BLANKET CONTRACT

The City of Seattle
PURCHASING SERVICES
700 – 5th Ave Ste 4112
PO BOX 94687
Seattle, WA 98124-4687

Blanket Contract #	Date	Change Order #
0000002319	04/22/09	
Payment Terms	**Freight Terms**	
Net 30	Prepaid & Allowed	
Buyer:	**FAX:**	**Phone:**
Ginny Justiniano	206-233-5155	206-233-7158

Vendor # 0000138136
Wingfoot Commercial Tire Systems LLC
12115 East Marginal Way S
Tukwila WA 98163

Contact: Chris Beasley, Commercial Sales
Phone #: 206-433-8133
Fax #: 206-433-8790
Email: wf199sls@wingfootct.com

Ship To:

City of Seattle-Fleets & Facilities Department Tire Shop and Seattle Public Utilities Transfer Station

Bill To:
See Attached

Wingfoot Commercial Tire Systems LLC is awarded a contract for providing the City of Seattle with Truck Tire Retreads and Related services as a result of an Invitation to Bid FFD-2301R conducted by the City on 03/18/09. See Attachments#1 and #2 for specifications and conditions. The term of the Contract is from April 22, 2009 through April 21, 2014 with an option to extend for one additional two year term.

Orders shall be placed by the Fleets & Facilities Department. Invoices shall be mailed in duplicate to the Departments, Accounts Payable, per attached list. **Each invoice shall indicate Contract #0000002319.**

This contract is subject to your bid submittal dated 04/01/09.

This is your NOTICE TO PROCEED.

Authorized Signature/Date
D. Justiniano 4/22/09

Attachment#1
Blanket Contract#0000002319
04/22/09 through 04/21/2014

Wingfoot Commercial Tire Systems LLC
Chris Beasley, Commercial Sales
Main: 206-433-8133
Fax: 206-433-8790
Email: wf199sls@wingfootct.com

TRUCK TIRE RECAPPING AND RELATED SERVICES

SCOPE:

It is the intent of these specifications to establish the minimum requirements for a tire recapping contract. The City of Seattle will require approximately 1,000 recapped truck tires annually of various sizes and treads. Traction and highway tread comprise approximately 90% of the class 6-8 truck tires utilized. Vendor to expect tire retreads for sizes 8R19.5 through 445-65R22.5. The City reserves the right to add further sizes and services as specified within this solicitation.

The City may elect to purchase retreaded tires manufactured with casings obtained from other sources. Such retreaded tires purchased shall be made with casings comparable in quality to those provided by the City, in terms of brand, material, wear and mileage.

GENERAL REQUIREMENTS:

1. Vendor shall conform to industry accepted standards for Tire retreading and Tire repairs. The apparent silence of this specification as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only materials and workmanship of first quality are to be used.
2. In the event of a conflict between the specifications requirements and federal or state laws, the federal or state laws shall prevail.
3. Vendor is required to have been in the business of recapping and repairing tires for a minimum of 5 years.
4. No Minimum order for pick-up.
5. Inspection of bidder's facility may be required before award of bid is made.
6. Vendor to expect up to fifty (50) recapped casings to be stored at their local facility at no additional charge until needed or ordered by the City.
7. Vendor will only recap sizes as requested by the City Tire Shop supervisor.
8. Vendor shall dispose of all rejected casings picked up by the Vendor at no additional cost to the City. The City contractor for disposing of used tires is Tire Disposal & Recycling Inc. For more information, please contact Mark Hope, vendor local representative at 503-240-1919.

PICK UP AND DELIVERY REQUIREMENTS:

1. Vendor shall pick up tire casings and used wheel rims within twenty-four (24) hours of City's initial call and return repaired, recapped or refinished wheels and tires to point of pick-up within seven (7) business days.
2. Vendor shall notify City personnel immediately by telephone or email on any delays due to unforeseen circumstances and update City contact for delivery status.
3. Vendor shall provide retread work order with casing ID number listing each casing picked up for recap.
4. Vendor shall provide City personnel work order that reflects the number of tire casings

picked up and credit amounts for capable casings (if applicable) to the Tire shop.

5. Retread tires shall be delivered to the following locations as directed by an authorized City of Seattle Fleets & Facilities Representative(s):

FFD Shops
805 South Charles Street
Seattle, WA 98134
Attn: Tire Shop, Rick Edgar
Phone: 206-386-1162
Email: edgarR@seattle.gov
OR
Seattle Public Utilities
Solid Waste Utility-South Transfer Station
8100 Second Ave South
Seattle WA 98134
Attn: Greg Van Wieringen
Phone: 206-684-7447
Email: vanwieG@seattle.gov

TRUCK TIRE INSPECTION:

1. Vendor shall use Shearology technology or equivalent to identify problems in the tire casing to be retreaded. Shearology creates sheared or split optical images. An area to be inspected is illuminated by a number of lasers, and a picture is taken, usually by a CCD camera. If Vendor does not currently use Shearology, Vendor will submit proof or statement of equipment used to identify problems in tire retreads.

WARRANTY:

1. Vendor to guarantee materials and workmanship 100% in accordance with the manufacturers warranty.
2. Vendor shall replace any brand numbers on tire casings if the original brand is destroyed or covered during repair process.

INVOICING REQUIREMENTS:

1. Vendor shall reconcile all work orders monthly to include City requestor's name, phone number and credit amounts for the cap-able casings.
2. Any cost reductions as a resultant of credit and unusable tires shall be itemized on each invoice.
3. Vendor shall mail a duplicate invoice to the City requestor department's Accounts Payable.
4. Vendor shall prominently print City assigned blanket contract number on each invoice.

CITY OF SEATTLE
BID OFFER SHEET
ITB-FFD-2301REBID
TRUCK TIRE RETREAD & RELATED SERVICES

Pricing shall be fixed and firm for first two (2) years of the contract. Prices beyond shall be submitted with supporting documents to the City Buyer in accordance with the solicitation requirements. Unit Price shall include FOB, Destination Prepaid & Allowed

PART I –MANDATORY ITEMS (MARKET BASKET)
Low bidder will be determined from Discount off Current Manufacturer's List Price of Part I. **Bidder shall submit a copy of your company's Current Manufacturer catalog with bid packet**. Percentage Discount off Current Manufacturer catalog shall apply to All Sizes in the Tire retread category as indicated below for Premium and Standard products for the life of the contract.

