



City of Tacoma, WA

**CITY OF TACOMA**

**FINANCE DEPARTMENT/PROCUREMENT & PAYABLES**

**REQUEST FOR PROPOSALS**

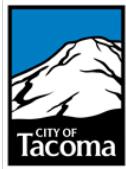
**JOB ORDER CONTRACT**

**SPECIFICATION NO. CT25-0217F**

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**City of Tacoma  
Finance Department/Procurement & Payables**

**REQUEST FOR PROPOSALS Specification No. CT25-0217F  
Job Order Contract**

**Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, March 3, 2026.**

Submittals must be received by the City's Procurement and Payables Division by 11:00 a.m. Pacific Time.

For electronic submittals, the City of Tacoma will designate the time of receipt recorded by our email server, as the official time of receipt. This clock will be used as the official time of receipt of all parts of electronic bid submittals. Include the specification number in the subject line of your email. Your submittal must be sent as an attachment, links to your electronic submittal will not be accepted.

For in person submittals, the City of Tacoma will designate the time of receipt recorded by the timestamp located at the lobby security desk, as the official time of receipt. Include the specification number on the outside of the sealed envelope. Late submittals will be returned unopened and rejected as non-responsive.

**Submittal Delivery:** Sealed submittals will be received as follows:

<b>By Email:</b> <a href="mailto:sendbid@tacoma.gov">sendbid@tacoma.gov</a>	<b>In Person:</b> Tacoma Public Utilities Administration Building North, Main Floor, Lobby Security Desk 3628 South 35 <sup>th</sup> Street Tacoma, WA 98409 Monday – Friday 8:00 am to 4:30 pm
Maximum email size including attachments: 35 MB. Multiple emails may be sent for each submittal.  <b>Note:</b> Email may pass through multiple servers before arriving at its destination. Please allow sufficient time for email delivery of submittals. Timely electronic delivery is at the risk of the supplier.	

**Bid Opening:** Submittals must be received by the City's Procurement and Payables Division prior to 11:00 a.m. Pacific Time. Sealed submittals in response to an RFP will be opened Tuesday's at 11:15 a.m. by a purchasing representative and read aloud during a public bid opening held at the Tacoma Public Utilities Administrative Building North, 3628 S. 35<sup>th</sup> Street, Tacoma, WA 98409, conference room M-1, located on the main floor. They will also be held virtually Tuesday's at 11:15 a.m. Attend a Zoom meeting [via this link](#) or call 1 (253) 215 8782, using meeting ID # 884 0268 0573, passcode # 070737.

Submittals in response to an RFP, RFQ or RFI will be recorded as received, but not read at bid opening. As soon as possible, after 1:00 PM, on the day of submittal deadline, preliminary results will be posted to [www.TacomaPurchasing.org](http://www.TacomaPurchasing.org).

If you believe your submittal was sent timely and was not read at bid opening, please contact [sendbid@tacoma.gov](mailto:sendbid@tacoma.gov) immediately.

**Solicitation Documents:** An electronic copy of the complete solicitation documents may be viewed and obtained by accessing the City of Tacoma Purchasing website at [www.TacomaPurchasing.org](http://www.TacomaPurchasing.org).

- [Register for the Bid Holders List](#) to receive notices of addenda, questions and answers and related updates.
- Click here to see a [list of vendors registered for this solicitation](#).

**Pre-Proposal Meeting:** See Pre-Proposal Meeting section.

**Project Scope:** The City of Tacoma (the "City") is seeking competitive proposals from qualified firms to perform general construction work in accordance with the City's Job Order Contracting program. A Job Order Contract is a fixed period, indefinite quantity contract that utilizes negotiated Job Orders for each individual project completed under the Job Order Contract. Prices for each Job Order are based on the Unit Prices contained in the Construction Task Catalog® adopted by the City and the Adjustment Factors submitted by the Contractor for the entire Contract Term. All Unit Prices are based on local labor, material and equipment costs and are for the direct cost of construction.

The City intends to establish up to three Job Order Contracts with qualified firms through a multi-phased Request for Proposal ("RFP") process described herein and in accordance with the RCW 39.10.430-460.

**Estimate:** \$4,000,000 annually. Contract value is not a guarantee of spend.

**Paid Sick Leave:** The City of Tacoma requires all employers to provide paid sick leave in accordance with State of Washington law.

**Americans with Disabilities Act (ADA) Information:** The City of Tacoma, in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. Specification materials can be made available in an alternate format by emailing the contact listed below in the *Additional Information* section.

**Title VI Information:**

"The City of Tacoma" in accordance with provisions of Title VI of the Civil Rights Act of 1964, (78 Stat. 252, 42 U.S.C. sections 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration of award.

**Additional Information:** Requests for information regarding the specifications may be obtained by contacting Ryan Foster, Senior Buyer, by email to [rfoster1@tacoma.gov](mailto:rfoster1@tacoma.gov)

**Protest Policy:** City of Tacoma protest policy, located at [www.tacomapurchasing.org](http://www.tacomapurchasing.org), specifies procedures for protests submitted prior to and after submittal deadline.



Meeting sites are accessible to persons with disabilities. Reasonable accommodations for persons with disabilities can be arranged with 48 hours advance notice by calling 253-502-8468.

## SUBMITTAL CHECK LIST

This checklist identifies items to be included with your submittal. Any submittal received without these required items may be deemed non-responsive and not be considered for award. Submittals must be received by the City of Tacoma Purchasing Division by the date and time specified in the Request for Proposals page.

The following items make up your complete electronic submittal package (include all the items below):	
Signature Page (Appendix B: Required Forms)  To be filled in and executed by a duly authorized officer or representative of the bidding entity. If the bidder is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.	
Complete answer to all sections of the Content to be Submitted Section	
Bid Bond (Appendix B: Required Forms)	
Certification of Compliance with Wage Payment Statutes (Appendix B: Required Forms)  Bidder shall complete this form in its entirety to ensure compliance with state legislation (SHB 2017).	
State Responsibility and Reciprocal Bid Preference Information (Appendix B: Required Forms)  Bidder shall complete this form in its entirety to ensure compliance with state legislation (SHB 2010).	
EIC Utilization Form (Appendix B: Required Forms)	
<b>To be submitted as a separate document:</b>  Adjustment Factor Bid Form (Appendix B: Required Forms)	

## POST AWARD DOCUMENT CHECKLIST

After award, the following documents will be executed:	
City of Tacoma Contract (See sample in Appendix D: Sample Documents)	
Certificate of Insurance and related endorsements per Insurance Requirements (Appendix C: Other Relevant Documents)	
Payment and Performance Bonds (See sample in Appendix D: Sample Documents)	
General Release (See sample in Appendix D: Sample Documents)	
LEAP Program Requirements and Forms (Appendix C: Other Relevant Documents)	

## **SPECIAL NOTICE TO BIDDERS**

Public works and improvement projects for the City of Tacoma are subject to Washington state law and Tacoma Municipal Code, including, but not limited to the following:

### **I. STATE OF WASHINGTON**

#### **A. RESPONSIBILITY CRITERIA – STATE OF WASHINGTON**

In order to be considered a responsible bidder the bidder must meet the following mandatory state responsibility criteria contained in RCW 39.04.350:

1. Have a current certificate of registration as a contractor in compliance with chapters 18.27 RCW, 18.106 RCW, 70.87 RCW, 19.28 RCW, which must have been in effect at the time of bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable:
  - a. Have Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW;
  - b. Have a Washington Employment Security Department number, as required in Title 50 RCW;
  - c. Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW and;
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 (unlicensed or unregistered contractors) or 39.12.065(3) (prevailing wage).
5. Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW and must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection.

#### **B. RECIPROCAL PREFERENCE FOR RESIDENT CONTRACTORS:**

Effective March 30, 2012, RCW 39.04.380 imposes a reciprocal preference for resident contractors. Any bid received from a non-resident contractor from a state that provides an in-state percentage bidding preference is subject application of a comparable percentage disadvantage.

A non-resident contractor from a state that provides an in-state percentage bidding preference means a contractor that:

1. Is from a state that provides a percentage bid preference to its resident contractors bidding on public works projects, and
2. Does not have a physical office located in Washington at the time of bidding on the City of Tacoma public works project.

The state of residence for a non-resident contractor is the state in which the contractor was incorporated, or if not a corporation, the state in which the contractor's business entity was formed.

The City of Tacoma will evaluate all non-resident contractors for an out of state bidder preference. If the state of the non-resident contractor provides an in-state contractor preference, a comparable percentage disadvantage will be applied to the non-resident contractor's bid prior to contract award. The responsive and lowest and best responsible bidder after application of any non-resident disadvantage will be awarded the contract.

The reciprocal preference evaluation does not apply to public works procured pursuant to RCW 39.04.155, RCW 39.04.280, federally funded competitive solicitations where such agencies prohibit the application of bid preferences, or any other procurement exempt from competitive bidding.

Bidders must provide the City of Tacoma with their state of incorporation or the state in which the business entity was formed and include whether the bidder has a physical office located in Washington.

The bidder shall submit documentation demonstrating compliance with above criteria on the enclosed State Responsibility and Reciprocal Bidder Information form.

#### C. SUBCONTRACTOR RESPONSIBILITY

1. The Contractor shall include the language of this subcontractor responsibility section in each of its first-tier subcontracts and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.
2. At the time of subcontract execution, the Contractor shall verify that each of its first-tier subcontractors meets the following bidder responsibility criteria:
  - a. Have a current certificate of registration as a contractor in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
  - b. Have a current Washington Unified Business Identifier (UBI) number;
  - c. If applicable, have:
    - i. Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW;
    - ii. A Washington Employment Security Department number, as required in Title 50 RCW;
    - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
    - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
    - v. An elevator contractor license, if required by Chapter 70.87 RCW and;
3. Not be disqualified from bidding on any public works contract under RCW 39.06.010 (unlicensed or unregistered contractors) or 39.12.065(3) (prevailing wage).

## II. CITY OF TACOMA

### A. SUPPLEMENTAL RESPONSIBILITY CRITERIA – CITY OF TACOMA:

In order to be considered a responsible bidder, the prospective bidder shall have all of the following qualifications set forth in Tacoma Municipal Code 1.06.262:

1. Adequate financial resources or the ability to secure such resources;
2. The necessary experience, stability, organization and technical qualifications to perform the proposed contract;
3. The ability to comply with the required performance schedule, taking into consideration all existing business commitments;
4. A satisfactory record of performance, integrity, judgment and skills; and
5. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
  - a. Bidder Responsibility. Bidders shall not be in violation of 39.04.350 RCW Bidder Responsibility Criteria - Supplemental Criteria.

In addition to the mandatory bidder responsibility criteria listed immediately above, the City may, in addition to price, consider any or all of the following criteria contained in Tacoma Municipal Code Chapter 1.06.262 in determining bidder responsibility:

1. The ability, capacity, experience, stability, technical qualifications and skill of the respondent to perform the contract;
2. Whether the respondent can perform the contract within the time specified, without delay or interference;
3. Integrity, reputation, character, judgment, experience, and efficiency of the respondents, including past compliance with the City's Ethics Code;
4. Quality of performance of previous contracts;
5. Previous and existing compliance with laws and ordinances relating to contracts or services;
6. Sufficiency of the respondent's financial resources;
7. Quality, availability, and adaptability of the supplies, purchased services or public works to the particular use required;
8. Ability of the respondent to provide future maintenance and service on a timely basis;
9. Payment terms and prompt pay discounts;
10. The number and scope of conditions attached to the submittal;
11. Compliance with all applicable City requirements, including but not limited to the City's Ethics Code and its Small Business Enterprise and Local Employment and Apprenticeship programs;
12. Other qualification criteria set forth in the specification or advertisement that the appropriate department or division head determines to be in the best interests of the City.

The City may require bidders to furnish information, sworn or certified to be true, to demonstrate compliance with the City responsibility criteria set forth above. If the city manager or director of

utilities is not satisfied with the sufficiency of the information provided, or if the prospective respondent does not substantially meet all responsibility requirements, any submittal from such respondent must be disregarded.

**B. ADDITIONAL SUPPLEMENTAL CRITERIA**

See Minimum Requirements/Qualifications Section.

**C. MODIFICATIONS TO SUPPLEMENTAL CRITERIA**

Potential bidders may request modifications to the City's supplemental criteria by submitting a written request to the Purchasing Division via email to [bids@tacoma.gov](mailto:bids@tacoma.gov) no later than 5:00 p.m. Pacific Time, three days prior to the submittal deadline. Please include the Specification No. and Title when submitting such requests. Requests must include justification for why certain criteria should be modified. Requests received after this date and time will not be considered.

The City will respond to a timely submitted request prior to the bid opening date. Changes to the supplemental criteria, if warranted, will be issued by addendum to the solicitation documents and posted to the City's website for the attention of all prospective bidders.

**D. DETERMINATION OF BIDDER RESPONSIBILITY**

If the City determines the bidder does not meet the criteria above and is therefore not a responsible bidder, the City shall notify the bidder in writing with the reasons for its determination. If the bidder disagrees, the bidder may appeal the determination in a manner consistent with the City's Protest Policy. Appeals are coordinated by the Purchasing Division heard by the Procurement and Payables Division manager for contracts less than or equal to \$500,000 and by Contracts and Awards Board for contracts greater than \$500,000.

## **1. OVERVIEW**

The City of Tacoma is comprised of two divisions: General Government and Tacoma Public Utilities. General Government is comprised of standard governmental departments including Information Technology, Police, Fire, Library, Environmental Services, Neighborhood and Community Services, Public Assembly Facilities, and Public Works.

The Tacoma Public Utilities division of the City consists of three operating divisions: Tacoma Power, Tacoma Water, and Tacoma Rail. Tacoma Public Utilities is one of the oldest and largest municipally owned utilities in the country.

To learn more about the City of Tacoma, visit [tacoma.gov](http://tacoma.gov)

The City has entered into contract with The Gordian Group both to maintain the unit price book/Construction Task Catalog® and to provide consulting services on task orders executed under any resulting contract(s).

The City of Tacoma (City) is soliciting proposals from qualified contractors to serve as prime contractor on job order contracts (JOCs) as authorized by RCW 39.10.420. The purpose of the JOC is to provide departments an efficient and effective tool for performing small to medium-sized public works projects, to reduce the specification development burden for well-defined public works projects, to expand City of Tacoma contracting opportunities to smaller, underutilized contractors via subcontracting, and to provide cost effective and compliant means for responding to emergency or unexpected issues.

See Appendix A for a detailed scope of work

## **2. PROJECT BUDGET**

Contracts resulting from these specifications will be on-call and as such, the contract value is not to be interpreted as a guarantee of spend. Actual spend against the contract will be determined based on the jobs ordered and delivered under the contract.

- 2.1 There will be a guaranteed minimum spend of \$50,000 for each job order contract executed as a result of these specifications.

The city will be relieved of its obligation to compensate contractor a minimum of \$50,000 in the initial term of the contract should the contractor refuse task orders during that same term.

- 2.2 Initial contract value of each job order contract that results from these specifications will be set at \$4,000,000 for the initial year.
- 2.3 If extended, contract value will be raised to \$4,000,000 plus any unspent funds from the previous year.
- 2.4 At no point will the value of any single contract exceed \$8,000,000 as per RCW 39.10.440.

## **3. MINIMUM REQUIREMENTS/QUALIFICATIONS**

- 3.1 Respondent must be registered as a general contractor with Washington State.
- 3.2 Respondent must not be debarred and must not have been excluded from responding to a public works bid in the last five years.
- 3.3 Respondent must have experience performing a job order contract in the last three years for a public entity of similar size and complexity as the City of Tacoma.
- 3.4 Respondent must have performed three large scale, on-call public works contracts within the last five years.

#### **4. CONTRACT TERM**

Contracts that result from these specifications will have an initial term of one year with two, one-year options to extend by way of written amendment to the contract. It is the City's intent to develop strong mutually beneficial relationships with all prime contractors awarded that will remain in place through all three years as allowed by RCW.

#### **5. CALENDAR OF EVENTS**

This is a tentative schedule only and may be altered at the sole discretion of the City.

Contract may be issued after Public Utility Board and City Council approval.

The anticipated schedule of events concerning this RFP is as follows:

Publish and issue RFP:	<b>1/26/2026</b>
Pre-Proposal Meeting	<b>2/2/2026</b>
Pre-Submittal Questions:	<b>2/4/2026</b>
Response to Questions:	<b>2/11/2026</b>
Submittal Due Date:	<b>3/3/2026</b>
Phase 1 Evaluation:	<b>March 2026</b>
Interviews/presentations, on or about:	<b>March 2026</b>
Phase 2 Evaluation	<b>April 2026</b>
Award Recommendation:	<b>April 2026</b>
Public Utility Board/City Council Approval:	<b>May/June 2026</b>

#### **6. INQUIRIES**

- 6.1 Questions should be submitted to Ryan Foster via email to rfoster1@tacoma.gov. Subject line to read:  
**CT25-0217F – Job Order Contract – VENDOR NAME**
- 6.2 Questions are due by 3 pm on the date included in the *Calendar of Events* section.
- 6.3 Questions marked confidential will not be answered or included.
- 6.4 The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential.
- 6.5 The answers are not typically considered an addendum.
- 6.6 The City will not be responsible for unsuccessful submittal of questions.

6.7 Written answers to questions will be posted alongside these specifications at [www.tacomapurchasing.org](http://www.tacomapurchasing.org)

## **7. PRE-PROPOSAL MEETING**

A virtual pre-proposal meeting will be held at the date and time specified below.

**Monday, February 2, 2026 at 10 am**

Please join the virtual pre-proposal meeting using the link provided below:

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**Microsoft Teams** [Need help?](#)

[Join the meeting now](#)

Meeting ID: 213 568 443 563

Passcode: ks62wZ9Z

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**Dial in by phone**

[+1 253-666-4424,,785888160#](tel:+12536664424,,785888160#) United States, Tacoma

[Find a local number](#)

Phone conference ID: 785 888 160#

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

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## **8. DISCLAIMER**

The City is not liable for any costs incurred by the Respondent for the preparation of materials, or a submittal submitted in response to this RFP, for conducting any presentations to the City, or any other activities related to responding to this RFP, or to any subsequent requirements of the contract negotiation process.

## **9. CONTRACTOR LICENSE FEE**

The City selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Information Management System ("JOC IMS"), JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the City. The Contractor shall be required to execute Gordian's SaaS Terms of Use and pay a JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms of the Contract. The JOC System License Fee shall be equal to 1% of the Job Order Price.

Within two business days of receipt of a Purchase Order from the City, the Contractor must provide notification to Gordian by forwarding a copy of the Purchase Order to Gordian.

Upon the Contractor's receipt of the initial payment from the City, Gordian will invoice the Contractor for the JOC System License Fee. Contractor shall remit payment to Gordian within thirty (30) days of the date of the invoice. Any amounts arising in relation to money not paid when due will be subject to a late charge of (1.5%) per month on the unpaid balance or the maximum rate allowed by law, whichever is less.

## **10. EVALUATION CRITERIA**

There are two phases to the evaluation of submittals. Phase one is an evaluation of respondent's qualifications. Phase two is an evaluation of the pricing coefficient(s) submitted against the unit price book/Construction Task Catalog® based on work times and locations. . Final score will be evaluated with a weighting of 70% Qualifications and 30% adjustment factors.

### **10.1 Phase 1: Qualifications**

A Selection Advisory Committee (SAC) will review and evaluate submittals without examination of the separately submitted adjustment factor. The relative weight of each scoring criteria is indicated in the table below.

Criteria	Max Points
Qualifications of Respondent	20
Comparable Contractor Experience	20
Project Approach	20
Qualifications / Experience of Key Personnel	15
Sustainability	5
Equity in Contracting (Subcontractor Inclusion Plan)	20
Total	100

After the evaluation, the SAC may conduct interviews of the most qualified Respondents before finalist selection.

- 10.1.1 The SAC may select one or more respondent to advance to stage two of the evaluation.
- 10.1.2 The SAC may use references to clarify information in the submittals and interviews, if conducted, which may affect the rating. The City reserves the right to contact references other than those included in the submittal.
- 10.1.3 A significant deficiency in any one criteria is grounds for rejection of the submittal as a whole.

### **10.2 Phase 2: Adjustment Factors**

There are three (3) Adjustment Factors for this Contract, which shall be proposed by the Bidder in its Phase II Cost Proposal. When preparing a Job Order Price Proposal, the Contractor shall select the appropriate Adjustment Factor for each task.

The Adjustment Factors are as follows:

- 10.2.1 *Normal Working Hours*: Monday through Friday 7:00 am to 5:00 pm except City holidays.
- 10.2.2
- 10.2.3 *Other Than Normal Working Hours*: Monday through Friday 5:01 pm to 6:59 am and all day Saturday, Sunday and City holidays.
- 10.2.4
- 10.2.5 *Non Pre-priced Task Adjustment Factor*: for Non Pre-priced Tasks.

Note: The Other Than Normal Working Hours Adjustment Factor must be equal to or greater than the Normal Working Hours Adjustment Factor. The Non Pre-priced Adjustment Factor must be equal to or greater than 1.0000.

For evaluation purposes only, the following work distributions shall be used to determine the lowest proposed price:

<b>Adjustment Factor</b>	<b>% Weight (For Evaluation Only)</b>
Normal Working Hours	80%
Other Than Normal Working Hours	10%
Non Pre-priced Tasks	10%

All Unit Prices listed in the Construction Task Catalog® are priced at a net value of 1.0000. The Adjustment Factors shall be an increase or decrease to all the Unit Prices listed in the Construction Task Catalog®. For example, 1.1000 would be a 10% increase to the Unit Prices and 0.9500 would be a 5% decrease to the Unit Prices. Bidders who submit separate Adjustment Factors for separate Unit Prices will be considered non-responsive and their proposal will be rejected.

Scores in this section will be out of 100 with the lowest weighted adjustment factor receiving 100 and all others receiving a total based on the below formula:

$$\text{Adjustment Factor Score} = \frac{\text{Lowest Adjustment Factor}}{\text{Adjustment Factor Bid}} \times 100$$

### 10.3 Final Score

Final award will be made based on the below table:

Phase	Weight
Qualifications	70%
Adjustment Factor	30%

## 11. CONTENT TO BE SUBMITTED

Proposals should be formatted as 8 1/2" x 11". A "page" is defined as one single-side of a document that has written text or graphics. The font should be Times New Roman or Arial with font size no smaller than 11 and the margins shall be 0.75" or greater. Submittals should be limited to a maximum of 10 pages, double-sided, or 20 pages total, excluding any required forms or resumes. All pages that exceed the specified page limit will not be part of the evaluation.

A full and complete response to each of the "CONTENT TO BE SUBMITTED" items is expected in a single location; do not cross reference to another section in your submittal.

Information that is confidential must be clearly marked and provide an index identifying the affected page number(s) and locations(s) of such identified materials. See Section 1 of the Standard Terms and Conditions – Solicitation 1.06 for Public Disclosure: Proprietary or Confidential Information.

Respondents are to provide complete and detailed responses to all items below. Submittals that are incomplete or conditioned in any way that contain alternatives or items not called for in this RFP, or not in conformity with law, may be rejected as being non-responsive. The City will not accept any submittal containing a substantial deviation from the requirements outlined in this RFP.

Submittals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the respondent's/team's abilities to meet the requirement of this RFP. Emphasis will be on completeness of content. The written submittals should be prepared in the sequential order as outlined below.

The City reserves the right to request clarification of any aspect of a firm's submittal or request additional information that might be required to properly evaluate the submittal. A firm's failure to respond to such a request may result in rejection of the firm's submittal. Firms are required to provide responses to any request clarification within two (2) business days.

Requests for clarification or additional information shall be made at the sole discretion of the City. The City's retention of this right shall no way diminish a Proposer's responsibility to submit a submittal that is current, clear, complete and accurate.

### 11.1 Qualifications of Respondent

#### 11.1.1 Overview of Respondent

- A. Complete the Signature Page (Appendix B: Required Form)
- B. Provide a brief description of the respondent:
  - 1. Length of time in business
  - 2. List primary as well as all relevant secondary offices

#### 11.1.2 Financial Health of Respondent

Describe the financial health of the company including credit ratings and name of rating service. Disclose any judgment and/or pending litigation which might affect the ability of the company to perform the work.

#### 11.1.3 Confirmation of Minimum Requirements

- A. Complete State Responsibility Information Form (Appendix B: Required Forms)
- B. Complete Certification of Compliance with Wage Status Form (Appendix B: Required Forms)
- C. Complete the Record of Prior Contracts document (Appendix B: Required Forms) – unreachable contacts may result in dismissal of respondent's submittal

#### 11.2 Comparable Contractor Experience

11.2.1 Describe respondent's experience fulfilling job order contracts over the last five years including identifying all public entities for whom these services have been rendered.

11.2.2 Identify all currently held job order contracts and describe how respondent would be able to concurrently meet the City of Tacoma's project load.

#### 11.3 Project Approach

11.3.1 Describe respondent's approach to fulfilling task orders effectively and efficiently.

11.3.2 Describe main challenges organizations encounter when standing up a job order contract and describe how respondent's approach mitigates these issues.

11.3.3 Describe how respondent will manage work at City of Tacoma remote locations.

#### 11.4 Qualification/Experience of Key Personnel

List key personnel that will handle the project. The personnel listed must be committed to this project for the expected term of the agreement. Include a brief bio or resume outlining the experience of the key personnel that will be involved.

#### 11.5 Subcontracting and EIC

Using the provided EIC Inclusion Plan form (Appendix B), submit a detailed plan for how respondent will ensure Washington State OMWBE firms will be equitably represented in subcontracting.

#### 11.6 Sustainability – 5 points

Provide information on your company's commitment to the environment. Include your sustainability statement and current practices. For more information, see our [Respondents Guide](#).

- A. Does the Respondent have an organizational sustainability plan and/or policy?

Yes  No

Provide additional information if checked "Yes," including whether it is made publicly available (provide link) and how it is communicated to employees.

B. Does the Respondent have:

- Greenhouse gas emission reduction targets?  Yes  No
- Energy and water conservation targets?  Yes  No
- Waste reduction targets?  Yes  No
- Toxics use reduction targets?  Yes  No
- Pollution reduction targets?  Yes  No
- Measure progress regularly and publicly?  Yes  No

C. How will the Respondent, through service delivery and/or their own operations during the contract period:

- Minimize greenhouse gas emissions?
- Minimize polluted stormwater runoff in Tacoma?
- Minimize waste generation?
- Minimize toxic use and/or generation?
- Minimize air pollution in Tacoma?
- Minimize resource extraction?

D. Demonstrate industry leadership across these areas? Is the Respondent an EnviroStars recognized business? Provide any relevant certifications and/or verified results.

#### 11.7 Contract Exceptions

List any exceptions respondent takes to the city's standard terms and conditions, the sample contract or any other terms in these specifications. Provide any preferred replacement language where appropriate. The City will be the sole judge of whether respondent is able to enter contract negotiations considering taken exceptions.

### 12. INTERVIEWS / ORAL PRESENTATIONS

An invitation to interview may be extended to Respondents based on SAC review of the written submittals. The SAC reserves the right to adjust scoring based on additional information and/or clarifications provided during interviews. The SAC may determine additional scoring criteria for the interviews following evaluation of written submittals.

The City reserves all rights to begin contract negotiations without conducting interviews.

Respondents must be available to interview within three business days' notice.

If interviews are conducted, the SAC will schedule the interviews with the contact person provided on the Signature Page. Additional interview information will be provided at the time of invitation. At this time, it is anticipated that the main objective of the interview will be for the SAC to meet the project manager and key personnel that will have direct involvement with the project

and hear about their relevant experience and expertise. The City does not intend to meet with firm officials unless they are to be directly involved with the project.

Following interviews, submittals will be rescored using the same criteria given in the Evaluation Criteria.

### **13. RESPONSIVENESS**

Respondents agree their submittal is valid until a contract(s) has been executed.

All submittals will be reviewed by the City to determine compliance with the requirements and instructions specified in this RFP. The Respondent is specifically notified that failure to comply with any part of this RFP may result in rejection of the submittal as non-responsive. The City reserves the right, in its sole discretion, to waive irregularities deemed immaterial.

The final selection, if any, will be that submittal which, after review of submissions and potential interviews, in the sole judgement of the City, best meets the requirements set forth in this RFP.

### **14. ACCEPTANCE / REJECTION OF SUBMITTALS**

Respondents are advised that the City reserves the right to cancel award of this Contract at any time before execution of the Contract by both parties if cancellation is deemed to be in the City's best interest. In submitting a Submittal, Respondents agree that the City is not liable for any costs or damages for the cancellation of an award.

The City reserves the right and holds at its discretion the following rights and options:

- To waive any or all informalities
- To award one or more contracts
- To not award a contract
- To issue subsequent solicitation

### **15. CONTRACT OBLIGATION**

**Awardee shall be required to comply with 2 CFR part 25 and obtain a unique entity identifier and/or be registered in the federal System for Award Management as appropriate.**

The selected Respondent(s) will be expected to execute a contract with the City. As part of the negotiation process, Respondents may propose amendments to the contract, but the City, at its sole option, will decide whether to open discussion on each proposed amendment and determine the final contract to be used. At a minimum, any contract will incorporate the terms and conditions contained herein. The Submittal contents of the successful Respondent may become contractual obligations if a contract ensues.

### **16. ORDER OF PRECEDENCE**

In the event of a conflict between these specifications and any incorporated terms and conditions, the following order of precedence will apply with the first being the most controlling and the last, the least controlling.

16.1 Specification No. CT25-0217F inclusive of Detailed Scope of Work in Appendix A

16.2 City of Tacoma Standard Terms and Conditions

16.3 City of Tacoma Insurance Requirements

16.4 Citywide Appendix

16.5 JOC Supplemental Conditions

16.6 SAAS Terms of Use

## **17. STANDARD TERMS AND CONDITIONS**

City of Tacoma [Standard Terms and Conditions](#) apply.

