

Set No. \_\_\_\_\_

**REQUEST FOR PROPOSALS**

**JOB ORDER CONTRACTING FOR  
GENERAL CONSTRUCTION SERVICES**

**VOLUME II: TERMS AND CONDITIONS**

**Contract No. 11-18-PW**



**City of Kirkland  
Department of Public Works  
123 Fifth Avenue  
Kirkland, Washington 98033**

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**CITY OF KIRKLAND  
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**1.1 Initiation of a Work Order.**

- A. As the need exists, the Owner will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- B. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
  - 1) The general scope of the work;
  - 2) Alternatives for performing the work and value engineering;
  - 3) Access to the site and protocol for admission;
  - 4) Hours of operation;
  - 5) Staging area;
  - 6) Requirements for catalog cuts, technical data, samples and shop drawings;
  - 7) Requirements for professional services, sketches, drawings, and specifications;
  - 8) Construction duration;
  - 9) Liquidated damages;
  - 10) The presence of hazardous materials;
  - 11) Traffic control;
  - 12) Date on which the Work Order Proposal is due.
- C. Upon completion of the joint scoping process, the Owner will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Owner will issue a Request for Work Order Proposal that will require the Contractor to prepare a Work Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Work Order Proposal and the Owner will evaluate the same. The Contractor cannot refuse to perform any task or any work in connection with a particular Project.
- D. The Owner may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if the Contractor and the Owner cannot agree



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on the quantities required, or for any other reason as determined by the Owner. In all such cases, the Owner shall issue a Supplemental Work Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.

**1.2 Preparation of the Work Order Proposal.**

- A. The Contractor's Work Order Proposal shall include, at a minimum:
  - 1) Work Order Price Proposal;
  - 2) Required drawings or sketches;
  - 3) List of anticipated Subcontractors and Suppliers;
  - 4) Construction schedule;
  - 5) Other requested documents.
- B. The Work Order Price shall be the value of the approved Work Order Price Proposal.
- C. The value of the Work Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (unit price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- D. The Contractor will prepare Price Proposals in accordance with the following:
  - 1) **Pre-priced Task:** An item of work included in the Construction Task Catalog® for which a Unit Price is given.
  - 2) **Non Pre-priced Task:** A task that is not set forth in the Construction Task Catalog®. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
    - a). Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
    - b) If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. If three quotes or bids cannot be obtained, the Contractor will provide



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the reason in writing for the Owner's approval. If approved, less than three quotes or bids will be allowed.

- c) The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

**For Non Pre-priced Tasks Performed with Contractor's Own Forces:**

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

**Total for a Non Pre-priced Tasks performed with Contractor's Own Forces = (A+B+C) x Non Pre-Priced Task Adjustment Factor**

**For Non Pre-priced Tasks Performed by Subcontractors:**

If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

**Total Cost for Non Pre-priced Tasks performed by Subcontractors = D x Non Pre-Priced Task Adjustment Factor**

- 1) After a Non Pre-priced Task has been approved by the Owner, the Unit Price for such task will be established, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.
  - 2) The Owner's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.
- E. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Price Proposal is less than the cost of the actual labor and material to perform such task, the Owner may permit the Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred. Provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
- F. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for



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filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up.

- G. The Contractor's Work Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Work Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Work Order Proposal will depend on the complexity and urgency of the Work Order but should average between seven and fourteen days. On complex Work Orders, such as Work Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- H. In emergency situations and minor maintenance and repair Work Orders requiring immediate completion, the Work Order Proposal may be required quickly and the due date will be so indicated on the Request for Work Order Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.
- I. By submitting a Work Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Owner.
- J. If the Contractor requires clarifications or additional information regarding the scope of work in order to prepare the Work Order Proposal, the request must be submitted so that the submittal of the Work Order Proposal is not delayed.

**1.3 Review of the Work Order Proposal and Issuance of the Work Order**

- A. The Owner will evaluate the entire Price Proposal and compare these with the Owner's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- B. The Contractor may choose the means and methods of construction; subject however, to the Owner's right to reject any means and methods proposed by the Contractor that:
  - 1) Will constitute or create a hazard to the work, or to persons or property; or
  - 2) Will not produce finished Work in accordance with the terms of the Contract; or
  - 3) Unnecessarily increases the price of the Work Order when alternative means and methods are available.





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- C. The Owner reserves the right to reject a Work Order Proposal or cancel a Project for any reason. The Owner also reserves the right not to issue a Work Order if it is determined to be in the best interests of the Owner. The Owner may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Work Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Work Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Work Order Proposal with the Owner.
- D. By submitting a Work Order Proposal to the Owner, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Work Order Price Proposal prior to delivering it to the Owner.
- E. Each Work Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Work Order Price and the Work Order Completion Time. All clauses of this Contract shall be applicable to each Work Order. The Work Order, signed by the Owner and delivered to the Contractor constitutes the Owner's acceptance of the Contractor's Work Order Proposal. A signed copy of the Work Order will be provided to the Contractor.

**1.6 Immediate Response**

- A. In situations requiring an immediate response, the Contractor may be directed to begin work immediately with the Price Proposal to follow. Immediate response situations will require the Contractor to mobilize construction operations quickly often times in less than 24 hours. For immediate response situations, the Contractor and the Owner will record the Work completed as it is performed. Once the Work is completed, the Owner will issue a Request for Work Order Proposal to the Contractor. The Contractor shall prepare a Price Proposal in accordance with the JOC Supplemental Conditions. To compensate the Contractor for the immediate response, the Owner will add to the Contractor's Price Proposal the increases listed in the table below.

<b><u>Work Order Price</u></b>	<b><u>Increase</u></b>
\$1.00 to \$15,000.00	\$1,000
\$15,000.01 to \$25,000	10%
\$25,000.01 to \$50,000.00	8% or \$2,500
\$50,000.01 to \$100,000.00	6% or \$4,000
\$100,000.01 to \$250,000.00	4% or \$6,000
>\$250,000.01	2% or \$10,000

- B. When calculating the increase to the Work Order Amount according to the table above, the Owner shall apply whichever number results in the higher dollar amount.



### **1.7 Contract Modifications**

With approval by the Owner and the Contractor, changes to the Contract may be accomplished after execution of the Contract and without invalidating the JOC Contract.

### **1.8 Changes in the Work**

- A. The Owner, without invalidating the Work Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Work Order.
- B. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Price Proposal.

### **1.9 Computer Requirements**

Computer Requirements. The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor and an internet connection. The Contractor shall maintain individual email accounts for each of its project managers. The cost of all computer requirements is deemed to be part of the Contractor's Adjustment Factors.

### **1.10 Adjustment to the Adjustment Factors (Contract Adjustment)**

- A. Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the contract award date to account for changes in construction costs, provided, the Contractor requests in writing, approximately fourteen to thirty days prior to the anniversary of contract award date, that the Adjustment Factors be updated. Such request shall be delivered to the Owner and to the Consultant/Gordian. In the event the Contractor fails to deliver the request timely, then the Owner shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by the Owner. Thereafter, the Contractor's Adjustment Factors will be adjusted according to the following:
- B. The Contractor's Normal Working Hours and Other than Normal Working Hours Adjustment Factors will be adjusted according to the following:
  - 1) A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for Seattle, WA published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. April bid date, Base Year Index is April of the prior year to March of the bid date year).
  - 2) A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for Seattle, WA published in the



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Engineering News Record (ENR) for the 12 months beginning with the month of anniversary of the bid due date (e.g. April bid date, Current Year Index is April of the prior year to March of the current year).