Tire Retread Category Description	Tire Sizes	State Tread Design(s)	State Percentage Discount off Current Manufacturer Catalog	Current Manufacturer Catalog Price	State City's Price after Discount off Current Manufacturer Catalog
Rib Type Highway tread, minimum	215/75R17.5	G159 12/32	63.5%	232.12	84.72
Traction type retreads open lug type, severe service	11R22.5 tread width min.9" wide, min. 26/32" tread depth	G177 27/32 WHL 28/32	63.5%	441.63 461.10	161.20 168.30
Traction treads-min. 22/32" deep	11R22.5 tread width min. 9" wide	G362 26/32 G182 26/32	63.5%	418.04 427.90	152.58 156.18

CITY OF SEATTLE
BID OFFER SHEET
ITB-FFD-2301REBID
TRUCK TIRE RETREAD & RELATED SERVICES

PART II – DESIRED ITEMS. Specify Shop Service charges during the retread process for all items on this page. ***These prices will not be included in the low bid award calculation***. Bidders are encouraged to offer options that would be a benefit to the City of Seattle which have been omitted from this offer form. Attach additional pages if necessary.

Tire Repairs & Related Services:

Description of Requirements	Price to include service charges during the retreading process.(if any, if none state no charge)
Holes repaired	$6.00
Nails removed	$ no charge
Section #42	$31.00
Refinish Rims	$26.00
Non-re-inforced spot repairs acceptable	$9.00
Minor bead repairs	$9.00

Credit for Recapable Tires:

Description of Requirements	Tire Sizes	Price for Virgin Casings	Price for previously capped casings
Removal of casings that are recapable but not wanted by the City. Vendor shall pick up at no charge and credit at stated prices to the City. (Price out items a-k of next column)	a. 8R19.5	$10	$0
	b. 9R22.5	$10	$0
	c. 11R.22.5	$50	$30
	d. 225-70R19.5	$10	$0
	e. 255-70R22.5	$15	$0
	f. 275/70R22.5	$15	$0
	g. 275/80R22.5	$50	$30
	h. 315-80R22.5	$25	$0
	i. 385-65R22.5	$25	$0
	j. 425-65R22.5	$25	$0
	k. 445/65R22.5	$25	$0

CITY OF SEATTLE
BID OFFER SHEET
ITB-FFD-2301REBID
TRUCK TIRE RETREAD & RELATED SERVICES

1. City Prompt Payment Discount: State Prompt Discount (Discount terms of 10 or more days will be considered in bid evaluation) — Terms: N/A % _____ days; Net 30 days.
2. The City of Seattle has entered into Inter-local Agreements with other governmental agencies pursuant to RCW 39.34, in lieu of those agencies conducting a separate competitive bid. Does Vendor agree to provide this product or service to such agencies? — Yes: _____ No: x
3. Businesses located and licensed within the Seattle City limits are eligible for Seattle tax consideration for purposes of calculation of low bid. This shall be equivalent to a reduction of the cost for purposes of bid evaluation only, of 0.025. — Yes: _____ No: x
4. Order contact/representative: Eric Appleby or Christopher Beasley — Phone no.:206-433-8133 Fax no.206-433-8790 Email: eappleby@wingfootct.com
5. Business Hours: — Mon-Friday: 7:30am-5:00pm Saturday: emerg svc only Sundays: emerg svc only
6. Does your company offer Shearology technology to identify problems in the tire casing to be retreaded? If no, please submit proof or statement of equipment used to identify problems in retreads. — Yes:_____ No: N

COMPANY NAME: **Wingfoot Commercial Tire Systems,LLC** (Name) **206-433-8133** (Phone)

FAX: 206-433-8790 **EMAIL** wf199sls@wingfootct.com

NAME: Todd M. Tyler (Print) VP & CFO (Title)

I have read and understand the above specifications

SIGNATURE: [signature] 4/1/2009 (Date)

NDT-II CASING INSPECTION SYSTEM – USED AT INITIAL INSPECTION

- Punctures are revealed when electrical charge is grounded to metal roller Capacity for all LT/MCT truck sizes
- Total visual inspection as casing is rotated
- High degree of reliability & accuracy
- Radial and bias-ply casing inspection capability Detects flaws from holes through the casing
- Detects hole through liner to casing body
- Detects flaws from penetration to the belts

G-100 MATTEUZZI HIGH PRESSURE – used at Final Inspection

- Final step in retread inspection process, casings 20" wheel fitment or larger
- Enclosed system provides operator with safe, visual inspection of finished retread at three stages of inflation
  - 30 PSI
  - 60 PSI
  - 120 PSI
- The inspection process helps locate undiscovered nail holes, deformations in the casing, and out-of-spec repairs
- The inspection process has the capability of successfully identifying tires with potential for "zipper" failure – weakened steel cords in radial tires

Attachment #2
Blanket Contract#0000002319

City of Seattle
CONTRACT

Terms and Conditions

1. **Entire Agreement.** This Contract including all attachments, amendments and subsequently issued change notices, comprises the entire agreement between the City of Seattle (Seattle) and the Contractor. The City's Purchase Order, the Vendor Offer including all attachments, the Addendum to the Bid, the ITB specifications, the ITB instructions and ITB Attachments, are explicitly included in this Contract. Where there are conflicts between these documents, the controlling document will be in that same sequence, with the first taking priority over the last listed.

2. **Term**: Any term specified in the solicitation or specification shall prevail. Should this be a one-time purchase, the Contract shall commence on the date the City's Buyer signs the same and shall expire sixty (60) days after delivery and acceptance of last item. If a Blanket Contract award, this contract shall be for the term specified in the solicitation, and if not specified shall be five years, with one two-year extension allowed at the option of the City. Such extensions shall be automatic, and shall go into effect without written confirmation, unless the City provides advance notice of the intention to not renew. The Vendor may provide also provide a notice to not extend, but must provide such notice at least 45 days prior to the otherwise automatic renewal date.

3. **Schedule**: Unless the City's Buyer issues a written change, Contractor shall deliver the items or render the services by the "Last Item Due Date" stated on the Contract signature page At the City's option, Contractor's failure to timely deliver or to perform may require expedited shipping at Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at Contractor's expense. If Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Buyer of such difficulty and the length of the anticipated delay.

4. **Scope of Work**: Contractor shall provide the products and/or services specified within this Contract.

5. **Adjustments**: The City's Buyer at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; extension of contract duration, and ancillary matters that Contractor may accommodate without substantial additional expense to the City.

