



## **Emergency Public Works Contract “Red Package”**

### **INSTRUCTIONS:**

\*The City is unable to process payment without an executed contract.

1. Do not alter this package. You may provide additional sheets if instructed to do so.
2. All sections of this package and attachments will become the terms of your Contract.
3. **This Emergency Work is considered public works.**
4. Review all Contract requirements and provide the Owner with a Quote to complete the Work and all incidentals provided herein.
5. Once notified you are the selected Contractor, Complete the separately provided, Section 3 Declaration and the Agreement Form and send original to:

Address to:  
Purchasing and Contracting  
Department of Finance and Administrative Services  
Attn: @CCS and Gina Owens

Physical Address:  
Seattle Municipal Tower  
700 Fifth Avenue, Suite 4350  
Seattle, WA 98104-5008

Mailing Address:  
P.O. Box 94669  
Seattle, WA 98124-4669

6. Provide the applicable evidence of Insurance, Payment and Performance Bond and Retainage Bond, if applicable.
7. Counter signature by FAS-Purchasing and Contracting (PC) is notification of Award; payment is contingent on an executed contract.

### **RESPONSIBLE CONTRACTOR REQUIREMENTS**

Before awarding any public works contract a Firm providing a quote must meet the following mandatory responsibility criteria:

1. At the time of quote submittal, have a certificate of registration in compliance with Chapter 18.27 RCW;
2. Have a current State unified business identifier number and City of Seattle business license, if applicable; etc.
3. If required by business type, have industrial insurance coverage for the Contractor’s employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW. If the Contractor has no employees, the Contractor must comply with the alternative election process and provide documentation under Title 50 and 51; and
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 and not listed on the US Government’s System of Award Management database (<http://www.sam.gov/>); and
5. Have received training on requirements related to public works and prevailing wage by Labor and Industries or approved training provider under RCW 39.04.350, and chapter 39.12 or are exempted by Labor and Industries. <https://secure.lni.wa.gov/verify>.
6. Meet any supplemental criteria requirements, if applicable.

The Contractor, additionally must demonstrate compliance with the following City requirements:

1. The Contractor must show substantial compliance with social equity Contract requirements on past projects or evidence to responsibly perform, including but not limited to, compliance with the Inclusion Plan, Social Equity Plan, or Community Workforce.
2. The Contractor must have a current Seattle Business License and must be current on all Business and Occupancy Taxes pursuant to SMC 5.555.030 A, before Award when the Work is in the City of Seattle. The Contractor conducts business in the City of Seattle, or the Contractor owes Taxes to the City of Seattle.
3. The Contractor must be registered on the City's Online Business Directory (OBD) website before Award.
4. Paid Sick and Safe Time (PSST) SMC 14.16 and RCW 49.46
5. Equal Benefits (SMC 20.45): Except as may be provided in the Equal Benefits Program rules.
6. Labor Standards (SMC 14.16, 14.17, 14.19, 14.20): Except as may be provided in the Office of Labor Standards rules, the Contractor must demonstrate compliance with the City's fair labor standards.
7. Campaign Contributions (SMC 2.04): The Contractor must not be found in violation of earning more than \$250,000 in City contracts in the last fiscal year and contributed to a City elected official's campaign.
8. The Contractor must comply with any additional requirements as a condition of state or federal funding, loans, or grants for the Work.

If the Owner determines a Contractor to be not responsible, the Owner will not award to that Contractor.

Additionally, the selected Contractor must verify responsibility criteria, as applicable, for each first-tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification must include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in items (1) through (5) above, and possess an electrical or plumbing Contractor license, if required by Chapter 19.28 RCW, or an elevator Contractor license, if required by Chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

**END OF INSTRUCTIONS**



### Emergency Public Works Contract “Red Package

Public Works #: 2022-@@@ Contract Title: @@@Project Name as assigned on DDAF

**SECTION 1: SCOPE OF EMERGENCY WORK**

@@@Concisely restate & summarize the emergency from the DDAF.

@@@ Identify scopes of work

Upon Notice to Proceed, the Contractor shall mobilize to secure the site and

Scope of work includes, but is not limited to:

- 

@@@ Exclusions/Assumptions/Clarifications:

Attachments *(list all applicable attachments)*:

- Request for Emergency Pricing, dated:
- @@Contractor Proposal dated @DATE
- @@Department Construction Management Forms (if applicable)
- @@Technical Specifications (if applicable)
- @@Drawings (if applicable)
- @@Surveys (if applicable)
- @@Existing Conditions (if applicable)
- @@Permits (if applicable)



## SECTION 2: GENERAL TERMS AND CONDITIONS

### 1. BY PROVIDING A QUOTE FOR THE WORK LISTED IN SECTION 1 ABOVE YOU ARE AGREEING TO THE FOLLOWING: EMERGENCY WORK BY CONTRACTOR

The Contractor must perform the emergency Work as instructed and described in the Contract which may include the Contractor's Quote, Plans, Specifications and any other related Contract documents which is attached hereto and incorporated herein. Emergency Work is to repair or replace facilities, utilities or infrastructure damaged under unforeseen conditions, which have caused a real and imminent threat to person, property or environment. Emergency Work will be repair-in-kind or replacement to current standards.

Unless otherwise directed in the contract, all reference, definitions, processes, etc. will follow the City of Seattle Standard Plans and Specifications for Road, Bridge, and Municipal Construction (current edition).

### 2. CONTRACT MANAGEMENT

**@@Department Name (Department)** must have primary responsibility for the Owner under this Contract and must oversee and approve all emergency Work to be performed, coordinate communications, and review and approve all invoices under this Contract.

#### 2.1 COORDINATION OF THE CONTRACT

All parts of this Contract, including attachments, are essential and complementary. A requirement occurring in one part is binding as though occurring in all. Work or materials that have been omitted from the description or scope, but clearly implied, must be furnished by the Contractor as though it had been specifically stated. The Contractor must immediately notify, in writing, the Owner if the Contractor finds a discrepancy in different parts or attachments of the Contract. The Contractor must not proceed with any Work affected by such discrepancy until directed, in writing, by the Owner.

### 3. NOTICE TO PROCEED/TIME OF COMPLETION

- A. No emergency Work is to be performed prior to issuance of *Notice to Proceed* by the Owner.
- B. All emergency Work under this Contract is to be Substantially Complete:

**Select appropriate contract time (delete other)**

- # of Days Select Day Type. days from the Notice to Proceed.

**OR**

- By this date: Click or tap to enter a date.

### 4. PAYMENT

- A. The Owner must pay the Contractor for the emergency Work performed under this Contract as follows:

#### SELECT CONTRACT TYPE:

- Lump Sum (Not to Exceed), or  Unit Prices set forth in the Emergency Pricing Request/Contractor Proposal

The Contractor must do all emergency Work and furnish all labor, tools, materials, equipment, in accordance with and as described in the Quote Form and the **City of Seattle Standard Plans and Specifications, current edition** (*standards, codes, etc. which should be followed*) which are incorporated herein.

The Contractor must provide and bear the expense of all equipment, emergency Work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing

the emergency Work provided for in this Contract and every part thereof; except as mentioned in the Quote Form to be furnished by the Owner.