## **18. INSURANCE REQUIREMENTS**

Successful proposer will provide proof of and maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements contained in this solicitation. Please see Appendix C: Additional Requirements.

## **19. ADDITIONAL TERMS AND CONDITIONS**

19.1 JOC Supplemental Conditions apply. See Appendix C.

19.2 SAAS Terms of Use will apply following contract execution. See Appendix D.

## **20. PREVAILING WAGE INFORMATION**

If this project requires prevailing wages under chapter 39.12 RCW, any worker, laborer, or mechanic employed in the performance of any part of the work shall be paid not less than the applicable prevailing rate of wage.

The project site could be located in Pierce, King, Lewis, Mason, and Grays Harbor Counties.

The effective date for prevailing wages on each project will be the effective date of the executed task order:

Look up prevailing rates of pay, benefits, and overtime codes from this link:

<https://secure.lni.wa.gov/wagelookup/>

## **REQUIRED FILINGS**

The contractor and all subcontractors covered under [39.12 RCW](#) shall submit to the Department of Labor and Industries (L&I) for work provided under this contract:

1. A Statement of Intent to Pay Prevailing Wages must be filed with and approved by L&I upon award of contract.
2. An Affidavit of Wages Paid must be filed with and approved by L&I upon job completion.

Payments cannot be released by the City until verification of these filings are received by the engineer. Additional information regarding these filings can be obtained by calling the Department of Labor & Industries, Prevailing Wage at 360-902-5335, <https://secure.lni.wa.gov/> or by visiting their MY L&I account.

See also Intents and Affidavits for Citywide Contracts section in the Detailed Scope of Work (Appendix A)

## **21. BID BOND**

A deposit of at least five percent (5%) of the total Bid shall accompany each Bid. For the purposes of this section, a respondents bid should be considered to be \$4,000,000 which is the annual contract value available for contracts resulting from this specification. This deposit may be cash, certified check, cashier's check, or a bid bond (Surety bond).

- 21.1 If a Bid Bond is used, the form furnished by the City (Appendix B: Required Forms) must be followed; no variation from the language thereof will be accepted. The amount of the Bid Bond must be not less than five percent (5%) of the total amount bid; and, if shown in dollars and cents, the amount of said Bid Bond must be not less than the required five percent; or in lieu of dollars and cents, the bond may be completed by inserting therein, "five percent of the amount of the accompanying proposal". Bid Bonds will not be returned. Bid Bond should be submitted electronically with bid submittal. Hard copies should be postmarked no later than the submittal date.
- 21.2 If a certified or cashier's check is provided by the successful Respondent(s), the amount of their check will be refunded after award of the Contract, City's receipt of the signed Contract, and acceptance of the Performance Bond, if applicable. Unsuccessful Respondents providing certified checks will be refunded the amount of their check upon award of the Contract.
- 21.3 Failure to furnish a Bid deposit of a minimum of five percent (5%) shall make the bid nonresponsive and shall cause the bid to be rejected by the City.

If submitting your bid electronically, A scanned version of the original bid bond or cashier's check shall accompany your electronic bid submittal. The original bid bond or cashier's check shall be sent to the Contracting Agency and received by the Contracting Agency within 7 calendar days of the bid opening, or the bidder may be deemed non-responsive.

Original bid bond or cashier's check will be delivered to:

City of Tacoma Procurement & Payables Division  
Tacoma Public Utilities  
3628 South 35th Street  
Tacoma, WA 98409

If so, stated in the Contract Provisions, cash will not be accepted for a bid deposit.

## **22. PAYMENT AND PERFORMANCE BONDS**

If a payment and performance bonds is stated herein, the required bond including power of attorney, will be 100 percent of the annual contract total and is subject to the following requirements.

- 22.1 The City's payment and performance bonds forms must be used.
- 22.2 The payment and performance bonds must be executed by a surety company licensed to do business in the state of Washington.
- 22.3 The cost of a payment and performance bonds must be included in submittal prices. Bonds will not be paid as a separate line item.

22.4 For a supply-type contract, a certified cashier's check or cash may be substituted for the bonds; however, this cash or check must remain with the City through the guarantee period and any interest on said amount shall accrue to the City.

### **23. PARTNERSHIPS**

The City will allow firms to partner in order to respond to this RFP. Respondents may team under a Prime Respondent's submittal in order to provide responses to all sections in a single submission; however, each Respondent's participation must be clearly delineated by section. The Prime Respondent will be considered the responding vendor and the responsible party at contract award. All contract negotiations will be conducted only with the Prime Respondent. All contract payments will be made only to the Prime Respondent. Any agreements between the Prime Respondent and other companies will not be a part of the agreement between the City and the Prime Respondent. The City reserves the right to select more than one Prime Respondent.

### **24. COMMITMENT OF FIRM KEY PERSONNEL**

The Respondent agrees that key personnel identified in its submittal or during contract negotiations as committed to this project will, in fact, be the key personnel to perform during the life of this contract. Should key personnel become unavailable for any reason, the selected Respondent shall provide suitable replacement personnel, subject to the approval of the City. Substantial organizational or personnel changes within the agency are expected to be communicated immediately. Failure to do so could result in cancellation of the Contract.

### **25. AWARD**

Award will be made to the highest scoring respondent(s). Notice of finalist selection will be sent to all respondents following selection by the Selection Advisory Committee.

Once a finalist (or finalists) has been selected by the Selection Advisory Committee, contract negotiations with that finalist will begin, and if a contract is successfully negotiated, it will, if required, be submitted for final approval by the Public Utility Board and/or City Council.

### **26. ENVIRONMENTALLY PREFERABLE PROCUREMENT**

In accordance with the [City's Sustainable Procurement Policy](#) and [Climate Action Plan](#), it is the policy of the City of Tacoma to encourage the use of products or services that help to minimize the environmental and human health impacts of City Operations. Respondents are encouraged to incorporate environmentally preferable products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, products, manufacturing, packaging, distribution reuse, operation, maintenance or disposal of the product or service.

The City of Tacoma encourages the use of sustainability practices and desires any awarded contractor(s) to assist in efforts to address such factors when feasible for:

- Durability, reusability, or refillable.

- Pollutant releases, especially persistent bio accumulative toxins (PBTs), low volatile organic compounds (VOCs), and air quality and stormwater impacts;
- Toxicity of products used;
- Greenhouse gas emissions, including transportation of products and services, and embodied carbon
- Recycled content;
- Energy and water resource efficiency;

## **27. PROPRIETARY OR CONFIDENTIAL INFORMATION**

The Washington State Public Disclosure Act ([RCW 42.56 et seq.](#)) requires public agencies in Washington make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act, or are otherwise privileged. Documents submitted under this RFP shall be considered public records and, with limited exceptions, will be made available for inspection and copying by the public.

Information that is confidential or proprietary must be clearly marked. Further, an index must be provided indicating the affected page number(s) and location(s) of all such identified material. Information not included in said index will not be reviewed for confidentiality or as proprietary before release.

## **28. ADDENDUMS**

In the event it becomes necessary to revise any part of this RFP, an addendum will be posted alongside specifications at [www.tacomapurchasing.org](http://www.tacomapurchasing.org). Failure to acknowledge addendum(s) on the required Signature Page may result in a submittal being deemed non-responsive by the City.

## **29. LEAP REQUIREMENTS**

- 29.1 This project has LEAP Requirements, see Appendix C for complete LEAP documentation.
- 29.2 See Detailed Scope of Work Task Orders Section Subsection C. 2 regarding apprenticeship requirement for Task Orders exceeding \$350,000. (Appendix A)

## **30. EQUITY IN CONTRACTING**

This project has EIC requirements, see Appendix B for EIC Inclusion Plan and Appendix C for complete EIC documentation.

## **APPENDIX A – DETAILED SCOPE OF WORK**

### **Detailed Scope of Work**

## Detailed Scope of Work

### 1. OVERVIEW

The Job Order Contract process is an alternative public works delivery method authorized in RCW 39.10.410. A Job Order Contract is a fixed period, indefinite quantity contract which provides for the use of negotiated Job Orders for each separate project completed under the Job Order Contract. Prices for each Job Order are based on the unit prices contained in the Construction Task Catalog® adopted by the City and the Adjustment Factor submitted by the Contractor (through this RFP) for the entire Contract Term.

Bidders will bid three (3) Adjustment Factors to be applied to the Unit Prices. One Adjustment Factor for performing work during Normal Working Hours, a second Adjustment Factor for performing work during Other Than Normal Working Hours, and a third Adjustment Factor for performing work related to Non-Pre-priced tasks. The same three (3) Adjustment Factors apply to every Job Order Requested for Pre-priced and Non-Pre-Priced Tasks associated with the Construction Task Catalog®.

As projects are identified, the Contractor will jointly scope the work with the City. The City will prepare a Detailed Scope of Work and issue a Request for Proposal to the Contractor. The Contractor will then prepare a Job Order Proposal for the Project including a Job Order Price Proposal, drawings and sketches, a list of subcontractors and materialmen, construction schedule, and other requested documentation. The Job Order Price shall equal the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the value of all Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non-Pre-priced Tasks.

If the Job Order Proposal is found to be complete and accurate, the Owner may issue a Job Order to the Contractor.

A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Price. The Contractor will be paid the Job Order Price for completing the Detailed Scope of Work within the Job Order Completion Time.

Extra work, credits, and deletions will be contained in a Supplemental Job Order.

### 2. SCOPE OF WORK/UNIT PRICE BOOK

The Construction Task Catalog® and Gordian Technical Specifications can be accessed using the following link:

<https://fortive.box.com/s/028brxf3huos7noxrhwzm0j4lz8retqt>

### 3. ON-CALL NATURE OF WORK

The citywide contract(s) that result from this specification will be available for use by all City of Tacoma (City) departments, including those of Tacoma Public Utilities (TPU). Resulting contracts will be subject to RCW 39.10.420-39.10.460, in addition to RCW 39.04 on Public Works.

The contract will be administered by purchasing but work performed under the contract(s) will be ordered and coordinated by project managers throughout the City.

### 3.1 Line-Item Quantities and Contract Value

Contract values are not a guarantee of spend. Actual contract value and unit rate quantities will depend on the work ordered, authorized, and performed under the contract.

### 3.2 Remote Location

See Appendix C for a map of the Tacoma Power and Tacoma Water Service Areas as well as maps of City of Tacoma remote facilities.

## 4. CONTRACT AWARD PROCESS 39.10.430

### 4.1 Duration of the Contract and Options to Extend

See Contract Term section of the specification

### 4.2 Rationale for Issuing a Job Order Contract

See Overview of Project section of the specification

### 4.3 Qualifications

See Minimum Requirements/Qualifications section of the specification

### 4.4 Unit Price Book/Construction Task Catalog® and Respondent Coefficient

See Section I of this document

### 4.5 Minimum Contracted Amount

See Project Budget section of the specification

### 4.6 Evaluation Criteria

See Evaluation Criteria and Interviews/Oral Presentations sections of the specification

### 4.7 Form of Contract

See Sample Contract in Appendix D

### 4.8 Pricing and Renewals of JOC

#### 4.8.1 See Section 15 of the JOC Supplemental Terms.

#### 4.8.2 In extraordinary circumstances, price adjustments can be considered as prescribed in the Standard Terms and Conditions (See Section 15 Standard Terms and Conditions)

### 4.9 Public Disclosure

#### 4.9.1 Proposals submitted in response to these specifications are subject to RCW 39.10.470.

#### 4.9.2 Provisions of the City of Tacoma Standard Terms and Conditions regarding confidential information and public disclosure also apply.

### 4.10 Equity in Contracting Requirements (Inclusion Plan)

Per RCW 39.10.430 (4), the City of Tacoma Equity in Contracting team will review all submittals for compliance with requirements concerning contracting with historically marginalized populations.

#### 4.11 Protest Period

There will be a protest period of ten business days from the time of award of contract(s) resulting from these specifications.

#### 4.12 Exclusion from Identification of Licensed Subcontractors

Respondents to these specifications need not comply with RCW 39.30.060.

### 5. CONTRACT ADMINISTRATION

#### 5.1 Central Administration

Following contract execution but prior to any work being performed under the contract, supplier will attend a kickoff meeting with purchasing and other city stakeholders including but not limited to EIC staff, LEAP staff and potential project managers throughout the city. No work should be performed prior to this meeting.

Topics discussed and requirements for projects completed under the contract may be captured in a Contract Administration Plan and that plan will be used to track progress and performance of the contract, and to identify and resolve any issues that arise.

A Purchasing Contract Administrator will be identified at this meeting and the supplier will need to identify a main contract administrator that can be contacted for any and all communications regarding the administration of this contract.

Prior to commencement of any work under the contract, supplier shall provide all required LEAP documentation to the LEAP Coordinator at a location, time and date determined by the LEAP Coordinator.

#### 5.2 Task Order Administration

Individual task orders will be managed by project managers throughout the city. Prime contractor is responsible for tracking subagreement numbers and task order project managers and contract administrators.

### 6. INDIVIDUAL PROJECT COORDINATION

It is incumbent upon awardee(s) to confirm these items with departments/workgroups as new task orders are created.

#### 6.1 Coordination with Others

It is possible that other contractors or the City will be working in the project areas during the time of construction. It shall be the responsibility of this contractor to coordinate its work with all other agencies and/or contractors within the project area.

All construction activities shall be coordinated daily, or as required, with the project manager lead or their designated representative. Changes to the schedule that will impact dates shown as milestones on the schedule shall be coordinated with the project manager.

The facilities or portions of facilities within the project limits must be kept in continuous operation throughout the construction period. No interruption will be permitted which adversely affects the degree of service provided.

The contractor shall also be responsible to minimize disruptions to building occupants during working hours 6:30 a.m. to 6:00 p.m., Monday through Friday.

Contractor shall provide temporary facilities and make temporary modifications as necessary to keep the existing facilities in operation during the construction period.

Contractor shall comply with all security and access control requirements.

The contractor shall follow all requirements of City of Tacoma, Department of Public Utilities, and Tacoma Power's security program(s).

## 6.2 Protection of Existing Utilities and Improvements

The contractor shall protect from damage the utilities and all other existing improvements not provided for in the proposal or special provisions. The cost of labor, equipment and materials required to protect or replace said items shall be incorporated into the bid for the project.

## 6.3 Superintendent

The contractor shall employ a competent superintendent (foreman) who shall be present at the project site at all times during the entire progress of the work, except those times when the contractor is demobilized. The superintendent shall be on site even when only a subcontractor is working, unless otherwise approved by the engineer/project lead. The foreman shall be satisfactory to the contractor and shall have full authority to act on their behalf.

# 7. CONTRACT REQUIREMENTS 39.10.440

## 7.1 Subcontracting Requirement

- 7.1.1 At least 90% of work must be performed via subcontract.
- 7.1.2 Subcontracting must meet the requirements of the EIC Inclusion Plan submitted by the contractor and accepted by the City of Tacoma.
- 7.1.3 Task orders must be distributed as equitably as possible among qualified and available subcontractors.

## 7.2 Advertising Requirement

Per RCW 39.10.440 (5) the job order contractor shall advertise the intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.

# 8. TASK ORDERS

## 8.1 Task Order Contractual Requirements

- 8.1.1 Each task order shall be executed as its own contract.
- 8.1.2 Work under a single project may not be split between multiple task orders.
- 8.1.3 No more than twenty percent of the dollar value of a work order may consist of items not contained in the unit price book.

8.1.4 Architecture and engineering services procured under this contract must be directly associated with a specific task order.

**8.2 Minimum and Maximum Task Order Amounts**

8.2.1 There will be no minimum value for task orders under a resulting contract.

8.2.2 Task orders executed under a resulting contract may not exceed \$500,000 per RCW 39.10.450 (1).

**8.3 Task Order Reviews and Approvals**

8.3.1 All task orders must be reviewed by EIC prior to final execution.

8.3.2 Risk will review the scope of task orders and advise on any additional insurance requirements beyond those identified in the Insurance Requirements in Appendix C..

8.3.3 Task orders in excess of \$350,000 before tax, and including over six hundred single trade hours, require utilization of apprentices(s) registered in a Washington State Apprenticeship and Training Council-approved apprenticeship program per RCW 39.04.320 except with concurrence of the City of Tacoma LEAP team and as allowed for per RCW 39.10.450 (8).

8.3.4 Notice to proceed must be issued by a Senior Buyer in the purchasing department and must be accompanied by:

- A. Legal approval of task order to form
- B. Director of Finance acknowledgement
- C. Department Approval to Proceed based on dollar value

**9. INTENTS AND AFFIDAVITS FOR CITYWIDE CONTRACTS**

**9.1.1 Intent Filing**

Separate intents and affidavits will need to be filed for each task order. Intents for the contractor and all subcontractors shall be filed prior to approval of any work and prior to any payment for work performed following task order execution.

**9.2 Certified Payrolls**

Certified payrolls are to be filed with Department of Labor and Industries (LNI) no less frequently than prior to invoicing for any task order. For contracts that are used in an ongoing basis, weekly certified payrolls should be filed both in LCP tracker and on the Department of Labor and Industries website.

**9.3 Affidavit Filing**

Immediately following the end of all work completed under a task order, the Contractor, and each Subcontractor of any tier, shall file an approved Affidavit of Wages Paid with LNI. Affidavits from the Contractor and all subcontractors must be received from Washington State's Department of Labor and Industries (LNI).

**9.4 Project Site Posting**

The Contractor shall post in a location readily visible to works at the task order site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone

number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed.

#### **9.5 Statutory Conflict**

If a State of Washington prevailing wage rate conflicts with another applicable wage rate (such as Davis-Bacon Ace wage rate) for the same labor classification, the higher of the two shall govern.

#### **9.6 Prevailing Wage Disputes**

Pursuant to RCW 39.12.060, if any dispute arises concerning the appropriate prevailing wage rate for work of a similar nature, and the dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his or her decision shall be final and conclusive and binding on all parties involved in the dispute.

#### **9.7 Prevailing Wage Indemnification**

The Contractor shall defend (at the Contractor's sole costs, with legal counsel approved by the City of Tacoma), indemnify and hold the City harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance"), including but not limited to RCW 51.12.050.

#### **9.8 Public Work Closeout and Retainage**

It is the contractor's responsibility to coordinate project close out with the project manager and department staff associated with task orders. Following closeout, all held retainage will be released.

### **10. BILLING AND INVOICING**

#### **10.1 Registration**

Awardee must be willing to register, and become fully transactional, in the City of Tacoma's Ariba portal. A master contract number will be assigned and task order specific subagreements will be created as work is ordered.

#### **10.2 Invoices**

In order for a proper invoice to be received, it must be submitted in Ariba against the appropriate task order subagreement and must include all required documentation:

##### **10.2.1 Approved task order, including original quote if requested by the department.**

##### **10.2.2 PDF invoice attachment including line-item detail aligned with the pricing terms included in the unit price book in these specifications. \***

##### **10.2.3 If the invoice includes line items to allow for work outside of that explicitly described in these specifications, contractor will provide documentation adequate to demonstrate approval by contract administrator and alignment with project manager approved quote.**

Invoices will only be approved following 100% completion of the project. Should a project extend beyond thirty (30) days, progress payments can be approved. Filing of certified payrolls is prerequisite to the approval of any progress payments.

## **11. REPORTING CAPABILITIES**

Supplier shall have the ability to provide accurate and consistent reporting on a quarterly, semi-annual and/or annual basis. The City may request that the contractor provide reports of invoiced services/purchases provided to the City during the contract term. Within twenty (20) business days of a request, the supplier shall provide the City a report clearly titled with the contract name and number, supplier name, supplier contact information and dates of the report period. Report will include line-item detail including quantity and spend for each item included in the Price Proposal Form along with itemization of work performed that does not explicitly fall under the scope of work included in these specifications.

## **12. SUPPLIER PERFORMANCE REVIEW**

Project managers will be encouraged to file performance reviews with the contract administrator (see Appendix D: Performance Review Form). At the determination of the contract administrator, contractor may be required to attend a review of their performance under the contract. Supplier will be notified of the time and location of any such meeting. Action items and/or cures identified in a performance review will be added to the contract file for follow up.

**APPENDIX B – SUBMITTAL PACKET**

Signature Page

Adjustment Factor Bid Form

Bid Bond

Certification of Compliance With Wage Payment Statutes

State Responsibility and Reciprocal Bid Preference Information

EIC Q&R • { } ÁU|ø

Record of Prior Contracts

## **SIGNATURE PAGE**

### **CITY OF TACOMA Finance Department/Procurement & Payables**

All submittals must be in ink or typewritten, executed by a duly authorized officer or representative of the bidding/proposing entity, and received and time stamped as directed in the **Request for Proposals page near the beginning of the specification**. If the bidder/proposer is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.

### **REQUEST FOR PROPOSALS SPECIFICATION NO. CT25-0217F Job Order Contract**

The undersigned bidder/proposer hereby agrees to execute the proposed contract and furnish all materials, labor, tools, equipment and all other facilities and services in accordance with these specifications.

The bidder/proposer agrees, by submitting a bid/proposal under these specifications, that in the event any litigation should arise concerning the submission of bids/proposals or the award of contract under this specification, Request for Bids, Request for Proposals or Request for Qualifications, the venue of such action or litigation shall be in the Superior Court of the State of Washington, in and for the County of Pierce.

#### **Non-Collusion Declaration**

*The undersigned bidder/proposer hereby certifies under penalty of perjury that this bid/proposal is genuine and not a sham or collusive bid/proposal, or made in the interests or on behalf of any person or entity not herein named; and that said bidder/proposer has not directly or indirectly induced or solicited any contractor or supplier on the above work to put in a sham bid/proposal or any person or entity to refrain from submitting a bid/proposal; and that said bidder/proposer has not, in any manner, sought by collusion to secure to itself an advantage over any other contractor(s) or person(s).*

---

Bidder/Proposer's Registered Name

---

Address

---

City, State, Zip

---

Authorized Signatory E-Mail Address

---

E.I.No. / Federal Social Security Number Used on Quarterly Federal Tax Return, U.S. Treasury Dept. Form 941

---

E-Mail Address for Communications

---

Signature of Person Authorized to Enter  
into Contracts for Bidder/Proposer

Date

---

Printed Name and Title

---

(Area Code) Telephone Number / Fax Number

---

State Business License Number  
in WA, also known as UBI (Unified Business Identifier) Number

---

State Contractor's License Number  
(See Ch. 18.27, R.C.W.)

Addendum acknowledgement #1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_ #4 \_\_\_\_\_ #5 \_\_\_\_\_

**THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.**

## ADJUSTMENT FACTOR BID FORM

**This form is not to be submitted until requested in phase two of the evaluation as specified in the Evaluation Criteria section above. Included here for informational purposes only.**

Bidder shall set forth Adjustment Factors in legible figures in the respective space provided. Failure to submit all Adjustment Factors may result in the Proposal being deemed non-responsive. Bidder shall perform the tasks required by each individual Job Order using the following Adjustment Factors:

	<b>Adjustment Factor Name</b>	<b>Adjustment Factor Bid</b>	<b>X Multiplier</b>	<b>= Total</b>
<b>1.</b>	Normal Working Hours Adjustment Factor	____ . _____	X 0.80	= ____ . _____
<b>2.</b>	Other than Normal Working Hours Adjustment Factor	____ . _____	X 0.10	= ____ . _____
<b>3.</b>	Non Pre-Priced Adjustment Factor	____ . _____	X 0.10	= ____ . _____
<b>4.</b>	Add all the Total amounts in the right column.  <b>The Sum of these Total amounts is the Award Criteria Figure.</b>			= ____ . _____

**Notes To Bidder:**

1. Specify lines 1 through 4 to four (4) decimal places. Use conventional rounding methodology (i.e., if the number in the 5th decimal place is 0-4, the number in the 4th decimal remains unchanged; if the number in the 5th decimal place is 5-9, the number in the 4th decimal is rounded upward).
2. ***The Other Than Normal Working Hours Adjustment Factor must be greater than or equal to the Normal Working Hours Adjustment Factor.***
3. ***The Non Pre-priced Adjustment Factor must be greater than 1.0000.***
4. The weighted multipliers above are for the purpose of calculating an Award Criteria Figure and determining the lowest proposed price. No assurances are made by the Owner that Work will be ordered under the Contract in a distribution consistent with the weighted percentages above.
5. When submitting Job Order Price Proposals related to specific Job Orders, the Contractor shall utilize one or more of the Adjustment Factors applicable to the Work being performed.

Business Name: \_\_\_\_\_  Corporation  Joint Venture  
 Partnership  Sole Proprietorship

Business Address: \_\_\_\_\_ Phone: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_ E-mail: \_\_\_\_\_

---

Print Name of Signatory

---

Print Title of Signatory

---

Authorized Official's Signature

---

Signed on Date

---

Signed at (city, state)

Herewith find deposit in the form of a cashier's check in the amount of \$200,000 which amount is not less than 5-percent of the total bid.

SIGN HERE \_\_\_\_\_

---

---

## BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Tacoma, as Obligee, in the penal sum of \_\_\_\_\_ dollars, for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The condition of this obligation is such that if the Obligee shall make any award to the Principal for

according to the terms of the proposal or bid made by the Principal therefor, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for faithful performance thereof, with Surety or Sureties approved by the Obligee; or if the Principal shall, in case of failure to do so, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

PRINCIPAL:

SURETY:

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\_\_\_\_\_, 20\_\_\_\_\_

Received return of deposit in the sum of \$ \_\_\_\_\_

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## Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (**March 3, 2026**), that the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

---

Bidder

---

Signature of Authorized Official\*

---

Printed Name

---

Title

---

Date

---

City

---

State

*Check One:*

Individual  Partnership  Joint Venture  Corporation

State of Incorporation, or if not a corporation, the state where business entity was formed:

---

If a co-partnership, give firm name under which business is transacted:

---

*\* If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

Specification No. \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

## State Responsibility and Reciprocal Bid Preference Information

Certificate of registration as a contractor  
(Must be in effect at the time of bid submittal):

Number: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Current Washington Unified Business Identifier  
(UBI) Number:

Number: \_\_\_\_\_

Do you have industrial insurance (workers' compensation)  
Coverage for your employees working in Washington?

Yes       No  
 Not Applicable

Washington Employment Security Department Number

Number: \_\_\_\_\_

Not Applicable

Washington Department of Revenue state excise tax  
Registration number:

Number: \_\_\_\_\_

Not Applicable

Have you been disqualified from bidding any public  
works contracts under RCW 39.06.010 or 39.12.065(3)?

Yes       No  
If yes, provide an explanation of your  
disqualification on a separate page.

Do you have a physical office located in the state of  
Washington?

Yes       No

If incorporated, in what state were you incorporated?

State: \_\_\_\_\_  Not Incorporated

If not incorporated, in what state was your business  
entity formed?

State: \_\_\_\_\_

Have you completed the training required by RCW  
39.04.350, or are you on the list of exempt businesses  
maintained by the Department of Labor and Industries?

Yes       No



City of Tacoma  
Community & Economic Development  
Office of Equity in Contracting  
747 Market Street, Rm 900  
Tacoma WA 98402

## **JOB ORDER CONTRACTING (JOC) EQUITY IN CONTRACTING (EIC) PROGRAM**

### **EQUITY IN CONTRACTING (EIC) INCLUSION PLAN GUIDE & TEMPLATE**

The Job Order Contractor must submit an Inclusion Plan (See EIC Inclusion Plan guidelines provided on Page 2 of this document) that will be incorporated in the Contract. The plan should demonstrate that the contractor will proactively consider the Washington State Office of Minority and Women's Business Enterprise (OMWBE) \*Certified Businesses they will subcontract with on the contract work.

**\*Please note:** “Certified Business” means an entity that has been certified as a Disadvantaged Business Enterprise (“DBE”), Small Business Enterprise (“SBE”), Minority Business Enterprise (“MBE”), Women Business Enterprise (“WBE”), or Minority and Women’s Business Enterprise (“MWBE”) by the Washington State Office of Minority and Women’s Business Enterprise (OMWBE).

#### **Listed below are the EIC Business Participation (Goals)**

- ✓ 10% Minority Business Enterprise (MBE) certified by the Washington State Office of Minority and Women Business Enterprises
- ✓ 6% Women Owned Business Enterprise (WBE) certified by the Washington State Office of Minority and Women Business Enterprises
- ✓ 5% Small Businesses Enterprise (SBE) and/or Disadvantaged Business Enterprise (DBE) certified by the Washington State Office of Minority and Women Business Enterprises



## **INCLUSION PLAN GUIDELINES**

### **1. Anticipated EIC Business Participation (Goals)**

State Certification Category	EIC Goals	Anticipated % of contract amount (Goals)
Minority-owned business	10%	
Women-owned business	6%	
Small Business	5%	

### **2. Firm's Diversity Expert**

List the firm's Diversity team members and/or firm's diversity expert you anticipate using on this project with their experience recruiting diverse subcontractors.

### **3. Planned efforts by the firm to subcontract with certified firms to include, but not limited to the following:**

- a. General Description, including any applicable policies and procedures
- b. Mentoring, Training and Capacity Building Programs
- c. Prompt Payment, Retainage and Dispute Resolution

### **4. A description of firm's planned efforts at outreach to the small and diverse business community**

### **5. A description of firm's process for ensuring small businesses have enough time and information to provide your firm with bids**

### **6. An explanation of how firm ensures small businesses understand the bid requirements and specifications and are able to learn ways to improve if they are not selected (i.e. pre-bid meetings, debriefing, etc.)**

### **7. A description of how firm considers small business in the development of bid package**

### **8. A list of projects (5 max.) with diverse business participation in the last five (5) years**

### **9. Acknowledgement of firm's awareness and commitment to reach out to diverse businesses and helping Washington State meet or exceed the state's diverse businesses utilization goals**

### **10. Acknowledgement that proposing firm has education and training programs to communicate to your employees your firm's expected employee behaviors and performance relative to implementing the Diverse Business Inclusion Plan**

### **11. Any additional information the firm would like to include as a part of their plan.**

The City of Tacoma will review the submitted inclusion plan for the genuine efforts involved and the maximum opportunity to contribute toward the City of Tacoma's Equity in Contracting goals.