- 3) The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
  - 4) The Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the Contractor's new Adjustment Factors effective for the next 12 months.
  - 5) Averages shall be obtained by summing the 12 month indices and dividing by 12.
  - 6) All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
    - 7) The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
    - 8) The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- C. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- D. Under all circumstances, should the Contractor submit a Work Order Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the Work Order Price submitted in the Work Order Proposal.
- E. The Contractor cannot delay submission of the Work Order Proposal past the due date to take advantage of a scheduled update of the Adjustment Factors. In that event, the Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- F. **The Adjustment Factor for Non Pre-priced Tasks will remain constant for the duration of the Contract.**

### **1.11 Job Order Contracting System License**

The Owner selected The Gordian Group's (Gordian) Job Order Contracting (JOC) System for their JOC program. The Gordian JOC Solution includes Gordian's proprietary eGordian® JOC Applications and Construction Task Catalog®, which shall be used by the Contractor to prepare and submit Job Order Proposals, subcontractor lists, and other requirements specified by



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the Owner. **The Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution.**

**1.12 Cooperative Purchasing**

- A. RCW 39.34 allows cooperative purchasing between public agencies (political subdivisions) in the State of Washington. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement with the City of Kirkland may purchase from City of Kirkland contracts, provided that the supplier agrees to participate. The City of Kirkland does not accept any responsibility for purchase orders issued by other public agencies. Agencies using this contract must agree to pay Gordian's fee directly. **If the Contract is utilized by Entities, the Contractor agrees to pay Gordian the 1% JOC System License Fee.**
- B. The Contractor shall, within two (2) business days of receipt of a Purchase Order from an Entity, provide notification to the Owner and Gordian of each Purchase Order by forwarding a copy of the Purchase Order via email to PO@ezIQC.com or via facsimile to (864) 233-9100.
- C. The Contractor shall, within two (2) business days of sending an invoice to an Entity, provide notification to the Owner and Gordian of each invoice by forwarding a copy of the invoice via email to Invoice@ezIQC.com or via facsimile to (864) 233-9100.
- D. The Owner and Gordian may request records from the Contractor for all cooperative purchasing through this Contract and payment of all JOC System License Fees. The Contractor hereby agrees and authorizes Owner and/or Entity to provide a copy of each Purchase Order issued to Gordian. If discrepancies exist between cooperative purchasing activity and License Fees paid, the Owner or Gordian will provide written notification to the Contractor of discrepancies and allow the Contractor ten (10) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of the Owner and/or Gordian, the Owner and/or Gordian reserve the right to engage a third party to conduct an independent audit of the Contractor's records and, in the event Contractor is not in compliance with this Contract, Contractor shall reimburse the appropriate party for the cost and expense related to such audit.

**1.13 Order of Precedence of Contract Documents.**

- A. In the event of conflicting provisions within the Work Order Contract, the following order of precedence with item "1)" representing the highest precedence, for resolution of the conflict shall apply:



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- 1) Addenda (later takes precedence over earlier)
- 2) Agreement
- 3) Volume II, Section 1 – JOC Supplemental Conditions
- 4) Work Order Related Documents including drawings or Specifications
- 5) Volume II, Section 3 – WSDOT Standard Specifications and Amendments
- 6) Volume II, Section 2 – Terms and Conditions
- 7) Volume I – Contract Summary, Instructions for Proposers, and Proposal Forms
- 8) Volume III – Construction Task Catalog®
- 9) Volume IV – Technical Specifications

**1.14 Payments.**

- A. The Owner will make one payment for all Work Orders that have a Work Order Completion Time of 45 days or less, or a Work Order Price of \$25,000 or less. For all other Work Orders, the Owner may make partial, monthly payments based on a percentage of the work completed.
- B. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Owner concerning the percentage complete of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted.
- C. Per RCW 39.10.450, for purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Work Order issued shall be treated as a separate contract. Therefore, retainage in the amount of 5% will be held for 60 days following completion of each Work Order. The Contractor will be required to pay the prevailing wage and file intents and affidavits with Labor & Industries.



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SECTION 2: TERMS AND CONDITIONS**

**1.1. Abbreviations**

- A. Whenever, in the Contract Documents, or elsewhere in the Request for Proposal, the following abbreviations, are used, the meaning will be the full term, as follows, which meaning shall be applicable to both the singular and plural forms thereof:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway & Transportation Officials
ACI	American Concrete Institute
ADA	American Disabilities Act
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISE	Association of Iron and Steel Engineers
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration & Air Conditioning Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
AGC	Associated General Contractors of America
CPM	Critical Path Method of Project Scheduling
CRSI	Concrete Reinforcing Steel Institute
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronic Engineers
NBFU	National Board of Fire Underwriters
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NFPA	National Fire Protection Association
NIOSH	National Institute of Occupational Safety and Health
OFCCP	Office of Federal Contract Compliance Programs
OSHA	Occupational Safety and Health Act
OSHRC	Occupational Safety and Health Act Review Commission
PCA	Cityland Cement Association
PSCAA	Puget Sound Clean Air Agency
SAE	Society of Automotive Engineers
SMACNA	Sheet Metal & Air Conditioning Contractors' National Association, Inc.



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UBC	Uniform Building Code
UL	Underwriters' Laboratory
WISHA	Washington Industrial Safety & Health Act
WSDOT	Washington State Department of Transportation

### 1.2. DEFINITIONS

Whenever in the Contract Documents, or elsewhere in the Project Manual, the following words and defined terms are used, the meaning will be as follows, which meaning shall be applicable to both the singular and plural forms thereof:

- A. **Addendum:** A written or graphic document issued by the City prior to the opening of the bids that clarifies, corrects, or changes a document contained or referenced within the Contract Documents. Addenda will be distributed to "plan holders of record."
- B. **Agreement Form:** The written form executed by the City and the Contractor that binds the Contractor to perform the Work in accordance with the Contract Documents
- C. **Award:** Effective date the Agreement Form is executed by the City of Kirkland, and the start of Contract Time.
- D. **Beneficial Occupancy Date (BOD):** Beneficial Occupancy Date is established when the Owner or the Owner's tenant takes permanent possession of a portion of the Work and it is sufficiently complete to allow full, unrestricted and permanent use of the facility from an operational and safety standpoint, leaving only minor, incidental
- E. **Change Order:** A written document issued by the City of Kirkland on or after the date of the execution of the Agreement Form that authorizes a change to the Contract Documents.
- F. **Claim:** A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" includes Requests for Equitable Adjustment (until executed by agreed Change Order), disputes, changed conditions, and other matters in question between the City and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- G. **Construction Inspector:** City's Representative during actual construction or implementation of a Work Order if not the Project Manager.
- H. **Contract:** The Contract governs the relationship between the City and the Contractor concerning the Work. The Contract Documents Form the Contract.
- I. **Contract Documents:** The Contract Documents consist of the executed Agreement Form; Volume I – Contract Summary, Instructions for Proposers, and Proposal Forms; Volume II – Terms and Conditions; Volume III – The construction Task Catalog®; Volume IV – Technical Specifications, Addenda; All Work Order related documents including, but not limited to the Request for Work Order Proposals, the Contractor's submitted Work Order Proposals, Work Order Price Proposals; Standard Provisions, Special Provisions, form of bond, insurance certificates and any other form that may be requested in the Supplementary Conditions or listed in the Agreement Form as being part of the Contract Documents.



