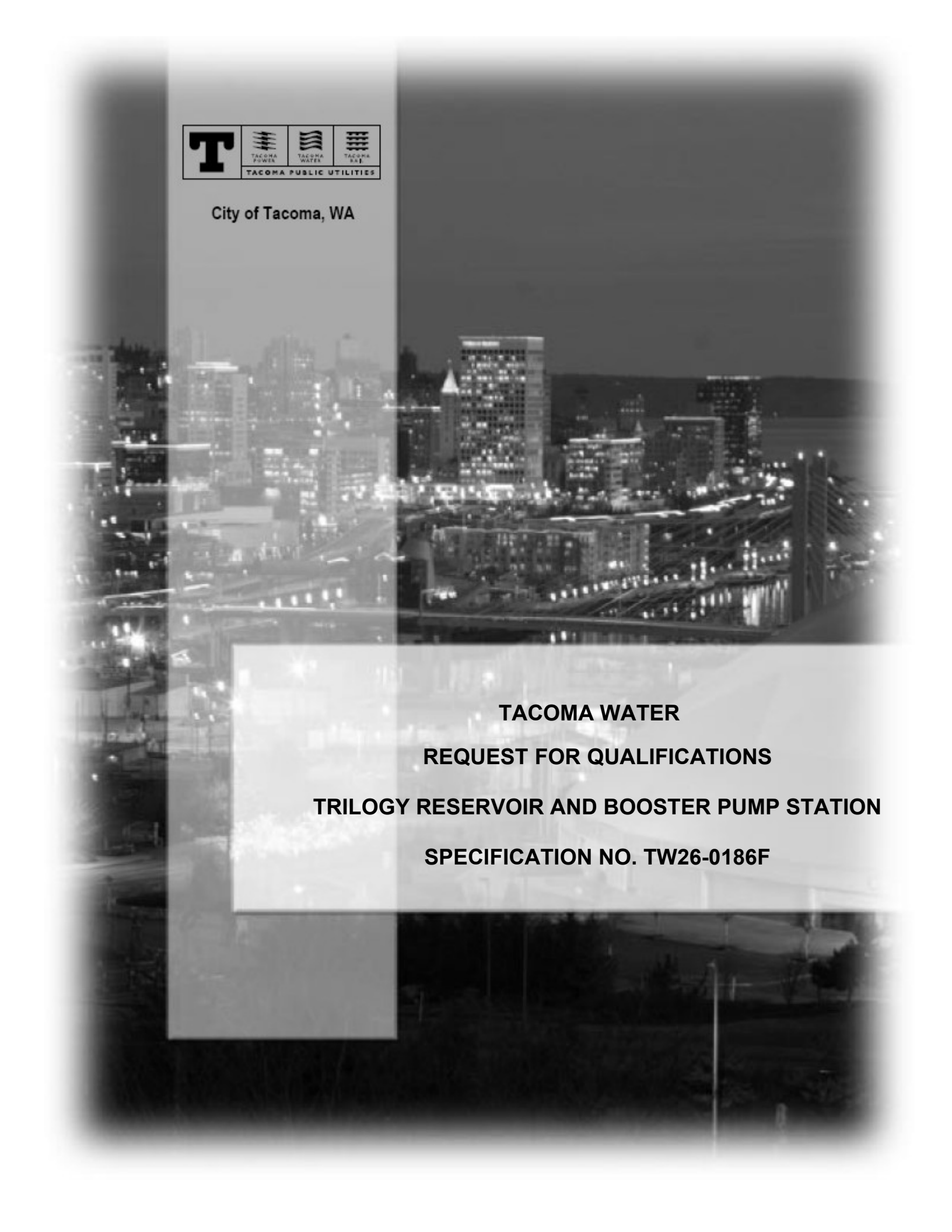

City of Tacoma, WA

TACOMA WATER

REQUEST FOR QUALIFICATIONS

TRILOGY RESERVOIR AND BOOSTER PUMP STATION

SPECIFICATION NO. TW26-0186F

City of Tacoma
Tacoma Water

REQUEST FOR QUALIFICATIONS TW26-0186F
Trilogy Reservoir and Booster Pump Station

Submittal Deadline: 11:00 a.m., Pacific Time, Tuesday, November 10, 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:

By Email:	**In Person:**
sendbid@tacoma.gov Maximum email size including attachments: 35 MB. Multiple emails may be sent for each submittal. **Note:** 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.	Tacoma Public Utilities Administration Building North, Main Floor, Lobby Security Desk 3628 South 35th Street Tacoma, WA 98409 Monday – Friday 8:00 am to 4:30 pm

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 a RFB 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. 35th 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.

If you believe your submittal was sent timely and was not read at bid opening, please contact 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.

- 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: A pre-proposal meeting will be held 9:00 a.m., PST, Wednesday, October 7, 2026 via TEAMS

Project Scope: This project will involve the design and construction of a 3-4 Million Gallon above-ground reservoir intended to serve the 810 pressure zone and an approximately 3,000 gallon-per-minute below-ground booster pump station to serve the 950 pressure zone.

Estimate: $17,000,000.00 excluding applicable taxes

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 Brandon Snow, Contracting & Procurement Specialist, Sr by email to bsnow@tacoma.gov.

Protest Policy: City of Tacoma protest policy, located at 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.

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6.0 RFQ GENERAL CONDITIONS

ATTACHMENTS

Attachment A	Signature Page
Attachment B	Index of Confidential and Proprietary Information
Attachment C	Insurance Company Letter of Intent Regarding Required Insurance, Insurance Requirements
Attachment D	Surety Letter of Intent Regarding Performance and Payment Bonds
Attachment E	Identification of Projects Table
Attachment F	Draft Contract
Attachment G	Draft General Terms and Conditions
Attachment H	Reference Documents

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 Qualifications page.

The following items make up your complete electronic submittal package (include all the items below):	
Signature Page (Attachment A)	
Index of Confidential and Proprietary Information (Attachment B)	
Insurance Company Letter of Intent Regarding Required Insurance (Attachment C)	
Surety Letter of Intent Regarding Performance and Payment Bonds (Attachment D)	
Identification of Projects Table (Attachment E)	
Content to be Submitted (Section 3)	

1.0 INTRODUCTION

The City of Tacoma (City) is using a two-step process to select a Design-Builder for the Trilogy Reservoir and Booster Pump Station (Project) utilizing the Design-Build (DB) project delivery method authorized under RCW 39.10.

The City was granted project approval from the State of Washington Capital Projects Advisory Review Board, Project Review Committee on September 24, 2026 to use the DB delivery method. The specific method of DB for this project will be Progressive Design-Build (PDB).

This Request for Qualifications (RFQ) initiates the first step of the procurement process, wherein the City will solicit, receive, evaluate and score Statements of Qualifications (SOQs) from experienced and qualified Proposers (which may include joint ventures), as further defined in Section 3.0 of this RFQ, and shortlist up to three (3) of the highest ranked Proposers (Finalists) to participate in the next step of the process.

The second step will be a Request for Proposals (RFP) process, which is further described below.

Prospective Design-Builders are responsible for all costs of preparing and submitting qualifications and/or Proposals and participating in the DB RFQ/RFP process. Submittal and evaluation criteria have been developed to specifically avoid the need for detailed design and cost estimating as a part of the submittal and procurement process. Finalists submitting responsive Proposals, who are not awarded a DB contract, will be paid an honorarium of $5,000.00.

City personnel, with an Owner's Advisor, have formed a team to provide technical oversight and DB support for the Project. The City desires to partner with the Design-Builder to execute the Project, as described in the RFQ, and as will be described in the forthcoming RFP, and the final DB Contract.

For clarity throughout the RFQ, the following terms and definitions apply.

City – The terms City, City of Tacoma, Owner, and Tacoma Water are synonymous and interchangeable in respect to this RFQ.

Contract or Design-Build Contract or DB Contract – The Design-Build contract the City anticipates executing through this procurement process, as provided under RCW 39.10.330.

Design-Build Team – The prime contractor, design consultants and subconsultants, and major and specialty subcontractors, suppliers and others performing the work required by the Design-Build contract documents.

Design-Builder or Contractor – The firm or joint venture awarded the Design-Build Contract.

Finalists – The short-listed Proposers after SOQ evaluation.

GMP – Guaranteed Maximum Price.

Key Personnel - Individuals fulfilling the roles identified in Section 3.8 and that must be identified in Respondent's SOQ and committed to work on the Project if Respondent is selected as the Design-Builder.

Proposers – The firms or joint ventures responding to the RFQ and/or RFP.

2.0 PROJECT DESCRIPTION

2.1 Reasons for Using DB Delivery

The primary driver for selecting the PDB delivery method for this Project is to expedite the overall project schedule. The Trilogy Reservoir and Booster Pump Station is one of multiple Tacoma Water projects to support ongoing growth in southeast Pierce County. To meet customer service requirements and improve water system resiliency in this region, the City desires to complete the Project by 2030. PDB delivery will provide the following opportunities to manage schedule risk:

- Pump Station equipment required for the project (e.g., pumps, electrical equipment including transformers, Motor Control Centers (MCCs), and standby generators) are currently long lead items. PDB delivery will provide the opportunity to utilize early works packages to select and order equipment early, reducing the overall project schedule relative to design-bid-build.
- An integrated DB team can move more quickly through design and construction than under other delivery methods.
- Early DB input to plan for constructability and construction sequencing will increase accuracy of the Project construction schedule and avoid unforeseen issues that could result in delays.
- The Contractor will have the ability to plan their use of the site and construction operations more thoroughly and will have the opportunity to influence the design.

The City also anticipates obtaining the following additional benefits from using PDB delivery:

- Early DB constructability input, particularly related to a constrained site, will minimize the risk of unexpected facility issues with critical drinking water infrastructure.
- Contractor input for novel approaches to startup, commissioning, and testing will benefit the readiness of the new reservoir and pump station for operations.
- Enhancing collaboration that considers operations and maintenance preferences and other projects in the area.
- PDB allows Tacoma Water to collaborate with the DB team to provide a design solution that meets the project requirements, with opportunity for design-to-budget refinements to align with the available budget.
- PDB allows Tacoma Water and the DB to come to certainty on cost of construction earlier than either GC/CM or traditional D/B/B delivery methods.
- PDB reduces Tacoma Water’s risk of added cost from change orders and allows faster resolution of challenges during construction.
- PDB allows Tacoma Water to work collaboratively and transparently with the Contractor and the design team to make educated/informed decisions on materials and systems based on cost effectiveness, durability, and availability.

2.2 Project Background and Scope

Tacoma Water serves as the water purveyor for the growing Tehaleh master planned community south of Bonney Lake. As this area continues to grow, Tacoma Water needs to expand its infrastructure to support the growth. An area of Tehaleh in the vicinity of Cascadia Boulevard is currently in need of a reservoir and booster pump station. This project will involve the design and construction of a 3-4 Million Gallon above-ground reservoir intended to serve the 810 pressure zone and an approximately 3,000 gallon-per-minute below-ground booster pump station to serve the 950 pressure zone.

The subject site for this critical infrastructure is located along the west side of 181st Avenue East in Bonney Lake, WA (Tax Parcel No. 7002741531).

Construction of the Trilogy Reservoir and Booster Pump Station and related improvements will facilitate operations within the Tehaleh master planned community as described in the attached Tehaleh Pressure Zone Study Summary (Attachment H). The potential arrangements of facilities on the parcel identified for construction are described in the attached Cascadia Reservoir Site Evaluation – Tech Memo (Attachment H) (note that the Trilogy Reservoir was referred to as the Cascadia Reservoir in planning documents). The City is interested in PDB input to establish the size, layout, tank material of construction, and pump station configuration.

Project scope for the DB team may include, but is not limited to: validation of Owner's project information and criteria; project scoping; design; cost estimating; life cycle and value analysis; constructability analysis; scheduling/phasing; submitting for and obtaining required jurisdictional inspections, approvals, and permits; subcontractor buy-out/bidding; materials and equipment procurement; subcontractor and supplier scheduling and coordination; and construction of the Trilogy Reservoir and Booster Pump Station.

2.3 Project Goals

The City has established the following Project Goals:

1. **Efficient Scheduling and Sequencing.** Before, during and after construction, the DB Team will implement an efficient schedule for design, construction sequencing and commissioning that will:
    a. Minimize the impact on Tacoma Water operations and customers.
    b. Implement a design and construction schedule that accounts for long lead time procurement items.
    c. Implement an effective permitting plan that minimizes the time to obtain a permit and reduces the risk of delays in obtaining the permits.
2. **Maximize the Project Budget.** The DB Team will leverage the efficiencies of the PDB process through innovative design to:
    a. Provide an efficient and effective design that maximizes the scope, long-term performance, and ease of operations and maintenance within the City's established budget and minimizes operations and maintenance costs.
    b. Provide clear, transparent, timely, and accurate project costs that will allow Tacoma Water to make timely decisions regarding the project and communicate effectively with executive sponsorship and stakeholders.

3. **Exemplify Excellent DB Performance.** The DB Team will develop and utilize a collaborative relationship between the City, its stakeholders, and the DB Team to meet or exceed the Project Goals and achieve the following objectives:
    a. Appropriate decision-making authority for on-site personnel and an expedited analysis/decision process so that decisions by the DB Team are made in a timely fashion so as not to impact the project schedule or impede daily operations.
    b. Excellent and intentional communication and collaboration between the DB Team and the City.
    c. Transparent and collaborative processes (e.g., pricing, scheduling, decision-making) for implementing the Project.
    d. Minimize recordable safety incidents.
4. **Quality.** The Design-Builder will employ a robust and effective Quality Management Plan and demonstrate superior technical expertise of personnel performing the work to achieve the following objectives:
    a. Meet or exceed technical and quality requirements for the Project.
    b. Development and implementation of a clear and thorough Quality Management Plan that actively and transparently discovers, tracks, and successfully resolves quality issues before they impact schedule and cost for both design and construction.
    c. The quality of materials, craftmanship, and design will be evident for years into the future. Cost effectiveness will be measured based on a balance of first-cost and long-term costs.

2.4 Project Funding

Tacoma Water funds our Capital Improvement Plan (CIP) with a combination of bonds, low-interest loans, capital and operating reserves. The initial A/E design, PDB advisory services, project management services and the Design Builder's preconstruction services for this project will be funded with capital reserves. The remaining, post-GMP costs of PDB advisory services, project manager/construction manager services, A/E design services and construction of the project will be funded by a combination of low interest loan funding, anticipated revenue bonds, and cash reserves.

2.5 Project Schedule

The following is the anticipated project schedule. The City intends to complete the Design-Builder selection process and execute a contract with the selected Design-Builder in a timely and efficient manner. The dates listed are preliminary and may be adjusted by the City during the procurement or project execution phases. The City reserves the right, at their sole discretion, to change the dates and times below.

Key Milestones	Target Date(s)
Step 1 – RFQ Phase	
RFQ Released for Advertisement	September 30, 2026
RFQ Pre-Proposal Meeting	October 7, 2026 at 9:00 AM PDT
Deadline for Submitting Questions	October 20, 2026 at 3:00 PM PDT
Last Day for City response to questions and to Issue Addenda	October 27, 2026
Statement of Qualifications Deadline	November 10, 2026 at 11:00 AM PDT
Notification of Selected Finalists	December 4, 2026
Step 2 – RFP Phase	
RFP Issued	Week of December 7, 2026
One-on One (Proprietary) Meeting	Week of January 4, 2027
Deadline for Submitting Questions	Week of January 11, 2027
Last Day for City response to questions and to Issue Addenda	Week of January 11, 2027
Proposal Deadline	***January 26, 2027***
Interviews (optional)	Week of February 8, 2027
Announcement of Highest-Ranked Finalist	Mid–February 2027
Design-Build Contract and Phase 1 (Pre-GMP) Fee/Scope Negotiations	February – March 2027
Tacoma Public Utilities Board Approval and DB Contract Execution (on or around)	May 2027
Project Execution	
Validation Period (0-10% Design)	May – September 2027
Design Development (10-30% Design)	September 2027 – January 2028
Design Development (30-60% Design)	January – April 2028
Negotiate GMP Amendment	May – June 2028
Tacoma Public Utilities Board Approval and GMP Amendment Executed (on or before)	August 2028
Phase 2 Design (60-100% Design)	April 2028 – August 2028
Construction	August 2028 – October 2029
Substantial Completion	October 2029
Commissioning and Startup	November 2029 – December 2029

2.6 Project Environmental Review and Permitting

The City anticipates that a number of permits and approvals will be required for the Project; major permits and approvals are summarized below. A comprehensive list of anticipated permits will be developed during the Validation Period.

- **Pierce County:** A Conditional Use Permit is anticipated to be required for the Reservoir property. A Cultural Resources Review may be required for the Reservoir property.
- **SEPA:** SEPA is anticipated to apply, and will be led by the City, with technical support from the Design-Builder.
- **Department of Health:** An Engineering Design Review Report will be required prior to construction of the infrastructure.

The City expects that the responsibility and delay risk for certain permits and approvals will be assigned to the City while the responsibility and delay risk for other permits will be assigned to the Design-Builder.