6. **Changes and Expansion Authority:** No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the City. The only person authorized to make amendments on behalf of the City is the Buyer from the City Purchasing Office of the Department of Executive Administration, City of Seattle (also referred to as the City RFP Coordinator) designated for this contract except as otherwise authorized herein or by the City Purchasing Services Division. The City Buyer shall issue change notices to Contractor, and such notices shall take effect under the signature of the City unless written objection of the notice is received by the Contractor upon Contractor receipt of the change notice.

   Federal Amendments: Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy, per OMB Circular A-102 Common Rule, Section 36.

7. **Expansion:** This contract may be expanded as mutually agreed, if such expansion is approved by the City Buyer. Expansions must be issued in writing from the City Buyer in a formal notice. The Buyer will ensure the expansion meets the following criteria collectively: (a) it could not be separately bid, (b) the change is for a reasonable purpose, (c) the change was not reasonably known to either the City or vendors at time of bid or else was mentioned as a possibility in the bid (such as a change in environmental regulation or other law); (d) the change is not significant enough to be reasonably regarded as an independent body of work; (e) the change could not have attracted a different field of competition; and (f) the change does not vary the essential identity or main purpose of the contract. The Buyer shall make this determination, and may make exceptions for immaterial changes, emergency or sole source conditions, or for other situations as required in the opinion of the Buyer. Note that certain changes are not considered an expansion of scope, including an increase in quantities ordered, the exercise of options and alternates in the bid, or ordering of work originally identified within the originating solicitation. If such changes are approved, changes are conducted as a written order issued by the City Purchasing Buyer in writing to the Vendor.

8. **Payment**: Seattle agrees to compensate as specified herein or attached, in consideration of acceptable Contractor performance. Payment shall only be made for services performed and/or product delivered, after receipt, review and authorization by the City. Such payment shall be paid according to early payment discount terms, or if no early payment discount is offered, thirty (30) days after the City's receipt and acceptance of the goods or completion and acceptance of the services. Payment periods will be computed from either the date of delivery an acceptance of all goods ordered, the acceptance by the City of completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. All dollars referenced in this Contract and attachments are US Dollars.

9. **Invoices**: Invoices must show a breakdown of services or products provided and price for each. Invoices must specify the Name and Phone Number of the City employee that placed the order.

10. **Overages/Underages:** Shipments shall match the purchase order, any unauthorized advance or excess shipments are returnable at Contractors expense. The City is not obligated to return overages and will not pay for overages.

11. **Taxes, Fees and Licenses.**

    Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor must pay all custom duties, brokerage or import fees where applicable as part of the contract price. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs.

    Taxes: Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, Seattle agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made for federal excise taxes and Seattle agrees to furnish Contractor with an exemption certificate where appropriate.

    Withholding payment for taxes/business license fees due the City of Seattle: Seattle Municipal Code 5.45.060 specifies that the Contractor will have taxes or fees paid in full for Seattle Business License requirements, before receiving any warrant or the final payment for performing within any contract for the City. The Director of the Department of Executive Administration may withhold payment due a City contractor pending satisfactory resolution of unpaid taxes and fees due the City under title 5.45.060.

    Supplier is to calculate and enter the appropriate Washington State and local sales tax on the invoice. Tax is to be computed on new items after deduction of any trade-in, in accordance with WAC 458-20-247.

12. **Pricing**: Pricing reflects the following agreements. These are in addition to annual Prevailing Wage adjustments if required. The Buyer may exempt these requirements for extraordinary conditions that could not have been known by either party at the time of bid or other circumstances beyond the control of both parties, as determined in the opinion of the Buyer.

    Requests for Rate Increases must be delivered to the City Purchasing Buyer in accordance to the rules below. No other employee may accept a rate increase request on behalf of the City. Any invoice that is sent to the City with pricing above that specified by the City in writing within this Contract or specified within an official written change issued by City Purchasing to this contract, shall be invalid. Payment of an erroneous invoice does not constitute acceptance of the erroneous pricing, and the City would seek reimbursement of the overpayment or would withhold such overpayment from future invoices.

    A. **Discount from Manufacturer List Pricing:** For all contract items that are priced as a discount below Manufacturer List prices, there shall be no changes to the discount rate throughout the life of the contract. As manufacturer list prices change, the net price to the City will automatically change in the same percentage as the discount rate to the City.

    B. **One-time Purchase Order Prices**: If the Bid is for a one-time purchase, pricing shall be firm and fixed for that purchase, and shall not be subject to requests for price increases by the Vendor.

C. **Hourly rates or Service Pricing**: For multi-year contracts that provide services. Original pricing shall be fixed and firm for the first two years of the contract. Rate increases are at the discretion of the Buyer; and must also be:

1. The direct result of increases to wage rates that do not exceed the CPI Index or other appropriate service rate index agreed upon between the Buyer and the Vendor.
2. Incurred after contract commencement date.
3. Not produce a higher profit margin than that on the original contract.
4. Clearly identify the service titles and the hours of service performed if specified within the contract.
5. Be filed with Buyer (RFP Coordinator) a minimum of 90 calendar days before the effective date of proposed increase.
6. Be accompanied by detailed documentation acceptable to the Buyer (RFP Coordinator) sufficient to warrant the increase.
7. The United States published indices such as the Producer Price Index or other government data may be referenced to help substantiate the Vendor's documentation. A link to the PPI Commodity Data is available at http://data.bls.gov/PDQ/outside.jsp?survey=wp.
8. The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.
9. Should not deviate from the original contract pricing scheme/methodology

D. **Fixed Product Pricing:** For product and supply contracts that provide on-going, multiple year supply. Original pricing shall be fixed and firm for the first two years of the contract. Price requests are at the discretion of the Buyer; and must also be:

1. The direct result of increases at the manufacturer's level (or if Vendor is a supplier of a raw material delivered directly to the City such as cement or soil, the increase must be verified at the supplier level).
2. Incurred after contract commencement date.
3. Not produce a higher profit margin than that on the original contract.
4. Clearly identify the items impacted by the increase.
5. Be filed with Buyer (RFP Coordinator) a minimum of 90 calendar days before the effective date of proposed increase.
6. Be accompanied by detailed documentation acceptable to the Buyer (RFP Coordinator) sufficient to warrant the increase.
7. The United States published indices such as the Producer Price Index or other government data may be referenced to help substantiate the Vendor's documentation. A link to the PPI Commodity Data is available at http://data.bls.gov/PDQ/outside.jsp?survey=wp.
8. The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.
9. Should not deviate from the original contract pricing scheme/methodology.