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- J. **Contractor:** The Contractor is the individual, partnership, firm, corporation, joint venture, or other business entity with whom the City of Kirkland has entered into this Contract, and who is referred to in Contract Documents as the Contractor. The term Contractor means and includes the Contractor and all of its representatives.
- K. **Day:** The term day shall mean a calendar day unless otherwise specifically designated.
- L. **Detailed Scope of Work:** a document setting forth the work the Contractor is obligated to complete for a particular Work Order. All references to "Contract Plans" shall be substituted with "Detailed Scope of Work." The Detailed Scope of Work can include the City of Kirkland Special Provisions required for each Work Order.
- M. **Department Contract Admin:** The City staff that processes all documentation for Work Order payment. Each department determines who that staff will be for each Work Order.
- N. **Drawings:** The graphic presentation of the Work, or parts thereof, which indicates the size, form, location, and arrangement of the various elements of the Work.
- O. **The Gordian Group, Inc.:** the Work Order Contract Consultant hired by the City.
- P. **Inspector:** The Engineer's authorized representative assigned to make inspections of the Contractor's performance of the Work.
- Q. **Notice to Proceed:** the written notice issued by the City to Contractor authorizing Contractor to proceed with each Work Order and specifying the first day charged to the Work Order.
- R. **Notice of Intent to Award:** The official notice from the City that it has accepted the contractor's bid and that it intends to award the Contract to the selected responsible bidder.
- S. **Notice to Proceed (NTP):** Notice To Proceed (NTP) is formal notification issued by the City of Kirkland, indicating that the Contractor can begin work under this Contract.
- T. **Notice of Completion of a Public Works Contract:** Notice of Completion of a Public Works Contract will be issued when all the Work is complete, with the exception of claims previously made in writing and identified by the Contractor, a Subcontractor or Supplier as unsettled at the time of application for final payment.
- U. **Pre-Final Inspection:** Pre-Final Inspection is the activity that occurs prior to Final Inspection per Work Order. The Contractor will prepare a punch list prior to requesting a Pre-Final Inspection by the City. Punch list items shall be limited to administrative requirements of the contract (i.e., Final Project Record Documents), training, landscaping, and minor deficiencies in the Work requiring correction. A Pre-final Inspection shall not be requested or granted if the Work is incomplete.
- V. **Product Data:** The illustrations, standard schedules, performance charts, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.
- W. **Project Manager:** the City's Representative for each Work Order. Main point of contact for the City, unless delegated to other City staff.
- X. **Provide:** The all-inclusive actions required to furnish, install, connect, adjust, test and make ready for use or occupancy.





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- Y. **Samples:** Physical examples of materials, equipment or workmanship establishing standards by which the Work will be judged.
- Z. **Software:** Any computer program, computer database or documentation related thereto for which any party claims protection under patent, copyright, trade secret or other proprietary or intellectual property right.
- AA. **Subcontractor:** A Subcontractor is a business entity that has a direct contract with the Contractor to perform a portion of the Work. The term "Subcontractor" means and includes the Subcontractor and its authorized representatives.
- BB. **Substantial Completion:** Substantial Completion is the stage in the progress of the Work Order when the Work is complete and in accordance with the Contract Documents, with the exception of items required for issuance of the Notice of Completion. The date of Substantial Completion is the end of Work Order Completion Time, and the start of the warranty period.
- CC. **Supplier:** A Vendor, Supplier, Distributor, or Materialman that supplies material or equipment used in the performance of the Contract.
- DD. **Surety:** A company that is bound with the Contractor to ensure the performance of the Contract, payment of all obligations pertaining to the Work, and fulfillment of such other conditions as are specified in the Contract, Contract bond, or otherwise required by law.
- EE. **Work:** All materials, labor and use of tools, equipment and services necessary by the Contractor and/or Subcontractor to complete the Work Order.
- FF. **Working Drawings:** Shop drawings, erection plans, false work plans, framework plans, cofferdam plans, stress diagrams, bending diagrams for reinforcing steel, or other diagrams, plans, or data used to illustrate some portion of the Work that the Contractor is required to submit to the Engineer.

### **1.3. JOC Specific Definitions**

- A. **Adjustment Factor** – A competitively bid adjustment to be applied to the unit prices listed in the Construction Task Catalog<sup>®</sup>. Also known as a “coefficient.”
- B. **Award Criteria Figure** - The amount determined in the Part II of the Bid Proposal contained in Section 7, which is used for the purposes of determining the proposer with the lowest proposed price.
- C. **Base Term** - The initial period of the Contract and does not include any Option Terms.
- D. **Construction Task Catalog<sup>®</sup>** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price. Also known as a “unit Price Book.”
- E. **Detailed Scope of Work** – A document setting forth the work the Contractor is obligated to complete for a particular Work Order.
- F. **Estimated Value** – An estimate of the value of Work Orders that could be issued to the Contractor during a term of the Contract.
- G. **Work Order** – A written order issued by the Owner, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Work



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Order Completion Time for the Work Order Price. A project may consist of one or more Work Orders.

- H. **Work Order Completion Time** – The time within which the Contractor must complete the Detailed Scope of Work.
- I. **Work Order Price** – The amount a Contractor will be paid for completing a Work Order.
- J. **Joint Scope Meeting** – A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- K. **Maximum Contract Value** - The maximum value of Work Orders that the Contractor may receive under this Contract.
- L. **Minimum Contract Value** – The minimum value of Work Orders that the Contractor is guaranteed the opportunity to perform under this Contract.
- M. **Non Pre-priced Task** – An item of work required by the Detailed Scope of Work but not included in the Construction Task Catalog®.
- N. **Normal Working Hours** – Includes the hours from 7:00 a.m. to 6:00 p.m. Monday through Friday, except for Owner holidays.
- O. **Option Term** - An additional period of time beyond the Contract Term which extends the termination date of the Contract.
- P. **Other than Normal Working Hours** – Includes the hours of 6:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and Owner Holidays and when the City can only provide access to the Work Order site for less than 7 hours at any one time.
- Q. **Pre-priced Task** – An item of work included in the Construction Task Catalog® for which a Unit Price is given.
- R. **Project** – The collective improvements to be constructed by the Contractor pursuant to a Work Order, or a series of related Work Orders.
- S. **Request for Work Order Proposal** – A written request to the Contractor to prepare a Work Order Proposal for the Detailed Scope of Work referenced therein.
- T. **Supplemental Work Order** - A Work Order issued to add or delete Work from an existing, related Work Order.
- U. **Technical Specifications** – Contains the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- V. **Unit Price** - The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.
- W. **Work** - All materials, labor and use of tools, equipment and services necessary by the Contractor and/or Subcontractor to complete the Work Order.
- X. **Work Order** – A written order issued by the Owner, such as a Purchase Order, requiring the Contractor to complete the Detailed Scope of Work within the Work



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Order Completion Time for the Work Order Price. A Project may consist of one or more Work Orders.