2.7 Project Contracting and Delivery Process

Project delivery will be a PDB contracting method using the form of contract set forth in (Attachment F). The City reserves the right to modify the contract form and to negotiate terms of the contract with the successful Finalist. The City anticipates modifying the form of contract to include provisions for performance requirements and a performance test; the modified form of contract will be included with the RFP.

3.0 REQUEST FOR QUALIFICATIONS PROCESS

3.1 Eligibility

Proposers who have a qualified DB Team and are interested in being considered for selection as the Design-Builder may submit a SOQ in accordance with the requirements set forth in this RFQ. The City reserves the right, at its sole discretion, to waive informalities or non-material irregularities in the SOQs and/or Proposals received, and to reject any and all proposals and/or cancel this RFQ and/or RFP at any time for any reason. In the event that the City does so, it shall provide the reasons for rejection or cancelation in accordance with RCW 39.10.330.

3.2 SOQ General Requirements

SOQs must address each topic below in a clear, comprehensive, and concise manner and in the format and order described below. SOQs should be prepared to provide straightforward and concise information that will enable the City's Selection Advisory Committee (SAC) to efficiently evaluate them.

The SOQ shall be formatted as follows:

1. Table of Contents. Refer to Section 3.5 for required SOQ sections and order.
2. The City has a strict page limit for the SOQ as indicated herein. Any SOQ with pages that exceed the page limit will not have those excess pages be considered for purposes of evaluation. While the City does not intend to reject SOQs for exceeding page limits, it will not consider any information on pages that exceed the page limit.
3. All SOQs shall be in an 8.5" by 11" format with the exceptions noted. Proposers may use up to three (3) 8.5" by 14" pages for organizational charts, figures, schedules, exhibits, tables, or other illustrative and graphical information used in responding to the RFQ requirements. All 8.5" by 14" pages will be counted as one page. Pages in 8.5" by 14" format may not be used for narrative responses. SOQs shall be limited to thirty (30) pages in length. (A page shall be defined as one face of a sheet of paper.) The SOQ must include a table of contents with bookmarks and be organized in sections corresponding to the numbering, criteria and order identified in RFQ Section 3.0.
4. The page count does not include the following:
    - proposal cover sheet,
    - table of contents,
    - resumes of Key Personnel,
    - required forms,

- tabs or back covers. Tabs, coversheet and back cover shall have no substantive written information included, otherwise they will be counted in the page limit.

5. Appendix information, attachments and exhibits will count towards the page limit.
6. All information shall be in English.
7. All narrative text shall be single-spaced in a regular style font at a minimum of 11 points. The type, style and size of headings and figures are not prescribed.
8. No text, tables, figures, photos, or other substantive content shall be printed within 1" of any page edge.
9. SOQs should only include information required by this RFQ.
10. SOQs shall be digital, in PDF format. The complete SOQ shall be contained in a single, unlocked, searchable PDF file with bookmarks. Maximum pdf file size is 35MB.
11. SOQs shall be submitted per the instructions on the information page located at the front of the RFQ. Proposers are encouraged to leave adequate time for transmission of SOQs.
12. Proposers have full responsibility for ensuring that their SOQs are received by the City by the SOQ deadline.
13. Proposers are discouraged from presenting detailed, project-specific design concepts, detailed pricing, 3-D models, renderings or other design or estimating intensive efforts as part of this DB RFQ/RFP process.

3.3 SOQ Evaluation Process

SOQs will be evaluated by an SAC. The SAC will be comprised of individuals familiar with the Project and knowledgeable in the scope of work. All scoring members of the SAC will be City employees; the City's technical consultants will provide non-scoring, advisory support to the SAC.

The SAC will first review SOQs for initial decisions on SOQ responsiveness and on Proposer responsibility. Signed documents, completion of required forms, and other initial elements of responsiveness and responsibility will be reviewed during initial screening. Those SOQs and Proposers found responsive and responsible will continue to be evaluated and scored.

The City reserves the right to determine, in its sole discretion, which projects submitted by the Proposer meet the definition of "Projects of Similar Scope and Complexity" and to award more points to Proposers who have performed work on projects that incorporate more of the characteristics set forth in this definition and that are more recent. The City also reserves the right to award more points to projects in which the Proposer's Key Personnel had substantial responsibility for their respective scopes of work.

The SAC will evaluate and score the SOQs using the evaluation criteria, scoring and weighting presented in this RFQ and any addenda. SOQs will be scored and then ranked in relation to all other SOQs submitted. Scores may range from zero points to the maximum points available, depending on the appropriateness and completeness of the response to the stated criteria.

The SAC will identify significant and minor strengths and weaknesses from the SOQs. The term "strength" is that part of the SOQ which ultimately represents a benefit to the Project and is expected to increase the Proposer's ability to meet or exceed the Project Goals; a minor strength has a slight positive influence and a significant strength has a considerable positive influence on the Proposer's ability to exceed the Project Goals.

The term “weakness” is that part of the SOQ which detracts from the Proposer’s ability to meet the Project Goals and may result in inefficient or ineffective performance; a minor weakness has a slight negative influence and a significant weakness has a considerable negative influence on the Proposer’s ability to exceed the Project Goals.

The City may contact references furnished by Proposers at any stage in the selection process and may contact other sources, including the City itself, that may not have been named by the Proposer but can assist the City in evaluating Proposers.

The City may perform a review of any Proposer’s financial status and capacity to perform the work. All Proposers shall comply with requests for information that are deemed necessary by the City to perform a reasonable review of the firm's financial status. The City reserves the right to reject any Proposer if the City’s analysis of the Proposer’s financial status and capacity indicates, in the City’s sole judgment, that the Proposer will not be able to successfully perform the work.

The City intends to select up to three (3) highest ranked teams to form the short list to which the City intends to issue an RFP.

The City reserves the right, at its sole discretion, to proceed with the procurement process with a single Proposer (if applicable); cancel the RFQ and/or RFP and procurement process; or reschedule the due date and time for the SOQs and/or Proposals and the procurement process. The City will notify all Proposers submitting SOQs of the highest ranked Proposers who will be invited to submit Proposals in response to the final RFP issued by the City.

Qualifications and scoring from the SOQ will be used as a portion of the scoring for Proposals.

3.4 Projects of Similar Scope and Complexity

The term “Projects of Similar Scope and Complexity”, as used in this RFQ, refers to projects the Proposer and/or their first-tier subcontractors and design subconsultants have successfully completed within the last ten (10) years. Projects the City determines to have substantial characteristics in common, with this project including many or all of those listed below, will follow the evaluation process as described in Section 3.3.

1. Projects where the Proposer, and/or their first-tier subcontractors and design subconsultants led construction and/or design.
2. Projects that included the prime and/or key subcontractors and subconsultants who are also proposed for this project.
3. Projects that included individual team members (prime, subcontractors, or subconsultants) that are also proposed for this project.
4. Projects that were delivered utilizing alternative project delivery (PDB, DB, GC/CM) and/or delivered in the State of Washington, Oregon, or Idaho.
5. Projects for public agencies and utilizing public funds. Clearly indicate any projects for agencies that are public utilities and/or water utilities.
6. Projects with similar features to this project (e.g., drinking water storage tanks and pump stations in a similar size range; testing, startup, and commissioning of similar facilities, etc.)
7. Projects with similar constraints and characteristics (authorities having jurisdiction, site size/type, etc.) to this project.

8. Projects that included inclusion and utilization of small business entities and disadvantaged business enterprises (DBE). Inclusive of small business enterprises (SBE), minority-owned business enterprises (MBE), woman-owned business enterprises (WBE), minority/women owned business enterprises (MWBE), veteran-owned business enterprises (VBE). Clearly indicate any projects that required state certification of DBEs, and/or had established goals for DBE participation, and/or met or substantially exceeded the established DBE goals.
9. Projects with similar construction budget and/or contract value to this project.

3.5 SOQ Evaluation Criteria

The SOQ shall demonstrate the DB Team's ability to undertake the Project by providing the following technical and management qualifications of the Proposer, subconsultants and subcontractors, and individual Key Personnel. The Proposer is responsible for ensuring that contact information contained in their referenced project profiles is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications.

Emphasis will be placed on experience and expertise in performing substantive work on Projects of Similar Scope and Complexity, as described in the definitions above. The City reserves the right to award more points to projects that have more of the characteristics set forth in the definition of Projects of Similar Scope and Complexity. The City also reserves the right to award more points to successful projects in which Proposer, subconsultants and subcontractors, and/or individual Key Personnel had substantial responsibility for their respective scopes of work.

Proposers are responsible for demonstrating the relevance of the projects discussed, including but not limited to how the projects meet the definition of Projects of Similar Scope and Complexity and how the Proposer's experience on the projects will make it more likely that the Proposer will meet or exceed the Project Goals.

SOQ Section No.	Section Title and Required Information	Points Available
3.6	Letter of Interest	**Pass/ Fail***
3.7	DB Team Qualifications and Past Performance References	**40**
3.8	Key Personnel Experience and Qualifications	**40**
3.9	Project Controls and Development of GMP	**10**
3.10	Disadvantaged Business Utilization Performance	**10**
3.11	Identification of Projects Table	**Pass/Fail**
	Forms • Signature Page • Index of Confidential and Proprietary Information • Insurance Company Letter of Intent Regarding Required Insurance • Surety Letter of Intent Regarding Performance and Payment Bonds	**Pass/ Fail***
	TOTAL POINTS	**100**

**Failure to submit information may result in disqualification of the SOQ.*

3.6 Letter of Interest – Pass/Fail

At a minimum include the name of the entity submitting as the Proposer and the primary point of contact with address, email, telephone number, and the signature of an authorized representative.

The Letter of Interest should introduce your firm (or joint venture or proposed team), provide supplementary information about your firm and proposed DB team that is not provided elsewhere in the SOQ, and explain what makes your team unique and the best fit for the Project. The Letter of Interest should also include the address(es) of the office(s) that will oversee and manage the Project, including design, and construction.

The City is looking to partner with a DB team with demonstrated qualifications and experience on Projects of Similar Scope and Complexity.

3.7 DB Team Qualifications and Past Performance References – 40 points

Please provide a narrative which includes the following information regarding the qualifications, experience and technical capabilities of the Proposer and any known key subconsultants, subcontractors and/or suppliers that the Proposer intends to subcontract to as a DB team member. The Proposer's experience and capabilities should be drawn from and reference Projects of Similar Scope and Complexity that the Proposer has completed within the last ten (10) years. (Refer to Section 3.4 above) The narrative and supporting information shall include, but not be limited to:

1. A firm organizational chart showing the team structure and any identified firms included on the DB team.
2. In graphical form, provide the following information about your firm (including approximate percentage work that is collaborative delivery for each period):
    - Total construction contract value, listed by year, of projects completed in Washington, Oregon and Idaho 2024 and 2025.
    - Total construction contract value of projects in Washington, Oregon and Idaho completed and in progress as of October 2026.
    - Total construction contract value of projects in Washington, Oregon and Idaho that will be in progress and/or anticipated to begin construction in 2028, including this project which would begin construction in 2028.
3. Experience and success that the Proposer, subconsultants and subcontractors have had:
    - Delivering projects utilizing collaborative project delivery, with emphasis on PDB delivery
    - Designing and constructing projects with similar features to this project.
    - Designing and constructing projects with similar constraints and characteristics to this project.
    - Conducting permitting and public outreach for similar projects.
    - Developing and implementing early GMPs or early works packages for the purposes of long-lead procurement or early construction activities.
    - Conducting testing, startup, commissioning, training, and hand-over for similar facilities.

4. Discuss how the Proposer's corporate cultures align/integrate to encourage safety.
5. Project profiles for three (3) to five (5) projects completed in the last ten (10) years that are of Similar Scope and Complexity to this project. Project profiles shall be no more than two pages in length. Project profile information shall include, but not be limited to:
    - Project name, name of owner, and location.
    - Project delivery method (D/B/B, GC/CM, DB, etc.)
    - Short description of the project.
    - Project photo(s) (optional).
    - Key Personnel included in this proposal that were involved and their role in the project's success.
    - Indicate which elements of the definition of "Projects of Similar Scope and Complexity" are met by the profiled project.
    - Contract substantial completion date and actual substantial completion date with an explanation of the difference, if any.
    - Contract final completion date and actual final completion date with an explanation of the difference, if any,
    - Original contract value and final contract value (including change orders) with an explanation of the difference, if any.
    - Listing of the goals for inclusion, expressed as a percentage of the total contract value, for Disadvantaged Business Enterprises (DBE, SBE, MBE, WBE, MWBE, VBE) and the actual inclusion achieved.
    - Contact information (phone and email) for the Owner's representative who is familiar with your firm's performance. (Note: the Proposer is responsible for ensuring that contact information provided is correct. The inability to contact a reference may have a detrimental impact on the evaluation of qualifications.) \

3.8 Key Personnel Experience and Qualifications – 40 points

Provide a narrative describing the experience and qualifications of the Design-Builder's proposed staff for the Key Personnel roles identified below.

Staff members proposed will be required to fully participate as proposed and deliver the Project during the entire duration of the schedule. Staff changes proposed by the selected Design-Builder after the award of a contract for services will be permitted only by expressed, written permission of the City. The City will expect that all proposed staff substitutions will meet or exceed the qualifications of the staff who were originally proposed.

Key Personnel for this project shall include, but are not limited to, the following roles:

- DB Project Manager (overall DB team)
- Preconstruction Lead (if different than DB Project Manager)
- Design Lead
- Construction Manager (if different than DB Project Manager)
- Construction Superintendent
- Lead Cost Estimator
- Project Executive

- Up to 2 other key roles identified by the Proposer

The DB Project Manager is required to have a minimum of seven (7) years of construction project management experience and have led or played a key role in a minimum of two (2) prior projects delivered with alternative methods (DB or GC/CM). The City prefers a DB Project Manager with experience overseeing both Design and Construction phases, providing continuity for the duration of the Project.

Proposers are encouraged to highlight situations where Key Personnel have worked together on previous Projects of Similar Scope and Complexity.

Provide an organizational chart showing Key Personnel and other essential project roles, including lines of reporting. Identify firm affiliation for each individual shown.

Provide a narrative summarizing the proposed DB Project Manager's experience leading similar projects and teams, experience with alternative delivery methods, and how that individual's leadership will benefit the Project and provide for an integrated, collaborative DB team and relationship with the City team.

Please provide resumes (no more than one single-sided page each) for Key Personnel that include the following information.

1. Name, current firm, geographic location, current title, and years employed by current firm.
2. If employed less than five (5) years at current firm, please list previous firm name, previous title and years employed by previous firm.
3. Proposed role on this Project.
4. Proposed percent time involvement during the various project phases – design, construction, and startup and commissioning.
5. Identify and discuss the impact of current assignments and other potential projects on the availability of the Key Personnel for this Project.
6. Total years of professional experience.
7. Total years of professional experience in the role for which they are proposed for this project.
8. Previous number of DB and GC/CM projects completed.
9. Education, certifications, professional registration and licenses held.
10. Provide information for 2-3 projects (preference for including previous Project(s) of Similar Scope and Complexity) that demonstrates experience that will assist in achieving or exceeding the Project Goals in the role proposed on this Project. Include project name, owner name, project description, current status of project, dates of involvement.
11. Provide two (2) professional references, including name, title, phone number, and email address. (Note: the Proposer is responsible for ensuring that contact information provided is correct. The inability to contact a reference may have a detrimental impact on the evaluation of qualifications.)

3.9 Project Controls and Development of GMP – 10 points

1. Describe the Team's past performance with PDB or similar integrated projects development and management of project budgets, including collaboratively developing a GMP. Include in the narrative how the Proposer ensured transparency of all costs and schedule.
2. Discuss the tools and techniques the Proposer has used to transparently develop the scope, cost, and schedule to an owner, including:
    - How the scope, cost, and schedule were communicated with the owner.
    - The resolution of discrepancies between the owner's cost information and that of the design-builder.
    - A demonstration of how the estimating, cost monitoring process, and schedule reporting provided substantive and meaningful information to the owner.
3. Describe any issues or problems that arose on the projects discussed in this section and how those issues or problems were resolved.

3.10 Disadvantaged Business Utilization Performance – 10 points

The City encourages the inclusion of historically underutilized business enterprises in the performance of City contracts. Certified businesses in this classification include but are not limited to: disadvantaged business enterprises (DBE); small business enterprises (SBE); minority-owned business enterprises (MBE); woman-owned business enterprises (WBE); minority woman-owned enterprises (MWBE); and veteran-owned business enterprises (VBE) as certified with the Office of Minority and Women's Business Enterprises, including small businesses and business entities certified with the Department of Veterans Affairs. Describe your team's past performance, programs, approaches, and specific steps used to recruit, mentor and include underutilized business enterprises in previous Projects of Similar Scope and Complexity.

1. Using specific past project examples, highlight strategies that were successful in increasing underutilized business participation.
2. For past Projects of Similar Scope and Complexity provide examples of scope of work that was awarded to underutilized businesses.
3. Identify scope items from this RFQ which you would solicit interest from underutilized businesses should you be shortlisted.
4. For the Design-Builder's last four (4) projects completed that were of Projects of Similar Scope and Complexity and which included Underutilized Business Utilization Goals, provide the following information in a tabular format:
    - Project name, name of owner, and location.
    - Project delivery method (D/B/B, GC/CM, DB, etc.)
    - Contract final completion date.
    - Contract final value (including change orders).
    - Listing of Underutilized Business Enterprises (DBE, SBE, MBE, WBE, MWBE, VBE) inclusion goals, expressed as a percentage of the total contract value, and the actual inclusion achieved.