13. **Cost Reductions:** Any cost reductions to the Vendor, such as rebates or "specials", shall be reflected in a reduction of the contract price effective immediately. Seattle will not be bound by prices contained in an invoice that are higher than those in the contract. Unless the higher price has been accepted by the City and the contract amended, the invoice may be rejected and returned to the Vendor for corrections.

14. **Invoicing:** The Vendor is required to provide a method for tracking the cost of the item to the City, with the City discount calculation displayed so that pricing discounts can be easily tracked and verified by the City with each invoice. Each invoice to the City shall specify the "Manufacturers Current List Price," the discount rate that the City receives, and the final net cost to the City.

15. **Catalogue and Manufacturer List Pricing:** Upon City request, the Vendor shall provide access to the "Manufacturer's Current Price List" in electronic and/or paper format. Such requests may be for current catalogue pricing or for past catalogue that are within the term of the contract.

16. **Delivery of Products and Services – Idling Prohibited:** Vehicles and/or diesel fuel trucks shall not idle at the time and location of the delivery to the City for more than five minutes. The City requires vendors to utilize practices that reduce fuel consumption and emission discharge, including turning off trucks and vehicles during delivery of products to the City. Exceptions to this requirement include when a vehicle is making deliveries and associated power is necessary; when the engine is used to provide power in another

device, and if required for proper warm-up and cool-down of the engine. Specific examples include "bucket" trucks that allow a worker to reach wires on telephone poles or tree branches for trimming; and vehicles with a lift on the back of a truck to move products in and out of the truck. The City of Seattle has a commitment to reduction of unnecessary fuel emissions. The City intends to improve air quality by reducing unnecessary air pollution from idling vehicles. Limiting car and truck idling supports cleaner air, healthier work environments, the efficient use of city resources, the public's enjoyment of City properties and programs, conservation of natural resources, and good stewardship practices.

17. **Travel and Direct Charges:** If the specifications and scope of work for this purchase have specifically identified travel and/or direct costs that the City intends to reimburse, then the following requirements shall apply. All such expenses must be pre-approved in writing by the Project Manager. If the specifications and scope of work do not clearly identify such costs for compensation, than no compensation will be given.

- City will reimburse the Contractor at actual cost for expenditures that are pre-approved by the City in writing and are necessary and directly applicable to the work required by this Contract provided that similar direct project costs related to the contracts of other clients are consistently accounted for in a like manner. Such direct project costs may not be charged as part of overhead expenses. Direct charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants or subcontractors.

- The billing for direct expenses specifically identifiable with this project shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, subconsultant/subcontractor paid invoices, and other supporting documents used by the Contractor to generate invoice(s) to the City. The original supporting documents shall be available to the City for inspection upon request. All charges must be necessary for the services provided under this Contract.

- The City will reimburse the actual cost for travel expenses incurred as evidenced by copies of receipts supporting such travel expenses, and in accordance with the City of Seattle Travel Policy, details of which can be provided upon request.

- **Airfare**: Airfare will be reimbursed at the actual cost of the airline ticket. The City will reimburse for Economy or Coach Fare only. Receipts detailing each airfare are required.

- **Meals:** Meals will be reimbursed at the Federal Per Diem daily rate for the city in which the work is performed and do not require receipts or additional documentation. The City will not reimburse for alcohol at any time.

- **Lodging:** Lodging will be reimbursed at actual cost incurred up to a maximum of the published Runzheimer Cost Index for the city in which the work was performed. Receipts detailing each day / night lodging are required. The City will reimburse at the single occupancy rate. As an alternative, lodging billed at the published Federal Per Diem daily rate for the city in which the work is performed does not require receipts or additional documentation. In this case, the invoice needs to state that "the lodging is being billed at the Federal Per Diem daily rate."

- **Vehicle mileage**: Vehicle mileage will be reimbursed at the Federal Internal Revenue Service Standard Business Mileage Rate in affect at the time the mileage expense is incurred (currently that rate is 48.5 cents per mile.)

- **Rental Car:** Rental car expenses will be reimbursed at the actual cost of the rental. Rental car receipts are required for all rental car expenses (the City will only pay for the rental of "Compact" vehicles unless three or more persons are sharing one vehicle in which case a "Mid-sized" vehicle rental is acceptable).

- **Miscellaneous Travel** (e.g. parking, gas, taxi, shuttle, tolls, ferry fees, etc.): Miscellaneous travel expenses will be reimbursed at the actual cost incurred. Receipts are required for each expense of $10.00 or more.

- **Miscellaneous other business expenses** (e.g. printing, photo development, binding): Other miscellaneous business expenses will be reimbursed at the actual cost incurred. Receipts are required for all miscellaneous expenses that are billed.

- **Subcontractor**: Subcontractor expenses will be reimbursed at the actual cost incurred. Copies of all subcontractor invoices that are rebilled to the City are required.

18. **Delivery:** Except when instructed otherwise, Delivery must be made during normal work hours and within timeframes proposed by Contractor herein and as accepted by Seattle. Failure to comply may subject Contractor to non-delivery assessment charges and/or damages as appropriate. Seattle reserves the right to refuse shipment when delivered before or after normal working hours. Contractor shall verify specific working hours of offices and so instruct carrier(s) to deliver accordingly. The acceptance by Seattle of late performance without objection or reservation shall not waive the right of Seattle to claim damages for such breach, nor preclude Seattle from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor. All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in Purchase Order. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

19. **Identification:** All invoices, packing slips, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

20. **Charges for handling:** No charges will be allowed for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.

21. **Contract Notices:** Contract notices shall be delivered to the Buyer at the addresses specified in the solicitation.

22. **Representations:** Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

23. **Warranties:** Contractor warrants that all materials, equipment, and/or services provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, are properly package, proper instructions and warnings are supplied, that all goods comply with applicable safety and health standards, that an MSDS Sheet is supplied as required by law, and that products or services conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by Seattle shall not alter or affect the obligations of the Contractor or the rights of Seattle.

24. **Independent Contractor:** It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that Seattle shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of 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 and that Seattle is not the exclusive user of the services that Contractor provides.

