BLANKET CONTRACT

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

Blanket Contract #		Date	Change Order #
0000002323		6/29/09	2
Payment Terms	Freight Terms		
Net 30 days	Pre-Paid & Allowed		
Buyer:		Phone:	Fax:
Sharon Rothwell		206-684-8310	206-233-5155

Vendor #: 0000128135
NW Erosion Control Inc.
17725 NE 65th St., Suite B-275
Redmond, WA 98052

Contact: Tony Bond
Phone #: 425-558-9355
Fax #: 425-558-3966
Email: tony@nwerosion.com

Ship To:
See Below

Bill To:
Fleets & Facilities Dept
Accounts Payable
PO Box 94689
Seattle, WA 98124-4689

NW Erosion Control Inc. was awarded a contract for Monitoring and Maintenance of Temporary Erosion & Sedimentation Control Measures (TESC), for City of Seattle Joint Training Facility (JTF) as a result of sole source negotiations conducted by the City. See Attachments # 1 and #2 for Specifications and conditions. The term of the contract is one (1) year with one (1) year extension.

Original Contract: 2/22/2008 through 2/21/2009
Change Order #1: issued to extend contract 2/22/09 through 8/21/09 in all other respects this contract remains unchanged.
Change Order #2: issued at the request of the project manager per page 16 of the Scope of work. Extends existing contract 8/22/09- 8/21/10, in all other respects this contract remains unchanged.

Prevailing wage applies see Attachment #1.

Orders shall be placed by DEPARTMENT REPRESENTATIVES. Invoices shall be mailed in duplicate to the DEPARTMENT PLACING THE ORDER, Attn: Accounts Payable, per attached list (or a/p address). Each invoice shall indicate Contract #0000002323.

The City of Seattle does not guarantee utilization of this contract. This contract is intended for Fleets & Facilities use ONLY. This contract is subject to cancellation by either party upon forty-five (45) days advanced written notice.

Prevailing Wage
The awarded Contractor and all subcontractors shall file an Intent to Pay Prevailing Wage Form concurrent with the execution of the contract. The Buyer will give the award Contractor(s) a Contract Number, and the Contractor and their subcontractor(s) shall then promptly submit the Intent to Pay Prevailing Wages to the Department of Labor & Industries for approval. The City requests this be done on-line to allow the City a rapid mechanism to verify submittal of forms. The following is the web-site to apply on line;

Authorized Signature/Date
Sharon Rothwell 8/5/09

http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp. However, the City will accept forms submitted through paper procedures. If the Contractor utilizes paper submittal, a copy shall be promptly provided to the Buyer

Affidavit of Wages Paid: 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. See Terms and Conditions for additional information regarding prevailing wage language.

Pricing increases or decreases may be requested by either party by written notice to Purchasing within forty-five (45) days of the contract anniversary date and can be implemented only by contract change order.

Authorized Signature/Date

Shawn Rothwell 5/8/20

Contract #2323
Attachment #1
Change Order #2
2/22/2009- 8/21/10

City of Seattle
CONTRACT
Terms and Conditions

WHEREAS, the purpose of this contract is to Monitor and Maintain Temporary Erosion & Sedimentation Control Measures (TESC) at City of Seattle Joint Training Facility (JTF) located at 9401 Myers Way S, Seattle, WA 98108; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, Seattle and Contractor mutually agree as follows:

1. **Entire Agreement.** This Contract, including all Attachments, amendments and subsequently issued change notices, comprises the entire agreement between Seattle and the Contractor. The Addenda, and Contractor's Proposal are explicitly included as Attachments. Where there are conflicts between these documents, the controlling document will first be this Contract as amended, then the Contractor's proposal and Addenda.

2. **Term.** This contract shall be for the duration specified by the City Project Manager. The City anticipates this work shall be required for up to one year duration, although the Contract shall remain in effect until terminated in writing by the City.

3. **Time of Beginning and Completion.** Contractor shall begin the work stated in the "Scope of Work" ("work"), on February 4, 2008,. Seattle will acknowledge in writing when work is complete. Time limits established pursuant to this Contract shall not be extended because of delays for which Contractor is responsible, but may be extended by Seattle, in writing, for its convenience or for conditions beyond Contractor's control.

4. **Scope of Work**. Seattle requires expert services to monitor and maintain the TESC measures, as further described below. Contractor shall provide the following products and/or services as specified below or as attached. These services shall be termed "work" herein.