- Contact information (phone and email) for the Owner's representative who is familiar with your firm's inclusion performance. (Note: the Proposer is responsible for ensuring that contact information provided is correct. The inability to contact a reference may have a detrimental impact on the evaluation of qualifications.)

5. Provide a brief narrative identifying the Proposer's aspirational goals for inclusion of historically underutilized business enterprises and summarizing the Proposer's inclusion plan for achieving those goals.

3.11 Identification of Projects Table - Pass/Fail

The Proposer must submit the Identification of Projects Table located in (Attachment E) for this section of the SOQ Evaluation Criteria. Proposers are required to use the form provided and not submit the information using their own form. The purpose of the Identification of Projects Table is to provide evaluators with sufficient information to determine whether projects cited are Projects of Similar Scope and Complexity; therefore, Proposers are required to submit the information below ***for every project mentioned in the SOQ narrative*** (i.e., excluding resumes and other attachments). Failure to submit the required information will not render an SOQ non-responsive, but it could have a negative impact on a Proposer's score.

The Identification of Projects Table may be submitted on 8.5" x 14" paper and is considered a "form", therefore the number of pages is not limited and will not count towards the maximum SOQ page limit. Project descriptions shall not exceed 200 words in each column for a single project. The Proposer is responsible for ensuring that contact information contained in their Identification of Projects Table is correct. The inability to contact a reference may have a detrimental impact on the evaluating qualifications. The Owner reserves the right to contact any person listed in the Identification of Projects Table or any other person with knowledge regarding any Project in which any DB Team Member or Key Team Member participated. The identification of projects will not be evaluated separately. Rather, the projects will be evaluated in the context of the criteria set forth in Section 3.7.

4.0 REQUEST FOR PROPOSALS

The Owner will issue the RFP to the Finalists. The RFP will further explain the evaluation criteria, Proprietary Meetings, and other elements of the RFP process. Prior to the submission date for Proposals, written questions will be accepted as defined in the RFP.

Proprietary Meetings. The Owner anticipates conducting a Proprietary Meeting with each of the Finalists. These meetings are anticipated to occur prior to the submission of the Proposals and will allow the Owner to evaluate the Finalists' ability to collaborate with the Owner's team and to allow the Finalists to ask the Owner questions regarding the Project and the Owner's goals and concerns. The Proprietary Meetings will be further described in the RFP.

All information from the DB Teams provided in the Proprietary Meetings will remain confidential during the procurement process. The Proprietary Meetings will also provide an opportunity for direct interaction between the Finalist and the SAC.

A Finalist may ask questions and submit suggested proposed changes to the contract provisions no later than the date set forth in the Procurement Schedule. The Owner, at its sole discretion, may revise the RFP, the contract provisions and/or program documents and issue an addendum to all Finalists.

Finalists will submit a Technical Proposal and a separate Price Proposal. The Owner will establish an SAC to review and evaluate the Technical Proposal and other elements outlined in the RFP. The RFP SAC may be the same as the RFQ SAC.

The SAC will evaluate the Proposals in accordance with the evaluation criteria set forth in the RFQ and RFP. Price Proposals will be reviewed after the scoring of Technical Proposals is complete. At its sole discretion, the Owner may ask written questions of Proposers, seek written clarifications, and conduct discussions with Proposers on Proposals.

Interviews. The Owner may conduct an Interview with each Finalist after the submission of the Proposals and will allow the Owner to ask questions regarding the DB Team's Proposal. Interviews will not be scored separately but will be used to inform scoring of Proposals.

The Owner will provide written notification to all Finalists of the selection decision and make a selection summary available to all Proposers at the conclusion of the Procurement.

Proposals from shortlisted firms will be reviewed and evaluated against the criteria and weightings in the table below; the City reserves the right to refine Proposal evaluation criteria and weighting in the RFP.

Evaluation Criteria	Points Available
Contract Acceptance, Signature Page, State Responsibility and Reciprocal Bid Preference Information	**Pass/Fail***
Overall Management Approach	**20**
Cost and GMP Development Plan	**15**
Design Development and Management Plan	**20**
Construction Management, Project Sequencing, and Scheduling	**20**
Disadvantaged Business Outreach and Inclusion Plan	**10**
Price Factor Proposals	**15**
Total Proposal Points	**100**
Total SOQ Points	**50****
Total Points	**150**

*Failure to submit information may result in disqualification of the Proposal
**50% of evaluated SOQ Points applied

5.0 CONTRACT NEGOTIATION, AWARD, AND EXECUTION

At the Owner's discretion, it will initiate negotiations with the Highest Scored Finalist. The Owner may also negotiate with other Finalists at its discretion if it is unable to reach agreement with the Highest Scored Finalist. The Owner will continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated. Negotiations are at the Owner's sole discretion. By submitting a Proposal pursuant to the RFP, the Finalist represents and warrants that it will enter into the contract provided by the Owner subject to the terms set forth in its Proposal.

6.0 RFQ GENERAL CONDITIONS

6.1 Questions and Addenda

All RFQ documents will be posted on http://www.TacomaPurchasing.org. It is the Proposer's responsibility to ensure it has received a complete set of documents from the website.

Finalists will be notified on how to access the RFP documents. It is the Proposer's responsibility to ensure it has received a complete set of documents from the website.

Any Proposer's questions regarding a perceived discrepancy, deficiency, ambiguity, error, or omission contained in the RFQ or RFP documents, or regarding any provision that the Proposer otherwise fails to understand in relation to the RFQ/RFP or the Project, must be submitted by email to the City's Contracting & Procurement Specialist, Sr (Brandon Snow, bsnow@tacoma.gov) at any time until the deadlines stated in RFQ/RFP Section 2.5 – Project Schedule. Questions must specifically reference the Specification Number, Specification Title, and Sections of the RFQ or RFP. Requests of a general nature do not require a Section reference. No further questions will be accepted after the date and time identified for each phase of procurement. The City will publish RFQ questions and any answers on http://www.tacomapurchasing.org. Finalists will be notified on how to access the RFP questions and answers. The City reserves the discretion to group similar questions to provide a single answer or not to respond when the requested information is confidential.

The City reserves the right to revise, delete, clarify, or otherwise modify the RFQ or RFP at any time before the submittal deadline stated in the RFQ Section 2.5 – Project Schedule. Such revisions, if any, will be announced by written addendum to the RFQ/RFP and the submittal deadline will be updated accordingly.

The City will issue addenda for any changes to the RFQ/RFP, which will become part of the RFQ/RFP. If an addendum is issued, all other provisions in the RFQ/RFP that are not modified remain unchanged. RFQ addenda will be issued on http://www.tacomapurchasing.org. Finalists will be notified on how to access the RFP addenda.

It is the obligation and responsibility of the Proposer to learn of any addenda, responses, or notices issued by the City. Note: some third-party services may independently post City of Tacoma solicitations or other procurement documents on their websites. Proposer relying on such services do so at their own risk.

Proposers shall acknowledge receipt of addenda on the Signature Page (Attachment A).

6.2 Validity of SOQs

Proposers agree that the information included in the SOQs, including Key Personnel, will remain valid and accurate for a minimum of ninety (90) days from submission. Finalists will be required to extend their validation through final selection and the Finalist awarded a DB Contract will be required to extend through contract execution.

6.3 Cost of Preparing Statement of Qualifications

The Proposer is solely responsible for all costs incurred in the preparation and presentation of a SOQ in response to this RFQ.

The City is not liable for any costs incurred by the Proposer in preparation of materials or a SOQ submitted in response to this RFQ, for attending any interviews, or any other activities related to responding to this RFQ.

6.4 No Objections

By submitting an SOQ in response to this RFQ, the Proposer therein infers that they do not object to any of the provisions of this RFQ prior to the SOQ deadline, the Proposer waives all rights to protest the provisions of this RFQ. By submitting an SOQ in response to this RFQ, Proposer agrees that the process, criteria, and requirements described in this RFQ are fair and proper, and that the Proposer has no objection to any provisions of the RFQ.

6.5 Proposer Responsibility in Responding

It is the Proposer's responsibility to provide a full and complete written response, which does not require interpretation or clarification by the City. The Proposer is to provide all requested materials, forms, and information. During evaluation and scoring (prior to interviews, if any), the City will rely upon the submitted materials and will not accept materials from the Proposer after the RFQ or RFP deadline; however, this does not limit the right of the City to consider additional information independently available to the City (such as references that are not provided by the Proposer but are known to the City, or past experience by the City in assessing the Proposer), or to seek clarifications from the Proposer as needed by the City.

For a Proposer proposing as a joint venture, each member of the joint venture shall separately provide their own individual information where this RFQ requests specific evidence of a Proposer's qualifications.

Proposers are advised that the City's ability to evaluate SOQs or Proposals is dependent in part on the Proposer's submitting SOQs and Proposals that are well-ordered, detailed, comprehensive, and readable. Proposers are responsible for errors and omissions in their SOQs and Proposals. No such error or omission shall diminish the Proposer's obligations to the City.

Prior to the SOQ or Proposal deadline, a Proposer may make changes to its SOQ or Proposal. No change shall be allowed after the deadline. If any changes are made to the SOQ or Proposal after submitting to the City and prior to the deadline, the Proposer shall contact the Purchasing representative in writing to request the return of the SOQ or Proposal in its entirety. The Proposer will be required to resubmit the SOQ or Proposal package in its entirety.

6.6 Withdrawal

At any time, by written request, a Proposer may withdraw their SOQ.

6.7 Cancellation and Rejection of Statement of Qualifications

The City reserves the right to reject non-responsive SOQs and may reject all SOQs for any reason at its sole discretion. The City may choose not to award and/or execute a DB Contract even after declaration of the Highest Ranked Finalist. Proposers acknowledge that a Notice of Award Recommendation confers no right of contract. A decision by the City to cancel the RFQ, RFP, and/or not enter into a contract will not be the basis of any claims or causes of action for costs or damages by any Proposers.

6.8 Ex Parte Communications

Proposers are advised to refrain from initiating and/or engaging in communications specific to this procurement with third party agencies, City consultants, and other non-designated employees of the City and its departments who may or may not have knowledge of the Project. These agencies and/or employees are not authorized to represent the interests of the City in this procurement.

Proposers are advised not to rely on any information obtained other than what is provided by the designated City representative Brandon Snow, Contracting & Procurement Specialist, Sr, via email at bsnow@tacoma.gov.

The City reserves the right to take actions deemed appropriate to the City, up to and including the disqualification of the Proposer/Finalists, for engaging in unauthorized communications deemed detrimental to this procurement.

6.9 Ethics

The Proposer must be aware, familiar and comply with the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code and educate Proposer/Finalist staff accordingly.

6.10 Gifts and Gratuities

A Proposer/Finalist shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work, or meals) to any City employee, consultant, volunteer or official.

6.11 Eligibility / Disallowed Firms

The City has retained the following consulting firms to provide guidance in preparing this RFQ, the RFP, and advice related to financial, contractual, and technical matters. These firms are prohibited from joining any Proposer's team or otherwise assisting any Proposer with the procurement process.

- Brown and Caldwell
- Thaxton Parkinson PLLC

6.12 Involvement of Current and Former City Employees

A Proposer/Finalist (including officer, director, trustee, partner or employee) must not have a business interest or a close family or domestic relationship with any City official, officer or employee who was, is, or will be involved in selection, negotiation, drafting, signing, administration or evaluating Proposer/Finalist performance. If a Proposer/Finalist has any current or past (within the most recent 24 months) involvement with City employees, officials or volunteers that are working or assisting on this procurement or on the DB Contract, Proposer/Finalist must notify the Purchasing representative. The City shall make sole determination as to compliance.

6.13 Organizational Conflicts of Interests

Organizational Conflict of Interest means that because of other activities or relationships with other persons or entities, a person or entity:

1. Is unable or potentially unable to render impartial assistance or advice to the City; or
2. Is or might be otherwise impaired in its objectivity in performing the contract work; or
3. Has an unfair competitive advantage.

The integrated nature of the DB project delivery method creates the potential for Organizational Conflicts of Interest. Disclosure, evaluation, neutralization, and management of these conflicts and of the appearance of conflicts, is in the interest of the public, the City, and the consulting and construction communities.

The City will take steps to ensure that individuals involved in the preparation of the procurement documents (e.g., RFQ, RFP), evaluation of SOQs and Proposals, and selection of Design-Builder are not influenced by Organizational Conflicts of Interest, and that no Proposer/Finalist is given an unfair competitive advantage over another.

Proposers/Finalists are required to disclose all relevant facts concerning any past, present, or currently planned interests, activities, or relationships which may present an Organizational Conflict of Interest.

Proposers/Finalists shall state how their interests, activities, or relationships, or those of the chief executives, directors, Key Personnel, or any proposed consultant, subconsultant at any tier, contractor, or subcontractor at any tier may result, or could be viewed as, an organizational conflict.

If an Organizational Conflict of Interest is determined to exist, the City may, at its sole discretion, offer the Proposer/Finalist the opportunity to avoid or neutralize the Organizational Conflict of Interest; disqualify the Proposer/Finalist from further participation in the procurement; cancel this procurement; or, if Award has already occurred, declare the Proposal non-responsive and Award the DB Contract to the next highest scored Finalist, or cancel the DB Contract. If the Proposer/Finalist was aware of an Organizational Conflict of Interest prior to Award of a DB Contract and did not disclose the conflict to the City, the City may terminate the DB Contract for default.

6.14 Licensing and Registration

All Proposers must be registered pursuant to RCW 18.27 (Registration of Contractors) at the time of SOQ submittal.

Proposers must be registered with the City of Tacoma's Tax and License Division https://www.cityoftacoma.org/government/city_departments/finance/tax_and_license/ at the time of SOQ submittal.

Finalists must meet all the requirements pursuant to RCW 39.04.350 at the time of the proposal deadline or the City will find the Finalist non-responsible. All Finalists are encouraged to carefully review bidder responsibility criteria and ensure they are responsible bidders at the time of the proposal deadline.

6.15 Team Continuity and Changes to Organizational Structure

Part of the evaluation of SOQs will be based on the qualifications of the proposed Key Personnel. A Proposer/Finalist may not, without the written consent of the City, substitute, or change any of the Key Personnel for the duration of the selection process and for the duration of the DB Contract. Requests shall not be unreasonably withheld. All proposed Key Personnel are to be committed throughout the selection process and be available for the post-Proposal Interview. If a Proposer substitutes any Key Personnel prior to Award, the City reserves the right to revise its scoring of that team.

Requests for removal, replacements, and additions shall be submitted in writing. To qualify for approval, the written request shall document that the proposed removal, replacement, or addition will be equal to or better qualified than the Key Personnel provided in the SOQ. The City will use the criteria specified in the RFQ to evaluate all requests.

6.16 Requesting Disclosure of Public Records

This procurement is subject to RCW 39.10.470(3) which provides that all documents related to a procurement under RCW 39.10.330 are exempt from disclosure until the notification of the highest scoring Finalist is made in accordance with RCW 39.10.330(6) or the selection required under RCW 39.10.330(3).

6.17 Public Disclosure Proprietary and Confidential Material Must be Marked

Proposer submittals, all documents and records related to the submittal, and all other documents and records provided to the City by Proposer are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, City may be required, upon request, to disclose the Contract and documents or records 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 Proposer has complied with the requirements to mark records considered confidential or proprietary as such requirements are stated below, City agrees to provide Proposer 10 days written notice of impending release. Should legal action thereafter be initiated by Proposer to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Proposer, 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 Design-Builder took no action to oppose the release of information.

If Proposer provides City with records or information that Proposer considers confidential or proprietary, Proposer must mark all applicable pages or sections of said record(s) as "Confidential" or "Proprietary" (Attachment B). Further, in the case of records or information submitted in response to this RFQ or a subsequent RFP, an index must be provided indicating the affected pages or sections and locations of all such material identified Confidential or Proprietary. Information not included in the required index will not be reviewed for confidentiality or as proprietary before release. If Proposer fails to so mark or index Submittals and related records, then the City, upon request, may release said record(s) without the need to satisfy the requirements to mark confidential or proprietary content above; and Proposer expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said record(s). Proposer may not simply mark everything with a document header or footer, page stamp, or a generic statement that a document is non-disclosable, exempt, confidential, proprietary, or protected.

Submission of materials in response to City's RFQ and RFP shall constitute assent by Proposer to the foregoing procedure and Proposer shall have no claim against the City on account of actions taken pursuant to such procedure.