- B. Payments must be in accordance with Section 1-09.9 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition). The payment process can be negotiated at the discretion of the Owner.
- C. The Contractor must maintain time and expense records, which may be requested by the Owner. The Contractor must submit invoices to the Owner for payment for emergency Work performed. All invoices must reference the public works number (PW#) and must be in a format acceptable to the Owner.
- D. The Owner must pay all Contractor invoices within thirty (30) days of receipt of an approved invoice. Payment for emergency Work performed must not be evidence of acceptable performance or an admission by the Owner that any emergency Work has been satisfactorily completed.
- E. All records and accounts pertaining to this Contract must be available for inspection upon request by the Owner for a period of six (6) years after final payment.
- F. If during the course of the Contract, the emergency Work rendered does not meet the requirements set forth in the Contract, the Contractor must correct or modify the emergency Work to comply with the requirements of this Contract at the Contractor's sole expense, and without delaying the time of completion. The Owner must have the right to withhold payment for such emergency Work until it meets the requirements of the Contract documents.

## **5. RESPONSIBILITY OF THE CONTRACTOR**

- A. Examination of the project site: The Contractor must carefully examine the project site and existing damage. Submittal of a quote must be conclusive evidence that the Contractor has made the necessary examinations and understands the requirements for completion of the Emergency Work. The Contractor further warrants, agrees and acknowledges by submitting a quote that:
  - i. The Contractor has taken all necessary steps to ascertain the scope and need of the repair/replacement, the nature and location of the Emergency Work.
  - ii. The Contractor has investigated and is satisfied as to the general and location conditions which can affect the Emergency Work and its cost, including, but not limited to:
    - a. Conditions bearing upon acquisition, transportation, disposal, handling and storage of materials;
    - b. The availability of labor, materials, water, electricity and roads;
    - c. Uncertainties of weather, river stages, tides, or similar physical conditions at the project site;
    - d. The conformation and condition of the ground;
    - e. The character of equipment and facilities needed preliminarily and during Emergency Work performance;
    - f. Site and environmental conditions which by statute, law or regulations require specific training and certifications for employees.
  - iii. Is familiar with and will comply with all federal, state, and local laws, ordinances; and regulations that might affect the Work or those engaged in the Work.
  - iv. Is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Project Site.

B. Project Cleanliness and Final Cleanup. The Contractor must keep the Project Site clean and remove debris, refuse and discard materials of any kind resulting from Work in accordance with Section 1-04.10 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).

- i. Encampments: In accordance with FAS Encampment Rule 17-01, an Encampment Immediate Hazard may be removed promptly. The Engineer will determine the safety and risk level of the Encampment and provide direction to the Contractor. The Engineer may have the Owner's own forces, or third-party specific contract, remove any Encampment.

Encampment Obstruction removal requires notice. The Owner will affix the notice to the obstruction as soon as reasonably possible. The notice will state the date the notice was posted, the obstruction must be immediately removed and is subject to removal without further notice, where any personal property removed will be stored, and how any stored personal property may be claimed by its owner.

Prior to any removal of any Encampment, the City's Encampment Cleanup Program Manager must be notified. The Contractor must contact the Engineer to request such notification be made by the Engineer.

C. Management and Disposal of Waste. All waste generated or encountered under this Contract must be managed in accordance with all applicable local, State and federal regulations and law. Unless otherwise specified in the Contract, the Contractor is responsible for arranging and implementing the proper handling, management, segregation, storage, transport and disposal of all wastes that are not Dangerous Wastes, including processing and maintaining required documentation in accordance with Section 1-07.3 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).

*(the following supersedes paragraph 5 of the Standard Specifications, current edition)*

Disposal sites used under the Contract must comply with all applicable rules, ordinances, codes, regulations and laws, and must have all required authorizations for the waste to be disposed. Loads of recyclable construction and demolition waste of a single material may be transported directly to a recycling facility. Mixed construction and demolition waste containing materials required to be recycled must be transported to a certified construction and demolition waste processor listed on the City's certified facilities website:

<https://www.seattle.gov/utilities/construction-resources/collection-and-disposal/construction-and-demolition/certified-facilities>

per SMC21.36.089. Unrecyclable construction and demolition waste must be transported to disposal facilities per SC 21.36.112.

- i. Recyclable Materials: The City requires specific types of construction and demolition waste to be recycled per SMC 21.36.089 and SPU Director's Rule SW-640 (<https://www.seattle.gov/utilities/about/policies>). Recyclable materials include but are not limited to asphalt and cement concrete, bricks, ferrous and non-ferrous metal, cardboard, untreated and unpainted wood, and new construction gypsum scrap.

D. Water Quality and Temporary Construction Stormwater Pollution Prevention. The Contractor must comply with City ordinances, State and federal laws and other regulations or rules applicable to water pollution occurring in waters of the State and in interstate waters. See Section 1-07.5 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition). The Contractor must incorporate practices that prevent erosion, or control erosion when erosion is unavoidable, and must make every effort to maintain effective erosion and sediment controls throughout the Work in accordance with Section 1-07.15 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).

E. Protection and Restoration of Property. The Contractor must protect from damage or destruction, Real Property within or adjacent to the Project Site including improvements thereto and fixtures found under or upon, and all personal property located within or adjacent to the Project Site that is not designated for

repair, replacement or removal. Refer to Section 1-07.16 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).

- F. Safety. The Contractor must take all necessary precautions for the safety of all persons on the emergency Work site and must comply with all applicable provisions of federal, state and local regulations, ordinances and codes. The Contractor must erect and properly maintain at all time, as required by the conditions and progress of the emergency Work, all necessary safeguards for the protection of emergency Workers and the public and must post danger signs warning against known or unusual hazards. The Contractor is responsible for complying with Section 1.07.1(2) SAFETY RULES AND STANDARDS and Section 1-07.23 PUBLIC CONVENIENCE AND SAFETY of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).
- G. Temporary Traffic Control. The Contractor, must plan, manage, supervise and perform all temporary traffic control activities needed to support the Work of the Contract in compliance with Section 1-10 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).
- H. Defective and Unauthorized Work. Work and Materials that do not conform to the requirements of the Contract, Work done beyond the lines and grades shown on the Drawings or established by the Engineer, or extra Work and Materials furnished without prior written approval will be considered defective Work or unauthorized Work as applicable. Work Performed and Materials furnished will be subject to inspection by the Engineer in accordance with Section 1-05.6 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition). Contractor must be responsible for correcting all defects in emergency workmanship or materials discovered within one (1) year after acceptance of this emergency Work. If corrections are required, Contractor is responsible for defects in emergency workmanship and materials for one year after acceptance of those corrections. Within seven (7) days of receiving notice, the Contractor must start emergency Work to remedy such defects and complete emergency Work within a reasonable time. In emergencies where damage may result from delay or where loss of service may result, the Owner may choose to complete such corrections by Contract or any other means. The costs associated with completing this emergency Work and any damages resulting from the defects must be borne by the Contractor.
- I. Warranty. The Contractor must furnish any guaranty or warranty furnished as a normal trade practice with the purchase, by the Contractor or a Subcontractor, of any equipment, Materials, or items incorporated in the Work. The Contractor must be liable for any costs, losses, expenses, additional damages including consequential damages suffered by the Owner resulting from defects in the Contractor's emergency Work including, but not limited to, cost of materials and labor expended by the Owner in making additional emergency repairs and cost of engineering, inspection and supervision by the Owner.
- J. Nondiscrimination and Affirmative Efforts. The Contractor agrees not to discriminate against any employee or applicant or any other persons in the performance of this Contract because of race, religion, sex, creed, color, national origin, ancestry, marital status, gender identity, sexual orientation, age, the presence of any sensory, mental, or physical handicap, or other circumstances as may be defined by federal, state or local law or ordinance. The Owner will not enter into contracts with Contractors that do not agree to use Affirmative Efforts to employ women and minority group members as required under SMC 20.42, who do not agree to ensure an Acceptable Worksite, or who violate any provisions of that chapter. The Contractor must comply with the provisions of RCW 35.22.650. The Contractor must comply with the City's Fair Contracting Practices Ordinances law (SMC Ch. 14.10 as amended), which prohibits discrimination in contracting practices.
- K. Acceptable Worksite:  
  
An Acceptable Worksite is defined as a Worksite that is appropriate, productive, safe, free from bullying, hazing or harassment. An Acceptable Worksite is free from behaviors that may impair production, and/or

undermine the integrity of the work conditions including but not limited to job performance, safety, productivity, or efficiency of workers.

