



PUBLIC WORKS CONTRACT

1. Parties. This Public Works Contract is made by and between the City of Puyallup, a Washington State municipal corporation (City) and _____ (Contractor).

For and in consideration of the promises hereinafter made and exchanged, the City and Contractor agree as follows:

2. Contract. The word “Contract” as used throughout this document shall include the following:

- a. This Contract;
- b. Contractor’s submitted and City accepted bid packet, which is on file with the City and incorporated herein by this reference. (The provisions of this Contract shall prevail over any conflicting provisions in the bid packet.); and
- c. The project manual & bid documents for the [project], which are on file with the City, and are incorporated herein by this reference.

3. Term. This Contract shall be effective when both parties have executed this Contract and shall terminate upon the City’s final acceptance of the Contract Work, or a valid exercise of termination rights under the provisions of this Contract.

4. Contract Work. The provision of goods and services identified in the Contract constitute the contract work (Contract Work). Contractor shall perform the Contract Work pursuant to the terms of the Contract. Contractor shall furnish all labor, materials, equipment, tools, transportation, services, appliances, and appurtenances for the Contract Work in strict conformity with this Contract, within the time-period prescribed by the City.

5. Manner of Work & Qualifications. Contractor shall provide, perform and complete the Contract Work in its entirety in a proper and workmanlike manner, and in conformance with the standard of care required of Contractor by law, and in accordance with, and as described in the incorporated plans and specifications, which are by this reference incorporated herein and made part hereof, and shall perform any changes in the Contract Work in accord with the Contract.

Contractor warrants that its employees or those persons or entities that perform the Contract Work have sufficient education, training, skill, knowledge, ability, and experience to competently perform the Contract Work. Contractor further warrants that its employees or those persons or entities that perform the Contract Work have satisfied all statutory and regulatory requirements that are necessary to perform the Contract Work.

6. Time of Completion. Contractor shall commence to perform the Contract Work after execution of this Contract and when directed by the City. The City's authority to direct commencement shall include the authority to delay commencement of the Contract Work. Contractor shall complete the Contract Work by: _____ **of receiving a Notice to Proceed.**

7. Compensation. The City shall pay Contractor an amount up to, but **not to exceed** _____ (\$_____) plus any applicable Washington State sales tax. Contractor shall submit regular statements to the City describing the portion of the Contract Work that has been provided with any necessary corresponding or supporting records. The City, upon receipt of a completed invoice or billing statement, shall promptly process said claims for payment. Contractor shall be responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Contract.

a. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to Contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under RCW 60.28, whichever is later. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted upon entering into this Contract, and shall be issued from a bonding company that satisfies the City.

b. Defective or Unauthorized Work. The City shall be entitled to withhold payment from Contractor for any defective or unauthorized work. If Contractor is unable, for any reason, to satisfactorily complete any portion of the Contract Work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for costs incurred by the City. The City is entitled to deduct the cost to complete the Contract Work from any amounts that may be due and payable to Contractor. Notwithstanding the terms of this section, the City's payment to Contractor shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.

c. Final Payment—Contractor's Waiver of Claims. CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

8. Changes. The City may issue a written change order for any change in the Contract Work during the performance of this Contract. Alternatively, if Contractor believes that a change order is necessary, Contractor must submit a written change order request to the City. If Contractor fails to request a change order before performing changes in the Contract Work, Contractor waives its right to make any claim or submit a subsequent change order request for that changed portion of the Contract Work. Contractor shall perform the change order work upon receiving either a written change order from the City or an oral order from the City that

precedes a written change order.

If the City issues or authorizes the change order and determines that the change increases or decreases Contractor's costs or time for performance, the City will make an equitable adjustment to the terms of this Contract, which may include, but shall not be limited to, a change in compensation or extension of time. The City will attempt, in good faith, to reach agreement with Contractor on all equitable adjustments. However, if the parties are unable to agree, the City is entitled to establish an equitable adjustment that it deems appropriate. Contractor shall complete the change order work, but may elect to protest the adjustment and assert a claim as provided in this Contract.