5. **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.

6. **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.**

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **Catalogue and Manufacturer List Pricing.** Upon request by the City, the Vendor shall also 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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **Contract Notices, Deliverable Materials and Invoices Delivery.** Official Contract notices shall be delivered to the following addresses (or such other address (es) as either party may designate in writing):

If delivered by the U.S. Postal Service, it must be addressed to:
Sharon Rothwell
City of Seattle Purchasing and Contracting Services
PO Box 94687
Seattle, WA 98124-4687

If delivered by other than the U.S. Postal Service, it must be addressed to:

Sharon Rothwell
City of Seattle Purchasing and Contracting Services
Seattle Municipal Tower
700 5th Ave., #4112
Seattle, WA 98104-5042

Phone: (206) 684-8310
Fax: (206) 233-5155
E-Mail: Sharon.rothwell@seattle.gov

Project work, invoices and communications shall be delivered to the City Project Manager:

City of Seattle
Attention: Mary Pearson (206) 684-0407 or Brad Tong (206) 233-7841

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **Affirmative Efforts for Utilization of Women and Minority Subcontracting and Employment,**

    A. 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.

B. 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.

C. 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.

D. 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).

26. **Equal Benefits.**

A. 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/.)

B. 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.

24. **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.

25. **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 42.56. 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 42.56 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 Agreement.

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 42.56 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.

26. **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.

27. **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) **Commercial General Liability** insurance, including premises/operations, products/completed operations, personal/advertising injury, contractual liability, fire legal/tenant liability, stop gap/employer's liability and independent contractors liability; (2) if any vehicle, watercraft or aircraft is used in the performance of this Purchase Order/Vendor Contract, of a minimum of $1,000,000 per occurrence;

    (2) **Automobile Liability, Watercraft Liability** and/or **Aircraft Liability** insurance, including coverage for owned, non-owned, leased or hired vehicles, watercraft and aircraft, as appropriate of a minimum of $500,000 per occurrence; and

    (3) **Worker's Compensation** ("Industrial Insurance") as required by Title 51 of the Revised Code of Washington.

    (4) The insurance as provided under items (1) and (2) above shall include by endorsement the City of Seattle as an additional insured (as respects item (1), per ISO form CG 20 10 or CG 20 26 or equivalent additional insured endorsement wording, or equivalent blanket additional insured policy wording) and such additional insured status for the City shall apply as respects the full limits of all valid and collectible Automobile Liability, Watercraft Liability and/or Aircraft Liability insurance, whether primary, excess, contingent, or otherwise; shall be primary insurance as respects the City, and any other insurance or self-insurance maintained by the City shall be excess and non-contributory with the Contractor's insurance; and, shall be placed with insurers with not less than an A- VII A.M. Best's rating unless insurance has been procured under the provisions of chapter 48.15 RCW (Unauthorized "Surplus Lines" Insurers). It is specifically agreed that the insurance requirements in this section 2.18 shall override any limitation of liability or similar provision in any agreement or statement of work between the City and the Contractor and that no Contractor's insurer shall assert the right to invoke any such limitation.

    (5) Contractor is not required to provide evidence of insurance, unless required to do so under the solicitation or as otherwise required by the City Buyer.

28. **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.

29. **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.

30. **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.

31. **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.

32. **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.

33. **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.

34. **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.

35. **Amendments.** No modification of this Contract shall be effective unless in writing and signed by an authorized representative of the City, except as otherwise authorized herein. The City 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.

36. **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.

37. **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.

38. **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.

39. **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.

40. **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.

41. **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.

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

43. **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.

44. **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.

45. **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.

46. **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.

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

48. **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.

49. **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.

50. **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.

51. 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.

52. **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.

53. **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. If a public agency files or has filed an Intergovernmental Cooperative Purchasing Agreement with the City of Seattle, those agencies are eligible to purchase from Contracts established by the City. Such agencies may ask City of Seattle Contractors to accept orders from the agency, citing the City of Seattle contract as the basis for the order. The Vendor may accept or decline such orders. If the Vendor accepts an order from another public agency using the City of Seattle contract as the basis, the Vendor agrees to sell additional items at the contract prices, terms and conditions. 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.

54. **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.