## RECORD OF PRIOR CONTRACTS

**NAME** \_\_\_\_\_ **ADDRESS** \_\_\_\_\_

**Type of Work** \_\_\_\_\_ **Specification No.** \_\_\_\_\_

## **APPENDIX C – REFERENCED DOCUMENTS**

City of Tacoma Insurance Requirements

JOC Supplemental Conditions

LEAP Documents

EIC Documents

Tacoma Power and Water Services Area and Remote Site Maps

This Insurance Requirements shall serve as an attachment and/or exhibit form to the Contract. The Agency entering a Contract with City of Tacoma, whether designated as a Supplier, Contractor, Vendor, Proposer, Bidder, Respondent, Seller, Merchant, Service Provider, or otherwise referred to as "Contractor".

## **1. GENERAL REQUIREMENTS**

The following General Requirements apply to Contractor and to Subcontractor(s) performing services and/or activities pursuant to the terms of this Contract. Contractor acknowledges and agrees to the following insurance requirements:

- 1.1. Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by the City of Tacoma.
- 1.2. Contractor shall keep in force during the entire term of the Contract, at no expense to the City of Tacoma, the insurance coverage and limits of liability listed below and for Thirty (30) calendar days after completion of all work required by the Contract, unless otherwise provided herein.
- 1.3. Liability insurance policies, except for Professional Liability and Workers' Compensation, shall:
  - 1.3.1. Name the City of Tacoma and its officers, elected officials, employees, and agents as **additional insured**
  - 1.3.2. Be considered primary and non-contributory for all claims with any insurance or self-insurance or limits of liability maintained by the City of Tacoma
  - 1.3.3. Contain a "Waiver of Subrogation" clause in favor of City of Tacoma
  - 1.3.4. Include a "Separation of Insureds" clause that applies coverage separately to each insured and additional insured
  - 1.3.5. Name the "City of Tacoma" on certificates of insurance and endorsements and not a specific person or department
  - 1.3.6. Be for both ongoing and completed operations using Insurance Services Office (ISO) form CG 20 10 04 13 and CG 20 37 04 13 or the equivalent
  - 1.3.7. Be satisfied by a single primary limit or by a combination of a primary policy and a separate excess umbrella
- 1.4. A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements below. Verification of coverage shall include:
  - 1.4.1. An ACORD certificate or equivalent
  - 1.4.2. Copies of requested endorsements
- 1.5. Contractor shall provide to City of Tacoma Procurement & Payable Division, prior to the execution of the Contract, Certificate(s) of Insurance and endorsements from the insurer certifying the coverage of all insurance required herein. Contract or Permit number and the City of Tacoma Department must be shown on the Certificate of Insurance.
- 1.6. A renewal Certificate of Insurance shall be provided electronically prior to coverage

expiration via email sent annually to [coi@cityoftacoma.org](mailto:coi@cityoftacoma.org).

- 1.7. Contractor shall send a notice of cancellation or non-renewal of this required insurance within Thirty (30) calendar days to [coi@cityoftacoma.org](mailto:coi@cityoftacoma.org).
- 1.8. "Claims-Made" coverages, except for pollution coverage, shall be maintained for a minimum of three years following the expiration or earlier termination of the Contract. Pollution coverage shall be maintained for six years following the expiration of the Contract. The retroactive date shall be prior to or coincident with the effective date of the Contract.
- 1.9. Each insurance policy must be written by companies licensed or authorized (or issued as surplus line by Washington surplus line broker) in the State of Washington pursuant to RCW 48 with an (A-) VII or higher in the A.M. Best key rating guide.
- 1.10. Contractor shall not allow any insurance to be cancelled, voided, suspended, or reduced in coverage/limits, or lapse during any term of this Contract. Otherwise, it shall constitute a material breach of the Contract.
- 1.11. Contractor shall be responsible for the payment of all premiums, deductibles and self-insured retentions, and shall indemnify and hold the City of Tacoma harmless to the extent such a deductible or self-insured retained limit may apply to the City of Tacoma as an additional insured. Any deductible or self-insured retained limits in excess of Twenty Five Thousand Dollars (\$25,000) must be disclosed and approved by City of Tacoma Risk Manager and shown on the Certificate of Insurance.
- 1.12. City of Tacoma reserves the right to review insurance requirements during any term of the Contract and to require that Contractor make reasonable adjustments when the scope of services changes.
- 1.13. All costs for insurance are included in the initial Contract and no additional payment will be made by City of Tacoma to Contractor.
- 1.14. Insurance coverages specified in this Contract are not intended and will not be interpreted to limit the responsibility or liability of Contractor or Subcontractor(s).
- 1.15. Failure by City of Tacoma to identify a deficiency in the insurance documentation or to verify coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 1.16. If Contractor is a government agency or self-insured for any of the above insurance requirements, Contractor shall be liable for any self-insured retention or deductible portion of any claim for which insurance is required. A certification of self-insurance shall be attached and incorporated by reference and shall constitute compliance with this Section.

## **2. SUBCONTRACTORS**

It is Contractor's responsibility to ensure that each subcontractor obtain and maintain adequate liability insurance coverage that applies to the service provided. Contractor shall provide evidence of such insurance upon City of Tacoma's request. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

### **3. REQUIRED INSURANCE AND LIMITS**

The insurance policies shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve Contractor from liability in excess of such limits.

#### **3.1 Commercial General Liability Insurance**

Contractor shall maintain Commercial General Liability Insurance policy with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate. This policy shall be written on ISO form CG 00 01 04 13 or its equivalent and shall include product liability especially when a Contract is solely for purchasing supplies. It includes Products and Completed Operations for three years following the completion of work related to performing construction services. It shall be endorsed to include: A per project aggregate policy limit (using ISO form CG 25 03 05 09 or equivalent endorsement)

#### **3.2 Workers' Compensation**

Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states. Contractor must comply with their domicile State Industrial Insurance laws if it is outside the State of Washington.

#### **3.3 Employers' Liability Insurance**

Contractor shall maintain Employers' Liability coverage with limits not less than One Million Dollars (\$1,000,000) each employee, One Million Dollars (\$1,000,000) each accident, and One Million Dollars (\$1,000,000) policy limit.

#### **3.4 Professional Liability Insurance or Errors and Omissions**

For contracts with professional licensing, design, or engineering services. Contractor and/or its subcontractor shall maintain Professional Liability or Errors and Omissions with limits of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate covering acts, errors and omissions arising out of the professional services under this Contract. Contractor shall maintain this coverage for Two Million Dollars (\$2,000,000) if the policy limit includes the payment of claims or defense costs, from the policy limit. If the scope of such design-related professional services includes work related to pollution conditions, the Professional Liability policy shall include Pollution Liability coverage.

#### **3.5 Excess or Umbrella Liability Insurance**

Contractor shall provide Excess or Umbrella Liability Insurance with limits not less than Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate. This coverage shall apply, at a minimum, in excess of primary underlying Commercial General Liability, Employer's Liability, Pollution Liability, Marine General Liability, Protection and Indemnity, and Automobile Liability if required herein.

#### **3.6 Pollution Liability Insurance**

Contractor shall maintain Pollution Liability or Environmental Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Coverage shall include investigation and defense costs for bodily

injury and property damage, loss of use of damaged or destroyed property, Natural Resource Damage, and Hazardous Substance Removal. Such coverage shall provide both on-site and off-site cleanup costs, cover gradual and sudden pollution, and include in its scope of coverage the City of Tacoma damage claims for loss arising out of Contractor's work.

### **3.7 Installation Floater Insurance**

Contractor shall maintain during the term of the Contract, at its own expense, Installation Floater Insurance covering Contractor's labor, materials, and equipment to be used for completion of the work performed under this Contract against all risks of direct physical loss, excluding earthquake and flood, for an amount equal to the full amount of the Contract improvements.

### **3.8 Builder's Risk Insurance**

Contractor shall maintain during the term of the Contract and until final acceptance of the work by the City of Tacoma, a policy of Builder's Risk Insurance providing coverage for all-risk of physical injury to all structures to be constructed according to the Contract. City of Tacoma shall be included as a named insured (not named as additional insured) on the policy. Builder's Risk Insurance policy shall:

- 3.8.1 Have a deductible of no more than Five Thousand Dollars (\$5,000) for each occurrence, the payment of which will be the responsibility of Contractor. Any increased deductibles accepted by City of Tacoma will remain the responsibility of Contractor
- 3.8.2 Be on an ISO Special Form Causes of Loss or the equivalent and also include coverage for Collapse, Earthquake and Flood. The deductible for Earthquake and Flood may be higher than the \$5,000 deductible required in 3.18.1
- 3.8.3 Include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site
- 3.8.4 Be written in the amount of the completed value of the structures, with no coinsurance provisions exposure on the part of Contractor or City of Tacoma
- 3.8.5 Contain a Waiver of Subrogation provision whereby each insured waives their subrogation rights to the extent the loss is covered by this insurance
- 3.8.6 Grant permission to occupy, allowing the building or structure to be partially occupied prior to completion, without detrimental effect to the coverage provided
- 3.8.7 Include coverage for the testing and startup of the building's operating systems
- 3.8.8 Include coverage for City of Tacoma's loss of use or business interruption arising out of a covered loss which delays completion
- 3.8.9 Include resultant damage coverage for loss due to faulty workmanship and defective material
- 3.8.10 Include coverage for startup and testing
- 3.8.11 Include coverage for resultant damage coverage for loss due to faulty workmanship and defective material

Contractor and City of Tacoma waive all rights against each other, their respective subcontractors, agents, and representatives for damages caused by fire or other perils to the extent covered by Builder's Risk Insurance or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

### **3.9 Other Insurance**

Other insurance may be deemed appropriate to cover risks and exposures related to the scope of work or changes to the scope of work required by City of Tacoma. The costs of such necessary and appropriate Insurance coverage shall be borne by Contractor.

### **3.10 Other Conditions**

Contractor will be responsible to comply with all specific insurance requirements associated with any highway or rail crossings, e.g., Washington State Department of Transportation (WSDOT), Burlington Northern Santa Fe Railway (BNSF), and Union Pacific Railroad (UPRR).

## **JOB ORDER CONTRACTING (JOC) SUPPLEMENTAL CONDITIONS**

### **MODIFICATIONS TO THE GENERAL and OWNER SPECIAL AND SUPPLEMENTAL CONDITIONS**

The following clarifications and modifications apply to the General, Supplemental and Special Conditions:

1. Whenever the term "Contract" is used to describe the Work associated with an individual project, the term "Contract" shall be replaced with "Job Order".
2. The term "Task Order" as referenced in the Statement of Work and the term "Job Order" may be used interchangeably.
3. Whenever the term "Contract Time" is used to describe the duration associated with an individual project, the term "Contract Time" shall be replaced with "Job Order Completion Time".
4. Whenever the term "Contract Sum or Price" is used to describe the value associated with an individual project, the term "Contract Sum or Price" shall be replaced with "Job Order Price"
5. The Job 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 Job Order, estimated quantities, lists of materials and bid prices shall not apply, the descriptions as related to costs and payment shall not apply, and the payment sections within the individual sections shall not apply.
6. All references to "Bid Items" shall be interpreted to mean Work tasks necessary to complete the Detailed Scope of Work.
7. All references to "change order work", "extra work", "force account work", and any other descriptions to changes to the Detailed Scope of Work shall be interpreted to mean work described in a Detailed Scope of Work of a Supplemental Job Order.
8. The Construction Task Catalog® shall govern the work included in the Unit Price of a Pre-Priced Task.

#### **1. DEFINITIONS**

1. **Adjustment Factor** - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog®.
2. **Award Criteria Figure** - The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
3. **Contract Term** - The period of the Contract and does not include any Option Terms.
4. **Construction Task Catalog®** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
5. **Detailed Scope of Work** - A document setting forth the work the Contractor is obligated to complete for a particular Job Order.

6. **General Facilities** – Facilities that require no secured, regulations, or restrictions.
7. **Job Order** - A written order issued by the City, such as a Purchase/Task Order, requiring the Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
8. **Job Order Completion Time** - The time within which the Contractor must complete the Detailed Scope of Work.
9. **Job Order Price** - The value of the approved Job Order Price Proposal and the amount the Contractor will be paid for completing a Job Order.
10. **Job 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.
11. **Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.
12. **Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
13. **Maximum Contract Value** – The maximum value of Job Orders that the Contractor may receive under this Contract.
14. **Minimum Contract Value** - The minimum value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract.
15. **Non Pre-Priced Task** - A task that is not set forth in the Construction Task Catalog®.
16. **Normal Working Hours (General Facilities)** - Includes the hours from 7:00 a.m. to 4:00 p.m. Monday through Friday, except for City holidays in facilities classified as General by the City.
17. **Notice to Proceed** - A written notice issued by the City directing the Contractor to proceed with construction activities to complete the Job Order.
18. **Other than Normal Working Hours (General Facilities)** - Includes the hours of 4:01 p.m. to 6:59 a.m. Monday through Friday and all day Saturday, Sunday, and City Holidays in facilities classified as General by the City.
19. **Owner** – The City of Tacoma, Washington. Also called the City.
20. **Pre-Priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
21. **Project** - The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
22. **Request for Proposal** - A written request to the Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.
23. **Secured Facilities:** Facilities deemed Secured by the City. A Secured Facility may require

background checks and/or tool inventory.

24. **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
25. **Technical Specifications** - The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
26. **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.
27. **Work** - All materials, labor and use of tools, equipment and services necessary by the Contractor and/or Subcontractor to complete the Job Order.

## 2. CONTRACTOR SELECTION

- 2.1. The City may award an individual Project to any contractor. The City will select the contractor in accordance with the established procedures and based on one or more of the following criteria:
  - 2.1.1. Rotational selection among all contractors, unless otherwise determined by the City.
  - 2.1.2. Contractor's experience with similar type work, project size, construction management challenges, construction schedule, etc.
  - 2.1.3. Contractor's performance in developing Job Orders and completing Projects.
  - 2.1.4. Balancing Job Order volume among contractors.
  - 2.1.5. Limitations posed by bonding capacity of the contractors.
  - 2.1.6. Price, as determined by the Adjustment Factors of the contractors.
  - 2.1.7. Other appropriate criteria as deemed in the best interest of the City.

## 3. CONTRACTOR'S PERSONNEL

- 3.1. The Contractor shall assign a full-time person as its representative for this Contract. This person shall be acceptable to the City and shall have a cell phone at which he or she can be reached at all times.
- 3.2. The Contractor shall also have at all times an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job Order issued, the Contractor shall identify the Superintendent responsible for that Job Order. The Superintendent shall be reachable 24 hours a day, seven days a week. If the named Superintendent is not available because of illness or vacation or the like, the Contractor shall notify the City of a substitute Superintendent. At all times, the Contractor shall provide at least one Superintendent for every four Job Orders. Whenever, in the sole discretion of the City, the

Contractor is not providing a sufficient level of supervision, the City may direct the Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct the Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the City.

#### **4. ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS**

- 4.1. In the event of conflict between the Contract Documents, these JOC Supplemental Conditions shall take precedence as directed by given in the Order of Precedence Section of the specification.

#### **5. PROCEDURE FOR ORDERING WORK**

##### **5.1. CONDUCT THE JOINT SCOPE MEETING**

- 5.2. As the need exists, the City will notify the Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- 5.3. The Contractor does not have the right to refuse to perform any Project, Pre-priced Task, or Non Pre-priced Task.
- 5.4. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum, the following items:
  - 5.4.1. The work to be performed
  - 5.4.2. Presence of hazardous materials
  - 5.4.3. Job Order specific Insurance (if any)
  - 5.4.4. Subcontracting goals (if applicable)
  - 5.4.5. Required permits – including drawings for permits
  - 5.4.6. Long lead time materials
  - 5.4.7. Protocol for workers entering the site
  - 5.4.8. Staging area and areas that are off-limits
  - 5.4.9. Construction schedule and work hours – with critical milestones and phasing requirements
  - 5.4.10. Controlled inspections, testing requirements
  - 5.4.11. Value Engineering suggestions
  - 5.4.12. Organization of Price Proposal – by location, by corner, etc.
  - 5.4.13. Due Date for Detailed Scope of Work and for Price Proposal

- 5.5. Upon completion of the joint scoping process, the City 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 City will issue a Request for Proposal that will require the Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the Contractor and the City, will be the basis on which the Contractor will develop its Job Order Proposal, and the City will evaluate the same. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.
- 5.6. The City 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 City cannot agree on the quantities required, or for any other reason as determined by the City. In all such cases, the City shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.
- 5.7. If the Contractor requires additional information to clarify the Detailed Scope of Work before preparing the Job Order Proposal, the Contractor will make such request quickly so that the Job Order Proposal can be submitted on time.

## **6. PREPARATION OF A JOB ORDER PROPOSAL**

- 6.1. The Contractor shall prepare a Job Order Proposal including, at a minimum:
  - 6.1.1. Job Order Price Proposal;
  - 6.1.2. Provide supporting documentation for Non Pre-priced Tasks;
  - 6.1.3. Required drawings or sketches;
  - 6.1.4. List of anticipated Subcontractors including an MBE/WBE Certification (if necessary);
  - 6.1.5. Construction schedule;
  - 6.1.6. Other requested documents.
- 6.2. The Job Order Price shall be the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factors) plus the value of all Non Pre-priced Tasks.
- 6.3. The Contractor will prepare Job Order Price Proposals in accordance with the following:
  - 6.3.1. Pre-priced Task: The Contractor shall select the appropriate Pre-priced Tasks, enter the accurate quantities, and select the appropriate Adjustment Factors to be used for each such Pre-priced Task. The Contractor shall use the Adjustment Factors in effect on the date the Price Proposal is due, even though the Job Order may be issued after the Adjustment Factors have been updated.
  - 6.3.2. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog®.

6.3.2.1. 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 hourly, weekly, or monthly 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 Non Pre-priced Tasks performed with Contractor's own forces** = (A+B+C) x the Non Pre-priced Adjustment Factors.

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

If the Non Pre-priced Task will be subcontracted, the Contractor must submit three independent quotes for the work. If three quotes are not available, less than three may be approved at the discretion of the City upon the submission of a Letter of Justification from the Contractor to the City.

**D** = Lowest of three subcontractor quotes

**Total for Non Pre-priced Tasks** x the Non Pre-priced Adjustment Factors.

6.3.3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:

6.3.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

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

6.3.3.3. After a Non Pre-priced Task has been approved by the City, the Unit Price for such task will be established, following approval by the City, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

6.3.3.4. The City'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.

6.4. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the City 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.

6.5. 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 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. The cost of expediting services or equipment use fees are not reimbursable.

6.6. The Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.

6.7. The Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job 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.

6.8. In immediate response situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, the Contractor may be directed to begin work immediately with the paperwork to follow.

6.9. In the event an immediate response is necessary, the Contractor shall be required to follow alternative procedures as established by the City. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Detailed Scope of Work, Request for Job Order Proposal, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures to develop a Job Order.

6.10. For purposes of Using the Construction Task Catalog®, the project site is defined as the exterior perimeter of a building. For work not performed in a building, the project site is defined as the limits of the work area.

6.11. By submitting a Job Order Proposal to the City, 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 Job Order Price Proposal and apply the appropriate Adjustment Factors(s) prior to delivering it to the City.

- 6.12. If the Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.
- 6.13. In the event the Contractor is required to work in a secured facility or location where labor, materials, and equipment must be inspected, the Contractor will be permitted to add labor hours to the Job Order Price Proposal to account for lost time as a result of such inspection.

## **7. REVIEW OF THE JOB ORDER PROPOSAL AND ISSUANCE OF THE JOB ORDER**

- 7.1. The City will evaluate the entire Job Order Price Proposal and compare these with the City's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. All incomplete Job Order Proposals will be rejected. The City will review the Price Proposal to determine the accuracy of the Pre-priced Tasks, quantities, Adjustment Factors, and Non Pre-priced Tasks.
- 7.2. The Contractor may choose the means and methods of construction; subject however, to the City's right to reject any means and methods proposed by the Contractor that:
  - 7.2.1. Will constitute or create a hazard to the work, or to persons or property;
  - 7.2.2. Will not produce finished Work in accordance with the terms of the Contract; or
  - 7.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 7.3. The City reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The City also reserves the right not to issue a Job Order if it is determined to be in the best interests of the City. The City may perform such work by other means. The Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the City.
- 7.4. By submitting a Job Order Proposal to the City, 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 Job Order Price Proposal prior to delivering it to the City.
- 7.5. It is the Contractor's responsibility to include the necessary Pre-priced Tasks and Non-Pre-priced Tasks, accurate quantities, and correct Adjustment Factors in the Price Proposal prior to delivering it to the City.
- 7.6. If the Job Order Proposal is found to be complete and accurate, The City may issue a Job Order to the Contractor.
- 7.7. The Job Order signed by The City and delivered to the Contractor constitutes The City's acceptance of the Contractor's Job Order Proposal.
- 7.8. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Price. The Job Order Price shall be the value of the approved Price Proposal.

- 7.9. All clauses of this Contract shall apply to each Job Order.
- 7.10. The Contractor will be paid the Job Order Price for completing the Detailed Scope of Work within the Job Order Completion Time.
- 7.11. The City, without invalidating the Job Order, may order changes in the Detailed Scope of Work by adding to, changing, or deleting from the Detailed Scope of Work, by issuing a Supplemental Job Order. All Supplemental Job Orders shall be developed in accordance with these procedures for ordering work.
- 7.12. The City may decide not to issue a Job Order under development, may decide to cancel a Job Order or any portion of a Job Order, or cancel a Project or any portion of a Project, for any reason. In such case, the Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to attending the Joint Scope Meeting, preparing or reviewing the Detailed Scope of Work, preparing a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, or reviewing the Job Order Proposal with The City. The City may perform such work by other means.
- 7.13. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. A separate Job Order will be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work,
- 7.14. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the City and delivered to the Contractor constitutes the City's acceptance of the Contractor's Job Order Proposal. A **signed** copy of the Job Order will be provided to the Contractor.
- 7.15. In the event that immediate emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by the City. The Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated for such work as if the work had been ordered under the standard procedures. Contractor must submit to the City's Representative, their emergency procedure/ safety plan prior to starting work. Contractor must be responsible for quality assurance and quality control.

## **8. CHANGES IN THE WORK**

- 8.1. The City, without invalidating the Job Order, may order changes in the Detailed Scope of Work by adding to, changing, or deleting from the Detailed Scope of Work, by issuing a Supplemental Job Order.
- 8.2. All Supplemental Job Orders shall be developed and priced in accordance with the Procedure for Ordering Work contained in these JOC Supplemental Conditions.
- 8.3. 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 Job Order Price Proposal.

## 9. LIQUIDATED DAMAGES

9.1. At the sole discretion of the City, liquidated damages will be assessed, if at all, on a Job Order-by-Job-Order basis. For each calendar day that the Detailed Scope of Work for a Job Order shall remain incomplete after the Job Order Completion Time, as amended pursuant to this Contract, the amount per calendar day specified in following table, Schedule of Liquidated Damages, will be deducted from any money due the Contractor, not as a penalty but as liquidated damages.

Value of Job Order	Liquidated Damages
\$0 to \$10,000	\$100/Day
\$10,001 to \$50,000	\$250/Day
Over \$50,000	\$500/Day

## 10. CONTRACT MODIFICATION

10.1. Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Contract Change Order.

## 11. PAYMENTS

11.1. Payments will be made net 30 from a properly submitted invoice. See Section 9.2 of the Detailed Scope of Work in Appendix A for information on submitting a proper invoice.

11.2. The City will make one payment for all Job Orders that have a Job Order Completion Time of 30 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the City may make partial, monthly payments based on a percentage of the work completed.

11.3. Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Project Manager concerning the percentage complete of the detailed Scope of work and the dollar value for which the Application for Payment may be submitted.

## 12. JOB ORDER CONTRACTING SOFTWARE

12.1. Job Order Contracting Software

12.1.1. The City selected The Gordian Group's (Gordian) Job Order Contracting (JOC) Solution for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Information Management System ("JOC IMS"), JOC Applications, construction cost data, and Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, Price Proposals, subcontractor lists, and other requirements specified by the City. The Contractor shall be required to execute Gordian's SaaS Terms of Use and pay a JOC System License Fee to obtain access to the Gordian JOC Solution™. The JOC System License Fee applies to all Job Orders issued to the Contractor under the terms of the Contract. **The JOC System License Fee shall be equal to 1% of the Job Order Price.**

12.1.2. Within two business days of receipt of a Purchase Order from the City, the Contractor must provide notification to Gordian by forwarding a copy of the Purchase Order to Gordian.

12.1.3. Upon the Contractor's receipt of the initial payment from the City, Gordian will invoice the Contractor for the JOC System License Fee. Contractor shall remit payment to Gordian within thirty (30) days of the date of the invoice. Any amounts arising in relation to money not paid when due will be subject to a late charge of (1.5%) per month on the unpaid balance or the maximum rate allowed by law, whichever is less.

### **13. LICENSE REQUIREMENTS**

13.1. The Contractor and its subcontractors must obtain and maintain as current all licenses required by state or local laws, codes, regulations or rules. The Contractor shall upon request at any time during the term of this Contract submit to the City evidence that it and its subcontractors hold the required licenses.

### **14. AS-BUILT DRAWINGS**

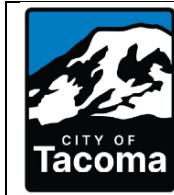
14.1. If the Contractor is provided, or prepares, drawings as part of the Detailed Scope of Work, then as the Detailed Scope of Work progresses the Contractor shall keep a complete and accurate record of changes to, and deviations from, such drawings. The As-Built Drawings will be created in the same medium (paper, electronic) in which they were originally prepared.

### **15. ANNUAL UPDATE OF THE CONSTRUCTION TASK CATALOG®**

15.1. The Construction Task Catalog® issued with the bid will be in effect for the first year of the Contract.

15.2. On the anniversary of the Contract, a new Construction Task Catalog® will be furnished. The new Construction Task Catalog® will be effective for the twelve (12) month period after the anniversary of the effective date of the Contract. The Construction Task Catalogs® that accompany each anniversary shall only apply to Job Orders issued after the effective date of that specific anniversary and shall have no impact on Job Orders issued prior to the effective date of that specific anniversary.

15.3. The Adjustment Factors submitted with the Proposal shall be used for the full term of the Contract, plus any Option Terms (if implemented). On the annual anniversary of the Contract, the City shall issue the Contractor a new Construction Task Catalog®. The Contractor will be issued the new Construction Task Catalog® for review prior to accepting new Work. The Contractor shall use the Construction Task Catalog® in effect on the date that the Job Order is issued. However, the Contractor cannot delay the issuance of a Job Order to take advantage of a scheduled update of the Construction Task Catalog®. In that event, the Contractor shall use the Construction Task Catalog® that would have been in effect without the delay.



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Tacoma, WA 98402  
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## **Local Employment and Apprenticeship Training Program**

**LEAP**

# **LOCAL EMPLOYMENT AND APPRENTICESHIP TRAINING PROGRAM (LEAP)**

## **ABBREVIATED PROGRAM DESCRIPTION**

The Local Employment and Apprenticeship Training Program (LEAP) is a mandatory City of Tacoma workforce utilization program adopted in 1997, to provide employment and training opportunities for Tacoma residents and residents of the Economically Distressed Areas of the Tacoma Public Utilities Service Area. LEAP also provides expanded opportunities for apprentices. Based on the location and estimated dollar amount of projects, LEAP assigns one or more program requirements to qualifying public works projects or service contracts. Based on compliance with LEAP requirements assigned, incentives or penalties apply.

## **LEAP WORKFORCE REQUIREMENT(s) ASSIGNED TO THIS PROJECT**

1. LOCAL EMPLOYEE REQUIREMENT – see definition below and zip code list included
2. Additional LEAP APPRENTICE UTILIZATION REQUIREMENT – see definition and zip code list included

## **DEFINITIONS OF ALL TYPES OF LEAP PROGRAM WORKFORCE UTILIZATION REQUIREMENTS**

1. LEAP LOCAL EMPLOYEE REQUIREMENT: The Prime Contractor is required to ensure that 15 percent of the total Labor Hours worked on the project are performed by residents of the City of Tacoma or Economically Distressed ZIP Codes for the following projects. Penalties for noncompliance apply.
2. LEAP APPRENTICE REQUIREMENT: The Prime Contractor is required to ensure that an additional 15 percent of the total Labor Hours worked on qualifying projects \$1,000,000 and up are performed by Apprentices who are LEAP qualified. They must be in an apprenticeship program approved by the Washington State Apprenticeship Council (SAC) who are residents of the Tacoma Public Utilities Service Area. This is in addition to the Local Employment Goal. Incentives for compliance and penalties for noncompliance apply.
3. LEAP WA STATE APPRENTICE REQUIREMENT: The Prime Contractor is required to ensure that 15% of the total labor hours Labor Hours on projects of \$1,000,000 and up located outside of the Tacoma Public Utilities Service Area but benefitting the Tacoma Public Utilities are performed by Apprentices who are residents of the Washington State. Incentives for compliance and penalties for noncompliance apply.

## PRIME CONTRACTOR LEAP UTILIZATION PLAN (included)

The plan is due to [leap@tacoma.gov](mailto:leap@tacoma.gov) at or before the **Preconstruction Meeting**. List how the LEAP requirements will be fulfilled. Include all subcontractors, trades, number of hours and percentage of hours that will be performed by Local Employees/Journeymen/Apprentices and any training programs involved. Notification of approval or rejection (with reasons) of the plan will be sent within ten business days. A revised plan must be submitted within ten business days from receipt of rejection. Failure to submit an approved plan in a timely fashion may result in withholding of project payment(s).

Per the Department of Labor & Industries' recommendation, no adjustments to apprentice utilization requirements will be considered until the end of the project and all related information has been submitted.