6.18 The City's Rights

Throughout the procurement process, the City reserves the right, at its sole discretion, to:

1. Appoint an SAC to review SOQs and Proposals;
2. Investigate the qualifications of any Proposer/Finalist;
3. Seek or obtain data related to the SOQs or Proposals from any source and consider such data in the evaluation of the SOQ/Proposal;
4. Require confirmation of information furnished by a Proposer/Finalist;
5. Hold meetings and conduct discussions and correspondence with the Proposers/Finalists to seek an improved understanding and evaluation of the SOQs or Proposals;
6. Require additional information from a Proposer/Finalist concerning its SOQ or Proposal;
7. Require additional evidence of qualifications to perform the work;

8. Modify the procurement process as permitted by law;
9. Waive minor deficiencies and irregularities in a SOQ or Proposal;
10. Reject any or all SOQs or Proposals;
11. Issue a new RFQ or RFP;
12. Conduct negotiations with the Highest Ranked Finalist prior to award of the Contract;
13. Cancel a Contract signed by the selected Design-Builder but not yet executed by the City; and
14. Not issue a Notice to Proceed after execution of the Contract.

6.19 Debriefing

Within ten (10) business days after execution of the DB Contract, the City will be available for an oral debriefing session upon written request made to the City's Purchasing representative by an authorized representative of an unsuccessful Proposer. Debriefings may include a review of the debriefed Proposer's points for each evaluation criteria, overall ranking, the strengths and weaknesses of its SOQ and Proposal, and presentation in the interview, and answers to questions regarding the selection process.

6.20 Protests

The City has rules to govern the rights and obligations of Proposers/Finalists that desire to submit a protest to this process. Please see the City website at Protest Policy for these rules. Proposers/Finalists have the obligation to be aware of and understand these rules, and to seek clarification as necessary from the City.

Protests shall be limited to the solicitation and/or evaluation process. No protest will be accepted when based solely on a challenge to the City's exercise of discretion or judgement in evaluation of SOQs or Proposals or in making a contract award recommendation. The City will not consider any protest based on items that could have been or should have been raised prior to the published deadline for submitting questions or requesting addenda.

Protests shall be filed and received by the City as instructed in notification letters sent to Proposers/Finalists of the City's selection decision.

In no event shall a protest be considered if all SOQs or Proposals are rejected.

Failure to comply with these protest procedures will render a protest waived.

END OF REQUEST FOR QUALIFICATIONS

Attachment A

Signature Page

SIGNATURE PAGE

CITY OF TACOMA
TACOMA WATER

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 Qualifications 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 QUALIFICATIONS SPECIFICATION NO. TW26-0186F
Trilogy Reservoir and Booster Pump Station

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.

Attachment B

Index of Confidential and Proprietary Information

Index of Confidential and Proprietary Information

Per Section 6.17 of the RFQ, in the index below, please provide the affected pages or sections and locations of all material identified Confidential or Proprietary.

Item Number (if applicable)	**Page Number**	**Section**	**Description**

Attachment C

Insurance Company Letter of Intent Regarding Required Insurance

Insurance Requirements

REQUEST FOR QUALIFICATIONS SPECIFICATION NO. TW26-0186F

Trilogy Reservoir and Booster Pump Station

Insurance Company
Letter of Intent Regarding Required Insurance

(To be typed on the Insurance Company's Letterhead)

[Attention]

Re: Trilogy Reservoir and Booster Pump Station – Letter of Intent to Insure

Dear [ ],

_____ ("Proposer") has submitted its Statement of Qualifications ("SOQ") in response to the Request for Qualifications ("RFQ") for the Trilogy Reservoir and Booster Pump Station ("Project"), issued by the City of Tacoma ("City") on September 30, 2026, as amended, pursuant to which the Proposer is seeking to be invited to submit a proposal to a subsequent Request for Proposals and be selected to enter into a Design-Build Contract ("Contract") with the City for this Project.

We have reviewed the Proposer's SOQ and the RFQ. We hereby certify that we intend to provide all required insurance as described in the RFQ in the event that the Proposer is selected for final negotiations and execution of the Contract by the City.

_____
Name of Insurance Company

_____
Name of Designated Signatory

_____
Signature

_____
Title

CITY OF TACOMA
INSURANCE REQUIREMENTS FOR CONTRACTS

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 **Both** CG 20 10, or CG 20 26, or CG 20 33, ***10 01 Editions***, or
- 1.3.7. CG 20 38 04 13 or the equivalent
- 1.3.8. 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 (Additional Insured, Waiver of Subrogation, Primary and non-contributory) specifically issued by the insurance carriers evidencing coverage on the certificate

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@tacoma.gov.

1.7. Contractor shall send a notice of cancellation or non-renewal of this required insurance within Thirty (30) calendar days to coi@tacoma.gov.

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 or products. 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) and/or Contractual Liability-Railroad using ISO form CG 24 17 10 01 or equivalent if Contractor is performing work within Fifty (50) feet of a City of Tacoma railroad right of way.

3.2 Commercial (Business) Automobile Liability Insurance

Contractor shall maintain Commercial Automobile Liability policy with limits not less than One Million Dollars ($1,000,000) each accident for bodily injury and property damage and bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles. Commercial Automobile Liability Insurance shall be written using ISO form CA 00 01 or equivalent. Contractor must also maintain MCS 90 and CA 99 48 endorsements or equivalent if "Pollutants" are to be transported unless in-transit Pollution coverage is covered under required Contractor's Pollution Liability Insurance.

3.3 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.

3.4 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.

3.5 Professional Liability Insurance or Errors and Omissions

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.

3.6 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.

3.7 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. Transportation Pollution Liability insurance, covering materials to be transported by Contractor pursuant to the contract, may be a required coverage depending on course and scope of the contract.

3.8 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.

3.9 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:

3.9.1 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

3.9.2 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

3.9.3 Include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site

3.9.4 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

3.9.5 Contain a Waiver of Subrogation provision whereby each insured waives their subrogation rights to the extent the loss is covered by this insurance
3.9.6 Grant permission to occupy, allowing the building or structure to be partially occupied prior to completion, without detrimental effect to the coverage provided
3.9.7 Include coverage for the testing and startup of the building's operating systems
3.9.8 Include coverage for City of Tacoma's loss of use or business interruption arising out of a covered loss which delays completion
3.9.9 Include resultant damage coverage for loss due to faulty workmanship and defective material
3.9.10 Include coverage for startup and testing
3.9.11 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.

3.10 Owners and Contractors Protective Liability Insurance

Contactor shall maintain during the performance of all work pursuant to the Contract, an ISO form Owners and Contractors Protective Liability policy, on which City of Tacoma shall be a named insured. Said policy shall provide coverage for bodily injury and property damage arising from the work to be performed under the Contract, and shall have policy limits of no less than Ten Million Dollars ($10,000,000) combined single limit of liability with a dedicated aggregate limit of no less than Ten Million Dollars ($10,000,000).

3.11 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.

Attachment D

Surety Letter of Intent Regarding Performance and Payment Bonds

REQUEST FOR QUALIFICATIONS SPECIFICATION NO. TW26-0186F

Trilogy Reservoir and Booster Pump Station

Surety Letter of Intent Regarding Performance and Payment Bonds

(To be typed on Surety's Letterhead)

[Attention]

Re: Trilogy Reservoir and Booster Pump Station – Letter of Intent to Issue Security

Dear [___],

_____("Proposer") has submitted its Statement of Qualifications ("SOQ") in response to the Request for Qualifications ("RFQ") for the Trilogy Reservoir and Booster Pump Station ("Project"), issued by the City of Tacoma ("City") on September 30, 2026, as amended, pursuant to which the Proposer is seeking to be invited to submit a proposal to a subsequent Request for Proposals and be selected to enter into a Design-Build Contract ("Contract") with the City for this Project.

We have reviewed the Proposer's SOQ and the RFQ. We hereby certify that, subject to our review of the terms of the final Contract, we intend to issue on behalf of the Proposer, as security for the performance of the Proposer's obligations under the Contract, a Performance Bond and a Payment Bond for the benefit of the City, in the event that the Proposer is selected for final negotiations and execution of the Contract. While we understand that the Guaranteed Maximum Price has not yet been determined, we understand that from the City's RFQ estimates that the Guaranteed Maximum Price will likely be in the range of $17,000,000.00. The Performance Bond and Payment Bond will each be in an amount equal to the Guaranteed Maximum Price under the Contract.

_____
Name of Surety

_____
Name of Designated Signatory

_____
Signature

_____
Title

Attachment E

Identification of Projects Table

Identification of Projects Table Form

Name of project	Owner and contact information	Location of project	Delivery method	Project description	Key team members involved in the project, including a description of their role and responsibilities on the project	Overall project value	Initial completion date and final completion date

Name of project	Owner and contact information	Location of project	Delivery method	Project description	Key team members involved in the project, including a description of their role and responsibilities on the project	Overall project value	Initial completion date and final completion date

Attachment F

Draft Contract

NOTE: THE CONTRACT IS BASED ON A MODIFIED VERSION OF THE DBIA #530 AND #535 DOCUMENTS.

Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price

DRAFT

Document No. 530

Third Edition, 2022

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Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ day of _____ in the year of 20_____, by and between the following parties, for services in connection with the Project identified below:

OWNER:
(Name and address)

City of Tacoma
Tacoma Public Utilities, dba Tacoma Water
3628 S 35th St
Tacoma, WA 98409

DESIGN-BUILDER:
(Name and address)

PROJECT:
(Include Project name and location as it will appear in the Contract Documents)

Trilogy Reservoir and Booster Pump Station

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

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Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, Contract Amendments, minor changes and Change Orders to this Agreement issued in accordance with the Contract Documents, including but not limited to the GMP Amendment in accordance with Section 6.6 herein, provided such Amendment is executed between the parties;

2.1.2 This Agreement, including all exhibits but excluding, if applicable, the GMP Amendment;

.1	Exhibit A:	Owner's Project Criteria
.2	Exhibit B1:	Insurance Exhibit – Design-Builder's Insurance Requirements
.3	Exhibit B2:	Payment Bond Form
.4	Exhibit B3:	Performance Bond Form
.5	Exhibit C:	Phase 1 and 2 Scope of Services
.6	Exhibit D:	Validation Period Level of Effort
.7	Exhibit E:	Hourly Rates, Unit Prices, and Allowance Items
.8	Exhibit F:	Contract Amendment Forms
.9	Exhibit G:	Change Order Forms

2.1.3 The General Conditions of Contract; and

2.1.4 Initial Project Scope, Design Submissions, the Design Log, and the Construction Documents prepared and approved in accordance with Exhibit C, the most recent approved documents governing over previously approved documents.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including but not limited to the various documents comprising the Owner's Project Criteria, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or after the parties' execution of the GMP Amendment, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

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3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract and Exhibit C.

3.4 If Owner's Project Criteria contain design or prescriptive specifications: Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design or prescriptive specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications, for the purposes of developing the Scope of Services for the Validation Period, the Validation Period Not to Exceed Amount, and the Design-Builder's Fee Percentage set forth in Design-Builder's Proposal. However, during the Validation Period in Phase 1, Design-Builder is required to perform an independent evaluation of all Owner Provided Information, including but not limited to any design or prescriptive specifications as required in Exhibit C. Further, regardless of the inclusion of design or prescriptive specifications or criteria, Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Owner's Project Criteria, the Initial Project Scope, the Basis of Design Documents as well as all applicable Legal Requirements. Provided Design-Builder complies with other requirements set forth in this Agreement such as those regarding notice of claims to Owner and identification of differing site conditions, Design-Builder shall be entitled to an adjustment in the Scope of Services for the Validation Period Scope, the Validation Period Not to Exceed Amount and/or the Design-Builder's Fee Percentage, but only to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification or prescriptive specifications that are inconsistent with meeting the performance requirements.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents. The Contract Documents may not be changed, modified, or altered except in writing signed by the parties.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including but not limited to such documents identified in the General Conditions of Contract and Exhibit C, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Interest in Work Product upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties") and on Owner's obligation to provide the indemnity set forth in Section 4.5 below.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 2.11B of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy, maintain, and furbish the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

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4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on Owner's obligation to provide the indemnity set forth in Section 4.5 below, and

4.3.2 Owner shall not be required to pay Design-Builder compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 2.13 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within ten (10) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 The Validation Period shall be completed no later than _____. The parties will establish a date for Phase 1 Completion at the conclusion of the Validation Period and for Substantial Completion of the entire Work during Phase 1 and as part of the GMP Amendment ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be determined during Phase 1. The Parties may establish separate Substantial Completion Dates for portions of the Project. For each Substantial Completion Date, the parties will comply with the process established in Exhibit C. Substantial Completion of the Project shall occur when the last portion of the Project has achieved Substantial Completion.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.13.E. of Exhibit C.

5.2.4 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

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5.4 Liquidated Damages. Not Used. See Section 2.47 of the General Conditions of Contract.

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s) for which liquidated damages are established.

5.6 Owner's Review Time. Unless otherwise set forth in the Contract Documents, the parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.6.1 Owner shall have a minimum of 14 days of receipt by Owner to review all Design Submissions, the Project Schedule and any updates thereto.

5.6.2 Owner shall make reasonable efforts to review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule and any updates thereto within 21 days of receipt by Owner. If Owner is unable to review and respond within the established timeline, Owner shall provide written notice to Design-Builder.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Section 1.13 of Exhibit C a contract price ("Contract Price") as set forth herein.

.1 Subject to the provisions of the Contract Documents, the Owner shall pay Design Builder for each Phase of the Project in accordance with Section 6.6 of the Agreement. Design Builder's compensation shall be subject to the Phase 1 NTE and the GMP, as applicable. The Phase 1 NTE, and the GMP, as applicable, shall be the maximum amount that the Design Builder may be compensated for the applicable Contract Phase, as amended pursuant to this Contract. The maximum amount that the Design Builder may be compensated pursuant to this Agreement for any given phase shall also be referred to as the Contract Price ("Contract Price"). The elements of the Design Builder's compensation, subject to the Contract Price are set forth herein. If the sum of the Design-Builder's compensation is less than the Phase 1 NTE and/or the GMP, as applicable, the savings shall go to the Owner. The Contract Price does not include Washington State Sales Tax, which shall be added to progress payments and paid by the Owner pursuant to the Contract.

.2 The parties acknowledge that the scope of work for this Project is not fully developed at the time of execution of the Agreement. The Design-Builder shall develop the Basis of Design Documents and other deliverables in Exhibit C such that the total compensation to the Design-Builder shall not exceed the GMP, unless the parties agree in writing to increase the GMP or the Design-Builder is otherwise entitled to an increase to the GMP pursuant to the terms of the Contract Documents.

6.2 Design-Builder's Fee Percentage.

6.2.1 Design-Builder's Fee Percentage shall be: _____ percent (_____%) of the Cost of the Work, as adjusted in accordance with the Contract Documents.

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6.2.1.1 The Design-Builder's Fee Percentage shall include the following items, which shall not be charged as a Cost of the Work.

.1 All profit of the Design-Builder for this Project;

.2 All regional and home office overhead expenses, including labor and materials, phone, facsimile, postage, internet service, and other incidental home office expenses attributed to Work on this Project

.3 All other costs and risk associated with the Project that are not set forth in the Cost of the Work.

6.2.1.2 The Design-Builder's Fee Percentage shall not be applied to the following:

.1 Design-Builder's costs for insurance, bonding, taxes, or permits; and

.2 The Design-Builder's Contingency as defined in Section 6.4.4.1.b.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably and necessarily incurred by Design-Builder in the proper performance of the Work. Unless included in the Lump Sum General Condition the Cost of the Work shall include only the following:

6.3.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's written agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.3.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.3.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit E and performing the function set forth in said Exhibit.

6.3.4 Unless included in Lump Sum General Conditions Costs, costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

6.3.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work. Such costs must be in accordance with Section 6.4.5.d below and approved in writing by Owner in advance.

6.3.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.
Contracts with Subcontractors and Design-Consultants that are paid on the basis of a Lump Sum must be approved in advance by the Owner, such approval shall not be unreasonably withheld. Payments to Subcontractors and Design-Consultants shall be consistent with the hourly rates set forth in Exhibit E.

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6.3.7 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work. The material costs shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in writing in advance by the Owner. Discounts and rebates based on prompt payment need not be included, however, if the Design-Builder offered but the Owner declined the opportunity to take advantage of such discount or rebate.

6.3.8 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

6.3.9 Costs of removal of debris and waste from the Site.

6.3.10 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

6.3.11 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work. The rental charge the applicable rental cost as established by the lower of the local prevailing rate published in the Rental Rate Blue Book by Data Quest or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. The rental rates are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use (and standing by for no longer than two (2) weeks) on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established, the Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

6.3.12 Premiums for insurance and bonds required by this Agreement or the performance of the Work are reimbursable; however, the Design-Builder's Fee Percentage shall not be applied to the cost for insurance and bond costs.

6.3.13 All fuel and utility costs incurred in the performance of the Work.

6.3.14 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work; however, the Design-Builder's Fee Percentage shall not be applied to the cost for taxes.

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6.3.15 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents; however, the Design-Builder's Fee Percentage shall not be applied to the cost permits.

6.3.16 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.3.17 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.3.18 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.3.19 Accounting and data processing costs related to the Work.

6.3.20 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner and not included in the Design-Builder's Contingency pursuant to Section 6.4.4.1.b.

6.4 Other Methods of Compensation

Within the Phase 1 NTE or the GMP, the parties may agree to the following methods of pricing Design-Builder's compensation.

6.4.1 Allowance Items and Allowance Values

.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Exhibit E or the GMP Amendment and are included within any established NTE and the GMP, as applicable.