55. **Recycled Product Requirements.** Whenever practicable, Contractor shall use reusable products, recyclable products and recycled-content products including recycled content paper on all documents submitted to the City. Contractors are to duplex all materials that are prepared for the City under this Contract, whether such materials are printed or copied, except when impracticable to do so due to the nature of the product being produced. Contractors are to use 100% post consumer recycled content, chlorine-free paper in such products that are produced for the City, whenever practicable, and to use other paper-saving and recycling measures in business they conduct with and for the City. This directive is executed under the Mayor's Executive Order, issued February 13, 2005.

56. **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

57. **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/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 current prevailing hourly wage rates 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 provided in this agreement when contracts are multi-year (where contract is longer than one year) or for building service maintenance (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 <u>at least</u> 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 then current Prevailing Wage Rates. 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. The Contractor will 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.

Scope of Work

Monitoring and Maintenance of Temporary Erosion & Sedimentation Control Measures (TESC) at City of Seattle Joint Training Facility (JTF)

Background

The Joint Training Facility, a 13-acre training campus for the Seattle Fire Department, Seattle Public Utilities and Seattle Department of Transportation, is located at 9401 Myers Way South. The facility includes Classroom Training and Apparatus Bay buildings, an outdoor training pavilion, eight training props, limited parking, and a series of bioswales, detention ponds and a stormwater runoff system.

These services are required to monitor and maintain Temporary Erosion Sedimentation Control (TESC) measures installed at two City sites. The vendor will assist in monitoring the sites and ensure they are properly maintained and remain effective and operational. The vendor will manage inspections, monitoring and maintenance of exterior site areas during the growing period of the vegetation when TESC measures are needed, and until the vegetation is established in its habitat. The services of the vendor are required until the TESC measures are no longer needed at the sites. Pricing will be unit pricing, and services will be ordered by the City Project Manager as needed, until the City Project Manager determines the services are no longer required and the contract can be closed.

Services Required

1. General Scope.

   Services required:
   a) ensure that Temporary Erosion & Sedimentation Control (TESC) measures installed by the City's general contractor are maintained and remain effective and operational; and
   b) manage inspections, monitoring and maintenance of exterior exposed site areas during the interim occupancy phase of the JTF capital project.
2. Duration.
   This is roughly estimated to be 12 months.

CONSULTANT/CONTRACTOR RESPONSIBILITIES	NOTES
1. Project Facility Familiarization	
2. Administrative management, oversight and periodic field observation visits to ensure the constructed site is maintained in accordance and in compliance with:	
• DPD-issued Site Grading Permit No. 744083 and DPD-approved Interim TESC & Stabilization Plan	Monitoring/testing/inspections performed by PacRim Geotechnical at City expense*
• SPU-issued Temporary Dewatering Authorization	Monitoring/testing/inspections performed by PacRim Geotechnical at City expense
• DOE-issued NPDES Construction Stormwater Permit No. WAR005814 and Stormwater Pollution Prevention Plan (SWPPP)	Monitoring/testing/inspections performed by PacRim Geotechnical at City expense
• Owner-provided operational SWPPP and Best Management Practices	Conditions TBD
• USACE / Owner's proposal for interim occupancy	Conditions TBD
• Other DOE permits and/or requirements (TBA)	Conditions TBD
3. Advise on direction to City's special monitoring / testing / inspections consultant as necessary to fulfill requirements of Item 2 (above)	
4. Provide remedial action to improve or modify site control measures and conditions as necessary to fulfill requirements of Item 2 (above)	

** PacRim Geotechnical is under direct contract to the City.*

NORTHWEST
erosion control, inc.

Contract # 2323
Attachment #2
8/22/09 – 8/21/10
Change Order #2

PROJECT
Duwamish Site Habitat Restoration/Enhancement Project
Orders

UNIT PRICES - INSTALLED

Item No.	Est Qty	Unit	Description	Unit Price
1	200	LF	SILT FENCE	$3.75
2		LF	SILT FENCE W/WIRE MESH	$5.15
4	200	LF	REMOVAL OF EXISTING SILT FENCE	$1.10
36	105	LF	COIR LOG	$18.00
37	140	SY	S-150BN BIODEGRADABLE MATTING	$2.50
38	54	EA	LIVE WILLOW STAKES	$5.75