A Worksite is defined as The Project Site and any field or company offices used for the Project, or other locations used in conjunction with the Project where Work is performed.

The Contractor must ensure an Acceptable Worksite and will include this Section in all subcontracts.

The intent of the person that appears to violate the Acceptable Worksite is not a measure of whether such behaviors are appropriate; rather the standard is whether a reasonable person should have known that such behavior would cause a worker to be humiliated, intimidated, or otherwise treated in an inappropriate, discriminatory, or differential manner.

Behaviors that violate an Acceptable Worksite include but are not limited to:

- i. Persistent conduct that to the reasonable person would be perceived as offensive and unwelcome;
- ii. Conduct that a reasonable person would perceive to be harassing or bullying in nature;
- iii. Conduct that a reasonable person would perceive to be hazing;
- iv. Verbal references that a reasonable person would perceive to be offensive stereotypes or racial/gender slurs;
- v. Jokes about race, gender, or sexuality that a reasonable person would perceive to be offensive;
- vi. Assigning undesirable tasks, unskilled work to trained apprentices and journey-level workers, manual work in lieu of work with appropriate equipment, unsupervised work, or dangerous work in disproportionate degrees to apprentices, women, or workers of color;
- vii. Language that a reasonable person would perceive to be offensive based on race, gender or oriented towards sexuality;
- viii. Name-calling, cursing or unnecessary yelling, including from a supervisor, foreman or other more senior person that a reasonable person would perceive as offensive;
- ix. Repeating rumors about individuals in the Worksite that a reasonable person would perceive as harassing or harmful to the individual's reputation;
- x. Refusal to hire someone based on race, gender, sexuality, or any other protected class;
- xi. References to or requests for immigration status (other than required by law), religious affiliation, gender affiliation, criminal background, or other related aspects of a worker unless mandated by federal law.

An Acceptable Worksite must assign work in a manner that respects training objectives for apprentices, and ensures an equitable distribution of meaningful work, training, and assignments among all workers, including women, people of color, or other defining characteristics.

Maintaining and managing an Acceptable Worksite is the Contractor responsibility, although each subcontractor must also have accountability for performance in sustaining and managing their worksites. PC will monitor Worksites to ascertain whether a risk or circumstance exists that may merit a remedy. Monitoring may include proactive observations of the Worksite, interviews of individuals familiar with the Worksite, data that may evidence disparities, investigation of complaints by an individual familiar with the Worksite, or other evidence. Except for unusual circumstances that require confidentiality, should situations arise that may require attention, PC will notify and collaborate with the prime contractor to discuss appropriate remedies, and may likewise notify subcontractors and appropriate unions when necessary for the resolution of the situation. This does not prevent PC from requiring other remedies such as those found in Section 1-08(3) of the City of Seattle Standard Specifications (current edition), if PC regards the situation as urgent, of particular potential harm, or without timely resolution.

- K. Employment. The Contractor, while engaged in the performance of any emergency Work or services required under this Contract, must not be considered an employee of the Owner. Any and all claims that may arise under the Workers Compensation Act and any and all claims made by a third party as a



consequence of any act or omission on the part of the Contractor while so engaged in any of the emergency Work or services provided for or rendered herein, must not be the obligation of the Owner.

- L. Notification Requirements for Federal Immigration Enforcement Activities. Prior to responding to any requests from an employee or agent of any federal immigration agency including the Immigration and Customs Enforcement, the U.S. Department of Homeland Security, Homeland Security Investigations, Enforcement Removal Operations, Customs and Border Protection, and U.S. Citizenship and Information Services regarding this Contract, Contractor must notify the Engineer immediately. Such requests include, but are not limited to:
  - i. Requests for access to non-public areas in City buildings and venues (i.e., areas not open to the public such as staff work areas that require card key access and other areas designated as “private” or “employee only”); or
  - ii. Requests for data or information (written or oral) about workers engaged in the work of this Contract or Owner employees.

No access or information shall be provided without prior review and consent of the Owner. The Contractor must request the federal immigration agency to wait until the Engineer is able to verify the credentials and authority of the federal immigration agent and directs the Contractor on how to proceed.

## 6. COMPLIANCE WITH LAWS

- A. The Contractor must comply with all federal, state, tribal, county, and city laws, executive orders, ordinances, rules, and regulations applicable to the Work. All references to laws, executive orders, ordinances, rules, and regulations include all laws, executive orders, ordinances, rules, or regulations as adopted or amended under this Contract.
- B. Any violation of the provisions of this section must be considered a violation of a material provision of this Contract and must be grounds for termination, or suspension of the Contract by the Owner, in whole or in part, and may result in ineligibility for further emergency Work for the Owner.
- C. Equal Benefits. The Contractor must comply with Chapter 20.45 SMC, 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 the Owner’s request, the Contractor must provide complete information and verification of compliance with Chapter 20.45 SMC. Evaluation of the Contractor’s compliance is based on the criteria listed in Chapter 1-07.11 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).
- D. Equal Employment Opportunity. The Contractor, by executing this Contract, is affirming that the Contractor complies with all applicable federal, state, and local non-discrimination laws, including but not limited to Chapter 14.04 SMC, Chapter 14.10 SMC, and Chapter 20.42 SMC.
- E. Women and Minority Business Enterprises Non-Discrimination Requirements. The Owner intends to provide the maximum practicable opportunity for increased participation by minority and women owned businesses, as long as such businesses are underrepresented, and to ensure that the Owner’s contracting practices do not support discrimination in employment when the Owner procures public works, goods, and services from the private sector. The Owner will not enter into contracts with Contractors that do not agree to use Affirmative Efforts to employ or contract with women and minority group members as required under SMC 20.42, who do not agree to ensure an Acceptable Worksite, or who violate any provisions of that chapter, or those requirements set forth below.

The Contractor must comply with the provisions of RCW 35.22.650 as follows:

*“Contractor agrees that the Contractor must actively solicit the employment of minority group members. Contractor further agrees that he must actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor must furnish evidence of his compliance*

*with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority Contractors on the basis of substantially equal proposals in the light most favorable to said minority businesses. The Contractor must be required to submit evidence of compliance with this section as part of the bid.”*

*“As used in this section, the term ‘minority business’ means a business at least 51% of which is owned by minority group members. Minority group members include but are not limited to blacks, women, Native Americans, Asians, Eskimos, Aleuts, and Hispanics.”*

## **7. CHANGES**

- A. As the Work proceeds, the Owner may, at any time without notice to the Surety, or sureties, change the Emergency Work within the general scope of this Contract to successfully complete the repair. Change may include, but not limited to:
  - 1. Deleting Work that is not necessary,
  - 2. Increasing or decreasing quantities,
  - 3. Revising the way the Work is to be done,
  - 4. Adding additional Work necessary to successfully complete the repair,
  - 5. Ordering the Contractor to speed up or delay the Work.
- B. The Contractor must obtain written consent of the Surety, or sureties, if changed Work increases the Awarded Contract Price by more than 25%, or the Owner specifically requests the Surety’s consent.
- C. Changes to the Emergency Work will be incorporated into the Contract by Change Order. The Contractor accepts all terms and requirements of the Change Order by signature of the Change Order.
- D. Other changes may be made, if necessary, in accordance to the provisions of Section 1-04.3 of the City’s Standard Specifications (most recent addition).

