her signature thereto is genuine, and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

Type/Print Name

Secretary or Assistant Secretary

CORPORATE SEAL OF SURETY: [SURETY]

By: _____
Attorney-in-Fact
(Attach Power of Attorney)

Name of Person Executing Bond

Address

Phone

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

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