- Y. **Work Order Completion Time** – The time within which the Contractor must complete the Detailed Scope of Work.
- Z. **Work Order Price** – The amount a Contractor will be paid for completing a Work Order.
- AA. **Work Order Price Proposal** - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- BB. **Work Order Proposal** - A set of documents including at least: (a) Work Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors; (d) Construction schedule; and (e) other requested documents.

### **1.4. Error, Inconsistency, Omission or Variance In the Contract Documents**

- A. The Contractor shall carefully study and compare the Contract Documents and shall at once report to the City any error, inconsistency, omission, or variance from applicable laws, statutes, codes, ordinances, or regulations which is discovered. The Contractor shall promptly report such discovery prior to commencement of any portion of the Work affected by any such error, inconsistency, omission, or variance. The Contractor shall not be liable to the City for damage resulting from such error, inconsistency, omission, or variance, but shall make all reasonable efforts to mitigate any impact resulting from such error, inconsistency, omission or variance. If the Contractor proceeds with the work and fails to promptly report the discovery of any error, inconsistency, omission, or variance known or believed by the Contractor to exist, the Contractor shall assume full responsibility therefore and shall bear all costs, liabilities and damages attributable to such error, inconsistency, omission, or variance.
- B. The rights and remedies afforded the City by this Contract are to be considered as cumulative and are in addition to and not in limitation of any rights and remedies otherwise available to the City under law. The pursuit of any remedy by the City shall not be construed to bar the City from the pursuit of any other remedy in the event of similar, different, or subsequent breaches of this Contract.

### **1.5. SUBMITTAL OF REQUESTED INFORMATION**

- A. The Contractor, at any time under this contract, upon request by the City, shall submit the following information. The information shall be presented in a format acceptable to the City.
  - 1. A list of Work Orders issued,
  - 2. The cost of each Work Order,
  - 3. A list of the subcontractors hired under each Work Order,
  - 4. The cost of each subcontract under each Work Order
  - 5. A copy of the intent to pay prevailing wages and the affidavit of wages paid for each Work Order subcontract;



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6. Any other information requested.

- B. In addition, the Contractor shall be familiar with regional labor, prevailing wage requirements and the subcontracting market, and be capable of working well with subcontractors.

**1.6. Service of Notices On the Contractor**

Any written notice required under the Contract to be given to the Contractor may, at the option of the City, be served on the Contractor by personal service, mail, or private courier. Delivery of the notice will be made to the last address provided in writing to the City. For the purpose of measuring time in determining the parties' rights and obligations with respect to the Contract, notice (other than that given by personal service) is conclusively presumed to be received by the Contractor on the second business day following the City's placing the notice in the U.S. mail or delivering it to the private courier.

**1.7. Officers and Employees of the City Have No Personal Liability**

Neither the City Council, Engineer, Construction Manager, Resident Engineer, Inspector, nor any other officer, employee or agent of the City, acting within the scope of their employment, shall be personally liable for any of their acts or omissions in connection with this Contract, it being understood that in such matters they are acting solely as agents of the City.

**1.8. CONTRACTOR IS RESPONSIBLE FOR ACTIONS OF SUBCONTRACTORS AND SUPPLIERS**

The Contractor is fully responsible for the acts and omissions of all Subcontractors, Sub-Subcontractors, Suppliers and all other persons performing a portion of the Work.

**1.9. MUTUAL RESPONSIBILITY OF CONTRACTORS**

- A. Should any sub-contractor, on this Contract, make claim against the City which arises as a result of any wrongful act, omission or failure to perform on the part of the Contractor, the Contractor agrees upon due notice to defend the City thereon, including submitting such claim to arbitration if demanded, and to pay all costs on account thereof, including but not limited to an arbitration award or court judgment, provided, however, that the Contractor shall be reimbursed by the City all of his/her costs and expenses in the event it is ultimately determined that the Contractor is not responsible for payment of such claim of any separate Contractor.
- B. Should the Contractor, on this Contract, make claim against the City which arises as a result of any wrongful act, omission, or failure to perform on the part of a sub-contractor, the Contractor agrees to arbitrate such claim with such sub-contractor if arbitration is demanded, and in the event the Contractor shall bring any arbitration proceedings or other action against the City, the Contractor agrees to reimburse the City for all costs and expenses incurred in the defense of such action in the event it is determined that the Contractor is not entitled to recover such claim.

**1.10. City's Right to Perform Disputed Work**

- A. If a dispute arises between the Contractor and separate contractors as to their responsibility for performance of any Work, including cleaning up as required by the Contract Documents, for accomplishing coordination or doing required cutting, filling, excavating or patching as required by the Contract Documents, the City may carry



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out such work and charge the cost thereof to the several contractors responsible therefore as the City shall determine to be just.

- B. If the Contractor fails to perform all or any portion of the Work in accordance with the Contract Documents, or fails to correct defective or non-conforming work, the City, without prejudice to any other rights it may have, may correct the failure using its own or other work forces, and issue a Change Order to deduct from the Contract Sum the cost incurred by the City in taking the corrective action (including all additional administrative costs incurred by the City in doing so).
- C. In the event of such an order to stop Work, the Contractor shall not be entitled to any increase in the Contract Time or Contract Sum, nor to any damages or relief from liability, on account of such order to stop work.

### **1.11. City's Right to Suspend Work**

- A. The City may direct that all or any part of the Work be suspended for such time period as the City deems proper because of unusual and severe weather or other unsuitable conditions beyond the control of the City and the Contractor, which prevents satisfactory performance of the Work, as provided in paragraph G-07.03. The Contractor shall immediately comply with the directive to suspend Work. The Contractor shall resume the suspended Work when so directed by the City.
- B. Such suspension of Work by the City shall not be a basis for a claim by the Contractor for an increase in the Contract Sum but Contract Time may be extended.

### **1.12. Suspensions for Convenience of the City**

- A. The City may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the City.
- B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the City in the administration of this contract, or (2) by the City's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of Work of this contract necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

### **1.13. City's Right to Carry Out Other Work**

The City reserves the right at all times to perform or cause to be performed other and additional work on or near the site of this project. Should such other or additional work be either underway or subsequently undertaken at or near this project, the Contractor shall coordinate its activities with those of all other work forces and conduct its activities so that the operations of the Contractor and those persons performing the other or additional work suffer the least interference and delay. In the event of a disagreement between such other work forces and the Contractor or the City as to the manner and order of performing the Work, the City will resolve the disagreement, and his decision shall be final and binding on all parties.



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**1.14. Materials and Equipment to Be New**

All materials and equipment required to be incorporated under this contract shall be new, except as otherwise provided in the specific Work Order. All such materials and equipment shall be applied, installed, connected, erected, used, cleaned, maintained and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processor, except as otherwise provided in the specific Work Order. Upon the request of the City, the Contractor shall furnish satisfactory evidence as to the kind, quality and manufacturer of materials and equipment.