### **7.1 DIFFERING SITE CONDITIONS OR CHANGED CONDITIONS**

- A. If the Contractor encounters:
  - 1. Pre-existing subsurface or latent physical conditions at the Project Site differing materially from those indicated in the Contract and information available to Contractors; or
  - 2. Pre-existing unknown physical conditions at the Project Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract and information available to Contractors, the Contractor must provide written notice to the Owner before the conditions are disturbed on the date of discovery or promptly the next Working Day. The Contractor must not proceed with that portion of the Work until ordered to do so.
- B. Upon notification by the Contractor, or when the Owner suspects a differing site condition, the Owner will promptly investigate the alleged changed condition, and:
  - 1. If the Owner determines that differing site conditions do not exist, the Contractor will be so notified by written notice. Should the Contractor disagree with such determination, the Contractor may file a written claim pursuant to the requirements of Section 10; or
  - 2. If the Owner finds that conditions are materially different and cause an increase or decrease in the Contractor’s cost of, or the time required for, performing all or any part of the Work, the Owner will make an equitable adjustment in the payment for the performance of the Work or the time for performance.

No equitable adjustment will be allowed unless the Contractor has given the written notice required in subsection "A" above; provided, however, the time for giving the written notice may be extended by the Owner for good cause. The time for giving written notice will not be extended beyond the time the Contractor knew, or should have known, of the existence of the differing site condition.

If there is a decrease in the cost or time required to perform the Work, failure of the Contractor to notify the Owner of the differing site condition must not affect the Owner's right to make an adjustment in cost or time.

## **7.2 DISCOVERIES OF CONTAMINATED MATERIAL(S), DANGEROUS WASTES(S) AND TSCA WASTE(S)**

During the performance of the Work, the Contractor must respond to each discovery of potential Contaminated Material(s), potential Dangerous Waste(s), or potential TSCA Waste(s) on the Project Site using due diligence, in accordance with Section 1-07.29 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).

## **8. TERMINATION OF CONTRACT**

- A. The Owner may terminate the Contract for default and take possession of the premises and all materials thereon and finish the emergency Work by whatever methods it may choose, by giving ten (10) days written notice to the Contractor, upon the occurrence of any one or more of the events hereafter specified:
  - 1. The Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed as a result of the insolvency of the Contractor.
  - 2. The Contractor refuses or fails to complete the emergency Work required herein.
  - 3. The Contractor fails to make prompt payment to subcontractors for material or labor.
  - 4. The Contractor fails to comply with any applicable federal, state, or local law or regulation.
  - 5. The Contractor fails to comply with instructions of the Project Manager, or breaches a material provision of this Contract.
- B. In the event this Contract is terminated by the Owner for default, the Contractor must not be entitled to receive any further amounts under this Contract for emergency Work that has not been accepted as of the date of termination. The Contractor must bear all costs and liabilities incurred by the Owner and caused by, or relating to, the Contractor's breach, including, but not limited to, increased costs in completing the emergency Work.
- C. Termination for Public Convenience. The Owner may terminate the Contract in whole or in part if the Owner determines that termination is in the best interests of the public.

## **9. OWNERSHIP OF DOCUMENTS**

- A. Upon completion or termination of this Contract, all finished or unfinished documents or other materials prepared by the Contractor pursuant to this Contract must become the sole physical and intellectual property of the Owner, and must be promptly forwarded to the Owner.
- B. Any records, reports, information, data, or other documents or materials provided to or prepared or assembled by the Contractor under this Contract will be kept confidential and must not be made available to any individual or organization by the Contractor without prior written approval of the Owner or by court order.

## **10. DISPUTES AND CLAIMS**

The dispute resolution process must follow the procedures set forth in Section 1-04.4 of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition). Any claim against the

Owner for damages, expenses, costs or extras arising out of the performance of this Contract must be made in writing to the Owner within thirty (30) days after the discovery of such damage, expense, cost, or extra, and in no event later than the time of making application to the Owner for final payment. The Contractor, upon making application for final payment, must be deemed to have waived its right to claim for any other damages for which a claim has not been made, unless such application for final payment includes notice of additional claim and fully describes such claim.

## **11. INDEMNIFICATION**

The Contractor must defend, indemnify and save harmless the Owner and its officers, employees and agents from every claim, risk, loss, damage, demand, suit, judgment and attorney's fee, and any other kind of expense on account of injury to or death of any and all persons, or on account of property damage of any kind, whether tangible or intangible, or loss of use resulting there from arising out of or in any manner connected with the Emergency Work performed under this Contract, or caused or occasioned by reason of the presence of the property, or an officer, employee or agent of either the Contractor or a Subcontractor upon or in proximity to the property of the Owner, at any time before the Completion Date.

If the claim, suit, or action for injuries, death, or damage is caused by or results from the concurrent negligence of (a) the Contractor or its officer, agent, or employee and (b) the Owner or its officer, agent or employee, these indemnity provisions must be valid and enforceable only to the extent of the Contractor's negligence.

The Contractor must also indemnify, defend, and save harmless any county, city or district and the officers and employees of said county, city or district connected with the Emergency Work within the limits of which county, city or district the Emergency Work is being performed hereunder all in the same manner and to the same extent as provided above for the protection of the Owner and the Owner's officers, employees and agents provided that no retention of money due the Contractor will be made by the Owner except as provided in RCW 60.28, pending disposition of suits or claims for damages brought against the county, city or district.

Contractor hereby assumes all risk of damage to its property, or injury to its officers, directors, agents, Contractors, or invitees, in or about the Project from any cause, and hereby waives all claims against the Owner. The Contractor further waives, with respect to the Owner only, its immunity under RCW Title 51, Industrial Insurance.

## **12. INSURANCE**

The Contractor shall maintain in full force and effect at Contractor's sole cost and expense, and Contractor shall ensure that its contractors and subcontractors of all tiers shall maintain in full force and effect during the periods stated, minimum types of insurance coverages with such minimum limits of liability and meeting such general conditions as are set forth below. The Contractor must not begin Work until the Owner is named as an additional insured. The term "insurance" herein must include but not be limited to self-insurance, alternative risk transfer techniques, capital market solutions or any other form of risk financing.

The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements must not be construed to limit the liability of the Contractor, that of any subcontractor of any tier or of any of their respective insurers. Any provision in any Contractor or subcontractor insurance policy that limits available limits of liability to those specified in a written agreement or contract must not apply and all insurance policies, with the exception of Professional Liability and Workers Compensation, must include the City of Seattle as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the Contractor or subcontractor, whether such limits are primary, excess, contingent or otherwise. This provision must apply regardless of whether limits maintained by the Contractor are greater than those required by this Contract, and regardless of whether the certification of insurance provided by a subcontractor of any tier specifies lower minimum limits than those specified for or maintained by the Contractor.

The insurance must provide the minimum coverages and limits of liability and meet all other requirements as set forth herein. Providing evidence of coverage for these stated minimum limits of liability must not relieve the Contractor, any subcontractor of any tier or any of their respective insurers from liability for claims in excess of such stated minimum limits of liability should higher limits of liability be placed. If Work is subcontracted, applicable minimum coverages and limits of liability may be evidenced by any subcontractor provided that such insurance fully meets the applicable requirements set forth herein.