25. **Inspection:** Work shall be subject, at all times, to inspection by and with approval of Seattle, but the making (or failure or delay in making) such inspection or approval shall not relieve Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding Seattle's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

26. **Title, Risk of Loss, Freight, Overages or Underages:** Title of goods received under this contract shall remain with the Contractor until they are delivered to the address specified, at which time title passes to Seattle. Regardless of FOB point, Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release Contractor from any obligations under. Prices include freight prepaid and allowed. Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges. Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.

27. **Performance:** Acceptance by Seattle of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

28. **Affirmative Efforts:**
    - Employment Actions: Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.
    - In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when necessary and commercially useful for purposes of fulfilling the scope of work required for this Contract. Contractors shall actively solicit subcontracting bids from subcontractors as needed to perform the work of this contract, from qualified, available and capable women and minority businesses. Contractors shall consider the grant of subcontracts to women and minority bidders on the basis of substantially equal proposes in the light most favorable to women and minority businesses. At the request of Seattle, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements.
    - If upon investigation, the Director of Executive Administration finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall notified in writing. The Director of Executive Administration shall give Contractor an opportunity to be heard, after ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Executive Administration still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.
    - Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Vendor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

29. **Equal Employment Opportunity:** All Contractors must comply with federal Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.:

30. **Civil Rights Act Title VI:** The Contractor must comply with the provisions of the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to, discrimination under any program or activity receiving federal financial assistance.

31. **Equal Benefits.**
    - Compliance with SMC Ch. 20.45: The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further

information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at http://cityofseattle.net/contract/equalbenefits/.)

- Remedies for Violations of SMC Ch. 20.45: Any violation of this section shall be a material breach of Contract for which the City may:
  a. Require the Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
  b. Terminate the Contract; or
  c. Disqualify the Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
  d. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated there under.

32. **Publicity**: No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Contractor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific written approval of the City's Project Director or his/her designee.

33. **Proprietary and Confidential Information:**

Contractor's Understanding and Obligations:

1. Contractor understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other contract materials) it submits to the City, or that are used by the City even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.17. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

2. Contractor must separate and clearly mark as "proprietary" all records related to this Agreement or the performance of this Agreement that the Contractor believes are exempt from disclosure. The Contractor is familiar with potentially-applicable public-disclosure exemptions and the limits of those exemptions, and will mark as "proprietary" only information that the Contractor believes legitimately fits within an exemption and will state the statutory exception upon which it is relying.

3. If Seattle notifies the Contractor under Paragraph B 2 of a public disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor's responsibility to make determination and pursue a lawsuit under RCW 42.17.330 to enjoin disclosure. The Contractor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent notification to the Contractor. It is the Contractor's discretionary decision whether to file the lawsuit.

4. If the Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record.

5. Notwithstanding the above, the Contractor must not take any action that would affect (a) the City's ability to use goods and services provided under this Agreement or (b) the Contractor's obligations under this Agreement.

6. The Contractor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

City's Obligations

1. The City will disclose those parts of records the Contractor has marked as "proprietary" information only to authorized persons unless:
   (a) the City receives a public disclosure request, in which case steps 2 and 3 below will be exercised before release of the information or
   (b) The Contractor has given the City express advance written permission to disclose the records. "Authorized persons" means those City officers, employees, contractors and consultants for whom the proprietary information is necessary to perform their duties or obligations to the City.
   The term "proprietary information" does not include ideas, concepts, know-how or techniques related to any information

that, at the time of disclosure, is in the public domain, unless the entry of that information into the public domain is a result of a breach of this Contract.

2. If the City receives a public disclosure request for records that the Contractor has marked as "proprietary" information, the City may promptly notify the Contractor of the request. The City may postpone disclosing these records for ten business days after it has sent notification to the Contractor, in order to allow the Contractor to file a lawsuit under RCW 42.17.330 to enjoin disclosure. It is the Contractor's discretionary decision whether to file the lawsuit.

3. If the City has notified the Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City will then disclose the record.

4. The City has no other obligations concerning records the Contractor has marked as "proprietary information" under this Agreement. The City has no obligation to claim any exemption from disclosure. The City is not obligated or liable to the Contractor for any records that the City releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

34. **Indemnification**: To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

35. **Insurance**: Unless specified otherwise, the following is in effect. Contractor shall maintain at its own expense at all times during the term of this Contract the following insurance with limits of liability consistent with those generally carried by similarly situated enterprise:

1. MINIMUM COVERAGES AND LIMITS OF LIABILITY. Vendor shall at all times during the term of this Agreement maintain continuously, at its own expense, minimum insurance coverage's and limits of liability as specified below:

A. Commercial General Liability (CGL) insurance, including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual
- Independent Contractors
- Stop Gap/Employers Liability

With minimum limits of liability of $1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except:

$1,000,000 Personal/Advertising Injury
$1,000,000 each accident/disease/employee Stop Gap/Employer's Liability

B. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of $1,000,000 CSL.

C. Worker's Compensation for industrial injury to Vendor's employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

2. CITY AS ADDITIONAL INSURED. The City of Seattle shall be included as an additional insured under CGL and Automobile Liability insurance for primary and non-contributory limits of liability.

3. NO LIMITATION OF LIABILITY. The limits of liability specified herein in subparagraph 1.A. are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of liability maintained by Vendor, whether such limits are primary, excess, contingent or otherwise.

4. MINIMUM SECURITY REQUIREMENT. All insurers must be rated A- VII or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.

5. SELF-INSURANCE. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Vendor.

6. EVIDENCE OF COVERAGE. Prior to performance of any scope of work under paragraph 5, Vendor shall provide certification of insurance acceptable to the City evidencing the minimum coverage's and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis. Certification should be issued to The City of Seattle, Risk Management Division, Seattle, WA and shall be delivered in electronic form either as an email attachment to riskmanagement@seattle.gov or faxed to (206) 470-1270.

36. **Audit:** Upon request, Contractor shall permit Seattle, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by Seattle or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as Seattle or Agency selects. The Contractor shall supply Seattle with, or shall permit Seattle to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of Seattle and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

    The City, the Federal grant agency if any, the Comptroller General of the United States, or any of their duly authorized representatives shall be provided access to any books, documents, papers and records of the subcontractor or any subcontract which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts and transcriptions. FAR clause 52.215-2 incorporated by reference. The complete clause may be viewed at http://www.whitehouse.gov/omb/circulars/a110/ The OMB A-110 provisions in effect at the time of this order govern. FAR clauses may be viewed at http:www.arnet.gov/far/

37. **Contractual Relationship:** The relationship of Contractor to Seattle by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Contractor to act as the agent or legal representative of Seattle for any purpose whatsoever. Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of Seattle or to bind Seattle in any manner or thing whatsoever.