.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance directly associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and Lump Sum General Conditions Costs, and Design-Builder's Fee Percentage are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

.5 Whenever the actual cost for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.1.4; however, Design-Builder must provide written notice of the difference between the actual cost and the Allowance Value pursuant to the Changes provisions in the General Conditions.

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The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.4.2 Not To Exceed Amounts

.1 The Owner and Design Builder may establish Not to Exceed ("NTE") Amounts for specific scopes of the Work ("NTE Scopes"). Any such NTE Amount will be negotiated between the Owner and Design-Builder pursuant to Section 6.6.1.4 of the Agreement and memorialized through an NTE Amendment in the form attached as Exhibit H.

.2 For each scope of work for which a NTE Amount has been established, the Design-Builder shall be reimbursed for the NTE Scope as a Cost of the Work; however, Design-Builder's compensation shall not exceed the NTE Amount without a written Change Order.

.3 Design-Builder shall not request reimbursement for costs that are within the NTE Scope unless those costs are identified in the Payment Application as subject to the NTE Amount. Except as allowed in Section 6.4.4.1.b, costs that are within the NTE Scope that are in excess of the NTE Amount shall be the sole responsibility of the Design-Builder.

.4 NTE Amounts and NTE Scopes may only be modified by Change Order pursuant to the General Conditions.

6.4.3 Lump Sums

.1 The Owner and Design-Builder may establish Lump Sums for specific scopes of the Work. Any such Lump Sum will be negotiated between the Owner and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:

a. A specific description of the scope of the Work that is subject to the Lump Sum "Lump Sum Scope";

b. An updated Schedule of Values that incorporates the Lump Sum; and

c. Any milestone dates associated with the with the Lump Sum Scope.

.2 For each Lump Sum Scope the parties have established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above based on the percentage of the Lump Sum Scope that has been completed, less the amount already paid to Design-Builder for the Work established in the Lump Sum.

.3 Design-Builder shall not request reimbursement for costs that are within the Lump Sum Scope unless those costs are identified in the Payment Application as subject to the Lump Sum. Except as allowed in Section 6.4.4.1.b, costs that are within the Lump Sum Scope that are in excess of the Lump Sum shall be the sole responsibility of the Design-Builder.

.4 Lump Sums may only be modified via Change Order pursuant to the General Conditions.

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6.4.4 Contingencies

.1 The Parties shall establish, as part of any NTE and the GMP, the following Contingencies which are available for Design-Builder's exclusive use for the below described unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents (collectively "Contingency Items"). Continency Items include the costs described below, which are subject to written approval by the Owner. The Owner may, in its discretion, approve other costs that may be reimbursed under a Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.

(a) Cost of the Work Contingency. The Cost of the Work Contingency is reimbursed as a Cost of the Work. The Cost of the Work Contingency is available to the Design-Builder for the following items:

(i) Trade buy-out differentials;

(ii) Escalation of materials; and

(iii) Other direct Costs of the Work that are not included in the Design-Builder's Contingency, but only with the prior written consent of the Owner.

(b) Design-Builder's Contingency. The Design-Builder's Contingency is available to the Design-Builder for items that are not excluded by Section 6.5 hereof and include but are not limited to the following items:

(i) Overtime or acceleration;

(ii) Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work, design errors or omissions (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained;

(iii) Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder;

(iv) Subcontractor or other tier defaults to the extent not compensated by any surety or bond; or

(v) Costs that are in excess of an NTE Sum or Lump Sum.

.2 Except as set forth in Section 6.4.4.3 below, the Design-Builder shall be reimbursed for Contingency Items in the same manner as set forth in Section 6.3

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of the Agreement; however, Design-Builder's compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design-Builder's Contingency in the applicable NTE or GMP without a written Change Order.

.3 Design-Builder shall not be entitled to apply the Design-Builder's Fee Percentage for items reimbursed under Section 6.4.4.1.b, the Design-Builder's Contingency.

.4 Prior to the final accounting, the Contingencies are not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase an NTE or GMP under the Contract Documents. Upon mutual agreement between the Design-Builder and the Owner, unspent amounts in a Contingency may be used to fund upgrades, betterments, revised Work or additional Work.

.5 Design-Builder shall provide Owner notice of all anticipated charges against the Contingencies and shall provide Owner as part of the monthly status report required by the General Conditions of Contract and Exhibit C an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from a Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.4.5 Lump Sum General Conditions Costs

.1 If the Parties enter into the GMP Amendment, the Parties shall establish an amount for the Lump Sum General Conditions Costs. The Parties shall determine the portions of the Cost of the Work set forth in Section 6.3 that are included in the Lump Sum General Conditions Costs, and the parties shall include a description of such costs in the GMP Amendment. Unless the Parties agree in writing otherwise, the costs that will be included in the Lump Sum General Conditions Costs are as follows:

a. Wages or salaries of Design-Builder's supervisory and administrative personnel for that portion of time that they are directly engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work. Specifically, the following personnel are included in the Lump Sum General Conditions Costs:

i. Project Executive
ii. Project Manger
iii. Superintendent and/or Construction Manager
iv. Quality Control Manager
v. Project Accountant
vi. Project Field Engineer and/or Design Manager
vii. Project Controls
viii. Project Scheduler
ix. Safety Manager
x. Diversity Manager
xi. Project Estimator

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b. Wages or salaries of Design Builder's personnel stationed at Design Builder's principal or branch offices, but only to the extent said personnel are approved in advance of the performance of the Work in writing by the Owner.

c. Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under this Section.

d. The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work and with the prior written consent of the Owner as set forth below:

   i. Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at www.gsa.gov.

   ii. Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed the Federal Per Diem maximum lodging rate for the location where the work is being performed.

   iii. Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the United States Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car (including fuel), at cost, in the ratio of one mid-size class rental car for each three Contractor's personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the Owner unless such options are approved in advance by the Owner's Representative. Appropriate insurance coverage should be included in the Contractor's insurance policies.

e. The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses. Reasonable petty cash expenses shall not exceed $2,000 per month without prior written approval from the Owner.

f. Accounting and data processing costs related to the Work.

g. Fees paid by the Design-Builder for the approval of Statements of Intent to Pay Prevailing Wages and certification of Affidavits of Wages Paid by the industrial statistician of the State Department of Labor and Industries. The Design-Builder will remain responsible for the actual submittal of the documents to the industrial statistician and the determination of the locality of the work to confirm the appropriate classification of work.

   In order to receive this reimbursement, the Design-Builder will be required to submit to Owner a list of its subcontractors at all tiers and have their Statements of Intent to Pay Prevailing Wages on file with the Owner.

h. General administrative costs not specifically listed in this subsection, including but not limited to the following:

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i. Shop Drawing Reproduction
ii. Construction Schedule & Updates
iii. Safety/Security
iv. Field Office Set-up (mobilization/demobilization)
v. Office Supplies
vi. Telephone and communications systems, including but not limited to cellular phones and radio systems
vii. Computer Network/System Set-up, maintenance and support, including but not limited to software and related licenses for computers and building information modeling systems
viii. Courier Service
ix. Postage (Fed-X, USPS)
x. Furniture/Equipment, including but not limited to printers, scanners, and associate costs
xi. Office Cleaning
xii. Project Superintendent Vehicle
xiii. Computers
xiv. Copy Machine
xv. Temporary Electric Hook-up/Removal
xvi. Temporary Electric Material
xvii. Project Signage
xviii. Temporary Water Hook-up/Removal
xix. Drinking Water & Supplies
xx. Chemical Toilets
xxi. O&M Manuals
xxii. Project Record Documents
xxiii. Field Engineering/Layout Survey

.2 For the Costs of the Work that are included in the Lump Sum General Conditions Costs, the Design-Builder shall no longer be entitled to be reimbursed separately for such costs as part of the Cost of the Work, and the Design Builder's sole compensation for the costs set forth in the identified General Conditions in this Section 6.4.5 shall be through the Lump Sum General Conditions Costs.

.3 The Owner shall have the right to examine the back-up documentation establishing the Lump Sum General Conditions Costs, including but not limited to all estimates, proposals, contracts and other financial documentation on a transparent basis.

.4 The Lump Sum General Conditions Costs shall only be modified if the Design-Builder is entitled to compensation for a delay pursuant to Section 2.07 of the General Conditions. Any modification to the Lump Sum General Conditions Costs shall be calculated as follows:

a. The Design Builder shall be entitled to receive a liquidated daily rate for extended General Conditions Costs ("Design-Builder's Delay Rate") for each day that the Contract Time for Substantial Completion is extended pursuant to Section 2.07 of the General Conditions.

    i. The Design-Builder's Delay Rate shall be calculated by dividing the Lump Sum General Conditions Costs by the number of days in the Contract Time set forth in the GMP Amendment for Phase 2.

    ii. Then, the Design-Builder's Delay Rate is multiplied by the number of days that the Contract Time is extended for Design-Builder's Delay, subject to a determination of entitlement pursuant to Section 2.08 of the General Conditions.

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iii. The result from the Design-Builder's Delay Rate multiplied by the number of days the project is delayed pursuant to Section 2.07 of the General Conditions is the Extended General Conditions Costs which shall be added to the Lump Sum General Conditions Costs by Change Order and paid to the Design Builder pursuant to the Schedule of Values, subject to a determination of entitlement pursuant to Section 2.07 of the General Conditions.

b. The Design-Builder's Delay Rate shall not apply to delays occurring after Substantial Completion is achieved.

c. The Parties agree that determining the Design Builder's damages for delay in Phase 2 would be extremely difficult or impracticable to determine and that the Design-Builder's Delay Rate, as calculated in this Section 6.4.5.4, is a reasonable estimate of and reasonable sum for such damages; therefore, the Design-Builder's Delay Rate shall be payable to the Design Builder as liquidated damages and not as a penalty.

6.4.6 Unit Prices and Hourly Rates

.1 Any Unit Prices and Hourly Rates shall be agreed upon in writing and set forth in Exhibit E to the Agreement. Design-Builder shall not charge more than a specified Unit Price or Hourly Rate than the amount set forth in Exhibit E, as modified through the Contract Documents.

.2 Once established, Unit Prices and Hourly Rates shall not be subject to audit and may only be changed by Change Order.

.3 Design-Builder must maintain a record of the number of Unit Prices and Hours billed using Hourly Rates for review by Owner.

6.5 Non-Reimbursable Costs.

6.5.1 The following shall not be deemed as costs of the Work:

.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

.2 Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

.3 The cost of Design-Builder's capital used in the performance of the Work.

.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 Project Phases

6.6.1 Phase 1

.1 **Compensation.** During Phase 1, the Design Builder shall be compensated for the following:

a. The Cost of the Work set forth in Section 6.3;

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b. Design-Builder's Fee Percentage set forth in Section 6.2.1 multiplied by the Cost of the Work, less insurance and bonding costs and taxes costs which shall not be multiplied by the Design-Builder's Fee Percentage; and

c Contingency Items charged under Section 6.4.4.1.b.

.2 Validation Period. At the beginning of the Project, Design-Builder shall engage in Validation of the Project information as set forth in Exhibit C, Section 2.02 (the "Validation Period").

a. **Validation Period Not to Exceed Amount.** The Validation Period Not to Exceed Amount is _____ dollars ($_____). Design-Builder guarantees that its compensation during the Validation Period of Phase 1 Project shall not exceed the Validation Period Not to Exceed Amount ("Validation Period NTE") established by the Parties. Documents used as a basis for the Validation Period NTE shall be identified in an Exhibit. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceed the applicable Validation Period NTE, as adjusted in accordance with the Contract Documents.

b. **Validation Period Completion Date.** The Validation Period Completion Date is _____.

c. **Development of Phase 1 Commercial Terms.** During the Validation Period, the parties will collaboratively develop the Phase 1 Not to Exceed Amount ("Phase 1 NTE"), Phase 1 Completion Date, the Phase 1 Scope of Work, a Target Budget, a Target Schedule, the Initial Project Scope, and other Submittals for the Project as set forth in Exhibit C. At the conclusion of the applicable Validation Period, provided the parties agree on the applicable terms, the parties shall enter into a Contract Amendment to establish the Phase 1 NTE, the Phase 1 Completion Date, the Target Budget, the Target Schedule, and the Initial Project Scope and to finalize the other Submittals required by Exhibit C.

.3 Design Development Period. Provided the parties enter into a Contract Amendment establishing the Commercial Terms of the Design Development Period, Design-Builder shall engage in the remainder of the Phase 1 activities as set forth in the Contract Documents and the applicable Contract Amendment for the Project.

a. **Compensation during the Design Development Period.** Design-Builder shall be compensated during the Design Development Period in the same manner as the Validation Period set forth in Section 6.2.2.1 above.
Design-Builder guarantees that its compensation for the remainder of Phase 1 shall not exceed the Phase 1 NTE in the applicable Contract Amendment. Documents used as a basis for a Phase 1 NTE shall be identified as an Exhibit to the Contract Amendment. Design-Builder agrees that it will be responsible for paying all costs of completing the Work which exceeds the applicable Phase 1 NTE, as adjusted in accordance with the Contract Documents.

b. **Development of the GMP Proposal.** During the remainder of Phase 1, the parties will collaboratively develop the GMP Proposal for the Project pursuant to Exhibit C.

.4 GMP Proposal. On the date set forth in the Project Schedule, Design-Builder shall submit a GMP Proposal to Owner for the Project which shall include the deliverables set

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forth in Exhibit C, unless the parties mutually agree otherwise. The GMP Proposal shall include all Work necessary to complete the Project.

a. Submission of the GMP Proposal. Submission of the GMP Proposal constitutes Design-Builder's representation and agreement that it has adequately investigated the site and the project parameters, the Project is adequately defined, the Basis of Design Documents are sufficiently defined to provide an accurate GMP and Project Schedule for the Project, and subject to the assumptions and clarifications in the GMP Proposal, the Project is sufficiently clear and understandable for the Design-Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the Original GMP of the Project, except as amended pursuant to the Contract Documents.

b. Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal. To assist in the Owner's review of the GMP Proposal, the Design Builder shall, upon the Owner's Request, provide all information, including but not limited to all data, reports, cost analysis, pricing, designs and specifications on which the Design Builder relied or used as a basis for the GMP Proposal. The Owner shall make its best efforts to review any revised GMP Proposal within thirty (30) days of receipt of the revised GMP Proposal.

c. Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the terms of the GMP Proposal shall be set forth in the GMP Amendment. At the Owner's option, the GMP for the Project may be converted into a Lump Sum.

d. Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

i. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.1.4.c above;

ii. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof and Section 2.11.B of the General Conditions.

e. Performance of Work After Submission of GMP Proposal. The Design-Builder shall not perform any Work after the submission of the GMP Proposal until the Owner has approved and signed the GMP Amendment unless the Design-Builder obtains the Owner's prior, written consent to perform such Work and only to the extent that such Work is expressly described in writing in such written consent. If Design-Builder performs such Work, Design-Builder shall be compensated pursuant to the written approval of the Owner.

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.5 Early GMPs. The parties may agree to establish a GMP for portions of the Work prior to establishing the GMP for the entire Project "Early GMP".

a. For each Early GMP, the Design-Builder will follow the process set forth in 6.6.1.4 above to establish the Early GMP, the scope associated with the Early GMP (the "Early GMP Scope"), and the schedule associated with the Early GMP Scope ("the Early GMP Schedule").

b. For each Early GMP, the parties shall determine the deliverables applicable to each Early GMP Proposal prior to its submission.

c. Early GMPs will be established through an Early GMP Amendment, which shall follow the same form as Exhibit F.

6.6.2 Phase 2, Post GMP Period

.1 Compensation. During Phase 2 for the Project, the Design Builder shall be compensated for the following, all subject to the GMP for the Project:

a. The Cost of the Work set forth in Section 6.3;

b. Design-Builder's Fee Percentage established pursuant to Section 6.2;

c. Any Lump Sum amounts established pursuant to Section 6.4.3;

d. Contingency Items charged under Section 6.4.4.1.b;

e. Design-Builder's Lump Sum General Conditions Costs established pursuant to Section 6.4.5;

f. Any Allowances established by the Parties in the GMP Amendment

g. Any Incentive payments established by the Parties in the GMP Amendment.

.2 GMP The Guaranteed Maximum Price ("GMP") is the total compensation to the Design-Builder as set forth in the GMP Amendment that shall establish a binding GMP between the Parties for the Project. Design Builder agrees that it will be responsible for paying all costs of completing the Phase 2 Work which exceed the GMP for the Project, as adjusted in accordance with the Contract Documents. Execution of a GMP Amendment constitutes Design Builder's representation and agreement to the following:

a. The Project is adequately defined, that the Basis of Design Documents are sufficiently defined to provide an accurate GMP for the Project;

b. The Project is sufficiently clear and understandable for the Design Builder to perform the Work in accordance with the Contract Documents for an amount that will not exceed the applicable GMP and within the Project Schedule; and

c. If the Work cannot be completed for the agreed GMP, any additional costs shall be the responsibility of the Design Builder, and Design Builder hereby assumes liability for such costs without reimbursement by the Owner.

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.3 If the parties decide to convert any GMP into a Lump Sum, Design-Builder shall be compensated pursuant to Section 6.4.3 of the Agreement.