Notwithstanding, Contractor shall have authority to determine and adjust insurance coverage and limits for subcontractors provided that any adjustment or modification to subcontractor insurance requirements shall not reduce or modify Contractor's obligations under this Agreement.

#### **A. Commercial General Liability (CGL) insurance**

CGL insurance must include coverage for:

1. Premises/Operations
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual
5. Independent Contractors
6. Stop Gap (unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy)
7. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent
8. Blasting (if explosives are used in the performance of the Work)

Such insurance must provide a minimum limit of liability of **\$1,000,000** each Occurrence Combined Single Limit Bodily Injury and Property Damage (CSL) except **\$1,000,000** each Offense Personal/Advertising Injury and **\$1,000,000** each Accident/ Disease - Policy Limit/ Disease - each Employee Stop Gap or Employers Liability. \$\_\_\_\_\_ Products/Completed Operations and \$\_\_\_\_\_ General Aggregate and includes the following:

##### **a. Products and Completed Operations Additional Insured**

The Contractor's CGL insurance must include the Owner as an additional insured for Products and Completed Operations by providing additional insured status on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for the Owner must remain in effect for not less than three (3) years following the Physical Completion Date or Final Acceptance of the Work (as applicable) by the Owner.

##### **b. @@@ XCU and Subsidence Perils Not Excluded (required if assessed by FAS)**

The Contractor's CGL insurance shall not exclude perils generally known as XCU (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respects earthquake peril only) or any equivalent peril.

#### **B. Automobile Liability Insurance**

Automobile Liability for owned, non-owned, hired, and leased vehicles, as applicable, with a minimum limit of liability of **\$1,000,000** CSL. In-transit pollution liability is required if pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

#### **C. State of Washington Statutory Workers' Compensation Insurance**

The Contractor must comply with Workers' Compensation coverage as required by Title 51 RCW (Industrial Insurance).

**D-K are optional coverages, FAS-RM should be consulted if any of the following could apply**

**D. @@@ Contractor's Pollution Liability Insurance (required if exposure to contaminated materials exists)**

The Contractor shall provide a Pollution Liability policy for pollutants that are or may be remediated on or off site covering claims, including investigation, defense, or settlement costs and expenses that involve bodily injury and property damage (including natural resources damages and loss of use of tangible property that has not been physically injured) covering:

1. Pollution conditions caused or made worse by the Contractor, including clean-up costs for a newly caused condition or a historical condition that is made worse.
2. In-Transit Pollution Liability.
3. The vicarious liability of subcontractors of any tier.

Such Pollution Liability insurance shall provide a minimum limit of liability of \$\_\_\_\_\_ each claim with a minimum aggregate limit of 200% of each claim limit. There shall be no requirement for a dedicated project aggregate limit provided that the Contractor shall (1) cause to be submitted to the City prior to the Notice to Proceed date with its insurance certification a written statement from its authorized insurance representative that the full minimum aggregate limit is available and has not been impaired by any claims reserved on another project, and (2) thereafter, until the completion of the Work, the Contractor shall provide notice in writing to the City within ten (10) days of Contractor's constructive knowledge of any pending or actual impairment of the aggregate limit. If in-Transit Pollution Liability is required but it is not provided under the Automobile Liability, then contractor or subcontractors must provide evidence of In-Transit Pollution Liability transportation coverage under Contractor's or its subcontractor's Pollution Liability policy.

**E. Umbrella or Excess Liability Insurance (required if assessed by FAS – typically projects exceeding \$1M)**

The Contractor shall provide minimum Excess or Umbrella Liability coverage limits of \$\_\_\_\_\_ each occurrence in excess of the primary CGL and Automobile liability insurance limits specified in Paragraph 12. The minimum total limits requirement of \$\_\_\_\_\_ may also be satisfied with primary CGL and/or Automobile liability insurance limits or any combination of primary and excess/umbrella limits.

**F. @@@Contractor's Professional Liability (required if professional services – non construction related tasks - are part of work being performed – contractor required to provide "stamped drawings")**

The Contractor must provide evidence of Professional Liability insurance covering professional errors and omissions for construction management, value engineering, or any other non-construction professional services. Such insurance must provide a minimum limit of liability of \$\_\_\_\_\_ each claim and may be evidenced as an extension of a CGL policy or by a separate Professional Liability policy. If insurance is on a claims made form:

1. The retroactive date, and that of all subsequent renewals, must be no later than the Notice to Proceed Date.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of the Project.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the contractor must purchase "extended reporting" coverage for a minimum of six (6) years after completion of the Project.

**G. Architects and Engineers Professional Liability (E&O) (required in lieu of Contractor Professional Liability policy if contractor is subcontracting professional services to A&E.)**

The Contractor and/or its Subcontractor and/or its design consultant must provide evidence of Professional Liability insurance covering design-related professional errors and omissions. Such insurance must provide a minimum limit of liability of \$\_\_\_\_\_ each claim. If insurance is on a claims made form:

1. The retroactive date, and that of all subsequent renewals, must be no later than the Notice to Proceed Date.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of the Project.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the contractor must purchase "extended reporting" coverage for a minimum of six (6) years after completion of the Project.

**H. Contractor provided Builders Risk Property Insurance (required if assessed by RM)**

1. The Contractor shall, at its sole expense, maintain Builders Risk Property insurance ("Builder's Risk") covering interests in the Work and the Building Maintenance Unit (BMU) on behalf of the Owner by the Contractor and any subcontractor of any tier ("Subcontractor"). Builders Risk shall insure against all risks of physical loss or damage, including earthquake and flood, except as are excluded. The Builders Risk shall:
  - (a) Commence at the Notice to Proceed Date and shall terminate upon such notification of the Final Acceptance date or earlier if the Owner and the Contractor agree that an earlier date is appropriate under the circumstances of the project.
  - (b) Be written with an amount of insurance equivalent to \$\_\_\_\_\_, including any needed "soft costs," including design costs, licensing fees, architect fees and engineer fees.
  - (c) Include coverage for temporary buildings, debris removal, and building materials in transit or stored on or off-site, but not for Contractor's or Subcontractor's owned, hired, or leased property or tools, equipment, or supplies used for construction and not intended to form a permanent part of the Work.
  - (d) Payment of deductibles shall be the responsibility of the Contractor except for (i) earthquake or flood claims, or (ii) all risks claims to the extent damage is not caused by the negligent acts of the Contractor or any Subcontractor.
  - (e) Include the City of Seattle as loss payee as its interest may appear.
2. Within ten (10) business days of binding Builder's Risk coverage, the Contractor shall provide to the Owner a certificate of Builder's Risk Property insurance that includes coverage information, amounts of insurance, deductibles and provisions for thirty (30) day notice of cancellation and **loss payee** status; evidence of renewal of such insurance shall thereafter be delivered until the earliest of the Final Acceptance Date or occupancy of the Work by the Owner. Contractor shall provide to Owner an electronic copy by email in Portable Document Format (PDF) of the complete Builder's Risk Property insurance policy as soon as Contractor receives it from insurer.
3. In the event of any claim or potential claim against the Builder's Risk, the Contractor shall, as soon as practicable, provide electronic written notice by email to [travis.steichen@seattle.gov](mailto:travis.steichen@seattle.gov).
4. Builder's Risk shall cover all materials, supplies, and equipment that are intended for specific installation in the project while such materials, supplies and equipment are located at the project site, in transit or while temporarily located away from the project site.

The Contractor and the Owner mutually waive all rights of subrogation against the other and any of their Subcontractors, and their respective agents and employees, each of the other, for damage caused by insured

perils to the extent covered by Builders Risk or other property insurance applicable to the work. The applicable property insurance policies shall provide automatic blanket provisions for such waivers.