**1.15. Disposal of Waste Materials**

- A. Waste material is defined as all material from demolition, excavation, dredging, or other source that is unsuitable to, or in excess of the needs of the work, or material that is designated for removal and disposal off of City property. All waste materials shall become the property of the Contractor, with the exception of materials containing substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous under applicable Local, State and/or Federal regulations which shall be handled and disposed of as directed by applicable regulations and/or the Contract Documents.
- B. Hazardous, potentially hazardous, infectious, toxic or dangerous materials shall be disposed of in strict compliance with all regulations and the Contract Documents and as directed by the City.
- C. The Contractor is solely responsible for the lawful managing and disposal of waste material and shall indemnify, defend and hold the City harmless from all liability, damages, claims, lawsuits, penalties and expenses, whether direct, indirect or consequential (including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration) arising from or in any way connected with, the demolition, excavation, removal or disposal of materials, except as specified for hazardous materials.
- D. The value of waste materials, if any, shall be reflected in the total Contract Sum.
- E. Should the Contractor, during the course of the Work, encounter site materials that it believes may be hazardous, potentially hazardous, infectious, toxic or dangerous, it shall immediately notify the City.
- F. The City of Kirkland will retain title to all hazardous waste presently on site encountered during demolition, removal, and excavation. This does not include hazardous materials generated by the Contractor, such as used motor oils, lubricants, cleaners, etc. Contractor shall dispose of such hazardous waste according to the Contract Documents, following local, State, and Federal regulations. The City of Kirkland will be shown as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-contractor generated hazardous wastes. Nothing contained within these Contract Documents shall be construed or interpreted as requiring Contractor to assume the status of Owner or generator of hazardous waste substances for non-contractor generated hazardous wastes.
- G. Contractor shall follow EPA and all other regulations regarding reporting the disposal of all materials.

**1.16. Warranties, Guarantees, No Waiver of City's Rights-** Refer to the current WSDOT Specifications.



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**1.17. Prerequisite to Suit**

- A. No legal action against the City may be filed on account of a Claim or other liability arising out of or related to these Contracts.
- B. For convenience of the parties to this contract, it is mutually agreed that any claims or causes of action which the contractor has against the City arising from this contract shall be brought within 180 days from the date of substantial completion. 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.

**1.18. Cutting, Fitting and Patching of Work**

- A. The Contractor shall be responsible for all cutting, fitting, patching or such other altering as may be required to complete the Work, or to make its several parts fit together properly.
- B. The Contractor shall not damage or endanger any portion of the Work, other work of the City, or that of any separate contractors by cutting, fitting, patching or other altering of any work, or by excavation. The Contractor shall not alter any of the work of the City or any separate contractor without written authorization from the City.

**1.19. Surveys**

- A. The Contractor shall provide sufficient space and safe facilities to enable the City to set points and elevations. The Contractor assumes full responsibility for detailed dimensions and elevations measured from stakes and marks established by the City.
- B. All Work performed shall be in conformance with the lines, grades and dimensions indicated on the standard drawings or as otherwise established by the City. If a discrepancy is noted between the drawings and staking, the same shall immediately be brought to the City's attention. Where tolerances are stated, the work performed shall be within those tolerances. The City will determine if the Work conforms to such lines, grades and dimensions, and his determination shall be final.
- C. All controls set by the City or others shall be carefully preserved by the Contractor.

**1.20. Notification Regarding Excavated Archeological Items**

If resources of potential archeological significance are encountered during construction or excavation, the Contractor will immediately stop work in the vicinity of the find and notify the City of Kirkland.

**1.21. Permits, Licenses, Fees and Notices**

- A. Unless otherwise specified, the Contractor shall procure and pay for all permits, licenses and all governmental inspection fees which are necessary or incidental to the performance of the Work and shall give all notices required by such permits and licenses. Any action taken by the City to assist the Contractor in obtaining permits or licenses shall not relieve the Contractor of its sole responsibility to obtain permits or licenses.
- B. Where applicable law, regulations, ordinances or agency policy prohibits the issuance of a necessary temporary operational or other permit to entities other than a public agency, the City will support the Contractor's request for such permit and will accept the permit in the City's name, but only if:



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1. The Contractor takes all necessary action leading to the issuance of the permit;
  2. The permit is determined to be in the public interest;
  3. The permit applies only to work performed in connection with this Project;
  4. The Contractor agrees in writing, in a form approved by the City, to abide by all requirements of the permit, and to indemnify, defend and hold harmless the City from any liability in connection with work prosecuted under the permit; and
  5. The Contractor agrees, in writing, to indemnify, defend and hold the City harmless from all expenses incurred in connection with such permit.
- C. The Contractor shall assume all costs and liabilities arising from the use of patented devices, materials, or processes used on or in performance of the Work.

**1.22. Utilities and Similar Facilities**

- A. Where removal or relocation of known utilities is necessary to accommodate construction, such removal or relocation shall be performed at the Contractor's sole expense unless it is specified in the Contract Documents that it will be performed by the City.
- B. Where the utility owner is identified as being responsible for removing or relocating utilities, such work will be accomplished at the utility owner's convenience, either during or in advance of construction. If the Contractor discovers the presence of any utilities at the Project site, it shall immediately so notify the City in writing.
- C. The right is reserved to the City and the utility owner to enter upon the project site from time to time to make such changes as are necessary for the relocation of the utilities or to make necessary connections or repairs. The Contractor shall cooperate with and facilitate any necessary access to or on the job site by the forces engaged in such work and shall conduct its operations in such a manner as to avoid delay or hindrance to the work being performed by such other forces. Whenever necessary, the Contractor shall make timely arrangements with the utility owner for the coordination of the Work.
- D. When the Contractor wishes to have any rearrangement made to any utility or other improvement for the Contractor's convenience in order to facilitate the construction operation, which rearrangement is in addition to or different from the rearrangement indicated in the Contract Documents, the Contractor shall (after obtaining the City's written approval of the proposed rearrangement) make whatever arrangements are necessary with the owners of such utility or other improvements for such proposed rearrangement and the Contractor shall bear all expenses in connection therewith.
- E. Before commencing any excavation, the Contractor shall provide notice of the scheduled commencement of excavation to all owners of underground facilities in accordance with RCW 19.122. The Contractor may encounter underground utilities during work operations. It shall be the Contractor's responsibility to locate and





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protect these utilities from damage. The contractor shall follow all current Call before you dig requirements.

- F. If any underground utility not identified in the Contract Documents must be relocated to accommodate the Project, the City will either arrange for the relocation of such utility or provide written authorization for the Contractor to do such work.
- G. If it is necessary to provide temporary connections to a utility shown in the Contract Documents due to conflicts during the course of construction or to maintain operations and service, it shall be the responsibility of the Contractor to do so at no additional cost.
- H. The Contractor shall protect from damage all private, public and City-owned utilities, including but not limited to communication lines, power lines, sewer and water lines, railroad tracks and appurtenances, traffic lighting and signal systems and similar facilities.
- I. Utilities damaged by the Contractor shall be repaired by the Contractor to their original condition at the Contractor's expense. The Contractor shall notify the City immediately of any such damage and shall begin repairs immediately and work continuously until the utility is restored to the satisfaction of the City.
- J. Contractor shall plan and execute its work to prevent outages in existing utilities or disruption of service. Existing utilities shall be staked/marked/potholed to verify location before excavation begins.
- K. The Contractor is alerted to the existence of RCW 19.122, an act relating to underground utilities and prescribing penalties. Any cost or scheduling impact incurred by the Contractor by reason of Contractor's required compliance with these statutory provisions shall be borne by the Contractor.