Contractor accepts all requirements of a change order by: (1) endorsing it, (2) issuing a separate acceptance, or (3) by failing to protest in accordance with the requirements of this Contract. Acceptance of payment for change order work under a change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for compensation or costs and expenses that are related to the change.

9. Change Order Protests and Claims. If Contractor disagrees with any requirement of a change order or oral order from the City, Contractor may file a protest and assert a claim as provided in this section. Contractor shall give written notice to the City of any protest and claim within fourteen (14) calendar days of the occurrence of the events giving rise to the protest and claim, or within fourteen (14) calendar days of the date Contractor knew or should have known of the facts or events giving rise to the protest and claim, whichever occurs first. Any protest and claim shall be conclusively deemed to have been waived by Contractor unless timely notice is provided pursuant to this section.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL CONSTITUTE A WAIVER OF ANY CLAIMS ARISING FROM OR RELATED TO THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

If Contractor chooses to file a protest and assert a claim, Contractor's written protest and claim shall include the following:

- a. Notice of Protest and Claim. A signed written notice of protest and claim that provides the following information:
 - The date of the notice;
 - An accurate description of the nature the claim and the circumstances that gave rise to the claim, including, if applicable, an analysis of the progress schedule showing the schedule impact or disruption;
 - The provisions in the Contract or change order that are the basis for, or apply to the claim; and
 - The proposed remedy, including, if any, the amount of the claim, and the basis for its calculation;
- b. Records. Complete copies of all records that support the claim.

10. Laws and Rules. Contractor shall comply with all applicable state, federal, or local laws, regulations, rules, or any other sources of authority, including, but not limited to, court

orders, administrative rulings and the following:

- a. **Wage, Hour, Safety, and Health Laws.** Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*, the Washington Industrial Safety and Health Act, RCW 49.17, and any other state or federal laws applicable to wage, hours, safety, or health standards.
- b. **Prevailing Wages.** Contractor shall file a “Statement of Intent to Pay Prevailing Wages”, which shall include Contractor’s registration certificate number and the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020, and the estimated number of workers in each classification. Contractor shall pay prevailing wages and comply with RCW 39.12 as well as any other applicable prevailing wage rate provisions. Contractor shall obtain the most current prevailing wage rate revision issued by the Department of Labor and Industries. Contractor shall require all subcontractors to comply with RCW 39.12 and this section of the Contract.

11. Independent Contractor. Contractor shall be an independent contractor for all federal, state and other purposes.

12. Days and Time of Work. Contractor shall perform the Contract Work only during Monday through Friday and 7:00 a.m. to 5:00 p.m. unless otherwise authorized by the City.

13. Audit of Contractor Records. Contractor shall maintain records which sufficiently and accurately reflect all the provision of goods and services and costs and expenses related to the performance of the Contract Work, and use such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Contract. Contractor shall make these records available to the City, at all reasonable times, for inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Contract.

14. Work Product. All originals and copies of work product related to the Contract Work, in whatever form, including, but not limited to, plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material, shall belong to the City. At the termination or expiration of this Contract, all originals and copies of any such work product in the possession of Contractor shall be delivered to the City. Contractor is entitled to retain copies of any work product for its own records.

15. Confidentiality. Contractor may use confidential information and other sensitive information gained by reason of its provision of services to the City, or by access to its property, when expressly authorized by the City, and only for City purposes. Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law, or in the case of personal information, without the prior written consent of the person to whom the personal information pertains. Contractor shall maintain the confidentiality of all personal information and other information gained by reason of its provision of services to the City, or by access to its property.

16. Insurance. Contractor shall procure and maintain for the duration of the Contract or activity associated with the Contract, whichever is longer, insurance against claims for injuries to persons or damage to property which may arise from or occur in connection with the performance of the work hereunder by Contractor, their agents, representatives, employees or subcontractors. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

- a. **Minimum Scope of Insurance.** Contractor shall obtain insurance of the types described below:
 - i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 - ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 05 09 or substitute endorsements providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
 - iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 - iv. Builders Risk insurance covering interests of the City, Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, collapse, The Builders Risk insurance shall include coverage for temporary buildings, debris removal and damage to materials in transit or stored off site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of Contractor. The Builders Risk insurance shall be maintained until the City has granted substantial completion of the project.