6.6.3 Savings and Incentives.

.1 If the sum of the actual Design-Builder's Compensation established under Section 6.1 hereof is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall go 100% to the Owner.

.2 The Parties may establish Incentive payments to the Design-Builder as part of the GMP Amendment.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the fifteenth (15th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Section 1.13 of Exhibit C.

7.1.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Section 1.13 of Exhibit C, but in each case less the total of payments previously made, and less amounts properly withheld under Section 1.13 of Exhibit C.

7.1.3 If the parties have established a Lump Sum, the Design-Builder shall be paid pursuant to Section 6.4.3 of the Agreement.

7.2 Retainage on Progress Payments.

7.2.1 The Owner will withhold retainage pursuant to RCW Chapter 60.28, and Owner shall release such retainage pursuant to state law. Pursuant to RCW Chapter 60.28, the Design-Builder may submit a bond in lieu of the retainage that the Owner would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on form acceptable to the Owner. In the event the Design-Builder fails at any time to pay persons protected under RCW Chapter 60.28 or the Owner has reason to believe that the Owner or other obligee under the bond has a claim against the retainage or for other good cause, the Owner may, at its option, resume retaining from monies earned by the Design-Builder in such amount as it would otherwise be entitled to retain had the bond not been accepted. Notwithstanding the Owner's resuming such retainage, said bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Design-Builder.
After the Design-Builder has paid protected persons or otherwise cured any default, the Owner may, at its option, again release retainage pursuant to the terms of the bond. Any costs associated with the Bond in Lieu of Retainage shall be Design-Builder's sole responsibility.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 1.13 of Exhibit C. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment pursuant and subject to RCW Chapter 60.28 and RCW Chapter 39.08 and all applicable laws and regulations, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 1.13 of Exhibit C.

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7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the statutory rate of interest.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an Open Book Basis relative to Costs of the Work and all other reimbursable costs set forth in the Agreement.

7.5.1 Design-Builder and all subcontractors and subconsultants shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents on an Open Book Basis. During the performance of the Work and for a period of six (6) years after Final Payment, Owner and Owner's accountants and auditors, the Washington State Auditor, and other governmental agencies entitled to audit the records shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's and all subcontractors and subconsultants of any tier records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of six (6) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience
Not Used - See Section 2.11.B of the General Conditions of Contract

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes: *(Identify individual's name, title, address and telephone numbers.)*

9.1.2 Owner designates the individual listed below as its Owner's Representative, who shall be responsible for providing Owner supplied information in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall be responsible for provided notices to the Design-Builder and shall communicate regularly with the Design-Builder. : *(Identify individual's name, title, address and telephone numbers.)*

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes: *(Identify individual's name, title, address and telephone numbers.)*

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9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 1.04.A of Exhibit C: *(Identify individual's name, title, address and telephone numbers.)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto.

10.2 Bonds and Other Performance Security. Not Used. Bonds shall be provided pursuant to Section 2.01.B of the General Conditions.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

11.2 Off Site Prefabricated Items.

11.2.1 In accordance with RCW 39.04.370, Design-Builder shall submit certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington as a part of the Affidavit of Wages Paid form filed with the Washington State Department of Labor and Industries.

11.3 Nondiscrimination. No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of age, sex, race, color, religion, creed, marital status, familial status, sexual orientation, national origin, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability, or use of a service animal by a person with disabilities. Specifically, and without limitation, Design-Builder and its subcontractors and subconsultants of any tier are prohibited from the following:

11.3.1 Refusing to hire any person because of age, sex, marital status, sexual orientation, gender identity, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation;

11.3.2 Discharging or barring any person from employment because of age, sex, marital status, sexual orientation, gender identity, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability;

11.3.3 Discriminating against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, gender identity, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military

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status, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes; or

11.3.4 Printing or circulating, or causing to be printed or circulated, any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, gender identity, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, That nothing contained herein shall prohibit advertising in a foreign language.

11.4 Business Registration Requirement. Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers are properly licensed to perform the work for which they are contracted and have all applicable business licenses, including but not limited to any licenses or registrations required by the State of Washington and any other regulatory authority. Design-Builder shall be solely responsible for contacting the State of Washington Business License Services at http://bls.dor.wa.gov or 1-800-451-7985 to obtain a business registration.

11.5 Contractor's Registration Requirement. Design-Builder represents and warrants that it and all of its subconsultants, subcontractors and suppliers performing construction work are properly licensed pursuant to RCW 18.27.

11.6 Submission of Information Regarding Utilization and Inclusion

11.6.1 Design-Builder and its subcontractors and designers shall submit to Owner and project information required by RCW 39.10.320 regarding plans for inclusion of underutilized businesses as subcontractors and suppliers including, but not limited to, businesses certified by the Office of Minority and Women Business Enterprises ("OMWBE"), Veteran Certified Businesses, and Small Businesses.

11.6.2 Design-Builder shall submit to Owner and the Washington State Office of Minority and Women's Business Enterprises its utilization of businesses certified by the OMWBE and Veteran Certified Businesses as required in RCW 39.10.330(8).

11.6 No Party is Drafter

Each party has had an opportunity to negotiate the provisions of this Agreement and its Exhibits and attachments, and neither party shall be construed as the drafter.

11.7 Successorship

Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

11.8 Headings

The headings used in any Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

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11.9 Further Assurances

Design-Builder shall promptly execute and deliver to Owner all such instruments and other documents and assurances as are reasonably requested by Owner to further evidence the obligations of Design-Builder hereunder, including assurances regarding assignments of Subcontracts contained herein.

11.10 Turn Over of Designs and Drawings

Upon final acceptance or termination of this Contract, the Owner shall be entitled to, and the Design-Builder shall turn over to the Owner, all such designs, drawings, tracings and the like prepared pursuant to this Contract, except for record copies, which the Design-Builder may use for its internal reference purposes subject to the nondisclosure provisions of this Contract, which shall survive the completion or termination hereof.

11.11 Limitation on Third Party Beneficiaries

Except as expressly provided in this Contract (such as warranty and indemnity provisions), it is not intended by any of the provisions of this Contract to create any other third party beneficiary under this Contract or to authorize anyone not a Party to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. Except as otherwise provided in this Section 11.11, the duties, obligations and responsibilities of the Parties pursuant to this Contract with respect to third parties shall remain as imposed by law.

11.12 Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

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In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:	**DESIGN-BUILDER:**
_____	_____
(Name of Owner)	*(Name of Design-Builder)*
_____	_____
(Signature)	*(Signature)*
_____	_____
(Printed Name)	*(Printed Name)*
_____	_____
(Title)	*(Title)*
Date: _____	Date: _____

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.

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NOTE TO PROPOSERS: This Exhibit C will be negotiated with the successful Design-Builder to reflect the Design-Builder's plan for the Project. Parts 1 and 2 of Exhibit C are provided with the RFQ. The remainder of Exhibit C will be provided with the RFP.

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PART 1 APPLICABLE TO ALL PHASES

1.01 INTEGRATED DELIVERY

A. Owner and Design-Builder commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

B. The Parties wish to fully embrace the principles of collaboration and integrated delivery in the performance of the Work of this Project. Integrated delivery emphasizes a cooperative approach to problem solving involving all key parties to the Project: the Owner, Design-Builder, Designer and principal Subcontractors (electrical, mechanical and others as the Design-Builder and the Owner jointly agree are appropriate). Toward that end, the Parties agree to employ the following techniques to maximize efficiency and minimize waste:

1. Create a culture of open and honest communication throughout the course of the Project;
2. Resolve disputes at the lowest possible level;
3. Integrate the design and construction team (including key specialty contractors and trade partners) as early as possible into the design process;
4. Utilize lean construction methods efficiently and effectively;
5. Establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than to the benefit of individual parties;
6. Develop the Project consistent with the Project Goals; and
7. Establish business terms that allow for equitable shared risk and reward for the parties who are members of the Design-Build Team.

1.02 PROJECT GOALS [Not Used]

1.03 DEFINITIONS

A. The following definitions supplement the definitions in the General Conditions of Contract.

1. *Allowance Item* is a description of the subject of an Allowance Value established pursuant to Section 6.4.1 of the Agreement.
2. *Allowance Value* is the amount established for an Allowance Item pursuant to Section 6.4.1 of the Agreement.
3. *Application for Payment* is the Submittal from the Design-Builder supporting payment pursuant to Article 7 of the Agreement.
4. *Basis of Design Documents* are the documents set forth in Section 3.04.F of Exhibit C.
5. *Commercial Terms* are any documents that establish an agreement between the parties regarding a maximum cost, a scope of work, or a schedule, including but not limited to the GMP, an Early GMP, Not to Exceed Amount, Lump Sum, Hourly Rate, Contract Time, Target Budget, Target Schedule, Owner's Project Criteria, Initial Project Scope, or Basis of Design Documents.
6. *Contingencies* are the amounts available for Design-Builder's use and are defined in Section 6.4.4 of the Agreement. The Cost of the Work Contingency is defined in Section 6.4.4.a. The Design-Builder's Contingency is defined in Section 6.4.4.b.
7. *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Owner's Project Criteria and the Basis of Design Documents unless a deviation from the Owner's Project Criteria or Basis of Design Documents (as applicable) is specifically set forth in a Change Order

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executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 1.05 herein.

8. *Contract Amendment* is a written amendment to the Contract Documents that incorporates additional terms into the Contract Documents. Later Contract Amendments govern over earlier Contract Amendments.

9. *Contract Price* shall mean the maximum amount that the Design-Builder may be compensated pursuant to this Agreement for any given phase.

10. *Contract Time* consists of the dates set forth in Article 5 of the Agreement.

11. *Date of Commencement* is the date set forth in Section 5.1 of the Agreement.

12. *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

13. *Design-Builder's Delay Rate* is the amount established in Section 6.4.5.4 of the Agreement.

14. *Design-Builder's Fee Percentage* is the percentage set forth in Section 6.2.1 of the Agreement.

15. *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

16. *Design Log* is a log of Reliable Decisions agreed upon by the parties. The Design Log supplements the Owner's Project Criteria, the Initial Project Scope, and Basis of Design Documents, as applicable.

17. *Design Development Period* is the period in Phase 1 that is described in Section 6.6 of the Agreement.

18. *Design Submission or Submittal* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

19. *Early GMP* is a GMP for a portion of the Work that is established prior to the establishment of the GMP for the entire Work as set forth in Section 6.6.1.5 of the Agreement.

20. *Early GMP Schedule* is the Schedule for progress and completion of an Early GMP Scope.

21. *Early GMP Scope* is the Scope of Work for an Early GMP.

22. *Extended General Conditions Costs* the result from the Design-Builder's Delay Rate multiplied by the number of days the project is delayed pursuant to Section 2.07 of the General Conditions as set forth in Section 6.4.5.4 of the Agreement.

23. *Final Completion* of the entire Project shall be deemed to have occurred when all of the following have occurred:

    a. All requirements for Final Completion of the Project have been achieved and Punch List Completion has been fully satisfied;

    b. Owner shall have received and accepted a final certificate of occupancy allowing use and occupancy of the Project;

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c. Owner shall have received and accepted all Construction Documents, Record Documents, as-built schedule, right-of-way record maps, surveys, test data and other deliverables required under the Contract Documents;

d. Design-Builder shall have delivered all operating manuals, warranties and other deliverables required by the Contract Documents;

e. All special tools, equipment, furnishings and supplies purchased and/or used by Design-Builder as provided in this Contract have been delivered to Owner and all replacement spare parts shall have been purchased and delivered to Owner free and clear of Liens;

f. All of Design-Builder's obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Completion) shall have been satisfied in full or waived in writing by Owner;

g. Design-Builder shall have delivered to Owner a Notice of Final Completion for the Project; and

h. All other conditions to Final Completion in this Contract shall have been satisfied.

(1) Owner will issue a Certificate of Final Acceptance to Design-Builder at such time as Owner determines that Final Acceptance has occurred.

(2) Final Completion will not prevent Owner from correcting any measurement, estimate or certificate made before or after completion of the Work, nor shall it prevent Owner from recovering from Design-Builder, its Surety(ies), or other provider of performance security or any combination of the foregoing, overpayment or other costs sustained for failure of Design-Builder to fulfill the obligations under the Contract Documents.

24. *GMP Amendment means an amendment to the Agreement entered into by the parties at the conclusion of Phase 1 that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties.*

25. *GMP Proposal* or *Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of the Agreement.

26. *Guaranteed Maximum Price* (“GMP”) is the total compensation to the Design-Builder as set forth in the GMP Amendment that shall establish a binding GMP between the Parties for the Project pursuant to Article 6 of the Agreement.

27. *Hourly Rates* are the amounts per hour established pursuant to Section 6.4.6 of the Agreement.

28. *Initial Project Scope* is the scope of the project that the parties collaboratively establish at the conclusion of the Validation Period that represents the parties’ best determination of an achievable project scope within the Target Budget.

29. *Key Personnel* mean those individuals and position descriptions identified by Design-Builder during the project procurement and other individuals identified as Key Team Members with the agreement of both parties, such agreement shall not be unreasonably withheld.

30. *Liens* mean any pledge, Lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).

31. *Lump Sum* is the amount established by the Parties pursuant to Section 6.4.3 of the Agreement.

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32. *Lump Sum General Conditions Costs* is the amount established by the Parties pursuant to Section 6.4.5 of the Agreement.

33. *Lump Sum Scope* is the description of the scope of the Work subject to the Lump Sum established pursuant to Section 6.4.3 of the Agreement.

34. *Nonconforming Work* is any Work that is found to not be in conformance with the Contract Documents.

35. *Not to Exceed Amount* is an amount that is established pursuant to Section 6.4.2 of the Agreement.

36. *Not to Exceed Scope* is the scope of Work subject to the Not to Exceed Amount established by the parties pursuant to Section 6.4.2 of the Agreement.

37. *OMWBE* means the Washington State Office of Minority and Women Owned Business Enterprises.

38. *Open Book Basis* means providing the Owner all underlying assumptions, price quotes and data associated with pricing or compensation (whether of the Design-Builder or the Owner) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by the Owner to satisfy itself as to the reasonableness of the amount.

39. *Original GMP is the GMP set forth in the GMP Amendment***.**

40. *Owner's Budget* is the amount of money set aside by the Owner for the Project.

41. *Owner's Project Criteria* are developed by or for Owner to describe Owner's technical requirements and objectives for the Project, including use, space, price, time, site, capacity, operability, and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

42. *Owner Provided Information* is any document or information provided by the Owner at any time, including but not limited to the Request for Qualifications, Request for Proposals, or Owner's Project Criteria.

43. *Project Schedule* is the schedule provided by the Design-Builder and approved by the Owner pursuant to the General Conditions and Exhibit C.

44. *Reliable Decision* is a decision, development, or election that refines the Owner's Project Criteria or Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Decision cannot change the Owner's Project Criteria or Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

45. *Schedule of Values* is the submission required pursuant to Section 3.05.B herein.

1. *Schematic Design* is the period in Phase 1 that initiates design development based on the design direction in the Validation Report.

46. *Site* are those areas designated in writing by the Owner for performance of the Work and such additional areas as may, from time to time, be designated in writing by the Owner for the Design-Builder's use in performance of the Work. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the prevailing wage requirements, and payment for use of equipment, the term "Site" shall also include (a) the field office sites, (b)

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any property used for bonded storage of material for the Project approved by the Owner, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by the Design-Builder or Subcontractors covered by the worker's compensation policy included in the insurance described in Exhibit B, but excluding any permanent locations of Design-Builder or such covered Subcontractors.

47. *Small Businesses are* those defined by RCW 39.04.010.

48. *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen and suppliers.

49. *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include Design Subconsultants, materialmen and suppliers.

50. *Substantial Completion* or *Substantially Complete* means:

    a. The Design-Builder has completed the Work or designated portion of the Work, in accordance with the Contract, such that the Project is in a condition that it can be used in a normal and safe manner, subject only to Punch List items and other Work that do not affect the ability to occupy the Project or designated portion thereof for such normal use and operation;

    b. The Project or designated portion thereof is sufficiently completed in accordance with the Contract, as modified by any executed Change Orders, so that it can be used for its intended purpose;

    c. All conditions to acceptance by utility Owners have been satisfied or waived, and any waivers approved by the Owner, in its sole discretion;

    d. The Design-Builder has completed commissioning the Work or designated portion thereof in accordance with the commissioning requirements in the Contract Closeout Plan set forth in Section 3.12 of Exhibit C, and the commissioning tests have been successfully performed and satisfied (subject to such commissioning which is identified in the commissioning requirements to be conducted after Substantial Completion);

    e. The Design-Builder has successfully passed a Performance Test consistent with the requirements of the Agreement, Exhibit A, and the Design-Builder's approved Performance Test Plan;

    f. To the extent applicable, all authorities having jurisdiction have confirmed and issued all pertinent approvals or other documents in respect thereof that the building and structures on the Site applicable to the portion of the Work for which Substantial Completion is sought are ready for occupancy; and

    g. All other conditions to Substantial Completion in the Contract shall have been satisfied.

51. *Target Budget* is the estimate for the GMP that is collaboratively established by the parties after the conclusion of the Validation Period that represents the parties' best determination of an achievable GMP.