### **1.23. Safety**

- A. The Contractor assumes full responsibility for and shall comply with all safety laws, regulations, ordinances and governmental orders with respect to the performance of this Contract. The Contractor shall so conduct all operations under this Contract as to offer the least possible obstruction and inconvenience to the City, its tenants, public and abutting property owners. In addition to the obligation imposed by this subparagraph, the Contractor shall be responsible for employing adequate safety measures and taking all other actions reasonably necessary to protect the life, health and safety of the public and to protect adjacent and City-owned property in connection with the performance of the Work. The Contractor shall have the sole responsibility for the safety, efficiency and adequacy of the Contractor's plant, appliances and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation. The Contractor shall be solely and completely responsible for the conditions of the Project Site, including safety of all persons and property in performance of the Work. This requirement shall apply continuously, and not be limited to normal working hours. The required or implied duty of the City to conduct construction review of the Contractor's performance does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the Project site.
  - 1) The Contractor shall establish and supervise:
  - 2) A safe and healthy working environment;



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- 3) An accident prevention program; and
  - 4) Training programs to improve the skill and competency of all employees in the field of occupational safety and health.
- B. The Washington State Department of Labor and Industries shall be the sole and paramount administrative agency responsible for the administration of the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA).
- C. The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions and amendments thereto; the provisions of the Washington Industrial Safety Act of 1973 (WISHA); and the requirements of the following chapters of the Washington Administrative Code:
- 1) Chapter 296-24 WAC General Safety and Health Standards.
  - 2) Chapter 296-62 WAC Occupational Health Standards.
  - 3) Chapter 296-155 WAC Safety Standards for Construction Work.
- D. In addition, the Contractor shall comply with the following requirements when they are applicable:
- 1) Chapter 296-44 WAC Safety Standards - Electrical Construction Code.
  - 2) Chapter 296-45 WAC Safety Standards - Electrical Workers.
  - 3) Local Building and Construction Codes.
- E. In cases of conflict between different safety regulations, the more stringent regulation shall apply.
- F. The Contractor shall maintain at the Project Site office, or other well-known place at the Project Site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the Project Site. Employees should not be permitted to work on the Project Site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.
- G. Contractor may be required to provide an individual safety plan for a specific Work Order or as requested by the City.

**1.24. Disruptions Caused by Labor or Other Disputes**

- A. Definition: The term "dispute" as used in this paragraph includes labor-related and non-labor-related disputes, whether or not the persons or other entities involved in the dispute have an employment relationship with either the Contractor or the City. Examples of such disputes include, but are not limited to, informational or other picketing and all other forms of concerted or non-concerted activity.
- B. Required Contractor Actions: The Contractor will take all reasonable steps to prevent all disputes arising from the presence of or the performance of the Work by the Contractor, its Subcontractors, Sub-Subcontractors or Suppliers, from disrupting the



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Project or otherwise interfering with access to City property by the City, its agents, employees, tenants or employees thereof, or other contractors engaged on or near the site of the Work. If such dispute disrupts the progress of the Work or interferes with access to City property, the Contractor shall promptly and expeditiously take all reasonable action to eliminate or minimize such disruption or interference, including but not limited to: (a) utilizing all reasonable means to prevent all unlawful conduct or picketing, or to restrict all lawful picketing or other activities to a single entrance to City property; (b) posting notices or signs which advise interested persons and labor organizations that a particular entrance to City property is for the employees of "primary" or, as the case may be, "neutral" employers; (c) policing entrances to assure that only authorized personnel may use the same; (d) notifying all interested labor organizations of the "primary" or "neutral" status of particular entrances; (e) upon the request of the City, altering or rerouting the access to the site(s) of the Work; and (f) in the event any such picketing or activity is unlawful or has a secondary impact upon the employees of neutral employers, tenants or their suppliers or contractors, promptly and expeditiously taking appropriate action to seek recourse through the appropriate governmental agency or State or Federal courts to limit the location of such picketing so as to reduce the impact thereof upon neutral employers.

- C. The City will cooperate with the Contractor to accomplish the foregoing actions and will render its assistance where appropriate; however, the City shall have the right, without providing additional compensation to the Contractor, to direct the Contractor to modify any of the foregoing actions which the Contractor has taken or plans to take, or to overrule such actions, to designate the entrances to be used as "primary" or "neutral" entrances, and to take appropriate legal action in order to protect the interests of the City and those of its tenants and other contractors. The foregoing actions to be taken by the Contractor are the Contractor's primary responsibility. Neither the failure of the City to request that the Contractor take a specific action nor the exercise by the City of its rights under this paragraph shall modify or constitute a defense to or waiver of the obligations imposed upon the Contractor in this paragraph.
- D. Failure to take the action described above or to comply with the directives of the City shall be considered a material breach of the Contract.
- E. If and to the extent that the Contractor fails to satisfy the obligations imposed on it by subparagraph of this paragraph, the Contractor shall be liable for and defend, indemnify and hold harmless the City, City Council, Engineer and all other officers, employees and agents of the City from all liability, claims, damages, losses and expenses (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) brought against the City by a third party (including, but not limited to, lessees, tenants, contractors, customers, licensees and invitees of the City) for injunctive relief or for monetary losses caused by loss of use, lost revenue, or interference with the activities of the City of such third party.
- F. The Contractor shall pay all attorneys' fees and expenses incurred by the City in establishing and enforcing the City's rights under this paragraph, whether or not suit was instituted.

**1.25. Damages for unexcused delays, Responsibility for damage, Inspection of work –**  
See the Current editions of the WSDOT Standard Specifications.



**1.26. CLEANING UP**

- A. The Contractor shall at all times keep construction sites, access points, public rights of ways and other areas free from accumulation of waste materials or rubbish caused by Contractor or Sub-Contractor, and at the completion of the Work Order, the Contractor or sub-contractor shall remove all rubbish from and about these areas as well as all tools, scaffolding, and surplus materials and shall leave the site "broom-clean" or its equivalent, unless more exactly specified. In case of dispute, the City may remove the rubbish and charge the cost to the Contractor as the City's Representative shall determine to be just. BURNING IS NOT PERMITTED ON THE SITE.
- B. The Contractor or sub-contractor shall select their own sites for disposal of debris and unsuitable materials not upon the job site or any property contiguous thereto. The Contractor is solely and alone responsible for any and all damages done or regulations violated in the disposal of waste material, and for any other actions which they perform. Contractor holds the City faultless and free from liability for any and all damages and costs incurred as a result of Contractor's actions. It shall be the responsibility of the Contractor to pay all fees and costs incurred in the disposal of waste material.

**1.27. CONTRACTOR STAFFING**

The Contractor shall provide for sufficient and appropriately skilled staff and support to implement the JOC quality control program. In addition, the project manager or superintendent shall be available to perform weekly site inspections with the City of Kirkland for the duration of each Work Order Project.

