

## **PUBLIC WORKS AGREEMENT**

### **Between the City of Ruston and Tucci & Sons, LLC**

**THIS AGREEMENT** is made by and between the City of Ruston, a Washington municipal corporation (hereinafter the "City"), and Tucci & Sons, LLC, organized under the laws of the State of Washington, located and doing business at 4224 Waller Road, Tacoma WA 98443 (hereinafter the "Contractor").

### **AGREEMENT**

The parties agree as follows:

#### **I. DESCRIPTION OF WORK.**

Contractor shall perform the following services for the City in accordance with the attached specifications for the City of Ruston – 2024-25 TIB HIGHLAND-SHIRLEY PAVEMENT OVERLAY PROJECT, which are set forth in the following exhibits:

**Exhibit A** – The Project Manual for the City of Ruston – 2024-25 TIB HIGHLAND-SHIRLEY PAVEMENT OVERLAY PROJECT (424 Pages).

**Exhibit B** – Tucci & Sons, LLC completed bid proposal (28 pages).

The above exhibits are incorporated herein by this reference as if set forth in full.

Contractor further represents that the services furnished under this Agreement will be performed in accordance with and as described in the attached plans and specifications and with the City's Public Works Standards contained in Chapter 12.09 of the Ruston Municipal Code, which includes (but is not limited to) the most current edition of the WSDOT Standard Specifications for Road, Bridge, and Municipal Construction (which shall apply except where noted otherwise). All of these Public Works Standards are by this reference incorporated herein and made a part hereof. Contractor further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.

**Compliance with Transportation Improvement Board (TIB) requirements.** The Contractor will also ensure compliance with the Transportation Improvement Board (TIB) agreement with the City of Ruston, including agreeing that it will comply with any policies, procedures, and requirements of such agreement and provide documentation as required for the City to obtain grant funding for the Project.

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**II. TIME OF COMPLETION.** The parties agree that work will begin on the tasks described in Section I above as shown on the Notice to Proceed. Work shall be completed within the working days shown on the Bid Proposal Form. If said work is not completed within the time specified, the Contractor agrees to pay to the Owner, as liquidated damages, the sum as outlined in Section 1-08.9 of the Standard Specifications, as amended by the Special Provisions.

**III. COMPENSATION.** The City will pay the Contractor according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract. Applicable Washington State Retail Sales Tax on this contract shall be governed by WAC 458-20-171 and its related rules for the work contemplated in this Agreement. The Contractor shall invoice the City monthly. The City will pay for the portion of the work described in the invoice that has been completed by the Contractor and approved by the City. The City's payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

The maximum contract price shall be **Three-Hundred Sixty-Three Thousand, Five-Hundred Eighteen Dollars and Zero (00) Cents (\$363,518.00)**, plus applicable Washington State Sales tax (if any), according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

A. Performance and Payment Bonds. Pursuant to Chapter 39.08 RCW, the Contractor shall provide the City a performance bond for the full contract amount and payment bond to be in effect until sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

B. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor & Industries and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later. The amount retained shall be placed in a fund by the City pursuant to RCW 60.28.011(4)(a), unless otherwise instructed by the Contractor within fourteen (14) calendar days of Contractor's signature on the Agreement.

C. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Agreement; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily

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complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor.

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

**IV. INDEPENDENT CONTRACTOR.** The parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement and that the Contractor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement.

**V. TERMINATION.** The City may terminate this Agreement for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.

B. The Contractor's failure to complete the work within the time specified in this Agreement.

C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.

D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.

E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.

F. The Contractor's breach of any portion of this Agreement.

If the City terminates this Agreement for good cause, the Contractor shall not receive any further money due under this Agreement until the Contract work is completed. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the City without restriction.

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**VI. PREVAILING WAGES.** Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work. Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor and shall comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries is attached.

**VII. CHANGES.** The City may issue a written change order for any change in the Contract work during the performance of this Agreement. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Agreement, section XV(D), within fourteen (14) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section VIII, Claims, below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

**VIII. CLAIMS.** If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Agreement or otherwise, shall be conclusively deemed to have been waived

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by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Agreement.

At a minimum, a Contractor's written claim shall include the information set forth in subsections A, items 1 through 5 below.

**FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.**

A. Notice of Claim. Provide a signed written notice of claim that provides the following information:

1. The date of the Contractor's claim;
2. The nature and circumstances that caused the claim;
3. The provisions in this Agreement that support the claim;
4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

B. Records. The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Contractor's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

C. Contractor's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Agreement.

D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested

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work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

**IX. LIMITATION OF ACTIONS.** CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS AGREEMENT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

**X. WARRANTY.** Upon acceptance of the contract work, Contractor must provide the City a one-year warranty bond in a form and amount acceptable to the City. The Contractor shall correct all defects in workmanship and materials within one (1) year from the date of the City's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

**XI. DISCRIMINATION.** In the hiring of employees for the performance of work under this Agreement or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor or sub-contractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

**XII. INDEMNIFICATION.** Contractor shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Contractor's performance of this Agreement, except for that portion of the injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers,

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the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

**XIII. INSURANCE.** The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representative, employees or subcontractors.

No Limitation. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

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3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
  4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's



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employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation. The Contractor and the City waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.

H. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request the City, the Contractor shall provide evidence of such insurance.

**XIV. WORK PERFORMED AT CONTRACTOR'S RISK.** Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

**XV. PUBLIC RECORDS ACT CHAPTER 42.56 RCW.** Contractor understands that her/his bid response documents, and any contract documents may be subject to release under the Public Records Act Chapter 42.56 RCW and the City may be required to disclose such documents upon a request. Contractor acknowledges that s/he has been advised to mark any records believed to be trade secrets or confidential in nature as "confidential." If records marked as "confidential" are found to be responsive to the request for records, the City as a courtesy to the Contractor, may elect to give notice to Contractor of the request so as to allow Contractor to seek a protective order from a Court. Contractor acknowledges and agrees that any records deemed responsive to a

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public records request may be released at the sole discretion of, and without notice by, the City.

## **XVI. EMPLOYMENT OF STATE RETIREES.**

The City is a "DRS-covered employer" which is an organization that employs one or more members of any retirement system administered by the Washington State Department of Retirement Systems (DRS). Pursuant to RCW 41.50.139(1) and WAC 415-02-325(1), the City is required to elicit on a written form if any of the Contractor's employees providing services to the City retired using the 2008 Early Retirement Factors (ERFs), or if the Contractor is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. Failure to make this determination exposes the City to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Contractor shall determine whether any of its employees providing services to the City or any of the Contractor's owners retired using the 2008 ERFs, and shall immediately notify the City and shall promptly complete the form provided by the City after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Contractor. Contractor shall indemnify, defend, and hold harmless the City from any and all claims, damages, or other liability, including attorneys' fees and costs, relating to a claim by DRS of a pension overpayment caused by or resulting from Contractor's failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

## **XVII. MISCELLANEOUS PROVISIONS.**

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Pierce County Superior Court, Pierce County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XII of this Agreement.

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C. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

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

F. Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

G. Compliance with Laws. The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

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**IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.**

<b>CONTRACTOR:</b>	<b>CITY OF RUSTON:</b>
By: _____ <i>(signature)</i>	By: _____ <i>(signature)</i>
Print Name: _____	Print Name: <u>D. Bruce Hopkins</u>
Its _____ <i>(title)</i>	Its <u>Mayor</u>
DATE: _____	DATE: _____
<b>NOTICES TO BE SENT TO:</b>	<b>NOTICES TO BE SENT TO:</b>
<b>CONTRACTOR:</b> Tucci & Sons, LLC 4224 Waller Road Tacoma, WA 98443 (253) 922-6676 (telephone) Email: To be determined	<b>CITY OF RUSTON:</b> Mayor of Ruston City of Ruston 5219 N. Shirley Street Ruston WA 98408 (253) 759-3544 (telephone) (253) 752-3754(facsimile) Email: <a href="mailto:townclerk@rustonwa.org">townclerk@rustonwa.org</a>
	<b>ATTEST</b>  _____ Mario Ortega City Clerk
	<b>APPROVED AS TO FORM:</b>  _____ Jennifer S. Robertson Office of the City Attorney

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## **Exhibit A**

The Project Manual for the 2024-25 TIB HIGHLAND-SHIRLEY OVERLAY PROJECT  
(424 pages)

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**Exhibit B**  
Contractor's Completed Bid Proposal (28 pages)