### MONETARY PENALTIES

#### FAILURE TO MEET ASSIGNED LEAP UTILIZATION REQUIREMENT(S)

Contractors shall be assessed an amount for each hour that is not achieved, per requirement. The amount per hour shall be based on the percent of the requirement that is met. All rounding shall be done down to the nearest whole percent. The amount per hour that shall be assessed is as follows:

Percentage of Requirement Met	Penalty per Unmet Hour
100% achievement	\$ 0.00 penalty
99% to 90% achievement	\$ 12.00 penalty
89% to 75% achievement	\$ 20.00 penalty
74% to 50% achievement	\$ 30.00 penalty
49% to 1% achievement	\$ 45.00 penalty
0% achievement	\$ 60.00 penalty

Penalties are invoiced to the Prime Contractor prior to final project payment. Retainage is held until this invoice is paid.

#### INCENTIVES - COMPLIANCE WITH MEETING AN APPRENTICE REQUIREMENT

For projects estimated to cost \$2,000,000 up to \$10,000,000, an incentive of \$1,000 per \$1,000,000 of estimated cost, including tax, is paid at the end of the project if the apprentice utilization requirement is met in full. Incentives are not paid when a good faith effort is used.

Engineer's Estimate + Tax	Incentive
\$2,000,000 - \$2,999,999	\$ 2,000
\$3,000,000 - \$3,999,999	\$ 3,000
\$4,000,000 - \$4,999,999	\$ 4,000
\$5,000,000 - \$5,999,999	\$ 5,000
\$6,000,000 - \$6,999,999	\$ 6,000
\$7,000,000 - \$7,999,999	\$ 7,000
\$8,000,000 - \$8,999,999	\$ 8,000
\$9,000,000 - \$9,999,999	\$ 9,000
\$10,000,000 and up	\$10,000

The Prime Contractor must demonstrate that they have exercised “best efforts” to meet the LEAP requirements and were still unable to do so. Best efforts include repeated seeking out utilization opportunities for LEAP-qualified employees for all trades involved in the project. Documentation of requests for LEAP-qualified employees and the responses from the organization(s) stating by letters or emails that no applicable employees are available, regardless of cost of employing them. LEAP must be copied on all requests. If requests are made via phone call or text, follow up documentation including the organization contacted and LEAP must be sent to [leap@tacoma.gov](mailto:leap@tacoma.gov).

## **CERTIFIED PAYROLLS AND NO WORK PERFORMED STATEMENTS - LCPtracker**

LEAP utilizes LCPtracker cloud-based system for recording certified payrolls and no work performed statements to determine compliance with LEAP requirements. It is the Prime Contractor’s responsibility to ensure all such documents are entered in LCPtracker and the. These must match what is entered in the Department of Labor and Industries’ site in content and in number of entries.

## **SUBCONTRACTOR NOTIFICATION**

Prime Contractors shall notify all Subcontractors of the LEAP Program requirement(s). Subcontractor labor hours may be utilized towards achievement of LEAP Requirements. Owner/Operator hours may be used for the Local Employment Requirement.

## **LEAP EMPLOYEE VERIFICATION FORM (included)**

LEAP may request this form and supporting documentation from the Prime and Subcontractors. Supporting documentation is a form of proof of residency for each employee presumed as able to assist in fulfilling LEAP requirements. List of items acceptable as proof of residency are located on page 2 of the form.

If you have any questions or need request further information, please feel free to contact the City of Tacoma’s LEAP Program at (253) 591-5590 or email [leap@tacoma.gov](mailto:leap@tacoma.gov).

**PART A: PROJECT INFORMATION AND TYPE OF LEAP UTILIZATION REQUIREMENTS**

<b>Prime Contractor:</b>	<b>Spec Number:</b>
<b>Project Name:</b>	
<b>LEAP Coordinator signature</b>	
<b>LEAP Utilization Requirements:</b> Total Project Labor Hours - 15% Local Employees AND an additional 15% Apprentices	
<b>Explanation:</b> <ul style="list-style-type: none"><li>- 15% of the total project labor hours must be met by LOCAL EMPLOYEES:<ul style="list-style-type: none"><li>o Journey or apprentice level craft workers living in the City of Tacoma or in the local Economically Distressed Areas as outlined in the project specification</li></ul></li><li>- An additional 15% of the total labor hours must be met by APPRENTICES:<ul style="list-style-type: none"><li>o Apprentices registered with WA State living in the Tacoma Public Utilities Infrastructure or Service Areas as outlined in the project specification</li></ul></li></ul>	
<b>Compliance:</b> Per Tacoma Municipal Code Chapter 1.90, failure to meet LEAP Utilization Requirements results in a monetary penalty.	

**PART B: PLAN FOR MEETING LEAP REQUIREMENTS**

Contractor Name	Trade or Craft	Number and Percent of total labor hours to be met by <b>J Journeyman LOCAL EMPLOYEES</b> performing this craft and living in the City of Tacoma or in a local Economically Distressed Area		Number and Percent of total labor hours to be met by <b>Apprentice LOCAL EMPLOYEES</b> performing this craft and living in the City of Tacoma or in a local Economically Distressed Area		Number and Percent of total labor hours to be met by <b>APPRENTICES</b> performing this craft and living in the Tacoma Public Utilities Infrastructure or Service Area		If Apprentice, list Apprentice Training Program Name:
		#	%	#	%	#	%	
		#	%	#	%	#	%	
		#	%	#	%	#	%	
		#	%	#	%	#	%	
		#	%	#	%	#	%	
		#	%	#	%	#	%	
		#	%	#	%	#	%	
		#	%	#	%	#	%	
		#	%	#	%	#	%	
		#	%	#	%	#	%	
	<b>TOTALS</b>	#	%	#	%	#	%	

**PART C: PROVIDE A DESCRIPTION OF PLANS TO ENSURE THE LEAP UTILIZATION REQUIREMENTS WILL BE MET. USE ADDITIONAL SHEETS IF NECESSARY.**

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## General Instructions for Prime Contractor to complete this LEAP Utilization Plan Form

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### **Part A Guidance**

**Contractor/Contract Information Section:** The Prime Contractor is responsible for completing this section. Failure to submit this plan at the Preconstruction Meeting may result in Progress Payments being withheld.

### **Part B Guidance**

**Trade or Craft:** Indicate the Trade or Craft being used.

**Employee Categories:** Indicate the number of hours and percentage of hours of the LEAP Utilization Requirement that will be met by each type of craft worker in each LEAP-Qualified Employee category for LEAP Requirements noted in Part A.

**Totals:** Total the number of hours and percentage number in each of the two middle columns. Percentage numbers in each column should equal the required percentage in Part A.

Name of Apprenticeship Program: If the line references Apprentices, list the name of the Registered Apprenticeship Program they are enrolled in.

### **Part C Guidance**

**Description of how the Contractor plans to ensure fulfillment of the LEAP Utilization Requirements:** Prime Contractor - Please describe how you plan to satisfy the LEAP Utilization Requirements on this project. Provide a summary of your outreach and recruitment procedures to hire LEAP-Qualified Employees to work on this project. If noting you will contact an organization requesting LEAP-Qualified Employees, include LEAP ([leap@tacoma.gov](mailto:leap@tacoma.gov)) in each email exchange between you and the organization.



City of Tacoma LEAP Office  
747 Market Street, Room 900  
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## **LEAP EMPLOYEE VERIFICATION FORM**

Contractor/Sub: \_\_\_\_\_ Specification Number: \_\_\_\_\_

Project Description: \_\_\_\_\_

Employee Name: \_\_\_\_\_ Craft: \_\_\_\_\_

Ethnic Group (*optional*):  African American/Black  Asian  Hispanic or Latinx

Native American/Alaskan Native  Native Hawaiian or Other Pacific Islander  White  Other

Gender (*optional*):  MALE  FEMALE  OTHER

Complete Physical Address (No PO Boxes): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

If Apprentice, Apprenticeship County: \_\_\_\_\_ Apprentice Registration I.D.: \_\_\_\_\_

Age: \_\_\_\_\_ Copy of DD-214 *if applicable*: \_\_\_\_\_

\*\*\*\*\*Please fill out entire form for tracking LEAP performance\*\*\*\*\*

LEAP-qualified employee categories: (check project requirements, fill out the corresponding section, and provide proof of residency of employee – see page 3).

### **FOR PROJECTS WITH ONLY THE LOCAL EMPLOYEE REQUIREMENT:**

- \_\_\_\_\_ a. Journeyman or Registered Apprentice residing in the City of Tacoma
- \_\_\_\_\_ b. Journeyman or Registered Apprentice residing in an Economically Distressed Area within the Tacoma Public Utilities Service Area

**FOR PROJECTS WITH THE LOCAL EMPLOYEE REQUIREMENT AND THE ADDITIONAL APPRENTICE REQUIREMENT**

- a. Journeyman or Registered Apprentice residing in the City of Tacoma
- b. Journeyman or Registered Apprentice residing in an Economically Distressed Area within the Tacoma Public Utilities Service Area
- c. WA State Registered Apprentice living in Tacoma Public Utilities Service Area

**FOR PROJECTS WITH ONLY THE STATE APPRENTICE REQUIREMENT – WORK IS PERFORMED OUTSIDE THE TACOMA PUBLIC UTILITIES SERVICE AREA**

- a. WA State Approved Apprentice \*(Only valid for contracts where 100% of work is performed outside of Pierce County)

Signature of Employee: \_\_\_\_\_ Date: \_\_\_\_\_

Contractor Representative: \_\_\_\_\_ Date: \_\_\_\_\_

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

**Please attach a legible copy of the following document(s) showing employee name and address of residence in the applicable categories. If employee is a Registered Apprentice, provide Apprentice Registration ID.**

.....

WA Driver's License (Date of Birth and Driver's License hidden)

Utility Bill/Phone Bill/Cell Bill/Cable Bill

Rental Agreement/Lease (residential)

Computer Printout From Other Government Agencies

Property Tax Records

Apprentice Registration I.D.

Food Stamp Award Letter

Housing Authority Verification

Insurance Policy showing address (Residence/Auto)

\*Any of the above must have a complete physical address verified by the [www.govme.org](http://www.govme.org) website. No PO Boxes

City of Tacoma  
(J Journeyman AND Apprentice)

98402	98418
98403	98421
98404	98422
98405	98444
98406	98445
98407	98465
98408	98466
98409	98467

Check addresses here:

[https://tacoma.maps.arcgis.com/apps/webappviewer/index.html?  
id=38107f6b096a4b8280c0d9b8a05bc7eb](https://tacoma.maps.arcgis.com/apps/webappviewer/index.html?id=38107f6b096a4b8280c0d9b8a05bc7eb)

## Economically Distressed Areas (J Journeyman AND Apprentice)

Zip Code	200% Pov	Unemployed	25+ College	Area
98002	Y		Y	Auburn
98304	Y		Y	Ashford/Rainier
98323	Y	Y	Y	Carbonado
98328	Y		Y	Eatonville
98330	Y		Y	Elbe
98336	Y		Y	Glenoma
98349	Y	Y		Lakebay
98355		Y	Y	Mineral
98356	Y	Y	Y	Morton
98377	Y	Y	Y	Randle
98385		Y	Y	South Prairie
98402	Y	Y		Downtown
98403	Y	Y		Stadium/St. Helens
98404	Y	Y		Eastside
98405	Y	Y		Hilltop/Central
98408	Y		Y	South End
98409	Y	Y		South Tacoma
98418	Y		Y	Lincoln/South End
98421	Y	Y	Y	Port
98439	Y	Y		McChord AFB
98444	Y	Y		Parkland
98445	Y		Y	Midland
98499	Y	Y		Lakewood
98520	Y	Y	Y	Aberdeen
98528	Y		Y	Belfair
98533		Y	Y	Cinebar
98546	Y	Y	Y	Grapeview
98548	Y	Y	Y	Hoodsport
98563	Y	Y	Y	Montesano
98564	Y	Y	Y	Mossyrock
98575	Y		Y	Quinault
98580	Y		Y	Roy
98582	Y		Y	Salkum
98584	Y		Y	Shelton
98591	Y		Y	Toledo
98592		Y	Y	Union
98925	Y		Y	Easton

# Tacoma Public Utilities Infrastructure and Service Area (Apprentices)

98001	Auburn
98002	Auburn
98003	Federal Way
98010	Black Diamond
98022	Enumclaw
98023	Federal Way
98030	Kent
98032	Kent
98038	Maple Valley
98042	Kent
98045	North Bend
98051	Ravensdale
98070	Vashon
98092	Auburn
98198	Seattle
98304	Ashford
98321	Buckley
98323	Carbonado
98327	DuPont
98328	Eatonville
98329	Gig Harbor
98330	Elbe
98332	Gig Harbor
98333	Fox Island
98335	Gig Harbor
98336	Glenoma
98338	Graham
98349	Lakebay
98354	Milton
98355	Mineral

98356	Morton
98360	Orting
98371	Puyallup
98372	Puyallup
98373	Puyallup
98374	Puyallup
98375	Puyallup
98377	Randle
98385	South Prairie
98387	Spanaway
98388	Spanaway
98390	Sumner
98391	Bonney
98402	Tacoma
98403	Tacoma
98404	Tacoma
98405	Tacoma
98406	Tacoma
98407	Tacoma
98408	Tacoma
98409	Tacoma
98416	UPS
98418	Tacoma
98421	Tacoma
98422	Tacoma
98424	Tacoma
98430	Camp Murray
98433	Tacoma
98438	McChord
98439	Lakewood

98443	Tacoma
98444	Tacoma
98445	Tacoma
98446	Tacoma
98447	PLU
98445	Tacoma
98466	Tacoma
98467	University Place
98498	Lakewood
98499	Lakewood
98520	Aberdeen
98524	Allyn
98528	Belfair
98533	Cinebar
98546	Grapeview
98548	Hoodsport
98555	Lilliwaup
98563	Montesano
98564	Mossyrock
98575	Quinault
98580	Roy
98582	Salkum
98584	Shelton
98585	Silver Creek
98591	Toledo
98592	Union
98597	Yelm
98925	Easton

## CHAPTER 1.90

### LOCAL EMPLOYMENT AND APPRENTICESHIP TRAINING PROGRAM

## Sections:

- 1.90.010 Purpose.
- 1.90.020 Scope.
- 1.90.030 Definitions.
- 1.90.040 LEAP Requirements.
- 1.90.050 *Repealed.*
- 1.90.060 Effect of program on prime contractor/subcontractor relationship.
- 1.90.070 Apprentice utilization requirements – Bidding and contractual documents.
- 1.90.080 Enforcement.
- 1.90.090 Compliance with applicable law.
- 1.90.100 Review and reporting.
- 1.90.105 Authority
- 1.90.110 Interpretation.

**1.90.010 Purpose.**

The purpose of this Chapter is to establish a means of providing for the development of a trained and capable workforce possessing the skills necessary to fully participate in the construction trades.

(Ord. 26301 § 1; passed Oct. 6, 1998)

**1.90.020 Scope.**

The provisions of this Chapter shall apply to all Public Works or Improvements and Service Contracts related to Public Works or Improvements funded in whole or in part with City funds or funds which the City expends or administers in accordance with the terms of a grant.

(Ord. 28970 Ex. A; passed Jun. 11, 2024: Ord. 26301 § 1; passed Oct. 6, 1998)

**1.90.030 Definitions.**

As used in this chapter, the following terms shall have the following meanings:

## 1.90.030.A

“Apprentice” shall mean a person enrolled in a course of training specific to a particular construction trade or craft, which training shall be approved by the Washington State Apprenticeship and Training Council established pursuant to RCW 49.04.010.

## 1.90.030.B

“Building Projects” shall mean all Public Works or Improvements having an Estimated Cost greater than \$750,000.00, and for which a building permit must be issued pursuant to Chapter 1 of the current edition of the state building code (Uniform Building Code).

## 1.90.030.C

“City” shall mean all divisions and departments of the City of Tacoma, and all affiliated agencies, provided, however, that the Tacoma Community Redevelopment Authority shall not be included within this definition.

“Civil Projects” shall mean all Public Works or Improvements that are not defined as a “Building Project,” provided that those projects having an Estimated Cost of less than \$250,000.00 shall not be included in this definition.

“Contractor or Service Provider” means a person, corporation, partnership, or joint venture entering a contract with the City to construct a Public Work or Improvement or provide a service related to a Public Work or Improvement.

## 1.90.030.D

“Director” shall mean the Director of Community and Economic Development, or the Director’s Designee.

## 1.90.030.E

“Economically Distressed ZIP Codes”\* shall mean ZIP codes in the Tacoma Public Utilities Service Area that meet two out of three (2/3) of the criteria of:

1. High concentrations of residents living under 200% of the federal poverty line in terms of persons per acre (69th percentile)
2. High concentrations of unemployed people in terms of persons per acre (45th percentile)
3. High concentrations of people 25 years or older without a college degree in terms of persons per acre (75th percentile).

(\*Current ZIP Codes are available on the Local Employment and Apprenticeship Program web page.)

“Electrical Utility” and “Water Utility” shall mean, respectively, the Light Division of the Department of Public Utilities of the City of Tacoma, and shall include the electrical services of that Division, and the Water Division of the Department of Public Utilities of the City of Tacoma.

“Estimated Cost” shall mean the anticipated cost of a Public Work or Improvement or related Service Contract, as determined by the City, based upon the expected costs of materials, supplies, equipment, and labor, but excluding taxes and contingency funds.

“Existing Employee” shall mean an employee whom the Contractor or Service Provider can demonstrate was actively employed by the Contractor or Service Provider for at least 1000 hours in the calendar year prior to bid opening plus one month following bid opening, and who was performing work in the construction trades.

#### 1.90.030.L

“Labor Hours” shall mean the actual number of hours worked by workers receiving an hourly wage who are employed on the site of a Public Work or Improvement or related Service Contract, and who are subject to state or federal prevailing wage requirements. The term “Labor Hours” shall include hours performed by workers employed by the Contractor or Service Provider and all Subcontractors and shall include additional hours worked as a result of a contract or project adjustment or pursuant to an agreed upon change order. The term “Labor Hours” shall not include hours worked by workers who are not subject to the prevailing wage requirements set forth in either RCW 39.12 or the Davis-Bacon Act - 40 U.S.C. 276 (a).

“LEAP Coordinator” shall mean the City of Tacoma staff member who administers LEAP.

“LEAP Program” or “Program” shall mean the City of Tacoma’s Local Employment and Apprenticeship Training Program, as described in this chapter.

“LEAP Regulations” or “Regulations” shall mean the rules and practices established in this document.

“LEAP Utilization Plan” shall mean the document submitted by the Contractor to the LEAP Coordinator which outlines how the associated LEAP requirements will be met.

#### 1.90.030.P

“Priority Hire Resident” shall mean any resident within the Economically Distressed ZIP Codes.

“Project Engineer” shall mean the City employee who directly supervises the engineering or administration of a particular construction project subject to this chapter.

“Public Work or Improvement” shall have the same meaning as provided in Section 39.04.010 RCW, as that Section may now exist or hereafter be amended.

#### 1.90.030.R

“Resident of Tacoma” shall mean any person who continues to occupy a dwelling within the boundaries of the City of Tacoma, has a present intent to continue residency within the boundaries of the City, and who demonstrates the genuineness of that intent by producing evidence that the person’s presence is more than merely transitory in nature.

#### 1.90.030.S

“Service Area - Electrical” or “Electrical Service Area” shall mean that area served with retail sales by the Electrical Utility of the City of Tacoma at the time a bid is published by the Electrical Utility for a Public Work or Improvement or related Service Contract to be performed primarily for the Electrical Utility.

“Service Area - Water” or “Water Service Area” shall mean that area served with retail sales by the Water Utility of the City of Tacoma at the time a bid is published by the Water Utility for a Public Work or Improvement or related Service Contract to be performed primarily for the Water Utility.

“Service Contract” shall mean all City contracts relating to a Public Work or Improvement which utilize labor at a City site and which are not within the exceptions to nor defined as “Building Projects” or “Civil Projects.”

“Subcontractor” means a person, corporation, partnership, or joint venture that has contracted with the Contractor or Service Provider to perform all or part of the work to construct a Public Work or Improvement or related Service Contract by a Contractor.

1.90.030.T

“Tacoma Public Utilities” means the City of Tacoma, Department of Public Utilities.

“Tacoma Public Utilities Service Area” shall mean every ZIP code listed by Tacoma Public Utilities as an area that either receives services or maintains infrastructure to provide services.

1.90.030.W

“Washington State Labor and Industries Prevailing Wage” shall mean the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers, and mechanics. Prevailing wages are established, by the Department of Labor & Industries, for each trade and occupation employed in the performance of public work. They are established separately for each county and are reflective of local wage conditions.

(Ord. 28970 Ex. A; passed Jun. 11, 2024: Ord. 28520 Ex. A; passed Jul. 17, 2018: Ord. 28147 Ex. B; passed May 7, 2013: Ord. 28110 Ex. C; passed Dec. 4, 2012: Ord. 27815 Ex. A; passed Jun. 30, 2009: Ord. 27368 § 1; passed Jun. 21, 2005: Ord. 26698 § 1; passed Sept. 12, 2000: Ord. 26301 § 1; passed Oct. 6, 1998)

**1.90.040 LEAP Requirements.**

A. Utilization Requirements.

1. All Contractors constructing Civil Projects or Building Projects, and all Service Providers involved with the construction of a Public Work or Improvement, shall ensure that at least 15 percent of the total Labor Hours worked on the Project are performed by persons having their residence within the boundaries of the City of Tacoma or Economically Distressed ZIP Codes, whether or not any such person is an Apprentice.

a. The thresholds for this section shall be \$250,000.00 for Civil Projects and \$750,000.00 for Building Projects.

2. Fifteen percent (15%) of the Total Labor Hours on contracts above one-million dollars (\$1,000,000.00) shall have work performed by Apprentices who are residents of the Tacoma Public Utilities Service Area consistent with RCW 39.04.320(1)(a), subject to waiver based on exceptions as specified in RCW 39.04.320(2)(a), (b), and (c).

3. Labor Hours performed by non-residents of the State of Washington will be deducted from a project’s total Labor Hours for purposes of determining compliance with the requirements of this chapter.

4. All Contractors and Service Providers shall submit a LEAP Utilization Plan as provided for in the regulations adopted under this chapter, and shall meet with the LEAP Coordinator to review said Plan prior to being issued a Notice to Proceed. Failure to submit a LEAP Utilization Plan may be grounds for the City to withhold remittance of a progress payment until such Plan is received from the responsible Contractor or Provider. A meeting with the LEAP Coordinator prior to issuance of a Notice to Proceed shall be excused only when the LEAP Coordinator is unavailable to meet prior to the scheduled date for issuance of the Notice to Proceed and the Contractor and the LEAP Coordinator have otherwise scheduled a meeting for the coordinator to review the Contractor’s or Provider’s plan.

The Contractor or Service Provider shall be responsible for meeting the LEAP utilization goal requirements of the contract, including all amendments and change orders thereto, and shall be responsible for overall compliance for all hours worked by Subcontractors. To the extent possible, the Contractor or Service Provider shall recruit Apprentices from multiple trades or crafts.

B. Failure to Meet Utilization Requirements.

1. Contracts for the construction of Building projects or Civil projects and Service Contracts shall provide that Contractors or Service Providers failing to meet the LEAP utilization requirements shall be assessed an amount for each hour that is not

achieved. The amount per hour shall be based on the extent the Contractor or Service Provider met its requirements. The amount per hour that shall be assessed shall be as follows:

Percent of Requirements Met	Assessment per unmet hour
100%	\$ 0.00
90% - 99%	\$ 12.00
75% to 89%	\$ 20.00
50% to 74%	\$ 30.00
1% to 49%	\$ 45.00
0%	\$60.00

When determining the percent of requirements that are met, all rounding shall be down to the nearest whole percent. No penalty shall be waived by the City unless it is determined by the Director to be in the best interests of the City, which determination shall be made after consultation with the LEAP Coordinator.

2. Deposit of Assessments. All assessments imposed pursuant to this section shall be deposited into a separate account and utilized to support the City's pre-apprenticeship and training programs. The policies and regulations adopted by the City Manager and Director of Utilities pursuant to this chapter shall address issues pertaining to a Contractor's existing workforce. Contributions need not be made for Labor Hours that have been adjusted in accordance with Section 1.90.040(E).

#### C. LEAP Reports.

Notwithstanding the provisions of TMC 1.90.100, the LEAP Coordinator shall, not less than annually, publish a LEAP report setting forth Contractor compliance with this chapter. Said report shall include information on all contracts and all Contractors to which this chapter applies, and shall detail the level and nature of LEAP participation by contract and by Contractor. The LEAP Coordinator's LEAP report may include such other information as may be helpful to assuring fair and accurate representation of the contracts, Contractors or projects covered in the report. The LEAP Coordinator's LEAP reports may be considered by the Board of Contracts and Awards in its determinations as to bidder responsibility.

#### D. LEAP Requirement Adjustments.

1. LEAP utilization requirements may be adjusted prior to bid opening and/or as a result of a contract amendment or change order on a Building Project, Civil Project, or Service Contract.

a. If LEAP utilization requirements are adjusted prior to bid opening, they shall be set forth in the bid or Request For Proposal advertisement and specification documents or in an addendum timely provided to prospective bidders, provided that such adjustment shall be based upon a finding by the Project Engineer that the reasonable and necessary requirements of the contract render LEAP utilization unfeasible at the required levels. The Director shall concur with the Project Engineer's finding, provided that should the Project Engineer and the Director fail to reach agreement on the Project Engineer's finding, then in that circumstance the matter shall be referred to the City Manager or the Director of Utilities, as appropriate, for ultimate resolution. Notwithstanding any other provision of this chapter to the contrary, the decision of the City Manager or the Director of Utilities with regard to LEAP requirement adjustments may not be appealed.

b. If LEAP utilization requirements are adjusted due to contract amendment or change order, the amount of adjustment shall be consistent with the utilization requirements set forth in this chapter and shall be determined pursuant to regulations adopted pursuant to this chapter for administration of LEAP utilization requirement adjustments.

2. The methodology of determining the appropriate adjustments to LEAP utilization requirements shall be determined in consultation with the LEAP Advisory Committee, established pursuant to this ordinance for so long as the LEAP Advisory Committee remains in existence.

3. LEAP utilization requirements shall not apply to those portions of a project that are funded by sources other than (a) City funds, or (b) funds which the City expends or administers in accordance with the terms of a grant to the City, provided that the Project Engineer shall notify the LEAP Coordinator of such non-application prior to bid advertisement. For the purposes of this paragraph, credits extended by another entity for the purpose of providing project funding shall not be considered to be City funds.

#### E. Utilization - Electrical Projects Outside Electrical Service Area.

Civil Projects or Building Projects that are constructed primarily for the benefit or use by the City's Electrical Utility, which are wholly situated outside the Electrical Service Area, and for which the estimated cost is less than \$1,000,000.00, are exempt from the requirements of this chapter.

F. Utilization - Water Projects Outside Water Service Area.

Civil Projects or Building Projects that are constructed primarily for the benefit or use by the City's water utility, which are wholly situated outside the Water Service Area, and for which the estimated cost is less than \$1,000,000.00 are exempt from the requirements of this chapter.

G. Utilization - Projects Outside Tacoma Public Utilities Service Area.

Civil Projects or Building Projects that are constructed primarily for the benefit or use by Tacoma Public Utilities, which are wholly situated outside the retail service area of the Tacoma Public Utilities Service Area, and for which the estimated cost is less than \$1,000,000.00 are exempt from the requirements of this chapter. Projects wholly situated outside the Tacoma Public Utilities Service Area, and for which the estimated cost is more than \$1,000,000.00, shall be exempt from 15% utilization requirement specified in subsection A1. of this section. The 15% utilization requirement specified in subsection A2. of this section may be met if project work is performed by Apprentices who are enrolled in a course of training specific to a particular construction trade or craft, provided such training has been approved by the Washington State Apprenticeship and Training Council in accordance with Chapter 49.04, RCW.

H. Emergency.

This chapter shall not apply in the event of an Emergency. For the purposes of this section, an "Emergency" means unforeseen circumstances beyond the control of the City that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

I. Conflict with State or Federal Requirements.

If any part of this chapter is found to be in conflict with federal or state requirements which are a prescribed condition to the allocation of federal or state funds to the City, then the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the City departments directly affected. This provision does not affect the operation of the remainder of this chapter. Administrative rules or regulations adopted under this chapter shall meet federal and state requirements which are a necessary condition to the receipt of federal or state funds by the City.

(Ord. 28970 Ex. A; passed Jun. 11, 2024: Ord. 28520 Ex. A; passed Jul. 17, 2018: Ord. 28147 Ex. B; passed May 7, 2013: Ord. 27815 Ex. A; passed Jun. 30, 2009: Ord. 27368 § 2; passed Jun. 21, 2005: Ord. 26992 § 1; passed Oct. 15, 2002: Ord. 26698 § 2; passed Sept. 12, 2000: Ord. 26301 § 1; passed Oct. 6, 1998)

**1.90.050 *Repealed by Ord. 27368. Good faith efforts.***

(Ord. 27368 § 3; passed Jun. 21, 2005: Ord. 26698 § 3; passed Sept. 12, 2000: Ord. 26301 § 1; passed Oct. 6, 1998)

**1.90.060 *Effect of program on prime contractor/service provider - subcontractor relationship.***

The LEAP Program shall not be construed so as to modify or interfere with any relationship between any Contractor or Service Provider and Subcontractor. The LEAP Program shall not grant the City any authority to control the manner or method of accomplishing any construction work that is additional to any authority retained by the City in a Public Works contract.

(Ord. 26698 § 4; passed Sept. 12, 2000: Ord. 26301 § 1; passed Oct. 6, 1998)

**1.90.070 *Apprentice utilization requirements – Bidding and contractual documents.***

All packages of bid documents for every Building Project and every Civil Project shall incorporate provisions satisfactory to the City Attorney so as to allow enforcement of the provisions contained in this Chapter. Such contractual provisions may include liquidated damages, calculated to reimburse the City for the Contractor's breach of these performance requirements, which shall be published with the City's call for bids.