**@@@If Contractor's means and methods include the use of any watercraft or in-water work, the Contractor must maintain the following coverages, when or if applicable:**

**I. @@@United States Longshore and Harborworkers (U.S.L.&H.) Act Workers Compensation Insurance (required if assessed by FAS)**

The Contractor must maintain insurance coverage in compliance with the statutory requirements of the U.S. Longshore and Harbor Workers' Compensation Act administered by the U.S. Department of Labor with a minimum limit of liability of \$\_\_\_\_\_.

**J. @@@Jones Act Insurance (required if assessed by FAS)**

If Contractor's means and methods, or the Contract requirements, include use of any divers or crews on watercraft (e.g., boat, barge, vessel) of any size, the Contractor must maintain, or cause to be maintained, evidence of insurance in compliance with the statutory requirements of the Merchant Marine Act of 1920 (the "Jones Act") with a minimum limit of liability of \$\_\_\_\_\_.

**K. @@@Marine General Liability (required if assessed by FAS)**

Marine General Liability covering bodily injury including wrongful death, third party property damage including loss of use thereof, premises/operations liability, products/completed operations, personal/advertising injury, contractual liability, stop gap or employer's liability (for monopolistic state projects), fire damage legal liability, action over indemnity, sudden and accidental pollution, amended exclusions for care, custody and control and watercraft liability to cover work related to this project. Coverage also to extend to cover stevedores legal liability, wharfinger's legal liability, terminal operator's liability and charterer's legal liability, when applicable. Coverage shall be on an occurrence basis and limits of liability shall not be less than \$\_\_\_\_\_ per occurrence and in the aggregate. The General Aggregate limit is to apply separately to each project.

With the following coverages:

1. **Hull and Machinery (H&M) Insurance:** Covering all watercraft used in performing work. Such coverage shall be written on the American Institute Hull Clauses (6/2/1977) form and shall include collision and tower's liability (if not provided under the P&I) coverage. Amount of coverage shall be equal to the fair market value of the vessel. Navigation warranties shall be sufficient to cover the work performed under this contract.
2. **Protection & Indemnity Insurance:** Covering all watercraft used in performing work. Such coverage shall be written on the American Institute Hull Clauses (6/2/1977) form and shall include collision and tower's liability (if not provided under the P&I) coverage. Amount of coverage shall be equal to the fair market value of the vessel. Navigation warranties shall be sufficient to cover the work performed under this contract.
3. **Vessel Pollution Insurance:** Covering all owned or operated watercraft used in performing work and/or services related to this project. Such coverage shall be written on the Water Quality Insurance Syndicate policy form, or equivalent, and shall include bodily injury. Limits of liability shall be in accordance with OPA90, but not less than \$\_\_\_\_\_ each occurrence. Vessel owner or operator shall also have Certificate of Financial Responsibility pursuant to OPA90, Coast Guard Regulations and State of California, as required. Any "as owner" or "other than owner" limitations of liability are to be deleted or amended not to apply to project owner. Navigation warranties shall be sufficient to cover the work performed under this contract.
4. **Cargo Insurance:** shall be carried for any cargo carried in conjunction with this project. Such coverage shall be placed on an "all risk" basis, including war risks, strikes, riots and civil commotion, debris removal. Goods insured are to be valued at cost, invoice plus 10%.



5. **Charterer's Legal Liability --Required if contractor is borrowing (time or voyage chartering) boats/vessels (and if not included in Marine General Liability above):** for any chartered, leased or borrowed watercraft used in performing work and/or services related to this project. Such coverage shall include but not be limited to third party bodily injury and property damage, including damage to the chartered, leased or borrowed watercraft and including damage to cargoes carried on said watercraft. Coverage to also include pollution liability.

#### **12.1 SECURITY OF INSURERS.**

Insurers shall be licensed to do business in the State of Washington and shall maintain not less than an A- VII A.M. Best's ratings unless coverage is procured as surplus lines under Revised Code of Washington (RCW) chapter 48.15 ("Unauthorized insurers").

#### **12.2 EVIDENCE OF INSURANCE**

##### ***(DOES NOT APPLY TO STATE OF WASHINGTON STATUTORY WORKERS' COMPENSATION)***

The Contractor must deliver to the Owner, as soon as practicable, certification of insurance meeting the requirements set forth herein. The certification of insurance must include the following:

1. An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.
2. A copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability and (if required) Pollution Liability insurance documenting that the City of Seattle is an additional insured for primary and non-contributory limits of liability and (if required) Products and Completed Operations Additional Insured; A statement of additional insured status on an ACORD or other form of certificate of insurance will not satisfy this requirement.
3. A copy of each policy's declarations page and schedule of forms and endorsements.
4. Any other policy language or endorsements that documents compliance with the requirements herein, including CA 99 48 and MCS-90 endorsements.
5. Should any insurance policy neither be issued nor delivered to the named insured Contractor at the time it delivers the signed Contract for the Work, the Contractor must deliver and maintain on file with the City binders of insurance evidencing compliance with the requirements herein. As soon as practicable after delivery of the policy(ies), the Contractor must deliver the certification specified in paragraphs 2., 3. and 4. above.

At any time upon the Owner's request, the Contractor must forward to the Owner a true and certified copy of any insurance policy(s).

#### **12.3 CHANGES IN INSURANCE REQUIREMENTS**

The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to the Contractor. Should the Contractor, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.

#### **12.4 GENERAL CONDITIONS (Not Applicable to Washington State Workers Compensation).**

1. Deductibles or Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City. The deductible and/or self-insured retention of the policies shall not limit or apply to Contractor's liability and shall be the sole responsibility of Contractor.
2. Cancellation. Coverage shall not be cancellable without at least thirty (30) days advance written notice of cancellation, except ten (10) days with respect to cancellation for non-payment of premium.
3. Waiver of Subrogation. CGL, Auto, and Employer's Liability insurance required to be maintained by UW hereunder shall contain a waiver of subrogation in favor of the City.

4. No Limitation of Liability. Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only. Nothing in the City's requirements for minimum insurance coverage shall be interpreted to limit or release liability of Contractor or any of Contractor's insurers. The City shall be an additional insured as required in paragraph 4. regarding the total limits of liability maintained, whether such limits are primary, excess, contingent or otherwise.

This paragraph 12 must survive the expiration or earlier termination of this Contract.

### **13. PREVAILING WAGES**

This Contract is subject to the prevailing wage requirements of Chapter 39.12 RCW (as amended). NO WORKER, LABORER OR MECHANIC EMPLOYED IN THE PERFORMANCE OF ANY PART OF THIS CONTRACT MUST BE PAID LESS THAN THE PREVAILING RATE OF WAGE as determined by the Industrial Statistician of the Department of Labor and Industries for the State of Washington. **The schedule of prevailing wage rates for the Contract is made a part of this Contract for @@COUNTYNAME County and as set forth by the Department of Labor and Industries and the effect date must be the date the Agreement Form is fully executed.** Prior to making any payment under this Contract, the Owner must receive an approved copy of the "Statement of Intent to Pay Prevailing Wages on Public Works Contracts" from the Department of Labor & Industries.

It is the Contractor's responsibility to obtain and file the "Statement of Intent to Pay Prevailing Wage". The Contractor must be responsible for all filing fees. Each invoice must include a signed statement that prevailing wages have been paid by the Contractor and all subcontractors. Following the final acceptance of services rendered, the Contractor must submit an "Affidavit of Wages Paid" to PC.