**1.28. JOC QUALITY CONTROL PROGRAM**

The Contractor is responsible for quality control and shall establish and maintain an effective quality control program. The Quality Control (QC) program shall consist of plans, procedures, and organization necessary to provide materials, equipment, workmanship, fabrication, construction and operations, both on-site and off-site that comply with Contract and Work Order requirements and are implemented with the construction schedule. The Contractor shall review and certify as correct, complete, and in compliance with project document requirements all shop drawings and lists of materials, fixtures and equipment as required by technical specifications. Quality Control is the sole responsibility of the Contractor.

**1.29. Subcontractor and Supplier Relations**

By an appropriate agreement, the Contractor shall require that each Subcontractor and Supplier, to the extent of the Work to be performed by that Subcontractor or Supplier, be bound to the Contractor to perform such portion of the Work according to the terms of the Contract Documents and to assume toward the Contractor all of the obligations which the Contractor assumes toward the City under this Contract. Such agreement shall preserve and protect the rights of the City with respect to the Work to be performed by the Subcontractor or Supplier so that the contracting thereof by the Contractor to others will not prejudice the City's right to have the Work performed in accordance with the Contract Documents. The Contractor shall require each Subcontractor and Supplier to enter into similar agreements with all Sub-Subcontractors and Suppliers, so that this requirement shall be applicable to Sub-Subcontractors and Suppliers at all tiers.



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**1.30. All Payments Subject to Applicable Laws**

- A. All payments made to the Contractor under this Contract are subject to all laws applicable to the City in general and to this Contract in particular.
- B. In particular, the law does not permit the City to make any payments to the Contractor under this Contract until proper and approved Statements of Intent to Pay Prevailing Wages have been filed with the City and no final payment

**1.31. Prevailing Wage Rates to Be Paid**

- A. Prior to making any payment, the City must receive from Contractor a Labor and Industries approved copy of the "Statement of Intent to Pay Prevailing Wages" form from all sub-contractors and lower-tiers; and, from Contractor, if self-performed. Each progress payment voucher claim shall include a signed statement that prevailing wages have been paid. Following the final acceptance of a project, the City must receive a Labor and Industries certified copy of the "Affidavit of Wages Paid" form from all sub-contractors and lower-tiers; and, from Contractor, if self-performed.
- B. It is the Contractor's sole responsibility to obtain the approved Intents and certified Affidavits from all sub-contractors and lower-tiers and file with the City for each Work Order.

**1.32. Completion, Occupancy, Beneficial Occupancy Date**

- A. Completion: A Work Order will be considered complete when all physical and administrative work has been accomplished in accordance with the Contract Documents. A Notice of Completion of Public Works Contract will be issued when all the Work is complete. The date of issuance of the Notice of Completion of Public Works Contract marks the completion of Contract Work for purposes of RCW 60.28.
- B. A portion of the Work may be occupied by the City prior to Substantial Completion of the project.
  - 1) Beneficial Occupancy. A certificate of Beneficial Occupancy will be issued for the portion of the Work Order that is occupied prior to Substantial Completion of the entire Work. The date of issuance of the certificate will be the Date of Beneficial Occupancy. The warranty provisions for the occupied portion of the Work will start on the Beneficial Occupancy Date. If stated in the Work Order Proposal, the Contractor shall provide operation and maintenance services for specified equipment and systems until Substantial Completion of the entire contract Work.
  - 2) Pre-Final and Final Inspection. When the Contractor has determined that the Work Order is complete, and has developed a punch list, it shall submit a copy of the punch list, along with a Request for Pre-Final inspection to the City. The City will review the status of punch list and the Work. If the Work is complete and if no more than 10% by number of additional items are added to the punch list by the City, then the City will complete the Pre-Final Inspection and deliver a final punch list to the Contractor for completion, leading to Final Inspection. If the Pre-Final Inspection request is not approved, then the Contractor shall proceed to complete the items as needed prior to a



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subsequent request to the City for another Pre-final Inspection. When the Contractor considers the Work Order, or a designated portion thereof, to be Substantially Complete, the Contractor shall request that the City schedule and conduct a Final Inspection.

- C. Failure of the City to include items on the punch list does not alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents. The City may revise the punch list at any time prior to Substantial Completion when items needing completion or correction are discovered.
- D. When the City finds that the Work is complete in accordance with the Contract Documents, a City Completion Memo will be issued.

### **1.33. WORK ORDER TRAFFIC CONTROL**

An accepted Traffic Control Plan (TCP) is required for every City of Kirkland Right-of-Way Use Permit. Approval of the TCP must be obtained by the JOC Contractor prior to the approval of the Work Order proposal. The primary function of TCP is to provide for the reasonably safe and effective movement of road users through or around temporary traffic control zones while reasonably protecting road users, workers, responders to traffic incidents, and equipment. The TCP must be site specific and include appropriate flagmen, signing, coning, and barricades for any temporary lane closures, sidewalk closures, or construction activities. Reasonable access and egress to local businesses and residents should remain available. All traffic control used shall be in accordance with the "Manual of Uniform Traffic Control Devices for Streets and Highways (MUTCD), Part VI", MUTCD-Washington State Modifications (M 24-01) and as prescribed by the City of Kirkland Transportation and Police Departments.

### **1.34. BACKGROUND CHECKS AND FINGERPRINTING**

In the event a JOC Work Order is conducted in a highly secure space, background checks and fingerprinting may be required and conducted of all workers before work can begin.

### **1.35. FEDERALLY-ASSISTED WORK ORDERS**

Some Work Orders may be partially or fully funded by a grant. i.e. federal, state, local. Contractor shall be notified when a Work Order is grant funded and what special grant requirements shall apply based on the grant agreement. Contractor shall be required to follow and observe all grant requirements, even to the extent where the Grant requirements may be more stringent than state law. Davis Bacon Wages, Buy America, Buy American and etc. may also be a requirement when the Work Order is federally funded.

### **1.36. WORK ORDER PROGRESS MEETINGS**

Schedule and administer meetings throughout progress of Work Order at maximum bi-weekly intervals. Contractor will make arrangements for meetings and prepare agenda with copies for participants. Attendance is required by any pertinent job superintendent, major subcontractors, City's representative, and/or engineer as appropriate to agenda topics for each meeting. The agenda may be as follows:

- 1) Review minutes of previous meeting.
- 2) Review work in progress.



## **JOC FOR GENERAL CONSTRUCTION SERVICES SECTION 2: TERMS AND CONDITIONS**

- 3) Field observations, problems, and decisions
- 4) Identification of problems that impede planned progress.
- 5) Review of submittal schedule and status of submittals.
- 6) Maintenance of project schedule.
- 7) Corrective measures to regain projected schedules.
- 8) Planned progress during succeeding work period.
- 9) Maintenance of quality and work standards.
- 10) Effect of proposed changes on project schedule and coordination.
- 11) Other business relating to Work.
- 12) Review construction record drawings.

### **1.37. Final Acceptance**

Final Acceptance shall be by formal action of the City of Kirkland Council after each Work Order. Final Acceptance shall not constitute acceptance of unauthorized or defective work, material or equipment. The City shall not be barred by Final Acceptance from requiring the Contractor to remove, replace, repair, or dispose of unauthorized or defective work, material, or equipment or from recovering damages for the same.