(Ord. 26301 § 1; passed Oct. 6, 1998)

**1.90.080 *Enforcement.***

A. The LEAP Coordinator shall review the Contractor's or Service Provider's and all Subcontractor's employment practices during the performance of the work for compliance with LEAP Program requirements. On-site visits may be conducted as necessary to verify compliance with the requirements of the LEAP Program. The Contractor, Service Provider, or Subcontractors shall not deny to the City the right to interview its employees, provided that the LEAP Coordinator shall make reasonable efforts to coordinate employee interviews with employers.

- B. Any knowing failure or refusal to cooperate in compliance monitoring may disqualify the defaulting Contractor, Service Provider, or Subcontractor from eligibility for other City contracts.
- C. The making of any material misrepresentation may disqualify the defaulting Contractor, Service Provider, or Subcontractor from eligibility for other City contracts.
- D. Any action by the City, its officers and employees, under the provisions of this Chapter may be reviewed by the Hearing Examiner upon written application of the party so affected. Application shall be made within twenty (20) days of the date of the action upon which the appeal is based, and provided to the City by certified mail or by personal service. Any action taken by the Hearing Examiner may be appealed pursuant to Hearing Examiner code, TMC Chapter 1.23.

(Ord. 28970 Ex. A; passed Jun. 11, 2024: Ord. 26698 § 5; passed Sept. 12, 2000; Ord. 26301 § 1; passed Oct. 6, 1998)

#### **1.90.090 Compliance with applicable law.**

Nothing in this Chapter shall excuse a Prime Contractor, Service Provider, or Subcontractor from complying with all relevant federal, state, and local laws.

(Ord. 26698 § 6; passed Sept. 12, 2000; Ord. 26301 § 1; passed Oct. 6, 1998)

#### **1.90.100 Review and reporting.**

The City Manager and Director of Utilities shall review the Program on or before January 1, 2000, and every two (2) years thereafter, and shall report to the City Council and Public Utility Board the Manager's and LEAP Coordinator's findings, conclusions, and recommendations as to the continued need for the Program, and any revisions thereto that should be considered by the Council and Board.

(Ord. 28970 Ex. A; passed Jun. 11, 2024: Ord. 26301 § 1; passed Oct. 6, 1998)

#### **1.90.105 Authority.**

The City Manager and the Director of Utilities shall have authority to jointly adopt policies and regulations consistent with this chapter to implement the LEAP program.

(Ord. 26698 § 7; passed Sept. 12, 2000: Ord. 26301 § 1; passed Oct. 6, 1998)

#### **1.90.110 Interpretation.**

This Chapter shall not be interpreted or construed so as to conflict with any state or federal law, nor shall this Chapter be enforced such that enforcement results in the violation of any applicable judicial order.

(Ord. 26301 § 1; passed Oct. 6, 1998)

## CHAPTER 1.07

### EQUITY IN CONTRACTING

## Sections:

- 1.07.010 Policy and purpose.
- 1.07.020 Definitions.
- 1.07.030 Discrimination prohibited.
- 1.07.040 Program administration.
- 1.07.050 *Repealed.*
- 1.07.060 Program requirements.
- 1.07.070 Evaluation of submittals.
- 1.07.080 Contract compliance.
- 1.07.090 Program monitoring.
- 1.07.100 Enforcement.
- 1.07.110 Remedies.
- 1.07.120 Unlawful acts.
- 1.07.130 Severability.
- 1.07.140 Review of program.

#### **1.07.010 Policy and purpose.**

It is the policy of the City of Tacoma that citizens be afforded an opportunity for full participation in our free enterprise system and that historically underutilized business enterprises shall have an equitable opportunity to participate in the performance of City contracts. The City finds that in its contracting for supplies, services and public works, there has been historical underutilization of small and minority-owned businesses located in certain geographically and economically disfavored locations and that this underutilization has had a deleterious impact on the economic well-being of the City. The purpose of this chapter is to remedy the effects of such underutilization through use of narrowly tailored contracting requirements to increase opportunities for historically underutilized businesses to participate in City contracts. It is the goal of this chapter to facilitate a substantial procurement, education, and mentorship program designed to promote equitable participation by historically underutilized businesses in the provision of supplies, services, and public works to the City. It is not the purpose of this chapter to provide any person or entity with any right, privilege, or claim, not shared by the public, generally, and this chapter shall not be construed to do so. This chapter is adopted in accordance with Chapter 35.22 RCW and RCW 49.60.400.

(Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 27867 Ex. A; passed Dec. 15, 2009)

#### **1.07.020 Definitions.**

Terms used in this chapter shall have the following meanings unless defined elsewhere in the Tacoma Municipal Code (“TMC”), or unless the context in which they are used clearly indicates a different meaning.

##### 1.07.020.B

A. “Bid” means an offer submitted by a Respondent to furnish Supplies, Services, and/or Public Works in conformity with the Specifications and any other written terms and conditions included in a City request for such offer.

B. “Bidder” means an entity or individual who submits a Bid, Proposal or Quote. See also “Respondent.”

##### 1.07.020.C

“Certified Business” means an entity that has been certified as a Disadvantaged Business Enterprise (“DBE”), Small Business Enterprise (“SBE”), Minority Business Enterprise (“MBE”), Women Business Enterprise (“WBE”), or Minority and Women’s Business Enterprise (“MWBE”) by the Washington State Office of Minority and Women’s Business Enterprise.

“City” means all Departments, Divisions and agencies of the City of Tacoma.

“Contract” means any type of legally binding agreement regardless of form or title that governs the terms and conditions for provision of supplies, services, or public works to the City. Contracts include the terms and conditions found in Specifications, Bidder or Respondent Submittals, and purchase orders issued by the City.

“Contractor” means any Person that presents a Submittal to the City, enters into a Contract with the City, and/or performs all or any part of a Contract awarded by the City, for the provision of Public Works, or Non-Public Works and Improvements, Supplies or Services.

## 1.07.020.G

“Goals” means the annual level of participation by Certified Businesses in City Contracts as established in this chapter, the Program Regulations, or as necessary to comply with applicable federal and state nondiscrimination laws and regulations. Goals or requirements for individual Contracts may be adjusted as provided for in this chapter or in regulations and shall not be construed as a minimum for any particular Contract or for any particular geographical area.

## 1.07.020.N

*Reserved.*

## 1.07.020.P

“Person” means individuals, companies, corporations, partnerships, associations, cooperatives, any other legally recognized business entity, legal representative, trustee, or receivers.

“Program Manager” means the individual appointed, from time to time, by the City’s Community and Economic Development Director to administer the Program Regulations.

“Program Regulations” means the written regulations and procedures adopted pursuant to this chapter for procurement of Supplies, Services and Public Works.

“Proposal” means a written offer to furnish Supplies or Services in response to a Request for Proposals. This term may be further defined in the Purchasing Policy Manual and/or in competitive solicitations issued by the City.

“Public Works (or “Public Works and Improvements”)” means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the City, or that is by law a lien or charge on any property therein. This term includes all Supplies, materials, tools, and equipment to be furnished in accordance with the Contract for such work, construction, alteration, repair, or improvement.

## 1.07.020.Q

“Quote” means a competitively solicited written offer to furnish Supplies or Services by a method of procurement that is less formalized than a Bid or a Proposal. This term may be further defined in the Purchasing Policy Manual.

## 1.07.020.R

“Respondent” means any entity or Person, other than a City employee, that provides a Submittal in response to a request for Bids, Request for Proposals, Request for Qualifications, request for quotes or other request for information, as such terms are defined in Section 1.06.251 TMC. This term includes any such entity or Person whether designated as a supplier, seller, vendor, proposer, Bidder, Contractor, consultant, merchant, or service provider that; (1) assumes a contractual responsibility to the City for provision of Supplies, Services, and/or Public Works; (2) is recognized by its industry as a provider of such Supplies, Services, and/or Public works; (3) has facilities similar to those commonly used by Persons engaged in the same or similar business; and/or (4) distributes, delivers, sells, or services a product or performs a Commercially Useful Function.

## 1.07.020.S

“Services” means non-Public Works and Improvements services and includes professional services, personal services, and purchased services, as such terms are defined in Section 1.06.251 TMC and/or the City’s Purchasing Policy Manual.

“Submittal” means Bids, Proposals, Quotes, qualifications or other information submitted in response to requests for Bids, Requests for Proposals, Requests for Qualifications, requests for Quotations, or other City requests for information, as such terms are defined in Section 1.06.251 TMC.

“Supplies” means materials, Supplies, and other products that are procured by the City through a competitive process for either Public Works procurement or Non-Public Works and Improvements procurement unless an approved waiver has been granted by the appropriate authority.

## 1.07.020.T

“Tacoma Public Utilities Service Area” means any ZIP code in which Tacoma Public Utilities maintains infrastructure or provides retail services.

## 1.07.020.W

“Waiver” means a discretionary decision by the City that the one or more requirements of this chapter will not be applied to a Contract or Contracts.

(Ord. 28931 Ex. A; passed Jan. 9, 2024; Ord. 28766 Ex. A; passed June. 8, 2021; Ord. 28625 Ex. A; passed Nov. 5, 2019; Ord. 28274 Ex. A; passed Dec. 16, 2014; Ord. 28141 Ex. A; passed Mar. 26, 2013; Ord. 27867 Ex. A; passed Dec. 15, 2009)

**1.07.030 Discrimination prohibited.**

A. No person that is engaged in the construction of public works for the City, engaged in the furnishing of laborers or craftspeople for public works of the City, or is engaged for compensation in the provision of non-public works and improvements supplies and/or services to the City, shall discriminate against any other person on the basis of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental or physical disability, or “pregnancy outcomes” under TMC 1.29.040, in employment. Such discrimination includes the unfair treatment or denial of normal privileges to a person as manifested in employment upgrades, demotions, transfers, layoffs, termination, rates of pay, recruitment of employees, or advertisement for employment.

B. The violation of the terms of RCW 49.60 or Chapter 1.29 TMC by any person that is engaged in the construction of public works for the City, is engaged in the furnishing of laborers or craftspeople for public works of the City, or is engaged for compensation in the provision of non-public works and improvements supplies and/or services shall result in the rebuttable presumption that the terms of this chapter have also been violated. Such violation may result in termination of any City contract the violator may have with the City and/or the violator’s ineligibility for further City Contracts.

(Ord. 28859 Ex. A; passed Nov. 22, 2022: Ord. 27867 Ex. A; passed Dec. 15, 2009)

**1.07.040 Program administration.**

A. The Community and Economic Development Director, or their designated Program Manager, shall be responsible for administering this chapter and obtaining compliance with respect to contracts entered into by the City and/or its contractors. It shall be the duty of the Director to pursue the objectives of this chapter by conference, conciliation, persuasion, investigation, or enforcement action, as may be necessary under the circumstances. The Director is authorized to implement an administrative and compliance program to meet these responsibilities and objectives.

B. The Director is hereby authorized to adopt and to amend administrative regulations known as the Program Regulations, to properly implement and administer the provisions of this chapter. The Program Regulations shall be in conformance with City of Tacoma policies and state and federal laws and be designed to encourage achievement of the Goals set forth herein.

(Ord. 28766 Ex. A; passed June. 8, 2021: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

**1.07.050 *Repealed by Ordinance No. 28931. Approval as a Certified Business.***

(Repealed by Ord. 28931 Ex. A; passed Jan. 9, 2024: Ord. 28766 Ex. A; passed June. 8, 2021: Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28274 Ex. A; passed Dec. 16, 2014: Ord. 28147 Ex. A; passed May 7, 2013: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

**1.07.060 Program requirements.**

A. The program shall meet the following requirements:

1. Establishment of Annual Goals.

The Program Regulations adopted pursuant to this chapter shall state reasonably achievable cumulative annual goals for utilization of Certified Businesses in the provision of supplies, services, and public works procured by the City. Cumulative annual goals for the participation of Certified Businesses in City contracts shall be based on the number of qualified Certified Businesses operating within the Tacoma Public Utilities Service Area. The dollar value of all contracts awarded by the City to Certified Businesses in the procurement of supplies, services, and public works shall be counted toward the accomplishment of the applicable goal.

2. Application to Contracts.

The Program Manager shall establish department/division specific requirements for Certified Business participation in City contracts in accordance with this chapter and the Program Regulations.

B. Exceptions:

City departments/divisions or the Program Manager may request an exception to one or more of the requirements of this chapter as they apply to a particular Contract or Contracts. Exceptions may be granted in any one or more of the following circumstances:

1. Emergency:

The supplies, services and/or public works must be provided with such immediacy that neither the City nor the contractor can comply with the requirements herein. Such emergency will be deemed documented whenever a waiver of competitive solicitation for emergency situations is authorized under Tacoma Municipal Code Chapter 1.06.257 or as may be hereinafter amended.

2. Not Practicable:

The Contract involves special facilities or market conditions or specially tailored or performance criteria-based products, such that compliance with the requirements of this chapter would cause financial loss to the City or an interruption of vital services to the public. Such circumstances must be documented by the department/division awarding the Contract and approved by the senior financial manager or, for Contracts where the estimated cost is over \$500,000 (excluding sales tax), approved by the Board of Contracts and Awards (“C&A Board”).

3. Sole source:

The supplies, services, and/or public works are available from only one feasible source, and subcontracting possibilities do not reasonably exist as documented by the department/division awarding the Contract and approved by the senior financial manager or, for Contracts where the estimated cost is over \$500,000 (excluding sales tax), approved by the C&A Board.

4. Government purchasing.

The Contract or Contracts are the result of a federal, state or inter-local government purchasing agreement and the use of such agreement in lieu of a bid solicitation conducted by the City is approved by the senior financial manager.

5. Lack of Certified Businesses:

An insufficient number of qualified contractors exist to create any utilization opportunities as documented by the Program Manager.

C. Waiver:

If, after receipt of Submittals but prior to Contract award, it is determined that due to unforeseen circumstances, a full or partial waiver of requirements is in the best interests of the City, the Director or Superintendent of the department/division awarding the Contract may request in writing that the City Manager or designee, on behalf of General Government, or the Director of Utilities or designee, on behalf of the Department of Public Utilities, approve such waiver..

Waivers may be granted only after determination by the City Manager or Director of Utilities that compliance with the requirements of this chapter would impose unwarranted economic burden on, or risk to, the City of Tacoma as compared with the degree to which the purposes and policies of this chapter would be furthered by requiring compliance.

(Ord. 28931 Ex. A; passed Jan. 9, 2024: Ord. 28766 Ex. A; passed June. 8, 2021: Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 27867 Ex. A; passed Dec. 15, 2009)

**1.07.070 Evaluation of submittals.**

A. All submittals for supplies, services, or public works and improvements contracts shall be evaluated for attainment of the Certified Business requirements established for that contract in accordance with this chapter and the Program Regulations.

B. The determination of Certified Business usage and the calculation of Certified Business requirements per this section shall include the following considerations:

1. General.

The dollar value of the Contract awarded by the City to a Certified Business in the procurement of supplies, services, or public works shall be counted toward achievement of the annual goal.

2. Supplies.

A Contractor may receive credit toward attainment of the Certified Business requirement(s) applicable to the Contract for expenditures for supplies obtained from a Certified Business; provided such Certified Business assumes the actual and contractual responsibility for delivering the supplies with its resources. The contractor may also receive credit toward attainment of the Certified Business goal for the amount of the commission paid to a Certified Business resulting from a supplies contract with the City; provided the Certified Business performs a commercially useful function in the process.

3. Services and Public Works subcontracts.

Any Contract awarded to a Certified Business or a bidder that utilizes a Certified Business as a subcontractor shall receive credit toward attainment of the Certified Business requirement(s) applicable to the Contract based on the percentage of

Certified Business usage stated in the bid. A contractor that utilizes a Certified Business as a subcontractor to provide services or public works shall receive a credit toward the contractor's attainment of the Certified Business requirement applicable to the contract based on the value of the subcontract with the Certified Business.

C. Evaluation of competitively solicited submittals for public works and improvements and for services when a requirement has been established for the contract to be awarded shall be as follows:

1. When contract award is based on price.

The lowest priced bid submitted by a responsive and responsible bidder will be reviewed to determine if it meets the requirement. Certified Businesses may self-count utilization or self-performance on such bids if they will perform the work for the scope the requirement is based upon. The Program Regulations may establish further requirements and procedures for self-utilization or self-performance by a bidder who is a Certified Business.

a. If the low bidder meets the stated Certified Business requirements, the bid shall be presumed the lowest and best responsible bid for contract award.

b. Any bidder that does not meet the stated Certified Business requirements shall be considered a non-responsible bidder unless a waiver of one or more of the requirements of this chapter is granted, in the City's sole discretion, pursuant to the criteria and processes in Tacoma Municipal Code 1.07.060.C.

2. When contract award is based on qualifications or other performance criteria in addition to price, solicitations shall utilize a scoring system that promotes participation by certified contractors. The Program Regulations may establish further requirements and procedures for final selection and contract award, including:

a. Evaluation of solicitations for Architectural and Engineering (A&E) services;

b. Evaluation and selection of submittals in response to requests for proposals; and

c. Selection of contractors from pre-qualified roster(s).

(Ord. 28931 Ex. A; passed Jan. 9, 2024; Ord. 28766 Ex. A; passed Jun. 8, 2021; Ord. 28625 Ex. A; passed Nov. 5, 2019; Ord. 28141 Ex. A; passed Mar. 26, 2013; Ord. 27867 Ex. A; passed Dec. 15, 2009)

### **1.07.080 Contract compliance.**

A. The contractor awarded a contract based on Certified Business participation shall, during the term of the contract, comply with the requirements established in said contract. To ensure compliance with this requirement following contract award, the following provisions apply:

1. Any substitutions for or failure to utilize or termination of Certified Businesses projected to be used must be approved in advance by the Program Manager. Substitution of one Certified Business with another shall be allowed where there has been a refusal to execute necessary agreements by the original Certified Business, a default on agreements previously made or other reasonable excuse; provided that the substitution does not increase the dollar amount of the bid.

2. Where it is shown that no other Certified Business is available as a substitute and that failure to secure participation by the Certified Business identified in the solicitation is not the fault of the respondent, substitution with a non-Certified Business shall be allowed; provided, that, the substitution does not increase the dollar amount of the bid.

3. If the Program Manager determines that the contractor has not reasonably and actively pursued the use of replacement Certified Business, such contractor shall be deemed to be in non-compliance.

B. Record Keeping.

All contracts shall require contractors to maintain relevant records and information necessary to document compliance with this chapter and the contractor's utilization of Certified Businesses, and shall include the right of the City to inspect such records.

(Ord. 28931 Ex. A; passed Jan. 9, 2024; Ord. 28766 Ex. A; passed Jun. 8, 2021; Ord. 28625 Ex. A; passed Nov. 5, 2019; Ord. 28141 Ex. A; passed Mar. 26, 2013; Ord. 27867 Ex. A; passed Dec. 15, 2009)

### **1.07.090 Program monitoring.**

A. An Advisory Committee shall monitor compliance with all provisions of this chapter and the related Regulations. The Program Manager shall establish procedures to collect data and monitor the effect of the provisions of this chapter to assure, insofar as is practical, that the remedies set forth herein do not disproportionately favor one or more racial, gender, ethnic, or other protected groups, and that the remedies do not remain in effect beyond the point that they are required to eliminate the

effects of under utilization in City contracting, unless such provisions are supported by a Disparity Study. The Program Manager shall have the authority to obtain from City departments/divisions, respondents, and contractors such relevant records, documents, and other information as is reasonably necessary to determine compliance.

B. The Program Manager shall submit an annual report to the Community and Economic Development Director, Director of Utilities, and the City Manager detailing performance of the program. The report shall document Certified Business utilization levels, waivers, proposed modifications to the program, and such other matters as may be specified in the Program Regulations.

(Ord. 28766 Ex. A; passed Jun. 8, 2021: Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### **1.07.100 Enforcement.**

The Director, or designee, may investigate the employment practices of contractors to determine whether or not the requirements of this chapter have been violated. Such investigation shall be conducted in accordance with the procedures established in the Program Regulations.

(Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### **1.07.110 Penalties.**

A. Upon receipt of a determination of contractor violation by the Program Manager, the City Manager or Director of Utilities, as appropriate, may take the following actions, singly or together, as appropriate:

1. Forfeit the contractor's bid bond and/or performance bond;
2. Publish notice of the contractor's noncompliance;
3. Cancel, terminate, or suspend the contractor's contract, or portion thereof;
4. Withhold funds due contractor until compliance is achieved;
5. Recommend disqualification of eligibility for future contract awards by the City (debarment) per Section 1.06.279 TMC; and/or
6. Any other appropriate action, including a monetary penalty as such penalties may be specified in Program Regulations.

B. Prior to imposing of any of the foregoing penalties, the City shall provide written notice to the contractor specifying the violation and the City's intent to exercise such remedy or remedies. The notice shall provide that each specified remedy becomes effective within ten business days of receipt unless the contractor appeals said action to the Hearing Examiner pursuant to Chapter 1.23 TMC.

C. When non-compliance with this chapter or the Program Regulations has occurred, the Program Manager and the department/division responsible for enforcement of the contract may allow continuation of the contract upon the contractor's development of a plan for compliance acceptable to the Director.

(Ord. 28931 Ex. A; passed Jan. 9, 2024: Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 28110 Ex. B; passed Dec. 4, 2012: Ord. 27867 Ex. A; passed Dec. 15, 2009)

### **1.07.120 Unlawful acts.**

It shall be unlawful for any Person to willfully prevent or attempt to prevent, by intimidation, threats, coercion, or otherwise, any Person from complying with the provisions of this chapter.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

### **1.07.130 Severability.**

If any section of this chapter or its application to any Person or circumstance is held invalid by a court of competent jurisdiction, then the remaining sections of this chapter, or the application of the provisions to other Persons or circumstances, shall not be affected.

(Ord. 27867 Ex. A; passed Dec. 15, 2009)

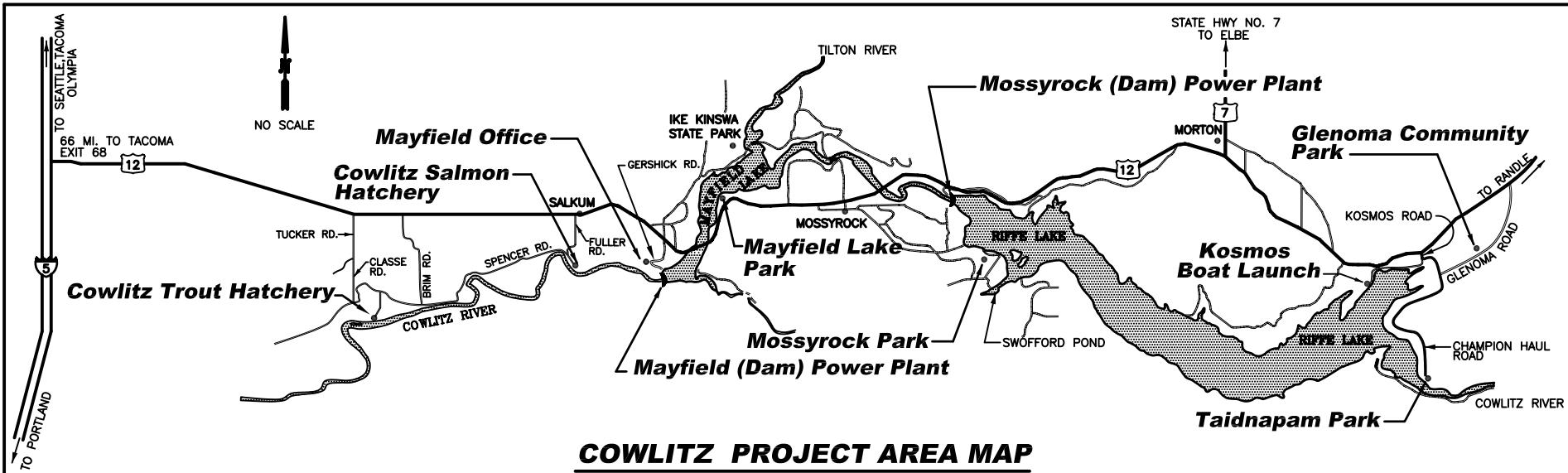
**1.07.140    Review of program.**

This chapter shall be in effect until such point in time that the City Council shall determine, after third party analyses, whether substantial effects or lack of opportunity of Certified Businesses remain true in the relevant market and whether, and for how long, some or all of the requirements of this chapter should remain in effect.

The Department Director or their designee shall review this chapter with City Council standing committee on a biennial basis in order to determine whether adjustments or revisions are required and present those proposals to the City Council for approval.

(Ord. 28931 Ex. A; passed Jan. 9, 2024: Ord. 28625 Ex. A; passed Nov. 5, 2019: Ord. 28274 Ex. A; passed Dec. 16, 2014: Ord. 28141 Ex. A; passed Mar. 26, 2013: Ord. 27867 Ex. A; passed Dec. 15, 2009)

EXHIBIT A  
TACOMA POWER PROJECTS LOCATION MAP(S)



## COWLITZ PROJECT AREA MAP

### DIRECTIONS-

#### COWLITZ TROUT HATCHERY

FROM TACOMA, TAKE I-5 SOUTH, DRIVE 66 MI. TO EXIT 68, "MORTON". TURN LEFT ONTO HWY. 12 EAST, DRIVE 12 MI., TURN RIGHT ONTO TUCKER RD. (GROCERY STORE WILL BE ON THE LEFT). FOLLOW TUCKER RD. 1.5 MI., VEER LEFT ONTO CLASSE RD. AT "T" TURN LEFT ONTO SPENCER RD. FOLLOW SPENCER RD. 2 MI. AND TURN RIGHT ONTO COWLITZ GAME FISH HATCHERY DRIVEWAY. FOLLOW DRIVEWAY .75 MI. TO HATCHERY.

#### COWLITZ SALMON HATCHERY

FROM TACOMA, TAKE I-5 SOUTH, DRIVE 66 MI. TO EXIT 68, "MORTON". TURN LEFT ONTO HWY. 12 EAST, DRIVE 12 MI., TURN RIGHT ONTO FULLER RD. FOLLOW FULLER RD. TO "T". TURN LEFT AND TRAVEL 1.1 MI. CONTINUE DOWNHILL TO SALMON HATCHERY.

#### GLENOMA COMMUNITY PARK

FROM TACOMA, TAKE I-5 SOUTH, DRIVE 66 MI. TO EXIT 68, "MORTON". TURN LEFT ONTO HWY. 12 EAST, DRIVE APPROXIMATELY 40 MI. AND TAKE A RIGHT TURN ON KOSMOS ROAD AND FIRST LEFT ONTO IMPROVED DIRT ROAD (CHAMPION HAUL ROAD). FOLLOW CHAMPION HAUL ROAD APPROXIMATELY 3/4 MILE TO FIRST LEFT, GLENOMA ROAD. TRAVEL APPROXIMATELY 1/2 MILE TO PARK.

#### KOSMOS BOAT LAUNCH

FROM TACOMA, TAKE I-5 SOUTH, DRIVE 66 MI. TO EXIT 68, "MORTON". TURN LEFT ONTO HWY. 12 EAST, DRIVE APPROXIMATELY 40 MI. AND TAKE A RIGHT TURN ON KOSMOS ROAD AND FOLLOW SIGNS TO THE BOAT LAUNCH.

#### MAYFIELD LAKE PARK

FROM TACOMA, TAKE I-5 SOUTH, DRIVE 66 MI. TO EXIT 68, "MORTON". TURN LEFT ONTO HWY. 12 EAST, DRIVE EAST APPROXIMATELY 19 MI., TURN LEFT ONTO BEACH ROAD (APRX. 1 MILE PAST MAYFIELD LAKE BRIDGE). TRAVEL 1/2 MILE TO PARK.

#### MAYFIELD OFFICE BUILDING, DAM & POWERHOUSE

FROM TACOMA, TAKE I-5 SOUTH, DRIVE 66 MI. TO EXIT 68, "MORTON". TURN LEFT ONTO HWY. 12 EAST, DRIVE 14 MI., TURN RIGHT JUST BEFORE SMALL STORE ONTO GERSHICK RD. FOLLOW GERSHICK RD. TO CYCLONE FENCE/GATE. PASS THROUGH GATE AND FOLLOW ONE-LANE ROAD TO MAYFIELD OFFICE ON THE LEFT. TO REACH THE POWERHOUSE, CONTINUE DOWN HILL TO THE END OF THE ROAD.

#### MOSSYROCK PARK

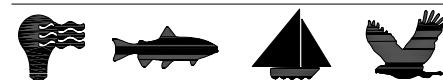
MOSSYROCK PARK IS LOCATED ABOUT 90 MILES SOUTH OF TACOMA IN LEWIS COUNTY NEAR THE TOWN OF MOSSYROCK. FROM TACOMA TAKE I-5 SOUTH TO STATE ROUTE 12 (EXIT 68 "MORTON"). TURN LEFT EASTBOUND ON STATE ROUTE 12 FOR APPROXIMATELY 21 MILES. TURN RIGHT ON WILLIAMS STREET (FLASHING YELLOW LIGHT). CONTINUE ON WILLIAMS STREET TO THE TOWN OF MOSSYROCK. WHEN YOU REACH THE "T", TURN LEFT ONTO EAST STATE STREET AND GO FOR 3 MILES TO MOSSYROCK PARK ENTRANCE.