#### **13.1 PAYROLL REPORTS**

Payroll reports for the Contractor, every Subcontractor, and all other individuals or firms required to pay prevailing wages for Work performed must be submitted weekly via an on-line reporting portal <http://www.LCPtracker.net>. The Contractor must be responsible for approving electronically the payrolls submitted by all Subcontractors. Payroll reports must be in accordance with Section 1-07.9(1) of the City of Seattle Standard Specifications for Road, Bridge and Municipal Construction (current edition).

### **14. CONTRACT DOCUMENTS AND MODIFICATION**

This Contract, together with the Attachments and **the City of Seattle Standard Plans and Specifications for Road, Bridge and Municipal Construction (current edition)**, applicable standards and codes represents the entire and integrated Contract between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument properly signed by both parties hereto.

### **15. LIQUIDATED DAMAGES**

Liquidated Damages does not apply to Emergency Work.

### **16. PAYMENT AND PERFORMANCE BOND**

The successful Firm must provide an original, executed Payment & Performance Bond for the awarded Contract Price. If a Payment and Performance bond applies, it must:

1. Be on a form provided by the Owner;
2. Be signed by an approved Surety (or Sureties) that:
  - a. Is registered with the Washington State Insurance Commissioner,
  - b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;

- c. Has a current rating of at least A-VII in A.M. Best's Key Rating Guide or is included in the U.S. Department of the Treasury's Listing of Approved Sureties (Circular 570).
3. The Owner may require the Surety (or Sureties) named on the Payment and Performance Bond to appear and qualify itself whenever the Owner deems the Surety (or Sureties) to be inadequate. In such case, the Owner may require upon written demand that the Contractor furnish additional Surety to cover any remaining emergency Work. Until the added Surety is furnished, payment on the Contract will stop.

## 17. RETAINAGE

- A. Pursuant to Chapter 60.28 RCW there will be reserved and retained from monies earned by the Contractor on progress estimates during the progress of the Work, a sum equal to five percent (5%) of the monies earned by the Contractor. Such retainage must be used as a trust fund for the protection and payment of:
  1. Claims by the State with respect to taxes imposed pursuant to Title 82 RCW that may be due from such Contractor; and
  2. The claims of any person or persons, mechanic, Subcontractor or Materialperson who must perform any labor under such Contract or the doing of said Work, and all persons who must supply such person or persons or Subcontractors with provisions or Supplies for carrying on such Work.
- B. Monies reserved under provisions of Chapter 60.28 RCW must, at the option of the Contractor, be:
  1. Retained in a non-interest bearing fund by the Owner; or
  2. Deposited by the Owner in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by the Owner under the provisions of a public improvement contract must be paid to the Contractor; or
  3. Placed in escrow with a bank or trust company by the Owner. When the monies reserved are to be placed in escrow the Owner will issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check must be converted into bonds and securities chosen by the Contractor and approved by the Owner and the bonds and securities held in escrow. Interest on the bonds and securities may be paid to the Contractor as the interest accrues.
  4. Contractor may opt to submit a bond in lieu of retained funds.
- C. Retainage will not be reduced for any reason below the minimum limit provided by law.
- D. The Contractor must designate the option desired on the Agreement Form at the time the Contractor executes the Contract with the Owner. The option selected must be considered part of the Contract. If the Contractor chooses option 2 or 3 in Section A of the Agreement form or the 10% retainage option in Section B, the Contractor must assume full responsibility to pay all costs that may accrue from escrow services, brokerage charges or both, and further assumes all risks in connection with the investment of the retained percentages in securities.
- E. Release of retained percentage will be made 60 days following the Completion Date pursuant to the provisions of Chapters 39.12 RCW, 39.76 RCW, and 60.28 RCW provided the following conditions are met:
  1. On Contracts totaling more than \$35,000.00 (excluding tax), a release has been obtained from the Washington State Department of Revenue (RCW 60.28.051).
  2. No claims, as provided by law, have been filed against the retained percentage (RCW 60.28.021).
  3. Affidavit of Wages Paid is on file with PC for the Contractor, each Subcontractor regardless of tier, and for any other individual or firm covered under Chapter 39.12 RCW.

4. In the event one or more claims are filed, the Contractor will be paid such retained percentage less an amount sufficient to pay such claims together with a sum determined by the Engineer sufficient to pay the cost of foreclosing on claims and to cover attorney's fees.

## **18. SUBCONTRACTOR**

### **18.1 SUBCONTRACTOR RESPONSIBILITY**

Work must not be subcontracted, regardless of tier, without written consent of the Engineer. Each first-tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification must include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in items (1) through (4) above on Page 1 and possess an electrical Contractor license, if required by Chapter 19.28 RCW, or an elevator Contractor license, if required by Chapter 70.87 RCW.

### **18.2 SUBCONTRACTOR INSURANCE**

Contractor must contractually require that each subcontractor of every tier maintain at a minimum the insurance coverages specified in paragraph 12 above, as applicable to their scope of Work for a value commensurate with their subcontract value, and include the City of Seattle as an additional insured for primary and non-contributory limits of liability.

### **18.3 SUBCONTRACTOR PAYMENT REPORTING REQUIREMENTS**

The Contractor must submit Subcontractor Payment Reports electronically through B2Gnow at: <https://seattle.diversitycompliance.com/>

- a. The first Subcontractor Payment Report must be submitted no later than the 15th of the first month after the date specified in the Notice to Proceed.
- b. Subsequent monthly Subcontractor Payment Reports must be submitted by the 15th day of every month thereafter. When no work is performed during a reporting period, the Contractor must submit monthly report(s) indicating that no work was performed.
- c. The last Subcontractor Payment Report must be marked as "Final" and must be submitted no later than 30 Days after the Physical Completion Date. The final report must list the name of and dollar amount paid to each Subcontractor and Supplier utilized by the Contractor. The Owner will not establish the Completion Date until the completed final Subcontractor Payment Report Form has been received.
- d. A sample of the form may be included in the Appendix section of the Project Manual but this form is submitted through an online reporting website listed above.
- e. The Contractor must require each Subcontractor and Supplier to register on the City's Business Registration website, if not currently registered (this is a one-time registration process for each Subcontractor and Supplier): <http://www2.ci.seattle.wa.us/VendorRegistration/> . Contractors may use this website to look up whether the Subcontractors or Suppliers are registered or not. The Subcontractors and Suppliers must register themselves.

### **18.4 SUBCONTRACTOR COMMUNICATIONS**

The Contractor may not impede, restrict, or prohibit subcontractors, suppliers, and vendors from communicating directly with the Engineer for any of the following reasons:

- a. Responding to City-initiated communications
- b. Inquiring, seeking assistance on, or reporting a violation of Acceptable Work Site provisions of 1-07.11(4)A
- c. Inquiring or seeking assistance on weekly payroll issues involving LPCTracker per 1-07.9(2)
- d. Inquiring or seeking assistance on issues related to equal opportunity, non-discrimination, Affirmative Efforts and Apprenticeship provisions of 1-07.11, 1-07.11(3), 1-07.11(4), 1-07.11(6)B and 1-07.11(6)E

- e. Inquiring or seeking assistance related to progress payments and prompt pay requirements per 1-09.11(2); or
- f. Inquiring or seeking assistance related to Subcontractor retainage per 1-09.11(4)A.

The Owner is not obligated to respond to any direct communication from a Subcontractor, Vendor or Supplier allowed by this Section, and this Section does not create a contractual relationship between the Owner and any Subcontractor, Vendor or Supplier, or bestow the status of a third-party beneficiary on any of those entities for any purpose. This Section does not alter or waive any notice requirement under the Contract or otherwise.