52. *Target Schedule* is the estimated Project Schedule collaboratively established by the parties at the conclusion of the Validation Period that represents the parties' best determination of an achievable Schedule.

53. *Trend* is an issue identified in the Trend Log.

54. *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.

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55. *Underutilized Business* means businesses that are traditionally underutilized in the construction industry including but not limited to businesses certified by OMWBE, Veteran Owned Businesses, as well as small, regional, and local businesses.

56. *Unit Prices* are the prices established for specific units of Work as set forth in Section 6.4.6 of the Agreement.

57. *Unusually Adverse Weather* means weather that satisfies all of the following conditions:

    a. Unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred and could not have been reasonably anticipated, documented by 10-year climatological data obtained by the U.S. National Oceanic and Atmospheric Administration from the nearest nationally recognized reporting station to the Site;

    b. Unanticipated for the time of year;

    c. Occurring at the Site; and

    d. Having a materially adverse effect on the scheduled Work.

58. *Validation Period* is the time period established in Section 6.6 of the Agreement to accomplish the tasks set forth in Exhibit C, Section 2.02 for the Project.

59. *Veteran Owned Business* is one certified by the Washington State Office of Veterans' Affairs.

60. *Work Group* is a team of individuals with representatives from both the Owner and Design-Build Team that are responsible for developing Design Submissions, updated estimates, and updated schedules for the applicable Design Submissions Package.

1.04 GENERAL SERVICES

A. Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

B. The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement any procedures additional to Exhibit C, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

C. Representatives of the Design-Build Team, including at a minimum the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the information required in Exhibit C and any issues that may have a material effect on the Project. For all meetings, the Design-Build Team shall issue meeting minutes within three days of meeting.

D. Design-Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Design Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which the Owner designates in writing. The Owner may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to the Owner for entering into the Contract with Design Builder and may not be withdrawn prior to Final Completion.

1.05 DESIGN SERVICES

A. **General**

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1. Owner does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Agreement, Design-Builder acknowledges that Owner has no such intent. Design-Builder shall, consistent with applicable state licensing laws, furnish through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2. Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants.

   To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

3. Any references in the Contract Documents to Design-Builder's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that Design-Builder shall "furnish" the design for the Project.

B. **Design Submissions**

1. Design-Builder shall provide the Design Submissions set forth in the Contract Documents. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2. Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section as well as the Commercial Terms. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time and are consistent with the Owner's Project Criteria, the Design Log and Basis of Design Documents, as applicable. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Section 2.18 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

3. On or about the date for submission of a Design Submission, Design-Builder and Owner

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shall meet and confer about the Design Submission, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under shall be processed in accordance with Section 2.18 of the General Conditions. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

4. Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

5. If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Section 2.18 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Section 2.18 of the General Conditions.

6. The Design-Builder shall provide an updated cost model for the Project periodically, including at each major design milestone (30%, 60%, GMP Submittal), at any key owner decision points, when a significant change in the Project occurs, or as requested by the Owner. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.

C. **Design Log**

1. A Design Log, including a full listing of Reliable Decisions and all changes to the Initial Project Scope and Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.

2. Both parties must agree to include a Reliable Decision in the Design Log.

3. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.

4. Once a Reliable Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Initial Project Scope or Basis of Design Documents.

5. The Design Log is for the sole purpose of tracking the development of the Design Submissions.

6. If a Reliable Decision will cause a change in the Owner's Project Criteria, the Initial Project Scope or Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Section 2.18 of the General Conditions.

D. **Trend Log**

1. If either party does not know the extent to which a Design Submission or other potential change will alter a Commercial Term, either party may request in writing to identify a Trend in the Trend Log.

2. The request to include a Trend in the Trend Log must include the following information:

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a. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;

b. The estimated change in the applicable Commercial Term; and

c. Potential impacts or changes to the Initial Project Scope or Basis of Design Documents as a result of the Trend.

3. Both parties must consent in writing to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.

4. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Initial Project Scope or Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order.

   If the resolution does not change the Initial Project Scope or Basis of Design Documents and/or any Commercial Term, it shall be removed from the Trend Log.

E. **Construction Documents**

1. Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work.

2. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified by the parties and recorded as set forth in the Contract Documents.

3. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth above and elsewhere in this Exhibit C. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

F. **Owner's Review of Design Submissions**

1. Owner's review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work.

2. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, the Design Log, the Trend Log, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

G. **Work Phasing**

1. Design-Builder may not proceed with schematic design without a separate written Notice to Proceed with Schematic Design.

2. Design-Builder may not proceed with the Design Development Period beyond Schematic Design without a separate written Notice to Proceed with the Design Development Period.

3. To the extent not prohibited by the Contract Documents or Applicable Laws, Design-Builder may prepare Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

4. Owner must approve all construction, and Design-Builder may not proceed with construction without a separate written Notice to Proceed with Construction.

1.06 STANDARD OF CARE FOR PROFESSIONAL SERVICES.

A. The standard of care for all professional services performed to execute the Work shall be the care

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and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the applicable Owner's Project Criteria, as the Owner's Project Criteria is developed through the Initial Project Scope, Reliable Decisions, and the Basis of Design Documents.

B. Design Builder shall perform all activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents.

1.07 CONSTRUCTION SERVICES

A. **General**

1. Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2. The Design-Builder shall assemble and install all equipment according to the applicable manufacturer's installation instructions.

   Work that does not conform to the applicable instructions and/or any resulting errors in assembly or installation shall be corrected by the Design-Builder. If the Owner determines that the Design-Builder has incorrectly assembled, installed and/or damaged any such equipment, the Design-Builder shall, at its own expense, furnish a competent manufacturer's representative to assist, instruct and approve the Design-Builder's corrected work.

3. If any materials or equipment are stored by Design-Builder, they shall be stored so as to ensure the preservation of their quality and fitness. Materials and equipment shall be placed on platforms or other hard, clean surfaces, and not on the ground, and shall be placed under cover and heated adequately to prevent condensation, oxidation or freezing. Stored materials and equipment shall be located so as to facilitate observation. The Design-Builder shall be responsible for all damage or loss that occurs as a result of its fault or negligence in connection with the care and protection of all materials and equipment until acceptance by the Owner.

4. Design-Builder is responsible for verifying that any equipment supplied by the Owner is in working order and sufficient for the purposes for which it was intended in the Project. If equipment furnished by Owner is not in working order or is not sufficient for the Project, Design-Builder shall notify Owner immediately, and Owner shall either repair or replace the equipment, at Owner's sole discretion. Design-Builder is responsible for the proper installation of the equipment furnished by Owner.

5. Design-Builder shall provide appropriate security for the Sites and shall take all reasonable precautions and provide protection to prevent damage, injury, vandalism, theft, and loss to the Work, equipment and materials used to perform the Work, real property within the Sites, and other property at or on the Sites, whether owned by Design-Builder, Owner, or any other third party.

6. Design-Builder shall maintain, rebuild, repair, restore or replace all Work (including plans and specifications, and materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether the Owner has title thereto) that is injured or damaged prior to Substantial Completion. Following Substantial Completion, Design-Builder shall continue to have responsibility to maintain, build, repair, restore or replace all Work not 100% completed at Substantial Completion, until Owner accepts maintenance responsibility with respect to such Work. Maintenance responsibility under this Section includes rebuilding, repairing and restoring all other property at the Project Site whether owned by Design-Builder, Owner or any other Person.

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B. **Title**

1. Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies provided, or to be provided, by it and its Subcontractors that become part of the Project or are purchased for Owner for the operation, maintenance, rebuild, repair or replacement thereof, free and clear of all Liens.

2. Title to all such materials, equipment, tools and supplies delivered to the Site shall pass to Owner, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by Owner to Design-Builder of invoiced amounts pertaining thereto.

3. Notwithstanding any such passage of title, Design-Builder shall retain sole care, custody, and control of, and risk of loss with respect to, such materials, equipment, tools and supplies and shall exercise due care with respect thereto until Final Acceptance or until Design-Builder is removed from the Project.

1.08 CORRECTION OF DEFECTIVE OR NONCONFORMING WORK

A. **Nonconforming Work**

1. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents ("Nonconforming Work"), including that part of the Work subject to Section 1.08 hereof, from the date of discovery of the Nonconforming Work through a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2. Nonconforming Work rejected by Owner shall be removed and replaced so as to conform to the requirements of the Contract Documents, at Design-Builder's cost and without any adjustment to the Contract Price or time extension or any other relief; and Design-Builder shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that Owner may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. Design-Builder shall, within seven (7) days of receipt of written notice from Owner of Nonconforming Work, take meaningful steps to commence correction of such Nonconforming Work, including the correction, removal or replacement of the Nonconforming Work and any damage caused to other parts of the Work affected by the Nonconforming Work. If the correction of Nonconforming Work cannot be completed within such seven (7) day period, Design-Builder must (a) provide a schedule for correcting the Nonconforming Work and (b) commence and diligently prosecute such correction in accordance with the approved schedule to completion. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such Nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the Nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable. This one-year correction period shall be extended with respect to portions of Work first performed after Final Acceptance and by corrective Work performed by the Design-Builder by the period of time between Substantial Completion and the actual performance of the Work.

3. Owner may agree to accept any Nonconforming Work without requiring it to be fully corrected. In such event, Owner shall be entitled to reimbursement of a portion of the Contract Price (which shall also reduce the GMP) in an amount equal to the greater of: (a) the amount deemed appropriate by Owner to provide compensation for future maintenance and/or other costs relating to the Nonconforming Work, or (b) 100% of Design-Builder's cost savings associated with its failure to perform the Work in accordance with Contract requirements. Such reimbursement (plus an administrative charge equal to 10% of the

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costs and expenses) shall be payable to Owner within ten days after Design-Builder's receipt of an invoice therefore. Alternatively, Owner may deduct the amount of such costs and expenses (plus an administrative charge equal to 10% of the costs and expenses) from any sums owed by Owner to Design-Builder pursuant to this Contract. Design-Builder acknowledges and agrees that Owner shall have sole discretion regarding acceptance or rejection of Nonconforming Work and the amount payable in connection therewith. Payment, reimbursement or deduction of the amounts owing to Owner under this Section shall be a condition precedent to the acceptance of the applicable Nonconforming Work.

B. **Not a Limitations Period**

1. The one-year period referenced in Section 1.08.A above applies only to Design-Builder's obligation to correct Nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

1.09 SUBCONTRACTS

A. **General.**

1. Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

2. Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

3. Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

4. Design-Builder shall ensure that each Subcontract (at all tiers) shall include those terms that are specifically required by the Contract Documents to be included therein as well as such additional terms and conditions as are sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, including but not limited to the following provisions:

   a. Effective procedures for timely resolution of claims and disputes, including an agreement by the Subcontractor to participate in any dispute proceeding pursuant to Section 2.18 of the General Conditions, if such participation is requested by Owner;

   b. A standard of professional responsibility or a standard for quality equal to or better than the requirements of the Contract Documents;

   c. A requirement to maintain usual and customary books and records for the type and

scope of operations of the business in which the Subcontractor is engaged;

d. A provision permitting audits to be conducted by the Design-Builder and Owner according to the terms of the Contract;

e. A requirement to provide progress reports to the Design-Builder appropriate for the type and scope of Work performed and to meet the requirements of Exhibit C;

f. A requirement that the Subcontractor maintain all appropriate licenses and registrations;

g. A provision prohibiting assignment of the Subcontract without the Design-Builder's written consent;

h. The following provision: "Nothing contained herein shall be deemed to create any privity of contract between Owner and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of Owner to the Subcontractor except those allowed under Washington law. In the event of any claim or dispute arising under the Subcontract and/or Design-Builder's contract with Owner, the Subcontractor shall look only to Design-Builder for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against Owner arising out of the Subcontract or otherwise arising in connection with the Subcontractor's Work."; and

i. Provisions in form and substance satisfactory to Owner, (a) Owner is a third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit, and (b) all guarantees and warranties, express or implied, shall inure to the benefit of Owner, and its respective successors and assigns.

B. **Subcontract Plan**

1. Design-Builder shall submit a Subcontract Plan as required herein, subject to the approval of the Owner. After approval by the Owner, Design-Builder may only modify the Subcontract Plan upon obtaining written approval from the Owner. Design-Builder may not award any Subcontract on the basis of a lump sum price without obtaining prior written permission from the Owner, such permission shall not be unreasonably withheld.

2. All subcontracted Work associated with the performance of the construction shall be awarded by Design-Builder in accordance with the Subcontractor Plan established during Phase 1.

3. Subcontractor Procurement. Unless approved in writing by the Owner, the procurement section of the Subcontract Plan shall comply with the following:

a. All subcontracted work associated with performance of construction packages shall be awarded by the Design-Builder to Subcontractors in accordance with a best value selection process established between the parties. Unless otherwise agreed in writing by the parties, the best value selection process shall contain mutually acceptable evaluation criteria for the proposal and selection process that is clear and consistent and includes both qualifications and price.

b. The Design-Builder may only modify the Subcontractor Procurement Procedure after obtaining written approval from the Owner. Any such modification shall be at the sole risk and responsibility of the Design-Builder and without any modification to any applicable Commercial Terms.

c. The Design-Builder's selection of Subcontractors shall comply with the following requirements, unless modified by the Subcontractor Procurement Procedure approved in writing by the Owner:

d. The Design-Builder shall identify the scope of the Work to be subcontracted and shall identify at least three pre-qualified Subcontractors for such scope for written

approval by the Owner.

e. After approval of the pre-qualified Subcontractors by the Owner, the Design-Builder shall select from the three pre-approved Subcontractors for the identified scope of the Work, unless it obtains prior written approval from the Owner to select a different Subcontractor.

f. If the Design-Builder cannot reasonably identify three pre-qualified Subcontractors, it shall inform the Owner in writing as to the reason for the inability to identify the Subcontractors and shall not proceed with the selection of a Subcontractor without the prior written approval of the Owner.

g. The Design-Builder shall select Subcontractors on the basis of the best value to the Project. If in the Design-Builder's determination, the Subcontractor who proposes the best value did not propose the lowest cost, the Design-Builder shall i) provide a written justification for the selection of the Subcontractor, and ii) obtain the Owner's written approval prior to Design-Builder entering into the Subcontract.

C. **Self-Performed Construction Work**

1. Self-Performed Construction Work means construction Work that would normally be performed by a subcontractor and does not include any costs associated with design, construction management, or Work that would be included in or described as part of any Lump Sum established by the Parties. Design-Builder must obtain prior, written approval from the Owner for the Design-Builder or the lead Constructor (if the lead Constructor is not also the Design-Builder) to perform Self-Performed Construction Work.

2. For each scope of Work for which Design-Builder proposes Self-Performed Construction Work, Design-Builder must submit to the Owner a proposal that contains the following minimum information as well as any other information reasonably requested by the Owner:

   a. A detailed description of the scope of the Self-Performed Construction Work;

   b. A Schedule of Values including all costs associated with the Self-Performed Construction Work; and

   c. A detailed explanation of the effect of the Self-Performed Construction Work on the Project, including but not limited to cost savings, benefits to the Project, and risks to the Project.

3. Design-Builder will provide the Owner with an estimate of the costs for all Self-Performed Construction Work on an open book and transparent basis. In calculating the costs for Self-Performed Construction Work, the following shall apply.

   a. The estimate for costs for Self-Performed Construction Work may not include lump sum costs and must show all estimated labor, material, and equipment costs by unit.

   b. The costs for Self-Performed Construction Work shall not include costs that are also included in the Lump Sum General Conditions Costs or any Lump Sum.

   c. Notwithstanding the above, Design-Builder may include in the costs for Self-Performed Construction Work additional general conditions costs that are directly associated with the Self-Performed Construction Work that Design-Builder would not have incurred but for the Self-Performed Construction Work.

1.10 APPLICABLE LAW

A. Design-Builder shall perform the Work in accordance with all Applicable Law and shall provide all notices applicable to the Work as required by the Applicable Law.

B. The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Applicable Law that directly affect the Work that are enacted after the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without

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limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Applicable Law.

1.11 GOVERNMENT APPROVALS AND PERMITS

A. Design-Builder shall identify in the Permitting Strategy Plan under Section 3.09 below those permits for which Owner is responsible and those permits for which Design-Builder is responsible.

B. Unless the permit is specifically identified as Owner's responsibility, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

C. Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

1.12 ARCHAEOLOGICAL RESOURCES

A. The Design-Builder shall comply with the Historical and Cultural Resources requirements of the Public Work Board Loan Section 1.11.

B. In the event the Design-Builder or any of its Subcontractors inadvertently discover any archaeological, paleontological, biological, cultural, or other resources at any time during the project, Design-Builder shall immediately notify the Owner telephonically and suspend all excavation activities at the site.

C. Design-Builder shall follow the procedures set forth in Section 2.18 of the General Conditions with respect to addressing the discovery of and shall be entitled to a Change Order as set forth therein, provided, however, that the Design-Builder shall not be entitled to a Change Order if the archaeological, paleontological, biological, cultural, or other resource was discovered or could have been discovered, with reasonable diligence, during Phase 1.