#### MOSSYROCK POWERHOUSE

FROM TACOMA, TAKE I-5 SOUTH, DRIVE 66 MI. TO EXIT 68, "MORTON". TURN LEFT ONTO HWY. 12 EAST, DRIVE APPROXIMATELY 21 MI. TO WILLIAMS ST. (FLASHING YELLOW CAUTION LIGHT) AND TURN RIGHT. CONTINUE ON WILLIAMS ST. FOR 0.4 MILE TO STATE STREET. TURN LEFT (EAST) ON EAST STATE ST. FOR 2.9 MILES TO YOUNG ROAD. TURN LEFT (NORTH) ON YOUNG ROAD AND FOLLOW YOUNG ROAD FOR .9 MILE AND TURN RIGHT AT MOSSYROCK DAM VIEW POINT SIGN. GO .5 MILE AND TURN LEFT ON DAM ACCESS ROAD GO 1.3 MILES TO DAM/POWERHOUSE.

#### TAIDNAPAM PARK

FROM TACOMA, TAKE I-5 SOUTH, DRIVE 66 MI. TO EXIT 68, "MORTON". TURN LEFT ONTO HWY. 12 EAST, DRIVE APPROXIMATELY 40 MI. AND TAKE A RIGHT TURN ON KOSMOS ROAD AND FIRST LEFT ONTO IMPROVED DIRT ROAD (CHAMPION HAUL ROAD). FOLLOW CHAMPION HAUL ROAD APPROXIMATELY 4 MILES TO TAIDNAPAM PARK ENTRANCE.

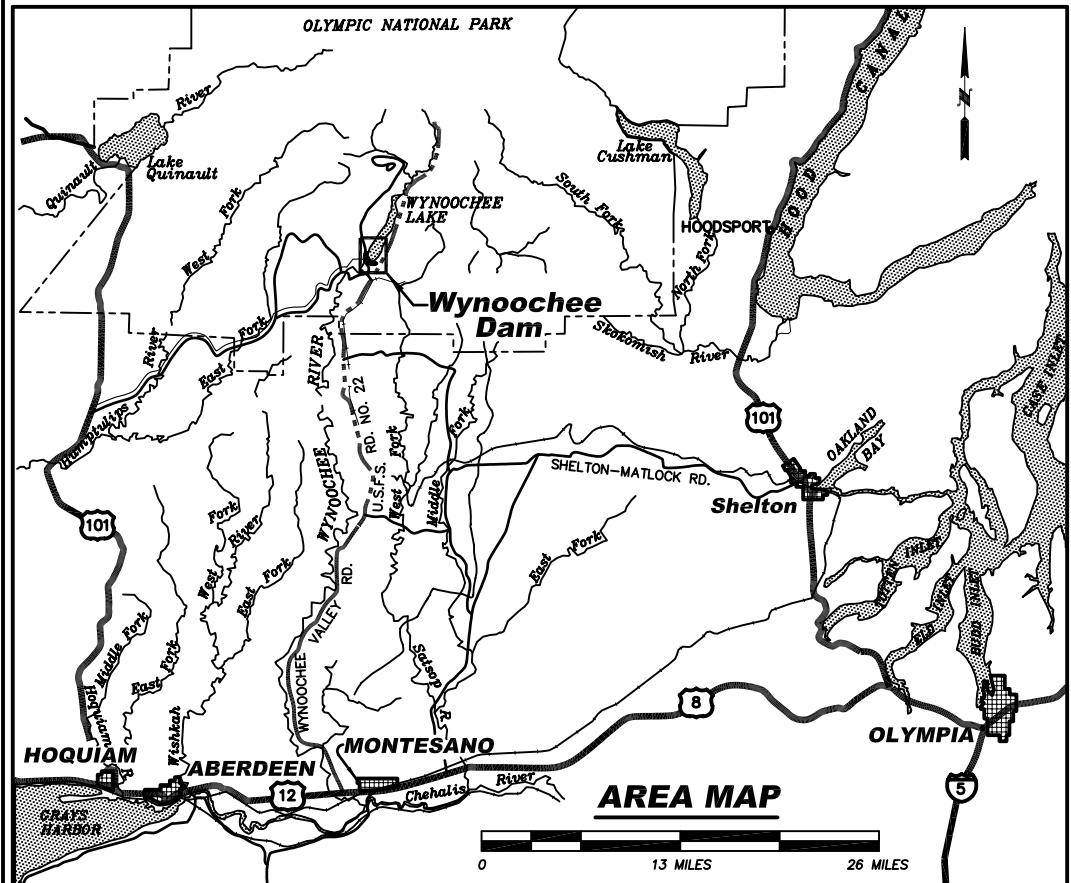


## Cowlitz River Project

TACOMA POWER







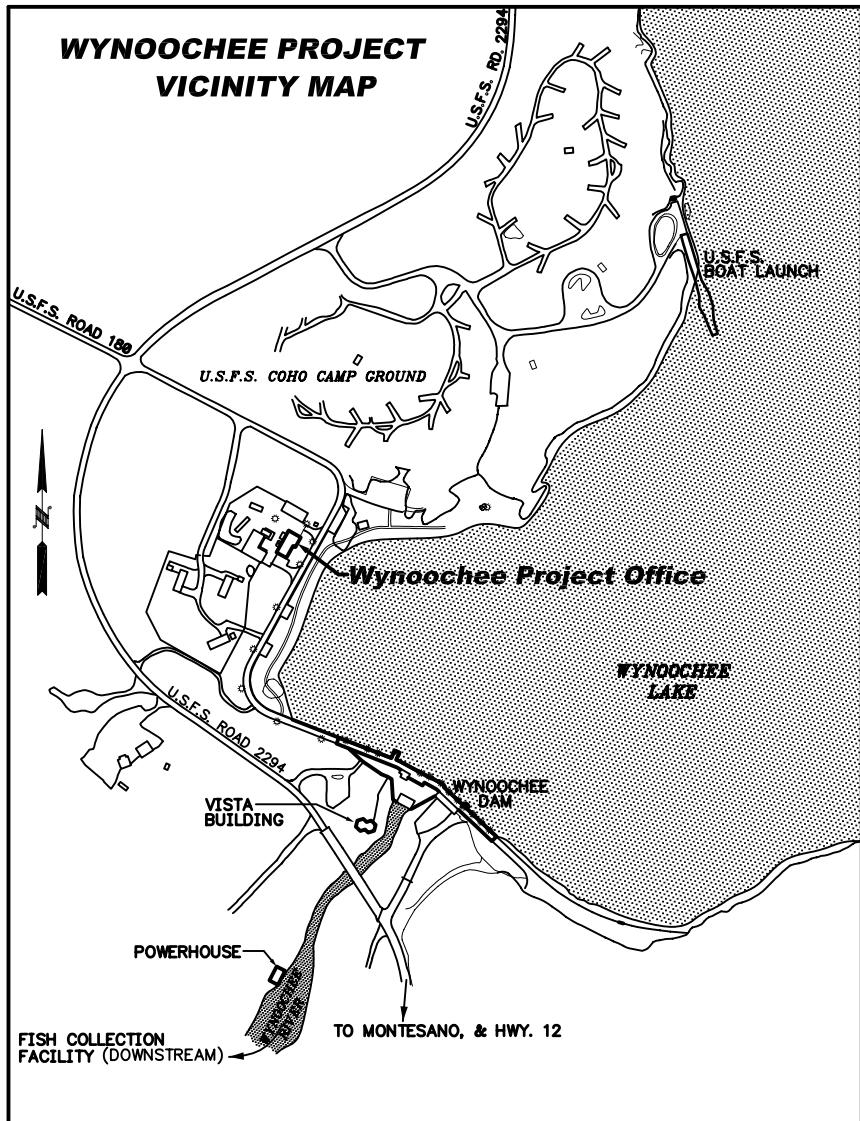
#### **DIRECTIONS**

FROM TACOMA, TRAVEL SOUTH ON I-5 TO OLYMPIA. TAKE THE HWY. 8 (OCEAN BEACHES) EXIT AND TRAVEL WEST APPROXIMATELY 45 MILES (JUST PAST MONTESANO). TURN RIGHT AT THE DEVONSHIRE ROAD EXIT ONTO WYNOCHEE VALLEY ROAD AND TRAVEL APPROXIMATELY 36 MILES TO THE WYNOCHEE PROJECT.



## **Wynoochee River Project**

TACOMA POWER



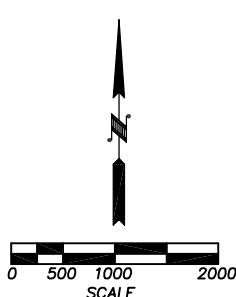
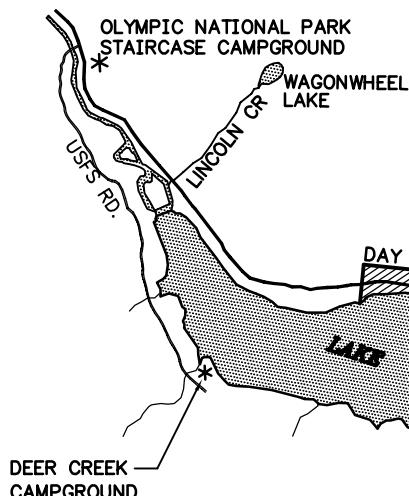
## DIRECTIONS-

### CUSHMAN NO. 1 DAM AND POWERHOUSE VICINITY:

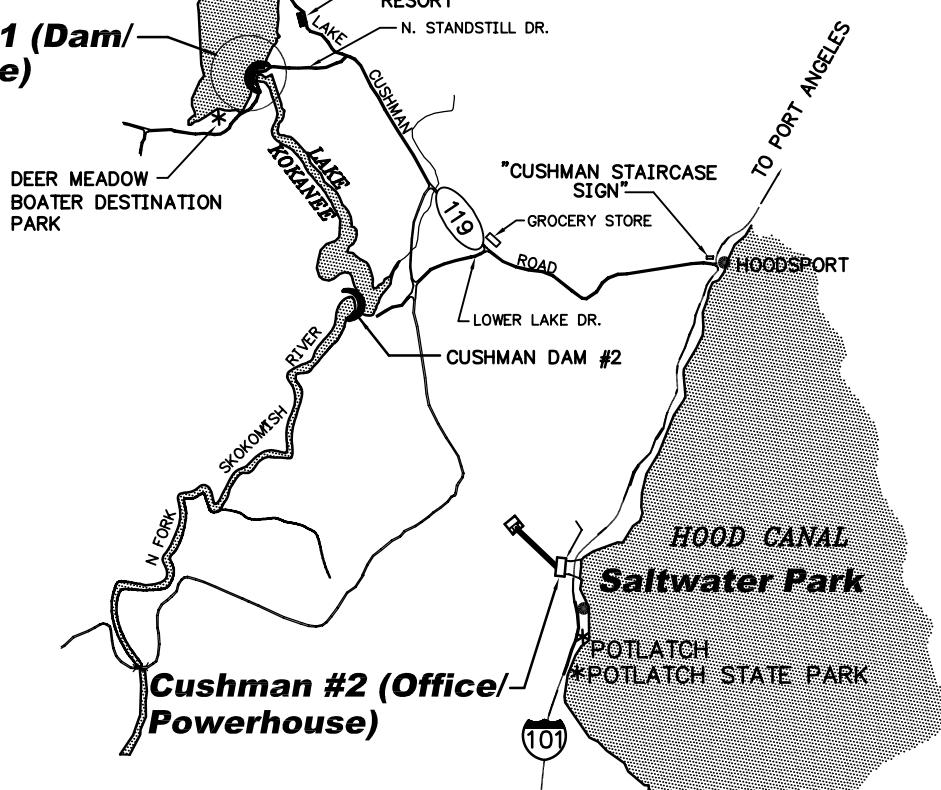
FROM TACOMA TAKE I-5 SOUTH FOR 28 MILES. TAKE EXIT 104 TO HWY. 101 NORTH. FOLLOW HWY. 101 32 MILES. CUSHMAN POWERHOUSE NO. 2 WILL BE ON THE LEFT. FROM POWERHOUSE NO. 2 CONTINUE ON HWY. 101 NORTH 2.7 MILES TO HOODSPORT AND TURN LEFT ONTO HWY. 119 AT "CUSHMAN STAIRCASE" SIGN. FOLLOW ROAD 4.4 MI. AND TAKE A LEFT ON N. STANDSTILL DR. CONTINUE PAST LAKE CUSHMAN FIRE DISTRICT BUILDING FOR APRX. 600 YARDS TO DAM CONTROL BUILDING AND SWITCHYARD ENCLOSED IN FENCED AREA WITH RESTRICTED AREA SIGNS.

### CUSHMAN NO. 2 DAM AND POWERHOUSE VICINITY:

FROM TACOMA TAKE I-5 SOUTH FOR 28 MILES. TAKE EXIT 104 TO HWY. 101 NORTH. FOLLOW HWY. 101 32 MILES. CUSHMAN POWERHOUSE NO. 2 WILL BE ON THE LEFT. FROM POWERHOUSE NO. 2 CONTINUE ON HWY. 101 NORTH 2.7 MILES TO HOODSPORT. TURN LEFT ONTO HWY 119 AT THE "CUSHMAN STAIRCASE" SIGN. FOLLOW ROAD 2.5 MILES AND TURN LEFT AT GROCERY STORE ONTO LOWER LAKE DR. TRAVEL 1.1 MILES AND TURN LEFT ONTO RESTRICTED CITY DRIVEWAY TO CUSHMAN NO. 2 DAM GATE DIRECTLY AHEAD.



### Cushman #1 (Dam/ Powerhouse)



### CUSHMAN PROJECT

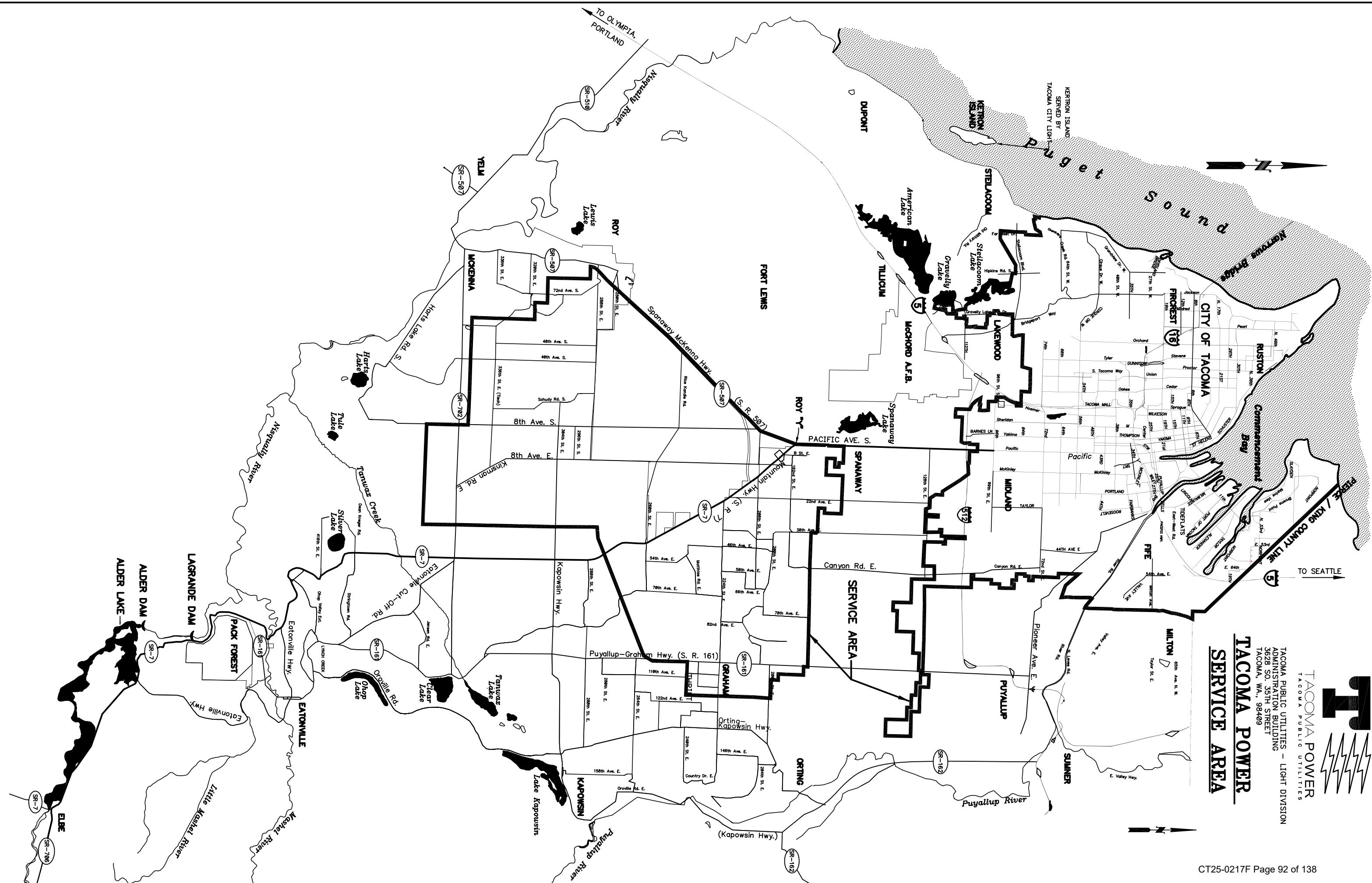
### AREA MAP



Cushman Hydro Project

TACOMA POWER

EXHIBIT B  
TACOMA POWER SERVICE AREA

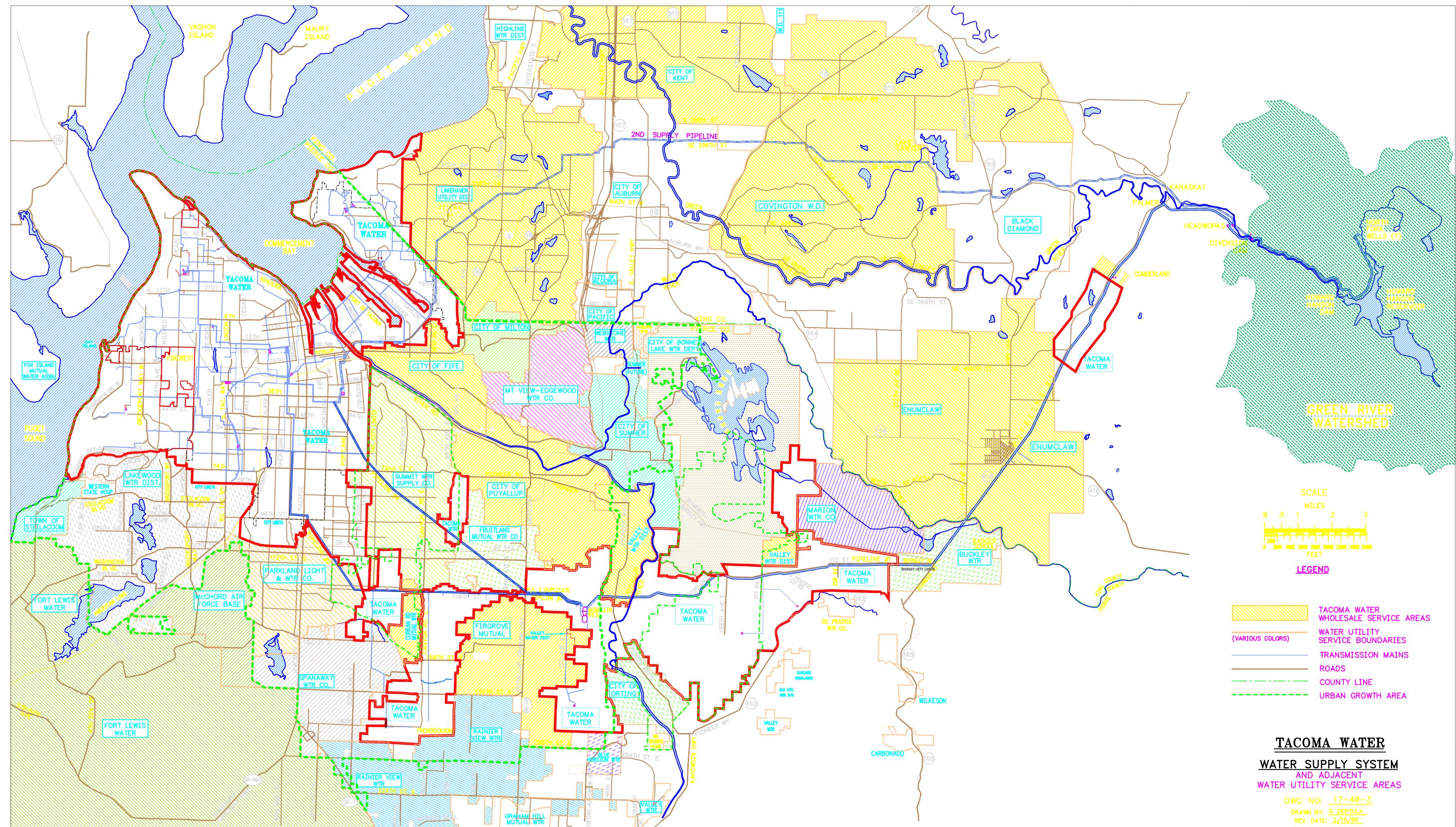


# TACOMA POWER TACOMA PUBLIC UTILITIES

TACOMA PUBLIC UTILITIES - LIGHT DIVISION  
ADMINISTRATION BUILDING  
3628 SO. 35TH STREET  
TACOMA WA 98409

## TACOMA POWER SERVICE AREA

EXHIBIT C  
TACOMA WATER – WATER SUPPLY SYSTEM



## **APPENDIX D – SAMPLE DOCUMENTS**

Sample SAAS Terms of Use

Sample Contract

Sample Task Order Contract

Sample Payment Bond

Sample Performance Bond

Sample Supplier Evaluation

## SaaS Terms of Use

These SaaS Terms of Use ("SaaS Terms"), along with any applicable Additional Terms (as defined below) (collectively the "Terms") apply to Customer access to, and use of the Subscriptions provided by The Gordian Group, Inc. and its subsidiaries and affiliates (collectively, "Gordian", "we" or "us").

### 1. Definitions.

- 1.1 **"Access Credentials"** means any information necessary for a Customer to login to or otherwise access and use the Subscriptions, including, but not limited to, user name and password.
- 1.2 **"Additional Terms"** means terms in addition to the SaaS Terms applicable to specific products as set forth in Section 2 below.
- 1.3 **"Authorized User"** means employees, agents, consultants, or contractors of Customer that have agreed to the Terms and shall use the Subscription solely for the benefit of Customer. Notwithstanding the foregoing, agents, consultants and contractors of Customer shall only be considered Authorized users if authorized in writing in advance by Gordian to use the Subscriptions subject to the Terms
- 1.4 **"Confidential Information"** includes, but is not limited to, the terms and conditions (but not the existence) of the Terms, all trade secrets, software, source code, object code, specifications, documentation, business plans, customer lists and customer-related information, financial information, proposals, budgets as well as results of testing and benchmarking of the Software, SaaS Subscription, Data Subscription, or other services, product roadmap, data, data analytics, and other information of Gordian and its licensors relating to or embodied in the Software, Data, or Documentation.
- 1.5 **"Content"** means all materials used and accessed by Customer through the Subscriptions, including, without limitation, text, images, software, audio and video clips, databases, dashboards, and Data.
- 1.6 **"Customer"** means those entities (including its Authorized Users) or individuals who have purchased Subscriptions in accordance with the Terms.
- 1.7 **"Customer Data"** means data that Customer (including its Authorized Users) provides, uploads, generates, transfers, or otherwise makes available to Gordian under the Terms.
- 1.8 **"Data"** means all data, including construction cost data, regardless of product purchased by Customer, available through the Subscriptions or otherwise provided by Gordian or its Partners to Customer.
- 1.9 **"Data Subscription"** means the provision of the Data, hosted by Gordian or its Partners and accessed by Customer via the internet as set forth in an applicable Order Document.
- 1.10 **"Devices"** means one or more sensors, Internet of Things (IoT) devices, or other data gathering equipment installed or located on Customer's premises.
- 1.11 **"Documentation"** means user manuals, technical manuals, and any other materials provided by Gordian, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software or Subscriptions.
- 1.12 **"Effective Date"** means the date for commencement of the Subscriptions as set forth in an applicable Order Document. If no commencement date is set forth in the Order Document or no Order Document exists, the commencement date shall be deemed to be the date Gordian provides the Customer with an account to access and use the Subscriptions.

- 1.13 **"Exported Copy"** means an exported copy of Customer Data provided to Customer by Gordian.
- 1.14 **"Federal Customer"** means any United States federal government branch or agency Customer of Gordian subject to the Terms, including agencies and departments from the Executive Branch, the Congress, or the military.
- 1.15 **"Initial Term"** means the period commencing on the Effective Date and continuing through the duration set forth in an applicable Order Document. In the event the Order Document does not specify a subscription duration or no Order Document exists, the duration shall be a one-year annual subscription from the Effective Date.
- 1.16 **"Intellectual Property"** includes, without limitation, Data, inventions, technology, patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, methodologies, procedures, processes, know-how, tools, utilities, techniques, various concepts, ideas, methods, models, templates, Software, source code, object code, algorithms, analytics, the generalized features of the structure, sequence and organization of Software, user interfaces and screen designs, dashboards, general purpose consulting and software tools, utilities and routines, logic, coherence and methods of operation of systems, and training methodology and materials.
- 1.17 **"Named User"** means a single individual designated by Customer and approved by Gordian as an Authorized User of the Subscriptions on a non-temporary basis.
- 1.18 **"Order Document"** means a document or set of documents executed by the parties which describes order-specific information. An Order Document may not be specifically called an Order Document; it can be referred to by another name, such as a purchase order or statement of work. Any Subscriptions provided via an Order Document are subject to the Terms.
- 1.19 **"Partner"** is a Third Party vendor under an agreement with Gordian to provide services in support of the Subscriptions, as well as any other obligations under the Terms.
- 1.20 **"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority.
- 1.21 **"Public Sector Customer"** means any Federal Customer or other United States state or local government, or any entity, authority, agency or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government, who purchases the Subscriptions from Gordian.
- 1.22 **"Renewal Term"** means the period commencing on the renewal date of the Subscriptions and continuing for the duration of the Subscriptions set forth in an applicable Order Document. In the event the Order Document does not specify a subscription duration or no Order Document exists, the subscription duration shall be a one-year annual subscription from the expiration of the Initial Term or prior Term.
- 1.23 **"Resultant Data"** means aggregated and anonymized data and information, including Customer Data and Usage Data, relating to Client's use of the Subscriptions.
- 1.24 **"SaaS Subscription"** means the provision of the Software, hosted by Gordian or its Partners and accessed by Customer via the internet, as a service and as set forth in an applicable Order Document.
- 1.25 **"Software"** means Gordian's proprietary software programs, including any Data incorporated therein.
- 1.26 **"Subscription Data"** means any construction cost data or other Data available through the Subscriptions or otherwise provided by Gordian to Customer.

- 1.27 **“Subscription Fees”** means the fees, including all taxes, paid or required to be paid by Customer for access to and use of the Subscriptions and the license granted under the Terms.
- 1.28 **“Subscriptions”** mean collectively the SaaS Subscription and the Data Subscription.
- 1.29 **“Term”** means collectively the Initial Term and Renewal Terms.
- 1.30 **“Third Party”** means any Person other than Customer or Gordian.
- 1.31 **“Usage Data”** means data regarding Customer’s use of the Subscriptions.

## **2. GENERAL.**

- 2.1 **Additional Terms.** Subscriptions for specific products shall be subject to the applicable Additional Terms listed below. The Additional Terms supplement the SaaS Terms. The Additional Terms shall control in the event of a conflict with the SaaS Terms.
  - (A) Addendum 1 –Additional Terms for Estimating Software
  - (B) Addendum 2 –Additional Terms for Procurement Software
  - (C) Addendum 3 –Additional Terms for Planning Software
  - (D) Addendum 4 – Additional Terms for Business Intelligence
- 2.2 **Order of Precedence.** The only terms from any Order Document applicable to the Terms are: (i) quantity; (ii) price; (iii) use limitations; (iv) renewal terms; and (v) payment terms. Any other terms contained in any Order Document are not applicable and the Terms shall control without regard to any order of precedence language in any Order Document. In the event of a conflict between the Terms and any other written agreement other than an Order Document, the Terms shall prevail unless such other agreement explicitly states that it supersedes the Terms and is executed by both parties in writing.
- 2.3 **Updates to Terms.** Gordian reserves the right, in its sole discretion, to change or modify these SaaS Terms and any Additional Terms at any time. All changes are effective immediately when posted and apply to all access and use of the Subscriptions thereafter. We encourage Customer to frequently review the Terms to ensure that its use of the Subscriptions complies with the Terms. If Customer does not agree to any modified, changed, or amended Terms, it must stop using the Subscriptions immediately.

## **3. ELIGIBILITY, REGISTRATION AND ACCOUNT.**

- 3.1 **Eligibility.** By using the Subscriptions, Customer represents and warrants that he or she is (a) 18 years of age or older; (b) has not been previously suspended or removed from the Subscriptions; and (c) has full power and authority to enter into the Terms and that, in doing so, Customer will not violate any other agreement to which it is a party. If Customer is using the Subscriptions on behalf of any entity, Customer represents and warrants that Customer is authorized to accept the Terms on such entity's behalf and that such entity agrees to be responsible to Gordian. If Customer violates the Terms, Customer represents, warrants and covenants to Gordian that Customer and its Authorized Users who access and use the Subscriptions are not employees or independent contractors of competitors of Gordian or of any company that delivers similar type data.
- 3.2 **Account Registration.** To access and use certain areas or features of the Subscriptions, Customer may be required to register for an online account. Customer agrees to provide accurate, current, and complete account information and maintain and promptly update Customer account information. Customer also represents, warrants, and covenants that it has entered the Terms under its true name and is not, directly or indirectly, impersonating any real or fictitious person or entity or otherwise acting

to withhold Customer's actual identity. When registering for an account, Customer cannot create an account name that incorporates a trademark without authorization from the trademark owner. Gordian reserves the right to reclaim account names, or to take other reasonable action as necessary, on behalf of any business or individual that holds legal claim, including trademark rights, in a name.