### **1.38. Notification of Lien Period**

- A. The date of issuance of the Notice of Completion of a Public Works Contract marks the completion of Contract Work for purposes of RCW 60.28.011. It is the responsibility and a condition of this Contract that Contractor promptly notifies all Subcontractors and Suppliers of the commencement of the period and of the final day for submitting any liens. As a further condition of this Contract the Contractor is required to place within all subcontracts a clause that states that this shall be done. The Contractor shall by letter inform the City of the compliance with this provision.
- B. Failure of the Contractor to comply with this provision may be used by the City as a basis to withhold retainer to ensure payment to uninformed Subcontractors. Failure to comply will also be made a matter of record for future determinations of bidder responsibility.

### **1.39. Substitutions of Key Personnel:**

- A. If any key personnel submitted by the Contractor in response to the RFP and evaluated by the City for Contract award should be unable to continue in the performance of assigned duties for reasons due to death, disability, or termination, the Contractor shall promptly notify the City explaining the circumstances. Changes in assignment of key personnel due to commitments not related to this Contract are prohibited without prior City approval.
- B. The Contractor shall furnish to the City within seven (7) working days the name of the person substituting for the individual unable to continue, together with any



**JOC FOR GENERAL CONSTRUCTION SERVICES  
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information the City may require to judge the experience and competence of the proposed substitute. Upon approval by the City, the proposed substitute shall be assigned to this Contract. If the City rejects the substitute, the Contractor shall have seven (7) days thereafter to submit a second proposed substitute. Such process shall be repeated until a proposed replacement has been approved by the City.

- C. In the event that, in the opinion of the City, the performance of the personnel of the Contractor assigned to this Contract is at an unacceptable level, such personnel shall cease to be assigned to this Contract and shall return to the Contractor, and the Contractor shall provide a substitute to the Owner, in accordance with the previous paragraph. Absence of acceptable key personnel for the Contract shall constitute an event of default.
- D. If the Contractor is unable to provide an adequate substitute in accordance with the previous paragraphs, the Owner reserves the right to terminate the Contract.





***JOC FOR GENERAL CONSTRUCTION SERVICES***  
***SECTION 3: WSDOT STANDARD SPECIFICATIONS AND AMENDMENTS***

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**CITY OF KIRKLAND**  
**SECTION 3: INFORMATION FOR PROPOSERS**

The most current version of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction and all amendments are included into this Volume II by reference and are considered to be part of the Contract Documents.



**CITY OF KIRKLAND  
SECTION 4: MODIFICATIONS TO THE WSDOT STANDARD SPECIFICATIONS  
FOR ROAD, BRIDGE, AND MUNICIPAL CONSTRUCTION**

The following clarifications and modifications apply to the WSDOT Standard Specifications for Road, Bridge, and Municipal Constructions, including amendments:

1. Whenever the WSDOT Standard Specification uses the term “Contract” to describe the Work associated with an individual Project, the term “Contract” shall be replaced with “Work Order.”
2. The Work Order Price shall set forth the fixed price, lump sum amount for which the Contractor is paid to complete the Detailed Scope of Work. Unless specifically stated for a Work Order, the Measurement and Payment sections contained in the WSDOT specification shall not apply to the Work under this Contract.
3. **In Section 1-01.3 Definitions:**
  - a. Delete the definition for “Award,” and replace with  
“Award – The formal decision of the Contract Agency to execute a Contract through the competitive process using public request for proposals.”
  - b. Add the following to the definition for “Bid Documents:”  
“The Bid Documents also include Volume I – Contract Summary, Instructions for Proposers, and Proposal Forms; Volume II – Terms and Conditions; Volume III – The construction Task Catalog®; Volume IV – Technical Specifications, Addenda; And all Work Order related documents including, but not limited to the Request for Price Proposals, Work Order Proposals, Work Order Price Proposals”
  - c. In the definition for “Contract,”  
Add the following to the 3<sup>rd</sup> paragraph: “The Bid Documents also include Volume I – Contract Summary, Instructions for Proposers, and Proposal Forms; Volume II – Terms and Conditions; Volume III – The construction Task Catalog®; Volume IV – Technical Specifications, Addenda; And all Work Order related documents including, but not limited to the Request for Price Proposals, Work Order Proposals, Work Order Price Proposals”
  - d. Delete the definition for “Contract Plans,” and replace with  
“Work Order Plans – a publication addressing the Work required for an individual project. At the time of the Request for Price Proposal, the plans may include, but are not limited to, the following: a vicinity map, a summary of quantities, structure notes, signing information, traffic control plans, and detailed drawings; all for a specific individual project. At the time the Work Order is issued, the Work Order Plans include any revisions.”



**JOC FOR GENERAL CONSTRUCTION SERVICES  
SECTION 4: SPECIAL PROVISIONS**

- e. Delete the definition for "Proposal Form," and replace with

"Proposal Form – The form provided to Proposers by the Contract Agency for submittal of a Proposal to the Contracting Agency identifying the Adjustment Factors that are to be applied to the Unity Prices listed in the Construction Task Catalog®."

- 4. Delete Section 1-02 Bid Procedures and Conditions in its entirety.** The bid procedures are specified in Volume I.
- 5. In Section 1-03 Award and Execution of the Contract:**
- a. Delete 1-03.1 Consideration of Bids in its entirety
- b. Delete 1-03.2 Award of Contract in its entirety
- c. In Section 1-03.4 Contract Bond: 1<sup>st</sup> sentence, delete "for the full Contract Amount" and replace with "\$2,000,000."
- d. In Section 1-03.4 Contract Bond: delete the 2<sup>nd</sup> sentence in its entirety and replace with "If this should occur, the Contracting Agency may then Award the Contract to the second most qualified Proposer or reject all Proposals.
- 6. In Section 1-04 Scope of Work:**
- a. Delete 1-04.1 Intent of the Contract in its entirety
- b. Delete 1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda in its entirety
- c. Delete 1-04.4 Changes in its entirety
- d. Delete 1-04.6 Variation in Estimated Quantities in its entirety
- e. In Section 1-04.7 Differing Site Conditions (Changed Conditions):
- Delete the 2<sup>nd</sup> paragraph and replace with "Upon written notification, the Engineer will investigate the conditions and if he/she determines that conditions materially differ and cause an increase or decrease in the Work Order Price or Work Order Completion Time required for the performance of the Detailed Scope of Work, a Supplemental Work Order will be issued. The Engineer will notify the Contractor of his/her determination whether or not an adjustment is warranted.
  - Delete the 3<sup>rd</sup> paragraph in its entirety
  - Delete the 4<sup>th</sup> paragraph in its entirety.
- f. Delete 1-04.8 Progress Estimated and Payments in its entirety.



**JOC FOR GENERAL CONSTRUCTION SERVICES  
SECTION 4: SPECIAL PROVISIONS**

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**7. In Section 1-05 Control of the Work:**

- a. In Section 1-05.12. 1<sup>st</sup> Paragraph. Delete the 3<sup>rd</sup> sentence in its entirety and replace with "The Secretary accepts the completed Work Order by signature of the final Contract Voucher."