## **19. COMPLETION**

The Contractor must perform all the obligations under the Contract before the Completion Date can be established. A Certificate of Completion for the Emergency Work issued by the Owner will establish the Completion Date and certify the Emergency Work as complete. The following must occur before the Completion Date can be established, and the final Contract price calculated:

1. The physical Emergency Work on the Project site must be complete; and
2. The Contractor must furnish all documentation required by the Contract or required by law, necessary to allow the Owner to certify the Contract as complete.
3. The Contractor must submit the final Subcontractor Payment Report Form online in accordance with section 18.

The issuance of a Certificate of Completion will not constitute acceptance of unauthorized Emergency Work or defective Emergency Work or Material.

The Contractor agrees that establishment of the Completion Date must not relieve the Contractor of the responsibility to indemnify, defend, and protect the Owner against any claim of loss resulting from the failure of the Contractor, a Subcontractor of any tier, or any other person who provides labor, Supplies, or provisions for carrying out the Emergency Work or for any payments required for unemployment compensation under Title 50 RCW or for industrial insurance and medical aid required under Title 51 RCW.

Failure of the Contractor to perform any or all of the Contractor's obligations under the Contract must not bar the Owner from unilaterally certifying the Contract complete so the Engineer may calculate a Final Contract Price.

## **20. GENERAL PROVISIONS**

- A. **Governing Law; Forum.** The Agreement will be governed by the laws of Washington. The Contractor irrevocably consents to the exclusive personal jurisdiction and venue of the Superior Court of King County, Washington, with respect to any dispute arising out of or in connection with the Agreement and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned court.
- B. **Severability.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Owner and the Contractor agree to replace any invalid or unenforceable provision with a valid and enforceable provision that most closely approximates the intent and effect of the invalid or unenforceable provision.
- C. **Non-waiver.** Any failure by the Owner to enforce strict performance of any provision of the Agreement will not constitute a waiver of the Owner's right to subsequently enforce such provision or any other provision of the Agreement.
- D. **No Assignment.** Neither the Agreement nor any of the rights or obligations of the Contractor arising under the Agreement may be assigned without the Owner's prior written consent. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.

- E. Notices. All notices and other communications under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address set forth in the Emergency Pricing Request Form.

**SECTION 3: AGREEMENT**

This agreement by and between the Director of Finance and Administrative Services, acting on behalf of The City of Seattle, a municipal corporation of the State of Washington, hereinafter referred to as the Owner, and \_\_\_\_\_, hereinafter referred to as the Contractor, witnessed that in accordance with the terms and conditions of Contract **PW#** \_\_\_\_\_ awarded the \_\_\_\_\_ day of \_\_\_\_\_, 2023 the parties agree as follows:

SECTION 1. That the Contractor shall do or cause to be done all Work and shall furnish or cause to be furnished all tools, Materials, Equipment, Supplies and labor necessary to perform the emergency work described in this contract, in accordance with, and as described in the Contract now on file in the office of the Engineer Based on the request from the Department, the Scope of Work listed in Section 1 and the Terms and Conditions listed in Section 2 is summarized as follows:

**LUMP SUM [NOT TO EXCEED]**

<b>Lump Sum Amount</b>	
<b>INCLUDE TRENCH SAFETY SYSTEMS IF REQUIRED BY RCW 39.04.180, OTHERWISE MARK NA</b>	
Trench Safety Systems	
Applicable State Sales Tax ([XX] %)	
Total Amount Including Tax	

**UNIT PRICE SUMMARY**

<b>Base Quote</b>	
Applicable State Sales Tax ([XX] %)	
Total Amount Including Tax	

The Contractor shall provide and bear the expense of all Equipment, Material, Supplies, work, and labor of any sort whatsoever that may be required for the transfer of Materials and for constructing and completing the Work provided for in this Contract and every part thereof, except such as are mentioned in the Contract furnished by the Owner.

SECTION 2. The parties shall be bound by the Constitution and Laws of the State of Washington and the Charter, Ordinances, Rules and Regulations of the City of Seattle and by all applicable federal laws and government regulations, which provisions are incorporated by reference herein.

For the convenience of the parties of this Contract it is mutually agreed that any claims or causes of action which the Contractor has against the Owner arising from this Contract shall be brought within 180 calendar days from the Completion Date of the Contract. It is further agreed by the parties that any such claims, disputes, or causes of action which cannot be resolved pursuant to the procedures set forth in the Contract Documents shall be brought only in the Superior Court of King County. The parties understand and agree that the Contractor's failure to bring suit within the time period provided shall be a complete bar to any such claims or causes of action.

SECTION 3. The Contractor shall begin the Work of the Contract on the Notice to Proceed Date stated in the Notice to Proceed issued to said Contractor by the Engineer, and to carry said Work on regularly and without interruption thereafter (unless the Engineer shall otherwise, in writing, specifically direct) with such forces as to complete said Work in a manner acceptable to the Engineer in Section 2, Paragraph 3 of the Contract, after such notice to begin Work; the time of beginning, rate of progress, and time of completion being essential and material provisions of the Contract.

SECTION 4. RESERVED

SECTION 5. The Owner agrees to employ the Contractor to complete the Work in accordance with the Contract and agrees to pay for the same according to the schedule of Bid item prices listed in the Bid Form, at the time and in the manner and upon the conditions provided for in the Contract.

The Contractor shall inform all Subcontractors who work on the Improvement named in Section 1 of this Agreement of the manner and method of payment and the manner and method of measuring or computing the quantities of subcontracted work.

SECTION 6. In accordance with Chapter 39.12 RCW, the City Charter, and this contract, the Contractor shall pay, or cause to be paid to persons employed on or in connection with this Work, not less than the prevailing rate of wage for an hour's work specified for the labor performed.

SECTION 7. The Contractor on behalf of his or her heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants to which the Contractor is obligated under the terms of the Contract.

SECTION 8. It is further provided that no liability shall attach to the Owner by reason of entering into this Contract except as expressly provided herein.

SECTION 9. If the Contractor violates any material covenant or provision of this Contract the Owner may: withhold payment due on any work done under the Contract until the Contractor complies with the Contract; order that the Work be stopped, terminate the Contract, debar the Contractor in accordance with SMC 20.70.

**[IF CONSENT DECREE APPLIES, INCLUDE SECTION 10 PARAGRAPH BELOW:]**

SECTION 10. The Contractor shall acknowledge that the Contractor has received and read the Consent Decree in United States of America and The State of Washington vs. The City of Seattle, Washington and agrees that all Work in the Contract shall be performed in conformity with the terms of the Consent Decree.

In witness whereof, the parties have executed this Agreement and it must become effective upon execution by the Owner.

Contractor must declare option for management of statutory retained percentage of this Contract by checking applicable boxes below.

- Contractor elects to submit a bond in lieu of retained funds.
- Contractor hereby elects to have the retained percentage (5%) of this Contract held in a non-interest bearing fund by The City of Seattle until sixty (60) days following the Completion Date.
- Contractor hereby elects to have The City of Seattle invest the retained percentage of the Contract from time to time as such retained percentage accrues and in accordance with RCW 60.28.011, .021 and .051. CONTRACTOR hereby designates:

\_\_\_\_\_  
Name of Financial Institution

\_\_\_\_\_  
Address including City, State and Zip Code

as the repository for the escrow of said funds. Contractor hereby further agrees to be fully responsible for payment of all costs or fees incurred as a result of placing said retained percentage in escrow and investing it as authorized by statute. The City of Seattle must not be liable in any way for any cost or fees in connection therewith.



**CONTRACTOR:** @@@Contractor Name Here

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF SEATTLE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

FAS Purchasing and Contracting Director