- 3.3 **Communication Authorization.** By using the Subscriptions, you authorize Gordian to contact you by mail, email, landline and mobile phone. These communications may include information about services and features of the Subscriptions, notices about applicable fees and charges, transactional information and other information concerning or related to the Subscriptions.
- 3.4 **Password Security.** Customer is also responsible for maintaining the security of Customer's password and accepts all risks of unauthorized access to Customer's account and the information Customer provides to Gordian.
- 3.5 **Compliance.** Upon request by Gordian, Customer will conduct a review of its Authorized Users access and use of the Subscriptions and certify to Gordian in a written instrument signed by an officer of Customer that it is in full compliance with the Terms or, if Customer discovers any noncompliance:
  - (A) Customer must immediately remedy such noncompliance and provide Gordian with written notice thereof. Customer must provide Gordian with all access and assistance as Gordian requests to further evaluate and remedy such noncompliance.
  - (B) If Customer's use of the Subscriptions exceeds the number of Authorized Users permitted under the Terms, Gordian will have the remedies set forth Sections 3.7 and 3.8.
- 3.6 **Audit.** During the Term, Gordian may, in Gordian's sole discretion, audit Customer's use of the Subscriptions to ensure Customer's compliance with the Terms.
- 3.7 **Remedies.** If the audit or any of the measures taken or implemented under this Section determines that the Customer's access to or use of the Subscriptions violate the Terms then:
  - (A) Customer will, within seven days following the date of Gordian's written notification thereof, pay to Gordian any retroactive fees for such non-permitted access or use. Unless Gordian terminates the Terms, Customer shall also obtain and pay for valid Subscriptions to bring Customer's use into compliance with the Terms.
  - (B) If Customer's access to or use of the Subscriptions violates the Terms, Customer shall also pay to Gordian, within seven days following the date of Gordian's written request, Gordian's reasonable costs incurred in conducting any audits pursuant to this Section.
- 3.8 **Cumulative Remedies.** Gordian's remedies set forth in this Section are cumulative and are in addition to, and not instead of, all other remedies Gordian may have at law or in equity.

#### 4. USAGE RIGHTS AND RESTRICTIONS.

- 4.1 **Subscriptions Limits.** Customer's usage of the Subscriptions shall not exceed any limitations on the number of Named Users or any other usage limitation metrics (e.g., square footage, number of locations, or number of reports) specified in an Order Document or other written agreement. If an Order Document or other written agreement specifies limitations on the number of users, subscribers, licensees, or licenses, such limitation shall be interpreted to mean the number Named Users unless concurrent use is explicitly allowed in writing.
- 4.2 **Usage Rights.** Gordian grants Customer, during the Term, a limited non-exclusive, non-assignable, non-transferable, non-sublicensable, royalty free and revokable, in the country where Customer is located,

right to access and use (and permit Authorized Users to access and use) the applicable SaaS Subscription and/or Data Subscription solely for Customer's internal business purposes subject to the restrictions set forth in this Section, unless otherwise explicitly authorized by Additional Terms or by written authorization from Gordian.

4.3 **Restrictions.** Customer shall not, and shall not permit any other Person to, access or use the Subscriptions except as expressly permitted by the Terms. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as the Terms expressly permit:

- (A) copy, modify, translate, adapt or otherwise create derivative works or improvements of the Subscriptions or any form of any Data;
- (B) combine the Subscriptions or any part thereof with, or incorporate the Subscriptions or any part thereof in, any other programs;
- (C) merge the Data with any other software or SaaS program or extract such Data other than expressly allowed by the Terms.
- (D) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Subscriptions or any Data, dashboards, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service
- (E) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Subscriptions, in whole or in part;
- (F) bypass or breach any security device or protection used by the Subscriptions or access or use the Subscriptions, other than by an Authorized User using his or her own then valid Access Credentials.
- (G) damage, destroy, disrupt, disable, impair, circumvent, interfere with, or otherwise impede or harm in any manner the Subscriptions, any systems used to provide the Subscriptions, or Gordian's provision of Subscriptions to any Third Party, in whole or in part;
- (H) remove, delete, alter, or obscure any trademarks, specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Subscriptions, including any copy thereof;
- (I) access or use the Subscriptions in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property right or other right of any Third Party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other customer), or that violates any applicable Law;
- (J) access or use the Subscriptions or any Data or dashboards for purposes of competitive analysis of the Subscriptions or any Data, the development, provision, or use of a competing software service or product or any other purpose that is to Gordian's detriment or commercial disadvantage.

5. **THIRD PARTY MATERIALS.** The Subscriptions may contain links and pointers to other sites on the internet which may be maintained by Third Parties. Such links do not include an endorsement by Gordian of any Third Party site or any material contained therein. Gordian does not control, and is not responsible for, the availability, accuracy, privacy policy, or currency of such Third Party sites or any information, content, products or services accessible from such Third Party sites.

6. **SUPPORT SERVICES.** The Subscriptions granted under the Terms entitles Customer to the support services set forth in the [Gordian Support Policy](#).

## 7. INTELLECTUAL PROPERTY RIGHTS.

- 7.1 **Ownership.** Except for rights expressly granted under the Terms, nothing in the Terms shall transfer any of either party's Intellectual Property rights to the other, and each party will retain an exclusive interest in and ownership of its Intellectual Property. Customer does not acquire any ownership interest in Gordian's Intellectual Property. Gordian's Intellectual Property includes, but is not limited to, any work that Gordian creates, acquires, or otherwise has rights in, including any works created pursuant to the Terms, except for any portion of such works that consist of Customer's Intellectual Property. Customer Data will be considered Customer's Intellectual Property. Gordian may, in connection with the provision of the Subscriptions hereunder, create, employ, provide, modify, acquire, or otherwise obtain rights in, and any and all Intellectual Property rights created in connection with the provision of the Subscriptions hereunder, recognized in any country or jurisdiction in the world, now or hereafter existing, whether or not perfected, filed, or recorded.
- 7.2 **Subscriptions and Content.** The Subscriptions and Content therein are owned or controlled by Gordian, which retains all right, title, and interest in and to such Subscriptions and Content. The Subscriptions and Content therein contain valuable and proprietary information of Gordian and others and are protected by the copyright and trademark laws of the United States and other countries, international conventions, and other applicable laws. Gordian reserves the right to make changes to the functionality of the SaaS Services at any time.
- 7.3 **Safeguards.** Customer must use commercially reasonable efforts to safeguard all Intellectual Property (including copies thereof) of Gordian from infringement, misappropriation, theft, misuse, or unauthorized access. Customer will promptly notify Gordian if Customer becomes aware of any infringement of Gordian's Intellectual Property rights in the Intellectual Property and fully cooperate with Gordian, at Gordian's sole expense, in any legal action taken by Gordian to enforce its Intellectual Property rights.
- 7.4 **Trademarks.** Customer agrees not to use any trademarks, service marks, names, logos, or other identifiers of Gordian, or their employees, licensors, independent contractors, and affiliates without prior written permission from Gordian. In addition, Customer may not use trademarks, service marks, names, logos, or other identifiers: (i) in, as, or as part of, Customer's trademarks or those of any Third Parties; (ii) to identify products or services that are not those of Gordian; (iii) in a manner likely to cause confusion; or (iv) in a manner that implies that Gordian sponsors or endorses or is otherwise connected with Customer's own activities, products and services or those of Third Parties.

8. **PAYMENT AND TAXES.** Unless otherwise agreed upon in writing, Customer shall pay all invoices within thirty (30) days of date of invoice, without any deduction or set-off, and payment will be sent as specified by Gordian. Subscription Fees shall be specified in the applicable Order Document and, unless stated otherwise, are denominated and payable in United States Dollars (USD). Gordian is not responsible for any payment conditions that are not expressly stated in the Terms or any applicable Order Document. Any undisputed amounts arising in relation to the Terms not paid when due will be subject to a late charge of (1.5%) per month on the unpaid balance or the maximum rate allowed by law, whichever is less. Without prejudice to Customer's rights set out elsewhere in the Terms, all Subscription Fees are non-refundable and payable in advance. In the event any Subscription Fees due and owing are 30 or more days overdue, Gordian may, after providing notice to Customer, and without limiting any of its other rights and remedies, suspend, terminate, or otherwise deny Customer access to or use of, all or any part of the Subscriptions, or condition future purchases on shorter payment terms. Customer acknowledges that, if it fails to provide a purchase order number when required for payment, or it delays payment by requesting payment conditions not set forth in the Terms or applicable Order Document, Gordian's right to pursue overdue charges will not be waived. Unless expressly provided otherwise in the Terms or any applicable Order Document, the Subscription Fees and charges covered by the Terms do not include applicable taxes. Customer agrees to pay any applicable

taxes arising out of the Terms, in its tax jurisdiction, other than those based on Gordian's net income. If Customer is tax-exempt, Customer agrees to provide Gordian a copy of its tax-exempt certificate prior to execution of an Order Document. Customer shall be responsible for any liability or expense incurred by Gordian because of Customer's failure or delay in paying taxes due.

## **9. TERM AND TERMINATION.**

- 9.1 **Term.** Subscriptions commence on the Effective Date and will continue for the Initial Term. Unless otherwise set forth in the Order Document, following the end of the Initial Term or any applicable Renewal Term, Subscriptions shall automatically renew for a Renewal Term.
- 9.2 **Duties Upon Termination.** Upon termination or expiration of any Data Subscription, unless otherwise agreed in writing by Gordian, Customer shall cease use of and delete all Subscription Data in any form. Gordian reserves the right to require Customer to certify in a writing signed by an authorized officer of Customer that all Subscription Data has been destroyed and Customer has ceased use of all Subscription Data.
- 9.3 **Breach.** Gordian reserves the right to restrict, suspend or terminate Customer's use of and access to the Subscriptions in whole or in part, without notice, with respect to any breach or threatened breach by Customer of any portion of the Terms, such termination to be without prejudice to the right of Gordian to pursue any and all other remedies available to it in equity or at law. If Gordian terminates the Subscriptions based on a breach of any portion of the Terms, Gordian will not refund any amounts paid or cancel any amounts then payable by Customer and reserves the right to refuse to provide access to Subscriptions to Customer in the future.

## **10. DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN A WRITING SIGNED BY GORDIAN, THE SUBSCRIPTIONS AND THE CONTENT AND DATA CONTAINED THEREIN ARE PROVIDED ON AN "AS IS" BASIS. GORDIAN EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPATABILITY, SECURITY, ACCURACY, OR NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, GORDIAN MAKES NO WARRANTY OF ANY KIND THAT THE SUBSCRIPTIONS AND DATA AND CONTENT CONTAINED THEREIN, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, RELIABLE, CURRENT, FREE OF HARMFUL CODE OR VIRUSES, ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED. GORDIAN IS NOT LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR SYSTEMS, COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO CUSTOMER'S USE OF THE SUBSCRIPTIONS OR TO CUSTOMER'S DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT. THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

## **11. LIMITATION OF LIABILITY.** IN NO EVENT SHALL GORDIAN BE LIABLE FOR ANY, SPECIAL, INDIRECT, INCIDENTAL EXEMPLARY, PUNITIVE, TREBLE, CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, REVENUE, PROFITS, STAFF TIME, GOODWILL, USE, DATA, OR OTHER ECONOMIC ADVANTAGE, WHETHER OR NOT A PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO ACCESS OR USE THE SUBSCRIPTIONS OR THE DATA OR CONTENT CONTAINED IN OR ACCESSED THROUGH THE SUBSCRIPTIONS, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE BY ANY USER ON ANY INFORMATION OBTAINED FROM GORDIAN, OR THAT RESULTS FROM

MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO GORDIAN'S RECORDS, PROGRAMS OR SERVICES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF GORDIAN (INCLUDING ANY ATTORNEYS' FEES AWARDED UNDER THE TERMS), WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SUBSCRIPTIONS OR TO THE TERMS EXCEED FEES PAID TO GORDIAN FOR THE PARTICULAR SUBSCRIPTIONS DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

## **12. CONFIDENTIALITY.**

- 12.1 **General.** One party ("Disclosing Party") may expose or provide to the other party ("Receiving Party") Disclosing Party's confidential and proprietary information, including but not limited to information designated as confidential in writing, or information which the Receiving Party should know is confidential and proprietary. Placement of a copyright notice on any portion of the Subscriptions will not be construed to mean that such portion has been published and will not diminish any claim that such portion contains Gordian's Confidential Information. For the avoidance of doubt, Gordian's Intellectual Property is Confidential Information.
- 12.2 **Non-Disclosure.** The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized dissemination and will use the same degree of care that it uses to protect its own Confidential Information, but in no event less than a reasonable amount of care. Neither party will use Confidential Information of the other party for purposes other than those necessary to directly further the purposes of the Terms. Except as otherwise expressly permitted herein, the Receiving Party shall not disclose Disclosing Party's Confidential Information to any person or entity other than the Receiving Party's officers, or employees who (i) need access to such Confidential Information in order to effect the intent of the Terms, and (ii) have entered into written confidentiality agreements, or are bound by professional responsibility obligations, which protect the Disclosing Party's Confidential Information sufficient to enable the Receiving Party to comply with its obligations of confidentiality under the Terms.
- 12.3 **Exceptions.** Information shall not be considered Confidential Information to the extent, but only to the extent, that the Receiving Party can establish that such information (i) is or becomes generally known or available to the public through no fault of the Receiving Party; (ii) was in the Receiving Party's possession before receipt from the Disclosing Party; (iii) is lawfully obtained from a Third Party who is not under any confidentiality obligations and has the right to disclose; or (iv) has been independently developed by the Receiving Party without reference to Disclosing Party's Confidential Information.
- 12.4 **Compelled Disclosure.** Receiving Party may disclose Disclosing Party's Confidential Information if it is compelled by law to do so, provided that the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest or limit such disclosure.
- 12.5 **Other Permitted Disclosures.** Notwithstanding the foregoing confidentiality obligations, either party may provide a copy of the Terms to the following persons and/or entities, who are under obligations of confidentiality substantially similar to those set forth in the Terms: potential acquirers, merger partners, lenders, and investors and to their employees, agents, attorneys, investment bankers, lenders, financial advisors, and auditors in connection with the due diligence review of such party. A party may also provide a copy of the Terms to that party's outside accounting firm and legal advisors and in connection with any litigation or proceeding relating to the Terms.

### 13. INDEMNIFICATION.

- 13.1 **Indemnitor Obligations.** To the extent allowable by applicable law, Customer shall defend and indemnify Gordian and/or its affiliates, licensors and service providers, and their officers, directors, employees, contractors, agents, licensors, suppliers, successor and assigns against any third-party claims, actions, suits or proceedings, and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising out of or related to any allegation that the Customer Data, or Customer's use of the Subscriptions in violation of the Terms, infringes the Intellectual Property rights of, or has otherwise harmed, a Third Party.
- 13.2 **Indemnitee Obligations.** Customer's obligations to defend and indemnify only apply provided Gordian: (i) gives prompt written notice of the claim to Customer; (ii) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle any claim against Gordian unless it unconditionally releases Gordian of all liability); and (iii) provides Customer, at Customer's expense, with all reasonable information and assistance relating to the claim and reasonably cooperates with Customer and Customer's counsel.

### 14. CUSTOMER DATA.

- 14.1 **Ownership Rights.** Customer retains sole and exclusive ownership to any and all Customer Data.
- 14.2 **License Rights.** Customer grants Gordian a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use any Customer Data, provided such data has been aggregated and anonymized, submitted to the Subscriptions to analyze and report on such data and to use such data for commercial purposes.
- 14.3 **Termination.** Upon termination of the applicable Subscriptions, and no longer than 30 days following termination of the Subscriptions, Customer may request in writing an Exported Copy of its Data in our then standard format at our then standard fee. Provided Customer is not in breach of any of its obligations under the Terms, and upon Customer's written request and payment of the applicable fees, Gordian will provide such Exported Copy. For the avoidance of doubt, Customer will have full access to its Customer Data throughout the Term; the Exported Copy is applicable only when Customer requests that Gordian provide Customer Data in a certain format. Customer acknowledges and agrees that Gordian shall have no obligation to maintain Customer Data after 30 days from termination.
- 14.4 **Security.** Gordian shall have in place a commercially reasonable information security policy designed to provide administrative, technical, and physical security for all Customer Data and in accordance with all applicable laws.
- 14.5 **Customer Obligations.** Customer is responsible for its Customer Data, including its content and accuracy. Customer represents and warrants that it has made all disclosures, provided all notices, and has obtained all necessary rights, consents, and permissions necessary for Gordian to use Customer Data under the Terms without violating or infringing laws, third-party rights, or terms or policies that apply to the Customer Data.

### 15. USAGE DATA ACCESS AND RIGHTS.

- 15.1 **Collection and Ownership.** Customer acknowledges that Usage Data may be collected by Gordian, including Usage Data from Devices located on location(s) owned, occupied, or otherwise under control of Customer. Gordian shall own all right, title, and interest in the Usage Data.
- 15.2 **Use and Access.** Gordian shall have the right to use any Usage Data for any internal business purposes, including improving the Subscriptions. Gordian may not, either directly or indirectly, sell or share Usage Data with any Third Parties without the prior express written consent of Customer.

15.3 **Resultant Data.** Customer hereby agrees that Gordian may collect, use, publish, disseminate, sell, transfer, and otherwise exploit the Resultant Data. Resultant Data is primarily used by Gordian to compile statistical, performance information for creation and development of products, product improvements, product creation, and product marketing. Gordian is the sole owner of all right, title, and interest in and to Resultant Data and any conclusions, impressions, understandings, insights, process improvements, or other information derived, extracted, or otherwise obtained by Gordian from Resultant Data, and the Resultant Data shall be owned exclusively by Gordian with all rights thereto, which shall be deemed Gordian Intellectual Property.

**16. PRIVACY POLICY.** Our [Privacy Policy](#) explains how Gordian collects, uses, and discloses information about our users. By using our Software, Subscriptions and services, Customer agrees that Gordian can use such data in accordance with our Privacy Policy.

**17. COMMERCIAL COMPUTER SOFTWARE.** The Software and Data provided hereunder are commercial items, developed at private expense, as defined in FAR 2.101. If the Software and Data are provided to the United States Government for end use, the government's technical data and software rights related to the Software and Data shall include only those rights defined in the Terms. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, or Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

**18. MISCELLANEOUS.**

18.1 **Notices.** All Notices will be in writing and will be deemed to have been duly given: (a) when delivered by hand; (b) three (3) days after being sent by registered or certified mail, return receipt requested and postage prepaid; (c) one (1) day after deposit with a nationally recognized overnight delivery or express courier service; or (d) when provided via email when the sender has received a delivery/read receipt. Gordian shall provide Customer, at its sole discretion, notice via the email address or physical address (if provided) provided by Customer when registering Customer's online account. Notices for Gordian shall be sent both physically and electronically to the following addresses:

**For physical notices for U.S. Customers:**

Gordian  
Attn: Legal Department  
30 Patewood Drive, Building 2, Suite 350  
Greenville, SC 29615

**For physical notices for Canadian Customers:**

Gordian  
Attn: Legal Department  
3700 Steels Ave. W., Suite 400  
Vaughan, ON L4L 8K8

**For physical notices for UK Customers:**

Gordian  
Attn: Legal Department  
52 Hurricane Way  
Norwich Airport  
Norwich NR6 6JB

**For all electronic notices:**

legal@gordian.com

18.2 **Force Majeure.** Except for Customer's obligation to pay fees due, to the extent that a delay or failure to perform all or any part of the obligations set forth in the Terms, applicable Statement of Work, or applicable Order Document is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this Section, neither party shall have the right to terminate the Terms or any Order Document, and neither party shall incur any liability to the other party on account of any loss, claim, damage, or liability resulting from such delay or failure to perform. Such force majeure events, occurrences, or causes shall include, without limitation, acts of God, acts of government, flood, fire, explosions, earthquakes, pandemics, civil unrest, acts of war, acts of terrorism, strikes, lockouts, riots or other labor problems, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within the parties' possession or reasonable control, and denial of service attacks. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused, however, either party may terminate the Terms or an Order Document due to a force majeure event, occurrence, or cause as described in this section that extends beyond 90 days.

18.3 **Independent Contractor Status.** Gordian is an independent contractor, and neither Gordian nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of Customer. Customer will not be legally responsible for any negligence or other wrongdoing by Gordian, its employees, servants or agents. Customer will not withhold from payments to Gordian any federal, state or unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Gordian or its employees, servants or agents. Furthermore, Customer will not provide to Gordian any insurance coverage or other benefits, including workers' compensation, normally provided by Customer for its employees.

18.4 **Compliance with Law.** Each party shall comply with all applicable federal, state, provincial and local laws and regulations in connection with the performance of its obligations and the exercise of its rights under the Terms.

18.5 **Governing Law and Jurisdiction.** All matters arising out of or relating to the Terms will be governed by and construed under the internal laws of the State of South Carolina without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to the Terms or the transactions contemplated hereby must be instituted in the federal courts of the United States of America or the courts of the State of South Carolina in each case located in the City of Greenville and County of Greenville, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth in the Terms will be effective service of process for any suit, action, or other proceeding brought in any such court.

(A) Notwithstanding the foregoing, if Customer is a Federal Customer, the Terms shall be governed by the laws of the United States, and venue and jurisdiction of any dispute will be determined by applicable federal statute. If federal laws of the United States are not dispositive, then to the extent permitted by federal law, the Terms will be governed by the laws of the State of South Carolina, excluding its conflict of law principles.

(B) Notwithstanding the foregoing, if Customer is a Public Sector Customer located within the United States, the Terms shall be governed by the laws of your state, excluding its conflict of laws principles.

(C) Notwithstanding the foregoing, if Customer is domiciled in Canada, the Terms shall be governed by the laws of Canada as applicable.

(D) Notwithstanding the foregoing, if Customer is domiciled in the United Kingdom, the Terms shall be governed by the laws of the United Kingdom as applicable.

18.6 **Waiver.** No waiver by either party of any of the provisions in the Terms will be effective unless explicitly set forth in writing. The failure of either party to exercise in any respect a right provided for in the Terms shall not be deemed to be a subsequent waiver of the same right, or any other right. The waiver by either party of any breach of any provision of the Terms shall not be deemed a waiver of any subsequent breach by the other party of the same or of different provisions.

18.7 **Severability.** If any term or provision of the Terms are invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

18.8 **Assignment.** Customer may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under the Terms, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Gordian's prior written consent, which consent Gordian may give or withhold in its sole discretion. No delegation or other transfer will relieve Customer of any obligations or performance under the Terms. Any purported assignment, delegation, or transfer in violation of this Section is void. Gordian may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under the Terms without consent. The Terms are binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

18.9 **Sole Benefit.** The Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under the Terms.

18.10 **Modifications.** Gordian retains the right to modify the terms and conditions of the Terms at any time. Any modification is effective immediately upon posting on any website used to access the Subscriptions. Customer's continued use of the Subscriptions following posting will be conclusively deemed an acceptance of all such modification(s). Customer's rights with respect to any dissatisfaction with any modifications made pursuant to this Section is to terminate the Terms and comply with all applicable termination provisions of the Terms, including but not limited to, return of all Proprietary Information in its possession to Gordian and discontinuing access or use of the Subscriptions. In the event of such termination, Gordian will not refund any amounts paid or due.

18.11 **Headings.** The headings of the various paragraphs herein are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify, or place any construction upon any of the provisions of the Terms.

18.12 **Drafting.** The Terms shall not be construed in favor of or against a party based on the author of the document.

18.13 **Entire Agreement.** The Terms, including any applicable Order Documents, cancels and supersedes all prior or contemporaneous oral or written communications, agreements, requests for proposals, proposals, purchase orders—whether or not signed by Gordian—conditions, representations, and warranties, or other communication between the parties relating to its subject matter and constitutes the parties' entire agreement relating to its subject matter. Except as set forth in Section 17.10, no modification to the Terms will be binding unless in writing and signed by an authorized representative of each party.

Last Updated: May 1, 2025

## Addendum 1

### Additional Terms for Estimating Software

These Additional Terms, in addition to the SaaS Terms, govern Customer's access to, and use of, use of RSMeans Online, MTCQS, or other estimating software subscriptions (collectively "Estimating Software"), both as a paid subscriber or as a free trial user, and are incorporated by reference into the SaaS Terms of Use ("SaaS Terms") (these Additional Terms and the SaaS Terms are collectively referred to as the "Terms"). Capitalized terms not defined here have the same meaning as defined in the SaaS Terms.

#### 1. DEFINITIONS.

- 1.1 **"Downloaded Data"** means insubstantial portions of the Estimating Data temporarily downloaded from the Estimating Software.
- 1.2 **"Estimating Data"** means collectively the Data and any proprietary cost estimating models available through the Estimating Software.
- 1.3 **"Renewal Date"** means the day the Customer's then current twelve (12) month subscription period expires.

#### 2. USAGE RIGHTS AND RESTRICTIONS.

The Subscriptions give Customer access to the Estimating Data. Notwithstanding any grant of rights set forth in the SaaS Terms, Customer is licensed to use the Estimating Data made available through the Estimating Software solely in the regular course of construction estimating and related work. Such use is subject to any restrictions set forth in the SaaS Terms, as well as the following:

- 2.1 **Downloaded Data.** The Subscriptions includes the right to temporarily store Downloaded Data in a spreadsheet for Customer's personal and/or employment related use on a single storage device under Customer's exclusive control solely (i) to display internally such Downloaded Data and (ii) to include and distribute the Downloaded Data in a construction estimate or related work prepared for a specific project, to be distributed to a specific party, provided such party agrees not to further disseminate the Downloaded Data. Customer acknowledges its responsibility in assuring compliance with the foregoing by any Third Party to whom Customer transmits Downloaded Data pursuant to the preceding sentence.
- 2.2 **Other Restrictions.** Customer may not merge the Estimating Data with any software program or extract such Estimating Data other than into a spreadsheet for any use on a single computer. Customer may not use the Estimating Data or any cost estimates or similar reports generated through the Software for the purpose of providing facility condition assessment services, job order contracting services, indefinite quantity construction contracting services, or similar services for itself or for any Third Parties. Customer may not use, copy, download, store, publish, modify, translate, transmit, transfer, sell or prepare derivative works of the Estimating Data, or any portion of the Estimating Data, in any form or by any means, except (i) as expressly permitted by the Terms, or (ii) with Gordian's express written permission. Downloaded Data shall not be stored or used in an archival database or other searchable database except as expressly permitted by the Terms. Customer shall not sell, license, or distribute Estimating Data (including printouts and Downloaded Data) to Third Parties, except as expressly permitted by the Terms, or use the Estimating Data as a component of or as a basis for any material or product offered for sale, license or distribution. Except for the license granted pursuant to the Terms, all rights, title and interest in the Estimating Data, in all formats and media throughout the world, including all copyrights, are and will continue to be the exclusive property of Gordian.

1. **TRIAL USE.** Free 30-day trials may be granted for a one-time use, once per user during any consecutive twelve (12) calendar month period subject to the Terms. Free trials may be terminated by Gordian at any time without prior notice if there is a violation of the provisions of the Terms, such termination to be without prejudice to the right of Gordian to pursue any and all other remedies available to it in equity or at law. Customer agrees to promptly update all information provided to Gordian, including its password, in the event of any known or suspected unauthorized use of Customer's trial use, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of its password. In the event of a breach of security, Customer will remain liable for any unauthorized use of its free trial. Free trials are not intended for academic projects and/or student use. All inquiries for such uses must be made by calling 800-334-3509 or emailing [gordiansupport@gordian.com](mailto:gordiansupport@gordian.com).

### 3. PAID SUBSCRIPTIONS.

- 3.1 **Fees and Payment.** For any paid Subscriptions, Customer agrees to pay, using a valid credit card which Gordian accepts, the applicable Subscription Fees, unless other payment terms are agreed to in an Order Document signed by Customer and Gordian. All Subscription Fees are non-refundable under any circumstances. Gordian reserves the right to increase fees, surcharges, and Subscription Fees, or to institute new fees, at any time, upon reasonable notice posted in advance on the Estimating Software with such fees to become effective upon the renewal of its then current Subscriptions.
- 3.2 **Renewal.** Gordian will automatically renew Customer's Subscriptions on the Renewal Date and Customer authorizes Gordian to charge Customer's credit card with the applicable Subscription Fees and any sales or similar taxes that may be imposed on the Subscription Fee payment on the renewal date unless Customer cancels its Subscriptions prior to the Renewal Date.
- 3.3 **Cancellation.** Customer may cancel its Subscriptions at any time by Contacting Gordian Customer Service, provided that any Subscription Fees charged prior to the Effective Date of cancellation will not be refunded, in whole or in part. Customer will not be eligible for a pro-rated refund of any portion of the Subscription Fees paid for any unused days of the then-current Term for which Customer paid, and the Subscriptions will expire at the end of the then-current Term.

Last Updated: May 1, 2025

## Addendum 2

### Additional Terms for Procurement Software

These Additional Terms, in addition to the SaaS Terms, govern your access to, and use of eGordian Subscriptions, JOC Cloud Subscriptions, or other subscription for procurement software solutions and are incorporated by reference into the SaaS Terms of Use ("SaaS Terms") (these Additional Terms and the SaaS Terms are collectively referred to as the "Terms"). Capitalized terms not defined here have the same meaning as defined in the SaaS Terms.

#### 1. DEFINITIONS.

- 1.1 **"Annual Subscription"** means a subscription for a one-year term that requires payment of an annual fee for such subscription.
- 1.2 **"Client"** means a mutual client of Gordian and Customer for whom Customer is to provide construction services as part of the mutual client's JOC Program.
- 1.3 **"Client Contract"** means a contract between Customer and a Client.
- 1.4 **"JOC"** means Job Order Contracting, which is an indefinite quantity, indefinite delivery method for procuring construction services.
- 1.5 **"JOC Program"** means a program set up to allow for procurement and performance of construction on an indefinite quantity, indefinite delivery basis.
- 1.6 **"JOC System"** the Proprietary Information used for the setup, operation, maintenance, or participation in a JOC Program
- 1.7 **"JOC Services Contract"** means a contract between Customer and Gordian for the setup and operation of JOC Program.
- 1.8 **"Proprietary Information"** means collectively the JOC System, the Software, the Documentation, the Data, and other related proprietary materials.
- 1.9 **"Term"** shall mean the duration set forth in Section 3 of these Additional Term.