38. **Supervision and Coordination:** Contractor shall:
    - Competently and efficiently, supervise and direct the implementation and completion of all contract requirements specified herein.
    - Designate in its bid or proposal to Seattle, a representative(s) with the authority to legally commit Contractor's firm. All communications given or received from the Contractor's representative shall be binding on the Contractor.
    - Promote and offer to Purchasers only those materials, equipment and/or services as stated herein and allowed for by contractual requirements. Violation of this condition will be grounds for contract termination.

39. **Compliance with Law**:

- General Requirement: The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

- Licenses and Similar Authorizations: The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

- Taxes: The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

40. **Americans with Disabilities Act:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

41. **OSHA/WISHA:** Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

42. **Contract Work Hours and Safety Standards:** For all contracts that employ mechanics or laborers, the Contractor and all subs shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provide that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

43. **Beck Notice:** Notification of Employee Rights Concerning Payment of Union Dues or Fees (Executive Order 13201) shall apply to all contracts above $100,000.

44. **Clean Air Act and Federal Water Pollution Control Act:** All Contractors and subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the City immediately and to the Regional Office of the Environmental Protection Agency (EPA).

45. **Energy Efficiency**:
All contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

46. **Assignment and Subcontracting:** Contractor shall not assign or subcontract any of its obligations under this Contract without

Seattle's written consent, which may be granted or withheld in Seattle's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions. Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions. Seattle's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

40. **Federal Debarment for Primes and all Subcontractors:** By signing this agreement, the Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Contractor shall immediately notify the City of any suspension or debarment or other action that excludes the Contractor and any subcontractor level from participation in Federal contracting. Prior to performance of any work by the Contractor or any subcontractor under this contract, Contractor shall verify all subcontractors that are intended and/or used by the Contractor for performance of City work are in good standing and are not debarred, suspended or otherwise ineligible by the Federal Government. Contractor shall include this same provision in any subcontractor or lower contract agreements. Debarment shall be verified at https://www.epls.gov/epls/search.do. The Contractor shall keep documentation of such verification within the Contractor records.

47. **Involvement of Former City Employees:** Contractor shall promptly notify Seattle in writing of any person who is expected to perform any of the Work and who, during the twelve (12) months immediately prior to the expected commencement date of such work or subcontract, was a City officer or employee. Contractor shall ensure that no Work or matter related to the Work is performed by any person (employee, subcontractor, or otherwise) who was a City officer or employee within the past twelve (12) months; and as such was officially involved in, participated in, or acted upon any matter related to the Work, or is otherwise prohibited from such performance by SMC 4.16.075.

48. **Copeland Anti-Kickback Act**): All contractors and subcontractors for construction or repair shall comply with the Copeland "Anti-Kickback" Action (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR, part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which s/he is otherwise entitled. The Contractor shall immediately notify the City of any suspected or reported violations.

49. **Byrd Anti-Lobbying Amendment**: Contractors executing contracts with the City shall sign the Vendor Questionnaire, providing certification of compliance to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 13652. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

50. **No Conflict of Interest:** Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

51. **No Gifts or Gratuities:** Contractor shall not directly or indirectly offer gifts and resources to any person employed by the City that is intended, or may be reasonably intended, to benefit the Vendor by way of award, administration, or in any other way to influence purchasing decisions of the City. This includes but is not limited to, City Purchasing office employees and City employees that do business with, order, purchase or are part of decision-making for business, contract or purchase decisions. The Vendor shall not offer meals, gifts, gratuities, loans, trips, favors, bonuses, donations, special discounts, work, or anything of economic value to any such City employees. This does not prohibit distribution of promotional items that are less than $25 when provided as part of routine business activity such as trade shows. Any violation of this provision may result in termination of this Contract. Nothing in this Contract prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.

52. **Intellectual Property Rights:**

Patents: Contractor hereby assigns to Seattle all rights in any invention, improvement, or discovery, together with all related information, including but not limited to, designs, specifications, data, patent rights and findings developed in connection with the performance of Contract or any subcontract hereunder. Notwithstanding the above, the Contractor does not convey to Seattle, nor does Seattle obtain, any right to any document or material utilized by Contractor that was created or produced separate from this Contract or was preexisting material (not already owned by Seattle), provided that the Contractor has clearly identified in writing such material as preexisting prior to commencement of the Work. To the extent that preexisting materials are incorporated into the Work, the Contractor grants Seattle an irrevocable, non-exclusive, fully paid, royalty-free right and/or license to use, execute, reproduce, display, and transfer the preexisting material, but only as an inseparable part of the Work.

Copyrights: For materials and documents prepared by Contractor in connection with the Work, Contractor shall retain the copyright (including the right of reuse) whether or not the Work is completed. Contractor grants to Seattle a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Contractor for Seattle under this Contract. If requested by Seattle, a copy of all drawing, prints, plans, field notes, reports, documents, files, input materials, output materials, the media upon which they are located (including cards, tapes, discs and other storage facilities), software programs or packages (including source code or codes, object codes, upgrades, revisions, modifications, and any related materials) and/or any other related documents or materials which are developed solely for, and paid for by, Seattle in connection with the performance of the Work, shall be promptly delivered to Seattle.

Seattle may make and retain copies of such documents for its information and reference in connection with their use on the project. The Contractor does not represent or warrant that such documents are suitable for reuse by Seattle, or others, on extensions of the project, or on any other project. Contractor represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

53. **No personal liability**: No officer, agent or authorized employee of the City shall be personally responsible for any liability arising under this Contract, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Contract.

54. **Binding Effect**: The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.

55. **Waiver:** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Seattle of any performance by the Contractor after the time the same shall have become due nor payment to the Contractor for any portion of the Work shall constitute a waiver by Seattle of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Seattle, in writing. The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

56. **Anti-Trust**: Seattle maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore the Contractor hereby assigns to Seattle any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under this contract and which are not passed on to Seattle under an escalation clause.

57. **Applicable Law:** This Contract shall be construed under the laws of the State of Washington. The venue for any action relating to this Contract shall be in the Superior Court for King County, State of Washington.