- b. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:
- i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 - ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.
 - iii. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.
- c. Other Insurance Provision. Contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of Contractor's insurance and shall not contribute with it.
- d. Contractor's Insurance for Other Losses. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Contractor, or Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.
- e. Waiver of Subrogation. Contractor and the City waive all rights against each other, any of their Subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.
- f. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of Contractor before commencement of the work. Before any exposure to loss may occur, Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

Subcontractors. The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using

an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

- g. Notice of Cancellation. Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.
- h. Failure to Maintain Insurance. Failure on the part of Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Contractor from the City.
- i. Contractor to insure that insurance coverage is adequate for the scope of work as defined in the RFP (Request for Proposal) and design drawings.
- j. City Full Availability of Contractor's Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

17. Performance & Payment Bond. At such time as Contractor enters into this Contract, Contractor shall provide a performance and labor & materials payment bond in an amount that equals the Contract compensation as security for the faithful performance and payment of all Contractor's obligations under this Contract. The amount of the bond shall be increased for each change order in an amount that equals the amount of the change order. The bond shall be in a form that is acceptable to the City's attorney. The surety shall be licensed to conduct business in the State of Washington and shall be named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

In the event that the compensation called for in this Contract is less than \$35,000.00, which sum shall be determined after the addition of applicable Washington state sales tax, Contractor may, in lieu of the above mentioned bond, elect to have the City retain 50% of the contract amount for a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under RCW 60.28, whichever is later.

18. Warranty. Contractor warrants that it shall correct all defects in workmanship and materials that occur within one (1) year from the date of the City's final acceptance of the Contract Work, or within the product or manufacturer's warranty period, whichever is longer. The expiration of this warranty shall be tolled for any defects in workmanship and materials until the defects are corrected. Thereafter, the warranty for the corrected portion of the Contract Work

shall extend for one (1) year from the date that such correction is completed and accepted by the City. Contractor shall begin to correct any defects within the timeframe set forth in the notice of defect from the City. If Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and Contractor shall pay all costs incurred by the City to achieve the correction.

Upon the City's final acceptance of the Contract Work, Contractor shall, at the option and upon demand of the City, provide the City with a warranty bond in a form and amount that is acceptable to the City.

19. Debarment. Contractor certifies that it is neither excluded nor disqualified as defined in 2 CFR Part 180. Contractor shall refrain from becoming excluded or disqualified, and shall fully comply with the requirements of Subpart C of 2 CFR Part 180 and any applicable parts of 2 CFR Parts 300 through 5899. Contractor shall require each person or entity with whom Contractor enters into a covered transaction at the next lowest tier, as defined in 2 CFR Part 180, to fully comply with the requirements of Subpart C of 2 CFR Part 180, and any applicable parts of 2 CFR Parts 300 through 5899. If Contractor or a person or entity with whom Contractor enters into a covered transaction is excluded or debarred, Contractor shall immediately notify the City in writing.

20. Indemnification & Hold Harmless. Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Contractor and the City, its officers, officials, employees, and volunteers, Contractor's liability hereunder shall be only to the extent of Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

21. Work Performed at Contractor's Risk. Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of this Contract. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

22. Termination. The City shall be entitled to terminate this Contract for good cause. "Good cause" shall include, but shall not be limited to, any one or more of the following events:

- a. Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract Work;
- b. Contractor's failure to make timely progress or complete the work within the

- timeframe required by the City;
- c. Contractor's failure to make full and prompt payment to subcontractors or for material or labor;
 - d. Contractor's failure to comply with Federal, state or local laws, rules or regulations;
 - e. Contractor's filing for bankruptcy or becoming adjudged bankrupt;
 - f. Contractor's breach of any portion of this Contract; or
 - g. Changes in budgetary allocations or funding.