2. **USAGE RIGHTS.** Notwithstanding any grant of rights set forth in the SaaS Terms, Gordian grants Customer the right to use the Subscriptions and any Proprietary Information for the sole purpose of (i) setting up and operating its own JOC Program as set forth in an applicable JOC Services Contract; (ii) purchasing under an existing JOC Program as set forth in an applicable JOC Services Contract; or (iii) for executing the Customer's duties and responsibilities under a Client Contract. Such use shall be subject to all restrictions set forth in the SaaS Terms.
3. **TERM.** The Subscription will commence upon execution of the JOC System Contract or Client Contract and shall remain in effect for the term of the JOC System Contract or the Client Contract or until terminated in accordance with the Terms. The Term shall not be subject to automatic renewal. Notwithstanding the foregoing, if the Client Contract requires the purchase of Annual Subscription, the Subscription will commence upon payment of the applicable annual subscription fee and continue for a period of one year or until terminated in accordance with the terms.
4. **FEES.** The Subscription is subject to Customer payment of all applicable fees as set forth in the JOC System Contract or the Client Contract under the terms and conditions contained therein. If Customer has any questions about the fees due under a Client Contract, Customer should contact the entity with whom it has entered into the Client Contract.

**5. ANNUAL SUBSCRIPTION.** If the Client Contract requires the purchase of an Annual Subscription, such license shall be used only by Customer for providing services to that Client through their Job Order Contracting program. For the avoidance of doubt, this means that Customer must purchase separate Annual Subscription for each Client whose Client Contract requires Customer to have an Annual Subscription.

Last Updated: May 1, 2025

SAMPLE

## Addendum 3

### Additional Terms for Planning Software

These Additional Terms, in addition to the SaaS Terms, govern your access to, and use of VFA Facility subscription, Sightlines Member Portal subscription, or other facilities assessment planning software subscriptions, and are incorporated by reference into the SaaS Terms of Use ("SaaS Terms") (these Additional Terms and the SaaS Terms are collectively referred to as the "Terms"). Capitalized terms not defined here have the same meaning as defined in the SaaS Terms.

#### 1. DEFINITIONS.

- 1.1. **"Protected Materials"** including any Data in the Software and any reports or other works created or generated as an output of Customer's use of the Subscriptions, except for any portion of such works that consist of Customer Data.

#### 2. USAGE RIGHTS AND RESTRICTIONS.

- 2.1. **Use of Protected Materials.** Gordian's Intellectual Property includes, but is not limited to, Protected Materials. Gordian shall retain sole and exclusive ownership of and all rights, title, and interest in the Protected Materials (whether developed by Gordian, Customer, or a Third Party), including the logic and structure thereof, which constitute valuable trade secrets of Gordian. Notwithstanding any grant of rights set forth in the SaaS Terms, Customer obtains only a limited non-exclusive, non-assignable, non-transferable, non-sublicensable, royalty free license for access and use of Protected Materials for Customer's internal business purposes, subject to the restrictions set forth in the SaaS Terms and in this Section. Customer may download and temporarily store insubstantial portions of the Data in a spreadsheet for Customer's use on a single storage device under Customer' exclusive control solely to (i) display internally such Data and (ii) to include and distribute the Data solely for the limited purpose set forth above.
- 2.2. **Restrictions on Protected Materials.** Customer shall not itself, or through any Affiliate, employee, consultant, contractor, agent, or other Third Party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Protected Materials; (ii) decipher, decompile, disassemble, reverse assemble, modify, adapt, translate, reverse engineer or otherwise attempt to make any changes to or derive source code, algorithms, tags, specifications, architecture, structure or other elements from the Protected Materials, in whole or in part, for any purpose; (iii) allow access to, provide, divulge or make available the Protected Materials to any user other than Customer's employees who have a need to such access and who shall be bound by a nondisclosure agreement with provisions that are at least as restrictive as the terms of the Terms; (iv) write or develop any derivative works based upon the Protected Materials; (v) use the Protected Materials to provide processing services to Third Parties, or otherwise use the same on a 'service bureau' basis; (vi) disclose or publish, without Gordian's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Protected Materials; or (viii) otherwise use or copy the Protected Materials except as expressly permitted herein.
- 2.3. **Name Usage Rights for Benchmarking.** If Gordian is providing any benchmarking Services to Customer or is providing access to Benchmarking Data through the Software, Customer grants to Gordian a non-exclusive, royalty free license, to: (a) use Customer's name in connection with any published lists of other institutions furnishing data for comparison purposes, (b) use Customer Data for benchmarking purposes provided that specific data applicable to Customer shall not be identified or identifiable, and (c) identify Customer to other institutions as a client of Gordian for marketing purposes.

Last Updated: May 1, 2025

## Addendum 4

### Additional Terms for Business Intelligence

These Additional Terms, in addition to the SaaS Terms, govern Customer's access to, and use of, use of Business Intelligence Subscriptions, and are incorporated by reference into the SaaS Terms of Use ("SaaS Terms") (these Additional Terms and the SaaS Terms are collectively referred to as the "Terms"). Capitalized terms not defined here have the same meaning as defined in the SaaS Terms.

#### 1. DEFINITIONS.

1.1 **"Business Intelligence Data"** means all Data provided via the Business Intelligence Subscriptions, including any and all dashboards, reporting and other visual representation available via the Business Intelligence Subscriptions.

2. **USAGE RIGHTS AND RESTRICTIONS.** The Subscriptions give Customer access to the Business Intelligence Data. Gordian's Intellectual Property includes, but is not limited to, Business Intelligence Data. Gordian shall retain sole and exclusive ownership of and all rights, title, and interest in the Business Intelligence Data (whether developed by Gordian, Customer, or a Third Party), including the logic and structure thereof, which constitute valuable trade secrets of Gordian. Notwithstanding any grant of rights set forth in the SaaS Terms, Customer is licensed to use the Business Intelligence Data made available through the Subscription Services solely in the regular course of construction estimating and related work. Such use is subject to any restrictions set forth in the SaaS Terms, as well as the following:

2.2 **Other Restrictions.** Customer may not merge the Business Intelligence Data with any software program or extract such Business Intelligence Data for any use. Customer may not use, copy, download, store, publish, modify, translate, transmit, transfer, sell or prepare derivative works of the Business Intelligence Data, or any portion of the Business Intelligence Data, in any form or by any means, except (i) as expressly permitted by the Terms, or (ii) with Gordian's express written permission. Customer shall not sell, license, or distribute Business Intelligence Data (including printouts) to Third Parties, except as expressly permitted by the Terms, or use the Business Intelligence Data as a component of or as a basis for any material or product offered for sale, license or distribution. Except for the license granted pursuant to the Terms, all rights, title and interest in the Business Intelligence Data, in all formats and media throughout the world, including all copyrights, are and will continue to be the exclusive property of Gordian.

Last Updated: May 1, 2025

## SERVICES CONTRACT

THIS CONTRACT, made and entered into effective as of [Month] [Day], [Year] ("EFFECTIVE DATE"), by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and [INSERT legal name of Supplier exactly as it appears in Ariba including any dbas or trade names], (hereinafter may be referred to as "CONTRACTOR" or "SUPPLIER");

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

### 1. Scope of Services

The CONTRACTOR agrees to diligently and completely perform the services or deliverables consisting of [INSERT A BRIEF DESCRIPTION OF THE WORK TO BE PERFORMED] as is described in [Exhibit A, B, ETC., if needed] attached hereto and incorporated herein.

### 2. Order of Precedence

To the extent there is any discrepancy or conflict between and/or amongst the terms of this Contract and Exhibit \_\_\_\_\_ and \_\_\_\_\_, the controlling terms for this Contract will be interpreted in the following order of precedence, with the first listed being the most controlling, and the last listed being the least controlling: Contract, Exhibit \_\_\_\_, Exhibit \_\_\_\_\_. [INSERT EXHIBIT REFERENCES IN ORDER OF WHICH IS MOST CONTROLLING]

### 3. Changes to Scope of Work

The CITY shall have the right to make changes within the general scope of services or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

### 4. On Call Contracts

If the services and deliverables performed under this Contract are performed on an on call or as assigned basis, service and deliverables will be assigned by Task Authorization or Statements of Work or other similar mechanism, each of which will contain the scope of the specific services or deliverables to be performed or provided, together with a schedule and budget, which will be in accordance with rates, charges and times for performance as set forth in this Contract. The total compensation paid under this Contract is dependent on the quantity of on call or as assigned services actually provided, subject to the not to exceed amount stated herein. Services or deliverables provided under this Contract, and the corresponding compensation, cannot augment compensation under a different contract with the CITY for the same Scope of Services as are provided under this Contract.

### 5. Term

All services shall be satisfactorily completed on or before [INSERT CONTRACT TERMINATION DATE] and this Contract shall expire on said date unless mutually extended by a written and executed Amendment to this Contract.

## **6. Renewals**

At CITY's sole option, the Term of this Contract may be renewed for additional [INSERT THE RENEWAL PERIOD - 1 YEAR, ETC] periods, not to exceed [INSERT THE MAXIMUM NUMBER OF RENEWAL PERIODS]. CITY will provide written notice of its intent to exercise any renewal options at least 30 days prior to the then existing Term and a written Amendment to this Contract will be mutually executed.

## **7. Delay**

Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

## **8. Compensation**

The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract [on the basis of] [EXHIBIT XXXX and/or a DESCRIPTION OF COMPENSATION ARRANGEMENTS –MILESTONES, TIME AND MATERIALS, LUMP SUM ETC.]

## **9. Prevailing Wages**

- A. If federal, state, local, or any applicable law requires CONTRACTOR to pay prevailing wages in connection with this Contract, and CONTRACTOR is so notified by the CITY, then CONTRACTOR shall pay applicable prevailing wages and otherwise comply with the Washington State Prevailing Wage Act (RCW 39.12) in the performance of this Contract.
- B. If applicable, a Schedule of Prevailing Wage Rates and/or the current prevailing wage determination made by the Secretary of Labor for the locality or localities where the Contract will be performed is made of part of the Contract by this reference. If prevailing wages apply to the Contract, CONTRACTOR and its subcontractors shall:
  1. Be bound by and perform all transactions regarding the Contract relating to prevailing wages and the usual fringe benefits in compliance with the provisions of Chapter 39.12 RCW, as amended, the Washington State Prevailing Wage Act and/or the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable, including the federal requirement to pay wages not less than once a week.

2. Ensure that no worker, laborer or mechanic employed in the performance of any part of the Contract shall be paid less than the prevailing rate of wage specified on that Schedule and/or specified in a wage determination made by the Secretary of Labor (unless specifically preempted by federal law, the higher of the Washington state prevailing wage or federal Davis-Bacon rate of wage must be paid).
3. Immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington and/or the federal Department of Labor, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages and/or other or additional documentation required by applicable federal law, must be submitted by CONTRACTOR and its subcontractors to the CITY, in the manner requested by the CITY, prior to any payment by the CITY hereunder, and an Affidavit of Wages Paid and/or other or additional documentation required by federal law must be received or verified by the CITY prior to final Contract payment.

## **10. Not to Exceed Amount**

The total price to be paid by CITY for CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed \$ [INSERT TOTAL AMOUNT OF CONTRACT] plus applicable taxes without a written and executed Amendment to this Contract. Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

## **11. Payment**

CONTRACTOR shall submit [Pick one of the following monthly, weekly, annual, Contract milestone, other (describe in detail)] invoices for services completed and/or deliverables furnished during the invoice period. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables. For transactions conducted in SAP Ariba, invoices shall be submitted directly through Ariba. For invoices paid by ACH or by check, unless stated otherwise, invoices shall be electronically submitted by email with corresponding PO number or other identifying number listed in the subject line to [accountspayable@cityoftacoma.org](mailto:accountspayable@cityoftacoma.org).

Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder

until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.

## **12. Payment Method**

The City's preferred method of payment is by ePayables (Payment Plus), followed by credit card (aka procurement card), then Electronic Funds Transfer (EFT) by Automated Clearing House (ACH), then check or other cash equivalent. CONTRACTOR may be required to have the capability of accepting the City's ePayables or credit card methods of payment. The City, in its sole discretion, will determine the method of payment for this Contract.

## **13. Independent Contractor Status**

The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create an employer and employee relationship. The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless stated otherwise in this Contract. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.

## **14. Services Warranty**

The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in the Scope of Work. In the performance of services under this Contract, the CONTRACTOR and its employees further agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals or service providers rendering the same or similar type of service. All obligations and services of the CONTRACTOR hereunder shall be performed diligently and completely according to such professional standards.

Unless a higher standard or longer periods of warranty coverage for product deliverables provided under this Contract is provided herein, CONTRACTOR agrees to correct any defect or failure of deliverables supplied under this Contract which occurs within one year from \_\_\_\_\_ [FILL IN APPROPRIATE TIME FRAME, E.G. GO LIVE, FIRST USE, ETC]. During said warranty period, all of the costs (including shipping, dismantling and reinstallation) of repairs or corrections is the responsibility of the CONTRACTOR. If CONTRACTOR is not the manufacturer of the item of equipment, CONTRACTOR agrees to be responsible for this warranty and shall not be relieved by a lesser manufacturer's guarantee. This Contract warranty period shall be suspended from the time a significant defect is first documented by the CITY until repair or

replacement by CONTRACTOR and acceptance by the CITY. In the event less than ninety (90) days remain on the warranty period (after recalculating), the warranty period shall be extended to allow for at least ninety (90) days from the date of repair or replacement and acceptance by the CITY.

## **15. Reliance on CITY Provided Data or Information**

If CONTRACTOR intends to rely on information or data supplied by CITY, other CITY contractors or other generally reputable sources without independent verification, such intent shall be brought to the attention of CITY.

## **16. Contract Administration**

[INSERT NAME TITLE AND DEPARTMENT OF CONTRACT ADMINISTRATOR] for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.

## **17. Specific Personnel**

If before, during, or after the execution of this Contract, CONTRACTOR represents to the CITY that certain personnel would or will be responsible for performing services and deliverables under this Contract, then the CONTRACTOR is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the CITY, and on a case-by-case basis.

## **18. Records Related to Performance of Contract**

Upon CITY's request, CONTRACTOR shall make available to CITY all accounts, records and documents related to the performance of this Contract for CITY's inspection, auditing or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance and quality assurance under this Contract. Upon City's request CONTRACTOR shall provide to CITY any and all records or documents related to the performance of this Contract that CITY deems to be public records responsive to a request made to the CITY pursuant to the Washington State Public Records Act, Chapter 42.56 Revised Code of Washington.

## **19. Records Retention**

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters related to the performance of this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of [INSERT THE TIME THE RECORDS SHOULD BE KEPT. MOST COMMON IS 6 YEARS] years after receipt of the final payment under this Contract or termination of this Contract.

If CONTRACTOR retains any City records or data hosted in a Cloud Service. CITY shall have the ability to access its records hosted in a Cloud Service at any time during the

Term of this Contract. CITY may export and retrieve its records during the Term of the Contract and, no later than 30 days from the termination of this Contract, CONTRACTOR shall export CITY records to City's custody and control.

## **20. Notices**

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY:	CONTRACTOR:
Name:	Name:
Title:	Title:
Address:	Address:
Telephone No.:	Telephone No.:
E-mail:	E-mail:

## **21. Termination**

- A. Except as otherwise provided herein, the CITY may terminate this Contract at any time, for CITY's own reasons and without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. CITY may terminate this Contract in the event of any material breach of any of the terms and conditions of this Contract if CONTRACTOR's breach continues in effect after written notice of breach and 30 days to cure such breach and fails to cure such breach.
- B. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.
- C. In the event of material default or breach by CONTRACTOR of any of the terms or conditions of the Contract, CITY may, at its election, procure services and deliverables under this CONTRACT from other sources, and may deduct from the unpaid balance due CONTRACTOR, or collect against the bond or security (if any), or may invoice and recover from CONTRACTOR all costs paid in excess of the price(s) set forth in the Contract.
- D. Termination of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

## **22. Suspension**

The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days' written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends. Suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

### **23. Federal Funds**

If federal funds will be used to fund, pay or reimburse all or a portion of the services or deliverables provided under the Contract, the terms and conditions set forth at Appendix A to this Contract are incorporated into and made part of this Contract and CONTRACTOR will comply with all applicable provisions of Appendix A and with all applicable federal laws, regulations, executive orders, policies, procedures, and directives in the performance of this Contract. If CONTRACTOR's receipt of federal funds under this Contract is as a sub-recipient, Appendix B, "Sub-recipient Information and Requirements" must be completed and incorporated into and made part of this Contract.

### **24. Taxes**

Unless stated otherwise herein, CONTRACTOR is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR holds CITY harmless from such costs, including attorney's fees.

If CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including by Tacoma City ordinance, and including by a court of law, CITY will deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. Any such payments shall be deducted from the CONTRACTOR's total compensation.

### **25. Licenses and Permits**

The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30. If applicable, CONTRACTOR must have a Washington state business license.

### **26. Indemnification**

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject

matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the sole negligence of the CITY, or its officers, agents, or employees. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

It is expressly agreed that with respect to design professional services performed by CONTRACTOR herein, CONTRACTOR's duty of indemnification, including the duty and cost to defend, against liability for damages arising out of such services or out of bodily injury to persons or damage to property shall, as provided in RCW 4.24.115 apply only to the extent of CONTRACTOR's negligence.

## **27. Title 51 Waiver**

CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

## **28. Insurance**

During the course and performance of the services herein specified, CONTRACTOR will maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services and deliverables provided under this Contract. The City of Tacoma Insurance Requirements documents are fully incorporated herein by reference.

Failure by CITY to identify a deficiency in the insurance documentation provided by CONTRACTOR or failure of CITY to demand verification of coverage or compliance by CONTRACTOR with these insurance requirements shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance.

## **29. Nondiscrimination**

The CONTRACTOR agrees to comply with all applicable federal, state, and City laws, regulations, and policies regarding non-discrimination and equal employment opportunities.

In the event of non-compliance by the CONTRACTOR, the CITY has cause to terminate this Contract, in whole or in part.

## **30. Conflict of Interest**

No officer, employee, or agent of the CITY, nor any member of the immediate family of any such officer, employee, or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in

appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

### **31. DELETE THIS - City Ownership**

This item was not required and can be deleted

### **32. Public Disclosure**

This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements herein to mark all content considered to be confidential or proprietary, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorneys fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.

### **33. Confidential or Proprietary Records Must be Marked**

If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the notice requirements above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

### **34. Duty of Confidentiality**

**DELETE THIS**

This item was not required and can be deleted

### **35. Approval for Release of Information Related to Contract**

If requested by CITY, CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles without CITY's prior written approval. CONTRACTOR may submit at any time for review and approval a generic abstract describing the component parts of the completed Scope of Services ("Project Abstract"). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

### **36. Dispute Resolution**

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

### **37. Miscellaneous Provisions**

#### **Governing Law and Venue**

Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration, or litigation arising out of this Contract.

#### **Assignment**

The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

#### **No Third Party Beneficiaries**

This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

#### **Waiver**

A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

#### **Severability and Survival**

If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

**Entire Agreement**

This Contract and the attached Exhibits and Appendices, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

**Modification**

No modification or amendment of this Contract shall be effective unless set forth in a written and executed Amendment to this Contract.

IN WITNESS WHEREOF, the Parties hereto have accepted and executed this Contract, as of the Effective Date stated above, which shall be Effective Date for bonding purposes as applicable. The undersigned Contractor representative, by signature below, represents and warrants they are duly authorized to execute this legally binding Contract for and on behalf of Contractor and further represents and warrants that Contractor is not suspended, debarred, or otherwise disqualified under federal, state, or local law from participating in this Contract.

CITY OF TACOMA:

Signature:

CONTRACTOR:

Signature:

Name:

Title:

Name:

Title:

(City of Tacoma use only - blank lines are intentional)

---

Director of Finance: \_\_\_\_\_

Deputy/City Attorney (approved as to form): \_\_\_\_\_

Approved By: \_\_\_\_\_

## APPENDIX A

### FEDERAL FUNDING

#### **1. COPELAND ANTI-KICKBACK ACT**

For Contracts subject to Davis Bacon Act the following clauses will be incorporated into the Contract:

- A. CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
- B. CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses federal agencies may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Contract clauses.
- C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **2. EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Contract, CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. If the CONTRACTOR does over \$10,000 in business a year that is funded, paid or reimbursed with federal funds, CONTRACTOR will take specific and affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- A. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to

instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- D. CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- G. In the event of CONTRACTOR's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further federally funded contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. CONTRACTOR will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

### **3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- A. Overtime requirements. Neither CONTRACTOR or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay

for all hours worked in excess of forty hours in such workweek.

- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (3)(A) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (3)(A) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (3)(A) of this section.
- C. Withholding for unpaid wages and liquidated damages. The CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (3)(B) of this section.
- D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (3)(A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (3)(A) through (D) of this section.

#### **4. CLEAN AIR ACT**

- A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal funds.

#### **5. FEDERAL WATER POLLUTION CONTROL ACT**

- A. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. CONTRACTOR agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the appropriate federal agency.
- C. CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal funding.

## **6. DEBARMENT AND SUSPENSION**

- A. This Contract is a Covered Transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONTRACTOR is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier Covered Transaction it enters into.
- C. This certification is a material representation of fact relied upon by the CITY. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. CONTRACTOR agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of this Contract and to include a provision requiring such compliance in its lower tier covered transactions.

## **7. BYRD ANTI-LOBBYING AMENDMENT**

- A. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification with CITY. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the CITY.
- B. If applicable, CONTRACTOR certification required by Appendix A to 44 CFR Part

18 contained at Appendix A-1 to this Contract is incorporated into this Contract.

## **8. PROCUREMENT OF RECOVERED MATERIALS**

- A. In the performance of this Contract, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - 2. Meeting contract performance requirements; or
  - 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site,  
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**9. CONTRACTOR** shall be required to comply with 2 CFR part 25, and obtain a unique entity identifier and/or be registered in the federal System for Award Management as appropriate.

## APPENDIX A-1

### APPENDIX A to 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

Supplier certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Supplier, by Contract signature, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap.38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

## APPENDIX B—Sub-recipient information and requirements

Pursuant to 2 CFR 200.332(a)(1) Federal Award Identification

(i) Agency Name (must match the name associated with its unique entity identifier)		(ii) Unique Entity Identifier (i.e., DUNS)	City of Tacoma Number for This Agreement
(iii) Federal Award Identification Number (FAIN)	(iv) Federal Award Date	(v) Federal Period of Performance Start and End Date	(vi) Federal Budget Period Start and End Date
(vii) Amount of Federal Funds <i>Obligated</i> to the agency <i>by this action</i> : \$	(viii) Total Amount of Federal Funds <i>Obligated</i> to the agency	(ix) Total Amount of the Federal Award <i>Committed</i> to the agency \$	
(x) Federal Award Project Description:			
(xi) Federal Awarding Agency:	Pass-Through Entity: City of Tacoma	Awarding Official Name and Contact Information:	
(xii) Assistance Listing Number and Name (the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listing number at time of disbursement)		(xiii) Identification of Whether the Award is R&D	
(xiv) Indirect Cost Rate for the Federal Award	Award Payment Method (lump sum payment or reimbursement)		

## **CITYWIDE CONTRACT WORK REQUEST AND AUTHORIZATION FORM**

### **SPECIFICATION/CONTRACT**

#### **CONTRACT INFORMATION**

Contract or Subagreement to be invoiced for the work	
Project Number:	

#### **PROJECT INFORMATION**

Project Manager Name	
Project Manager Contact	
Department/Division	
Date of Request	

#### **BRIEF DESCRIPTION OF WORK**

#### **LIST OF ANY ATTACHED DOCUMENTS**

#### **CONTRACTOR**

Estimated Labor Cost	
Estimated Materials Cost	
Other Costs	

\*detailed quote aligned with pricing terms of the contract must be attached

#### **PROJECT MANAGER APPROVAL/NOTICE TO PROCEED**

Desired Start Date	
Desired Completion Date	
LNI Intents Number	

Notice to Proceed Approval	
----------------------------	--

## CLOSEOUT

Actual Start Date	
Actual Completion Date	
Final Project Value	
LNI Affidavit Number	
NOC approval (City Clerks)	
NOC approval (LNI)	
Retainage Released	

## PROGRESS PAYMENTS


*\*Progress payments should only be approved after verification of wages paid from either a certified payroll or an approved affidavit of wages paid filed with LNI.*



## PAYMENT BOND TO THE CITY OF TACOMA

Resolution No. [Enter Reso # Here]  
Bond No.

That we, the undersigned, [Supplier name]  
as principal, and \_\_\_\_\_  
as a surety, are jointly and severally held and firmly bound to the CITY OF TACOMA, in the penal sum of,  
\$[dollar value], plus any applicable taxes, for the payment whereof Contractor and Surety bind themselves,  
their executors, administrators, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

This obligation is entered into in pursuance of the statutes of the State of Washington, the Ordinances of the City of Tacoma.

WHEREAS, under and pursuant to the City Charter and general ordinances of the City of Tacoma, the said City has or is about to enter with the above bounden principal, a contract, providing for

Specification No. [Enter Spec # Here]

Specification Title: [Enter Spec Title Here]

Contract No. [Enter Contract # Here]

(which contract is referenced to herein and is made a part hereof as though attached hereto), and

WHEREAS, the said principal has accepted, the said contract, and undertake to perform the work therein provided for in the manner and within the time set forth.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW 39.08, 39.12, and 60.28, including all workers, laborers, mechanics, subcontractors, and materialmen, and all person who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and all taxes incurred on said Contract under Titles 50 and 51 RCW and all taxes imposed on the Principal under Title 82 RCW; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract shall in any way affect its obligation on this bond, and waives notice of any changes, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

No suit or action shall be commenced hereunder by any claimant unless claimant shall have given the written notices to the City, and where required, the Contractor, in accordance with RCW 39.08.030.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of claims which may be properly filed in accordance with RCW 39.08 whether or not suit is commenced under and against this bond.

If any claimant shall commence suit and obtain judgment against the Surety for recovery hereunder, then the Surety, in addition to such judgment and attorney fees as provided by RCW 39.08.030, shall also pay such costs and attorney fees as may be incurred by the City as a result of such suit. Venue for any action arising out of or in connection with this bond shall be in Pierce County, WA.

Surety companies executing bonds must be authorized to transact business in the State of Washington as surety and 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. Department of the Treasury.

One original bond shall be executed, and be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed power of attorney for the office executing on behalf of the surety.

Principal: [Supplier name]

---

By: \_\_\_\_\_

Surety:

---

By: \_\_\_\_\_

Agent's Name: \_\_\_\_\_

Agent's Address: \_\_\_\_\_

SAMPLE



## PERFORMANCE BOND TO THE CITY OF TACOMA

Resolution No. [Enter Reso # Here]

Bond No. \_\_\_\_\_

That we, the undersigned, [Supplier Name]  
as principal, and \_\_\_\_\_  
as a surety, are jointly and severally held and firmly bound to the CITY OF TACOMA, in the penal sum of  
\$[dollar value], plus any applicable tax, for the payment whereof Contractor and Surety bind themselves,  
their executors, administrators, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

This obligation is entered into in pursuance of the statutes of the State of Washington, the Ordinances of the City of Tacoma.

WHEREAS, under and pursuant to the City Charter and general ordinances of the City of Tacoma, the said City has or is about to enter with the above bounden principal, a contract, providing for

Specification No. [Enter Spec # Here]  
Specification Title: [Enter Spec Title Here]  
Contract No. [Enter Contract # Here]

(which contract is referenced to herein and is made a part hereof as though attached hereto), and

WHEREAS, the said principal has accepted, the said contract, and undertake to perform the work therein provided for in the manner and within the time set forth.

This statutory performance bond shall become null and void, if and when the principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all terms and conditions of all duly authorized modifications, additions and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increase.

If the City shall commence suit and obtain judgment against the Surety for recovery hereunder, then the Surety, in addition to such judgement, shall pay all costs and attorney's fees incurred by the City in enforcement of its rights hereunder. Venue for any action arising out of in connection with this bond shall be in Pierce County, Washington.

Surety companies executing bonds must be authorized to transact business in the State of Washington as surety and 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. Department of the Treasury.

One original bond shall be executed, and signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed power of attorney for the office executing on behalf of the surety.

Principal: [Supplier name]

By: \_\_\_\_\_

Surety:

By: \_\_\_\_\_

Agent's Name: \_\_\_\_\_

Agent's Address: \_\_\_\_\_

## CONTRACTOR PERFORMANCE REVIEW (FOR INTERNAL RECOMMENDATION PURPOSES)

Project:	Spec. #
Location:	Contractor: (Use separate sheet for each sub-contractor)
Engineer:	Inspector:

### EVALUATION

Rate Each Area:	EXCELLENT - 3	GOOD - 2	ACCEPTABLE - 1
			INADEQUATE - 0

_____ 1. Safety	_____ 7. Quality of Supervisor
_____ 2. Quality of Work	_____ 8. Site Management
_____ 3. Overall Rating	_____ 9. Adequate Equipment
_____ 4. Communication/Coordination on Site	_____ 10. Adequate Personnel
_____ 5. Communication/Coordination with Office	_____ 11. Was Project Completed on Time (Y/N)
_____ 6. Supervision on Site	_____ 12. Would You Recommend this Contractor Work for Us Again (Y/N)

Comments (Required if Rated Below Acceptable)
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Input by \_\_\_\_\_ Review No. \_\_\_\_\_ Date \_\_\_\_\_