58. **Remedies Cumulative:** Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

59. **Captions:** The titles of sections, or subsections, are for convenience only and do not define or limit the contents.

60. **Severability:** Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.

61. **Disputes:** Any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

    Notwithstanding above, if Seattle believes in good faith that some portion of Work has not been completed satisfactorily, Seattle may require Contractor to correct such work prior to Seattle payment. In such even, Seattle must clearly and reasonably provide to Contractor an explanation of the concern and the remedy that Seattle expects. Seattle may withhold from any payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

62. **Termination:**

    For Cause: Seattle may terminate this Contract if the Contractor is in material breach of any terms of this Contract, and such breach has not been corrected to Seattle's reasonable satisfaction in a timely manner.

    For City's Convenience: Seattle may terminate this Contract in whole or in part, without cause and for any reason including Seattle's convenience, upon written notice to the Contractor.

    Nonappropriation of Funds: Seattle may terminate this Contract at any time without notice due to nonappropriation of funds, whether such funds are local, state or federal grants, and no such notice shall be required notwithstanding any notice requirements that may be agreed upon for other causes of termination.

    Acts of Insolvency: Seattle may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

    Termination for Gifts or Gratuities: Seattle may terminate this Contract by written notice to Contractor if Seattle finds that any gratuity in the form of entertainment, a gift, or otherwise, was offered to or given by the Contractor or any agent therefor to any City official, officer or employee, as defined above.

    Notice: Seattle is not required to provide advance notice of termination. Notwithstanding, the Buyer may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the Buyer until the effective date provided in the termination notice.

    Actions upon Termination: In the event of termination not the fault of the Contractor, the Contractor shall be paid for the services properly performed prior to termination, together with any reimbursable expenses then due, but in no event shall such compensation exceed the maximum compensation to be paid under the Contract. The Contractor agrees that this payment shall fully and adequately compensate the Contractor and all subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract. Upon termination for any reason, the Contractor shall provide Seattle with the most current design documents, contract documents, writings and other product it has completed to the date of termination, along with copies of all project-related correspondence and similar items. Seattle shall have the same rights to use these materials as if termination had not occurred.

63. **Force Majeure – Suspension and Termination:** This section applies in the event that either party is unable to perform the obligations of this contract because of a Force Majeure event as defined herein, to the extent that the Contract obligations must be suspended in full. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body, which prevents performance.

Force Majeure under this Section shall only apply in the event that performance is rendered not possible by either party or its agents. Should it be possible to provide partial performance that is acceptable to the City under Section #2 (Emergencies or Dias asters), Section #2 below shall instead be in force.

Should either party suffer from a Force Majeure event and is unable to provide performance, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance.

Upon receipt of such notice, the party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If such Event affects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such Event.

64. **Major Emergencies or Disasters:** The City may undergo an emergency or disaster that may require the Contractor to either increase or decrease quantities from normal deliveries, or that may disrupt the Contractor's ability to provide normal performance. Such events may include, but are not limited to, a storm, high wind, earthquake, flood, hazardous material release, and transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above. In such events, the following shall apply.

    (a) The City shall notify the Contractor that the City is experiencing an emergency or disaster, and will request emergency and priority services from the Contractor.
    (b) The City may request that the Contractor provide either increased or decreased quantities from traditional orders, or may request Contractor provide additional products or services.
    (c) Upon such notice by the City, the Contractor shall make reasonable efforts to provide the City the materials in the quantities requested and within the schedule specified by the City, adhering to the conditions in this Section.
    (d) The City of Seattle shall be the customer of first priority for the Contractor, except where preceded by State or Federal government mandates. The Contractor shall provide its best and priority efforts to provide the requested goods and/or services to the City of Seattle in as complete and timely manner as possible. Such efforts by the Contractor are not to be diminished as a result of Contractor providing service to other customers, except as mandated by State or Federal governments.
    (e) If the Contractor is unable to respond in the time and/or quantities requested by the City, the Contractor shall promptly assist the City to the extent practicable, to gain access to alternative materials and/or services. This may include:
        a. Coordinating with other distributors or subsidiaries beyond those in the local region to fulfill order requests;
        b. Offering the City substitutions provided the Contractor obtains prior approval from the City for such substitution.

    The Contractor shall charge the City the price determined in this Contract for the goods and services provided, and if no price has been determined, it shall charge the City a price that is normally charged for such goods and/or services (such as listed prices for items in stock). However, in the event that the City's request results in the Contractor incurring unavoidable additional costs and causes the Contractor to increase prices in order to obtain a fair rate of return, the Contractor shall charge the City a price not to exceed the cost/profit formula found in this Contract.

65. **Interlocal Cooperation Act:** RCW 39.34 allows cooperative purchasing between public agencies, and other political subdivisions. SMC 20.60.100 also allows non profits to use these agreements. Such agencies that file an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle may purchase from Contracts established by the City. Unless Vendor declines on the Offer submitted by the Seller to the City, the Vendor agrees to sell additional items at the bid prices, terms and conditions, to other eligible governmental agencies that have such agreements with the City. The City of Seattle accepts no responsibility for the payment of the purchase price by other governmental agencies. Should the Vendor require additional pricing for such purchases, the Vendor is to name such additional pricing upon Offer to the City.

66. **Selling to City Vendors**: Unless rejected by the Vendor in the Offer submitted to the City, the Contract will default to permitting City contractors to accept orders from City Vendors who are working on City projects, and sell the Vendors your products at the City contract price. The City may recommend your City contract as a source, to other winning City contractors for certain products.

67. **City Debarment:** In accordance with SMC Ch. 20.70, the Director of Executive Administration or designee may debar a Vendor from entering into a Contract with the City or from acting as a subcontractor on any Contract with the City for up to five years after determining that any of the following reasons exist:

    1) Contractor has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Contracts.
    2) Contractor failed to comply with City ordinances or Contract terms, including but not limited to, ordinance or Contract terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
    3) Contractor abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Contract.
    4) Contractor failed to comply with Contract provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
    5) Contractor submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with a Contract.
    6) Contractor colluded with another contractor to restrain competition.
    7) Contractor committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Contract for the City or any other government entity.
    8) Contractor failed to cooperate in a City debarment investigation.
    9) Contractor failed to comply with SMC 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

    The Director may issue an Order of Debarment after adhering to the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Contract.

68. **Recycled Product Requirements:** To promote and encourage environmentally sustainable practices for companies doing business with the City, the City requires that vendors under City contract use environmentally preferable products in production of City work products.