23. Liquidated Damages. Contractor acknowledges and agrees as follows: The Contract Work is ultimately for the benefit of the public, and as such, there is a compelling need to complete the Contract Work in the time specified in the Contract. Due to the expenditure of public funds for the Contract Work, and the need to complete the Contract Work for the health, safety and welfare of the public, the failure to complete the Contract Work within the time specified in the Contract will result in loss and damage to the City. A delay will likely result in damages that arise as a consequence of, or are incidental to, the delay, additional costs and expenses to the City that are difficult to determine, tangible and intangible detriments to the City, and loss of use and inconvenience to the public. However, damages for delay in the performance or completion of the Contract Work are and will be difficult to ascertain.

Although difficult to quantify and ascertain, the sum listed as liquidated damages represents a fair and reasonable forecast or estimation of the actual damage caused by a delay in the performance or completion of the Contract Work. In addition, the liquidated damages set forth below are intended to compensate the City for its loss and damage caused by delay. The liquidated damages are not intended to induce the performance of Contractor.

Accordingly, for each day that the Contract Work is not completed beyond the completion date specified in the Contract, or the completion date as directed by the City, the sum of \$_____ shall be deducted from the amount to be paid Contractor and shall be retained by City as damages. In the event that the Contract is terminated by City for good cause pursuant to the general conditions of the Contract, this liquidated damages section shall apply, but only to the extent that the Contract Work is delayed. In addition to liquidated damages, City shall be permitted to recover from Contractor the cost of completion of the work if the cost of completion exceeds the original sum of money agreed upon.

24. Remedies Cumulative. Any remedies provided for under the terms of this Contract are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

25. Subcontractors. All subcontractors or use of subcontractors shall require the prior written approval of the City. Contractor shall incorporate the terms and conditions of this Contract into any subcontract used in connection with this project.

26. Assignment. Contractor shall not assign any interest in this Contract and shall not transfer any interest in same (whether by assignment or notation), without the prior written consent of the City thereto; provided, however, that claims for payment under this Contract may be assigned.

27. Notices. Any notices required to be given by the City to Contractor or by Contractor to City shall be in writing and delivered to the parties at the addresses listed at the end of this Contract.

28. Waiver. Failure of the City to insist upon strict compliance with any terms, covenants or conditions of this Contract shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

29. Applicable Law - Venue. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and, in the event of dispute, the venue of any action brought hereunder shall exclusively be in the Pierce County Superior Court.

30. Discrimination Prohibited. In all Contractor services, programs or activities, and all Contractor hiring and employment made possible, directly, indirectly, by or resulting from this Contract, Contractor shall not discriminate against any protected class or on any basis prohibited by federal or state law, including, but not limited to, sex, race, color, creed, religion, national origin, disability, use of a guide dog or service animal by a person with a disability, HIV/AIDS or hepatitis C status, sexual orientation, gender identity, or honorably discharged veteran and military status.

31. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.

32. Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Contract, and the incorporated documents, if any. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

33. Severability. If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision, unless the purpose and intent of this Contract is made materially ineffective or destroyed.

34. Entire Agreement. The written provisions and terms of this Contract, together with any attachments, supersede all prior verbal statements by any representative of the City, and those statements shall not be construed as forming a part of or altering in any manner this Contract. This Contract and any attachments contain the entire Contract between the parties. Should any language in any attachment conflict with any language contained in this Contract, the terms of this Contract shall prevail.

35. Concurrent Originals. This Contract may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Contract.

IN WITNESS WHEREOF, the parties below have executed this Contract, and by doing so, acknowledge that they have read this Contract understand its terms, and enter this Contract in a knowing, intelligent, and voluntary manner.

[contractor]

Dated: _____

By:

Its:

City of Puyallup

Dated: _____

Kevin J. Yamamoto
City Manager

Approved as to form:

Attest:

Joseph N. Beck
City Attorney

Mary Winter
City Clerk

Notices to be sent to:	Notices to be sent to:
	City of Puyallup
Attn:	Attn: Mark A. Palmer, PE, LEED AP
	Director of Engineering/City Engineer
	333 S. Meridian
	Puyallup, WA 98371