UNIT PRICES - TIME & MATERIALS

Item No.	Est Qty	Unit	Description	Unit Price
16	225	HR	GENERAL LABORER	$45.00
39	7.5	CY	BARK MULCH - MATERIALS ONLY	$36.15
40	50	EA	PLYWOOD MATERIALS FOR SITE ACCESS/PROTECTION	$36.00
41	100	CY	QUARRY SPALL FILL	$53.50
42	255	SY	PROPEX 801 GEOTEXTILE FABRIC LINER - MATERIALS ONLY	$1.10
43	4	DAY	ASV/SKID STEER LOADER - EQUIPMENT	$390.50
44	3	DAY	MINI-EXCAVATOR - EQUIPMENT	$340.92

Tel:
425-558-9355
Fax:
425-558-3966
Web:
www.nwerosion.com

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Contract # 2323
Attachment #2
Change order #2
8/22/09-8/21/10

NORTHWEST
erosion control, inc.

DATE **PROJECT**
Duwamish Site Habitat Restoration/Enhancement Project

ITEM # 1 *SILT FENCE*

Dig a trench 4" x 4". Install 5' T-Posts at 5' on-center (on one side of fence only), Geotex 200ST woven fabric, with **native** backfill. Price is based on trenching by machine only, digging by hand may be subject to additional charges. Price does not include clearing, maintenance, removal or additional backfill required for grassed areas, to be charged per applicable labor and equipment rate bid items.

ITEM # 2 *SILT FENCE W/WIRE MESH*

Dig a trench by machine 4" x 4". Install 5' T-Posts at 5' on-center (on one side of fence only), Geotex 200ST woven fabric and wire mesh with native backfill. Price is based on trenching by machine only, digging by hand may be subject to additional charges. Price does not include clearing, maintenance, removal, or additional backfill required for grassed areas, to be charged per applicable labor and equipment rate bid items.

ITEM # 4 *REMOVAL OF EXISTING SILT FENCE*

Includes labor and equipment necessary for removal and disposal of silt fence. Vehicle access shall be available, clearing and restoration of site not included. NWECI not responsible for buried silt fence.

ITEM # 36 ***COIR LOG***

Price includes 12" diameter coir log and installation per manufacturers recommendations, per linear. Clearing, maintenance and removal not included; to be charged per applicable time and materials rates.

ITEM # 37 ***S-150BN BIODEGRADABLE MATTING***

Includes trenching at top of slope where feasible, materials and installation of North American Green S-150BN (Biodegradable Netting) matting, including stapling, per manufacturers recommendations. Installation includes standard overlap of 1/2". Clearing or ground preparation not included; to be charged per applicable time and materials rates.

ITEM # 38 ***LIVE WILLOW STAKES***

Plant prices include labor, materials, and installation per specifications. Water for establishment and irrigation to be provided by others. Bid does not guarantee availability of plants.

Tel:
425-558-9355
Fax:
425-558-3966
Web:
www,nwerosion,comp

Associated General Contraelevs

DATE

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TEM # 16 *GENERAL LABORER*

Installation and Maintenance Labor. Scope of this labor to be determined by Northwest Erosion Control, based on Washington State labor class descriptions. General Laborer rate to apply to work such as removal, tagging, & stockpiling of plants; re-installation of plants, placement of bark mulch, hand grading wash-out areas, swales and placement of geotextile fabric liner; also includes labor for irrigation repair (Does not include materials - To Be Determined). *Quantities are for estimate purposes only, these scopes of work will be performed on a T&M basis and are subject to change based on final quantities.*

ITEM # 39-44 *MATERIALS & EQUIPMENT RATES*

Prices include materials and equipment rates only, labor to be billed per Item #16 General Laborer. *Quantities are for estimate purposes only, actual quantities performed will be charged.*

Clarifications:

Staking and Surveying must be provided by others.
Traffic control to be provided by Prime Contractor/Client for all work.
Proposal based on no obstructions or utilities in or under areas for landscape improvement.

NWECI will request locates for all one-call utilities, customer responsible for locating private utilities, irrigation systems, drainage systems, and other private underground structures which may be impacted. NWECI will not be held responsible for damages to any non-located private utilities.

Soil conditions are the responsibility of the customer and are not warrantied by NWECI.

Upon acceptance of proposal and execution of written agreement of scope NWECI shall be provided minimum 48 hours for site mobilization pending schedule availability.