    Green Seal Products: Contractor shall use Green Seal certified cleaning products in performance of all cleaning and janitorial work to protect the health, safety, wellness and environmentally sustainable practices that the City requires of companies doing business with the City. Cleaning products, floor care products and other products used in the performance of work that carry a Green Seal certification are required. The Bidder shall identify the products that the Bidder intends to use at the City facilities and shall list them on the Offer Form, with a notation to confirm the Green Seal product certification. The Green Seal website is: http://www.greenseal.org/findaproduct/index.cfm. The City has contracts with various vendors who will supply the winning Bidder with Green Seal certified products for use in performance of City contract work, at City contract pricing. For the list of vendors, contact the City Buyer.

    Paper and Paper Product Requirements: The City requires use of 100% PCF (post consumer recycled content, chlorine-free) Grays Harbor paper, to comply with the City Executive Order and to encourage environmentally preferable practices for City business. Such paper is available at City contract prices from Keeney's Office Supplies at 425-285-0541.

    The City also requires Binders that are fully 100% recycled stock. "Rebinders" are a product that fit this requirement and are available at City contract prices from Keeney's Office Supplies at 425-285-0541. Please do not use binders or plastic folders, unless essential.

    Contractors shall duplex materials prepared for Seattle under this Contract, whether materials are printed or copied, except when impracticable due to the nature of the product. This is executed under the Mayor's Executive Order, issued February 13, 2005.

69. **Workers Right to Know**: "Right to Know" legislation required the Department of Labor and Industries to establish a program to

make employers and employees more aware of the hazardous substances in their work environment. WAC 296-62-054 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, improper, or other responsible party. Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question

70. **Prevailing Wage Requirements:**

a. If applicable, this contract is subject to prevailing wages, as required by RCW 39.12 (Prevailing Wages on Public Works) and RCW 49.28 (Hours of Labor) as amended or supplemented.

b. Contractor and any subcontractors shall be responsible for compliance with all provisions herein.

c. Filing Your Intent: The awarded Contractor and all subcontractors shall file an Intent to Pay Prevailing Wage Form concurrent with the execution of the contract.
   - You will need a Contract Number and a Start Date. The Buyer will tell you your Contract Number; the start date is the your contract is signed.
   - The Contractor and their subcontractor(s) shall then promptly submit the Intent to the Department of Labor & Industries for approval.
   - This must be done online at the L&I website: http://www.lni.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/File/default.asp .
   - If the Contractor is unable to file on-line, a paper copy of the approved Intent shall instead be promptly provided to the Buyer.

d. Contractor and any subcontractor shall not pay any laborer, worker or mechanic less than the prevailing hourly wage rates that were in effect at the time of bid opening for the worker classifications that are provided for under Prevailing Wages as issued by the State of Washington for the County in which the work shall be performed.

e. Vocationally handicapped workers, i.e. those individuals whose earning capacity is impaired by physical or mental deficiency or injury, may be employed at wages lower than the established prevailing wage. The Fair Labor Standards Act requires that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor. These certificates are acceptable to the Department of Labor and Industries. Sheltered workshops for the handicapped may submit a request to the Department of Labor and Industries for a special certificate, which would, if approved, entitle them to pay their employees at wages, lower than the established prevailing wage.

f. In certain situations, an Intent to Pay Prevailing wages shall be filed with the Department of Labor & Industries and with the Buyer, but the Vendor may indicate an exception on the Intent Form which exempts the requirement to pay at least prevailing wages rates for the following:

   - Sole owners and their spouse.
   - Any partner who owns at least 30% of a partnership.
   - The president, vice-president, and treasurer of a corporation if each one owns at least 30% of the corporation.
   - Workers regularly employed on monthly or per diem salary by state or any political subdivision created by its laws.

g. Prevailing Wage rates in effect at the time of bid opening are attached. These wages remain in effect for the duration of this contract, except for annual adjustments required by this agreement for multi-year contracts (where contract is longer than one year) and building service maintenance contracts (janitorial, waxers, shampooers, and window cleaners).

h. It is the sole responsibility of the Contractor to assign the appropriate classification and associate wage rates to all laborers, workers or mechanics that perform any work under this contract, in conformance with the scope of work descriptions of the Industrial Statistician of the Washington State Department of Labor and Industries.

i. With each invoice, Contractor will attach or write a statement that wages paid were compliant to applicable Prevailing Wage

rates.

j. Upon contract completion, Contractor and each subcontractor shall then file the Affidavit of Wages Paid (form L700-007-000) approved by the Industrial Statistician of Washington State L&I. This may be performed on-line if the Contractor has initiated the original Intent to Pay Prevailing Wage process on line. The receipt of the approved affidavit is required before Seattle can pay the final invoice.

k. For jobs above $10,000, Contractor is required to post for employees' inspection, the Intent form including the list of the labor classifications and wages used on the project. This may be postured in the nearest local office, for road construction, sewer line, pipeline, transmission line, street or alley improvement projects as long as the employer provides a copy of the Intent form to the employee upon request.

l. In the event any dispute arises as to what the prevailing wages are for this Contract, and the dispute cannot be solved by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington. In such case, the Director's decision shall be final, conclusive and binding on all parties. If the dispute involves a federal prevailing wage rate, the matter shall be referred to the U.S. Secretary of Labor for a decision. In such case, the Secretary's decision shall be final, conclusive and binding on all parties.

Prevailing Wage rate changes for Service Contracts greater than one year in duration:

a. This provision only applies to service contracts that continue beyond a single year in duration, including building service maintenance contracts (janitorial service contractors and work performed by janitors, waxers, shampooers, and window cleaners) and to multi-year service contracts.

b. Contractor and any subcontractor must pay at least the prevailing wage rates that were in effect at time of bid throughout the duration of the contract.

c. Each contract anniversary thereafter, Contractor and any subcontractors shall review the Prevailing Wage Rates that are in effect upon the date of the contract anniversary. The Contractor shall increase wages paid if required to meet no less then the current wage rates in effect at the time of the contract anniversary.

d. Any price or rate increases made as a result of a change in the prevailing wages will be compensated by the City on a pass through basis if the Contractor requests a price increase in accordance with the price increase request requirements provided in this agreement. The Contractor must follow the contract instructions for pricing increases, notifying the Buyer at least 45 days prior to the contract anniversary date of any resulting price increase and documenting the increase.