D. "Archaeological Resource" shall mean any material remains of human life or activities which are of interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistoric or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to objects pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives scrapers, rock carvings and paintings, and other implements and artifacts of any material or form.

E. Any Archaeological Resources that may be discovered during progress of the Work shall, at Owner's sole discretion, be the property of Owner.

1.13 PAYMENT AND COMPLETION

A. **Monthly Progress Payments**

1. On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment.

2. Prior to submitting an invoice Design-Builder will provide to the Owner on the 15th day of each month a proposed progressed schedule and progress reports for Owner's review for 1 week.

3. After the monthly Schedule progress and progress reports are reviewed and approved Design-Builder will provide to the Owner on the 30th day of each month an invoice and Schedule of Values, along with the Schedule and progress reports provided fifteen (15) days prior. Invoices from the Design-Builder will be based on the actual time and reimbursable expenses incurred to complete the work for items included in the Cost of the Work. Lump Sum General Conditions Costs will be invoiced as required pursuant to the Agreement. The Application for Payment shall be accompanied by all supporting

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documentation required by the Contract Documents and shall be in a form acceptable to Owner, including but not limited to the following information:

a. An Invoice Cover Sheet that will include the following items:

   i. Project name and title;
   ii. Invoice number (numbered consecutively, starting with "1");
   iii. Period covered by the invoice (specific beginning and ending calendar days);
   iv. Total amount authorized;
   v. Total amount invoiced through last period;
   vi. Current invoice amount;
   vii. Total invoiced to-date;
   viii. Percent invoiced;
   ix. Remaining Contract Price (exclusive of the Allowance amounts), GMP, and remaining Allowance amounts;
   x. Retainage withheld;
   xi. Net amount due Design-Builder
   xii. Total amount earned to date for the Project as a whole;
   xiii. Authorized signature, title of signer and date of signature; and
   xiv. Signatures of Design-Builder and Design-Builder's Quality Control Manager

b. An itemization of the costs incurred pursuant to the Contract, including but not limited to:

   i. The detailed amounts spend for the Cost of the Work under Section 6.3 of the Agreement incurred during the period of the Application for Payment and the back-up documentation for the Cost of the Work, including but not limited to timesheets, invoices, purchase orders, or any other document that evidences the Cost of the Work or any other cost for which Design-Builder requests reimbursement;

   ii. The Design-Builder's Fee Percentage incurred;

   iii. Allowance Items established under Section 6.4.1 of the Agreement;

   iv. Not to Exceed Amounts established under Section 6.4.2 of the Agreement;

   v. Any Lump Sums established pursuant to Section 6.4.3 of the Agreement;

   vi. Costs charged to Contingencies under Section 6.4.4. of the Agreement;

   vii. Design-Builder's Lump Sum General Conditions Costs established under Section 6.4.5 of the Agreement, if applicable; and

   viii. Unit Prices and Hourly Rates established under Section 6.4.6 of the Agreement, if applicable.

c. The monthly periodic deliverables in Exhibit C for the relevant Phase of the Work;

d. Certification by the Design-Builder's Quality Control Manager certifying that

   i. The Work has been performed in accordance with the approved quality Control Program; and

   ii. the elements of the approved Quality Control Program and all the measures and procedures provided for therein are functioning properly and are being followed.

e. A Conditional Waiver and Release on Progress Payment, in the statutory form, signed by Design-Builder and each Subcontractor or supplier that provided services, materials or equipment included in the invoice.

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f. An Unconditional Waiver and Release Upon Progress Payment, in the statutory form, signed by Design-Builder and each Subcontractor or supplier that provided materials or equipment included in any preceding invoice and for which Design-Builder received payment.

g. Other supporting documents as requested by Owner to facilitate its determination of the amount payable including but not limited to:

i. Hours and rates for sole sourced work.

ii. Material and equipment purchase orders and delivery backup.

iii. Progressed CPM resource loaded Primavera project schedule.

iv. Subcontractor invoices.

h. Other supporting documents as requested by the Owner to comply with the requirements of the Public Works Board Loan.

4. **Cash Flow**

a. Along with the baseline CPM resource loaded schedule the Design-Builder will provide an overall anticipated monthly cash flow for the project. The format for this cash flow will be acceptable to the Owner.

b. Every month the Design-Builder will update this cash flow with the following information

i. Baseline planned monthly costs

ii. Actual monthly costs

iii. Earned (Budgeted Work Completed) Monthly Costs

iv. Forecast monthly costs to complete the project

5. **Payment for Materials**

The Application for Payment may request payment for equipment and/or materials delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

a. The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;

b. The warehouse is located within a 25-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner.

c. Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);

d. Design-Builder furnishes Owner a certificate of insurance extending Design-Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;

e. The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access.

f. Owner shall at all times have the right of access in the company of Design-Builder.

g. Design-Builder and its surety assume total responsibility for the stored materials;

h. Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site; and.

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Upon payment, Owner will receive the equipment and materials free and clear of all Liens and encumbrances.

6. All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment.

7. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

8. The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, Liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

B. **Withholding of Payments**

1. On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Section 2.18 of the General Conditions hereof. When Design-Builder removes the grounds for withholding payment, Design-Builder shall provide written evidence thereof. If such evidence is satisfactory to Owner, Owner will include the amount so withheld in the next scheduled progress payment.

2. Specifically, and without limitation, Owner may deduct from each payment the following:

   a. Claims against Design-Builder;

   b. Defective Work not remedied or Work not performed in accordance with the Contract Documents;

   c. Failure of Design-Builder to make proper payments to any of its Subcontractors;

   d. Failure to perform the Work in accordance with the Current Schedule;

   e. Damage to other work or property caused by Design-Builder or any entity for which Design-Builder is responsible;

   f. Damages owing to Owner under the terms of the Contract;

   g. Any and all other circumstances in which Owner determines that it is necessary to protect its interests.

3. Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

C. **Design-Builder's Payment Obligations**

Design-Builder will pay Design Consultants and Subcontractors pursuant to Washington law, unless its contractual obligations to such parties provide for a shorter time period., all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for

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payment and mechanic's Liens as set forth in Section 1.14 hereof.

D. **Substantial Completion**

1. Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work representing an Interim Milestone, has achieved Substantial Completion. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Substantial Completion in accordance with the requirements of the Contract Documents.

2. The Design-Builder shall submit an up to date Punch List to the City when the Design-Builder believes that the Design-Build Work for the Project has been substantially completed in compliance with this Contract. The Punch List shall include a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work which need to be completed as a condition of Substantial Completion. The Design-Builder and the City will agree in writing upon the Punch List (or, if they are unable to agree, the City will prepare and issue the Punch List to the Design-Builder within twenty-one (21) days of the Design-Builder having submitted its prepared Punch List to the City). Completion of the Punch List work shall be verified by a walk-through of the Project conducted by the City with the Design-Builder.

3. Owner will conduct reasonable inspections, surveys and/or testing as Owner deems necessary. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, Owner will promptly advise Design-Builder as to any errors, omissions, deviations, defects, or deficiencies in the Work necessary to be corrected as a condition to Substantial Completion and as to any errors, omissions, deviations, defects or deficiencies which may be corrected as Punch List items. Upon correction of the errors, omissions, deviations, defects, or deficiencies identified as a prerequisite to Substantial Completion, Design-Builder shall provide written notification to Owner and Owner will conduct another round of inspections, surveys and/or tests. This procedure shall be repeated until Owner finds that all prerequisites to Substantial Completion have been met. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

4. Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 1.13.D.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

5. Performance testing shall proceed as follows:

   a. Conduct the Performance Test. When the Design-Builder has completed the Project, the Design-Builder shall conduct the Performance Test in accordance with the Contract Documents.

   b. Performance Test Completion. If the Project fails to meet the Performance Guarantees, the City may elect, in its discretion, to place the Project into normal operation while the Design-Builder continues to correct the conditions to meet the Performance Guarantees. If the Performance Test indicates that the Project

meets the Performance Guarantees set forth in the Contract Documents, the Project will be accepted. If the Performance Guarantees are not met, the parties shall proceed as set forth below.

c. Performance Test Report. Within thirty (30) days following the last day of any Performance Test, the Design-Builder shall furnish the City with a written Performance Test Report consistent with the requirements specified in the Contract Documents. If the Design-Builder fails to furnish the certified Performance Test report within such 30-day period, the Project shall be deemed to have failed to meet the Performance Test requirements.

d. Costs of Performance Test. The cost of all Performance Test activities which the Design-Builder incurs, including any repetition of the Performance Test, shall be included in the GMP. If repeated Performance Tests are required due to the failure of the Design-Builder to meet Performance Test requirements or other Performance Guarantees, the Design-Builder shall reimburse the City for all costs of the City in conducting any such repeated Performance Tests.

e. Failure of Performance Test. In the event the Project does not successfully meet the Performance Guarantees, the Design-Builder, at Design-Builder's expense, shall take corrective action and re-test the Project in accordance with the Contract Documents. The Design-Builder shall provide the City with at least two weeks' written notice of any repeat of the Performance Test. The City reserves the right to reschedule the Performance Test retest or rework due to failed Performance Tests.

f. If the City decides to place the Project in normal operation even though the Project failed to achieve the Performance Guarantees, the Design-Builder shall provide to the City, a written plan (hereinafter "Remedial Plan") describing, in detail, the remedial steps the Design-Builder proposes to take to meet the Performance Guarantees, including but not limited to whether the Remedial Plan requires an outage and the planned duration of the outage. The City shall have the right to approve the Remedial Plan in whole or in part, provided the City shall not unreasonably withhold approval of the Remedial Plan. If the approved Remedial Plan requires a facility outage, the City shall conduct an outage to allow the Design-Builder an opportunity to perform the Corrective Work. In addition, the City shall determine, in its sole discretion, the date and duration of any outage.

6. Conditions for Substantial Completion. Substantial Completion shall be achieved when the following conditions have been achieved:

a. Achievement of Performance Guarantees. The Design-Builder shall have completed the Performance Tests and such tests shall have demonstrated that the Project has met the Performance Guarantees. Substantial Completion shall not be deemed to have been achieved unless the Performance Test, conducted in the manner provided in the Contract Documents and the Performance Test Plan, demonstrates that the Performance Guarantees have been met.

b. Design-Build Work Completed. All Work on the Project, with the exception of the items on the Punch List for the Project has been completed.

c. Final Operation and Maintenance Manual. The Design-Builder has delivered to the City the final Operation and Maintenance Manual for the Project.

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d. Warranty Bonds are issued and submitted by the Design-Builder and accepted by the City.

e. Substantial Completion Certificate is issued by the Design-Builder and accepted by the City.

7. **Concurrence or Disagreement with Substantial Completion Conditions**

a. Substantial Completion Concurrence. The Substantial Completion Date shall be the day upon which the Design-Builder certifies that all Substantial Completion Conditions have occurred. The City shall determine, within 30 Days of its receipt of such report, whether it concurs with such certification. If the City states in writing that it concurs with the Design-Builder's certification, the Project shall be deemed to have achieved Substantial Completion and the Substantial Completion Date shall be established on the date of the Design-Builder's original certification. In cases where the City does not determine in writing the concurrence or disagreement with Substantial Completion Conditions certified by the Design-Builder within thirty (30) Days of the receipt by the City of such report, the date of the Design-Builder's original certification of the Substantial Completion Date shall be deemed to have been achieved and established.

b. Substantial Completion Disagreement. If the City determines at any time during such 30-Day review period that it does not concur with the Design-Builder's certification of Substantial Completion, the City shall immediately send written notice to the Design-Builder of the basis for its disagreement. In the event of any such non-concurrence by the City, the parties shall attempt to resolve the matter through discussion and negotiation for the remainder of the 30-Day review period. If the parties do not resolve the dispute within the 30 Days allowed for review, either party may elect to refer the dispute to Mediation pursuant to Section 2.18. If the parties are unable to resolve the dispute through Mediation, then either party may initiate judicial proceedings.

E. **Final Completion**

1. Design-Builder shall notify Owner when it believes the entire Work, or to the extent permitted in the Contract Documents a portion of the Work, has achieved Final Completion. Final Completion shall be deemed to have occurred when all of the conditions have been satisfied, including but not limited to:

a. Substantial Completion Achieved. The Design-Builder has achieved Substantial Completion in accordance with this Section;

b. Deliverables. The Design-Builder shall have delivered to the City all Deliverables required under the Contract Documents;

c. Final Record Drawings. The Design-Builder shall have delivered to the City construction record drawings and all Operations and Maintenance manual as required in the Contract Documents;

d. Spare Parts In Storage. All spare parts and additional materials required by the applicable General and Technical Requirements have been delivered and are in storage at the Project Site or other area designated by the City;

e. Punch List. All items on the Punch List have been completed by the Design-Builder and then approved and verified by the City.

f. Contract Documentation. The Design-Builder shall have delivered all other documentation required by the Contract or by Applicable Law;

g. Payment of Claims. The Design-Builder has certified to the City that all of its claims against the

h. City have been paid; and

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i. Cleanup. Clean up and removal of construction materials, debris, and any temporary facilities has been completed.

2. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Final Completion in accordance with the requirements of the Contract Documents, including but not limited to all Contract Wok has been completed and the Design-Builder has completed clean up and removal of construction materials, debris, and any temporary facilities. Owner will conduct reasonable inspections, surveys and/or testing as Owner deems necessary. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, Owner will promptly advise Design-Builder as to any errors, omissions, deviations, defects or deficiencies in the Work necessary to be corrected as a condition to Final Completion and as to any errors, omissions, deviations, defects or deficiencies which may be corrected as Punch List items. Upon correction of the errors, omissions, deviations, defects, or deficiencies identified as a prerequisite to Final Completion, Design-Builder shall provide written notification to Owner and Owner will conduct another round of inspections, surveys and/or tests. This procedure shall be repeated until Owner finds that all prerequisites to Final Completion have been met and the submissions in Section F.2 below have been provided. If such Work is Finally Complete, Owner shall prepare and issue a Certificate of Final Completion that will set forth the date of Final Completion of the Work or portion thereof.

F. **Final Payment**

1. When the Design-Builder has completed all work in accordance with the terms of the Contract Documents and received a Certificate of Final Completion, the Design-Builder shall properly execute and submit a Final Application for Payment final invoice to Accounts Payable. Once the Final Application for Payment has been processed, the Owner's Procurement Department will issue the Certificate of Completion and Release to be executed by the Design-Builder and returned to the Procurement Officer. The Certificate of Completion and Release shall constitute a waiver of all claims by the Design-Builder except for unsettled claims specifically stated, if any.

2. At the time of submission of its Final Application for Payment, Design-Builder shall provide the following:

   a. The Certificate of Completion and Release which shall warrant that the Design-Builder has fully completed its work included in the Contract and has fully paid for labor, materials, equipment, services, taxes and all other costs and expenses of every nature and kind whatsoever resulting from this Contract. If any dispute exists between the Design-Builder and any person, firm or corporation to which Design-Builder might be obligated in connection with this Contract, the Design-Builder shall state the name of claimant and amount and general nature of claim against the Contractor. The Certificate of Completion and Release shall state the amount and nature of all present and future claims that the Design-Builder may have against the Owner relative to this Contract. The Contract work shall not be complete until after the Design-Builder has returned to the Procurement Officer a properly completed Certificate of Completion and Release;

   b. Unconditional Waiver and Release Upon Final Payment, in a form acceptable to Owner, from all Subcontractors;

   c. Consent of Design-Builder's surety, if any, to Final Payment;

   d. Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents; and

   e. Any additional documents, certificates, records, plans, releases or other materials established in the Project Closeout Plan as required for Final Completion, including but not limited to the following:

(1) Final Record Drawings; and

(2) Spare parts in storage.

3. Sixty days after Final Acceptance, retainage may be released to the Design-Builder; provided, however, that there are no claims filed of materialmen or laborers and that the Owner has received the certificate of the Washington State Department of Revenue of payment in full of all taxes, Employment Security Department release, the approved Washington State Department of Labor and Industries Certificate of Release of the State's Lien on Public Works Contracts form and the approved affidavit showing payment of prevailing wages for the Design-Builder and any Subcontractors. If any liens remain unsatisfied from the retainage, the Design-Builder shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens including all costs and reasonable legal fees.

4. Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

5. Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work.

   Such deficiencies shall be corrected by Design-Builder as provided herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

6. Owner shall release the Contract Retainage pursuant to RCW 60.28.011.

1.14 INDEMNIFICATION

A. Patent and Copyright Infringement

1. Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

2. If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

3. Sections 1.14.A.1 and 1.14.A.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated

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to defend, indemnify and hold harmless Owner in Section 1.14.A.1 above.

4. The obligations set forth in this Section 1.14.A shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

B. **Payment Claim Indemnification**

Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's Liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's Lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or Lien, including, if necessary, the furnishing of a mechanic's Lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or Lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

C. **Design-Builder's General Indemnification**

1. Except as set forth in Section 1.14.C.2 below, Design-Builder acknowledges that pursuant to the terms of this agreement, Design-Builder is solely and totally responsible for the safety of all persons and property in the performance of this Contract.

2. To the greatest extent allowed by law, Design-Builder assumes the risk of all damages, loss, cost, penalties and expense and agrees to indemnity, defend and hold harmless the City, from and against any and all liability which may accrue to or be sustained by the City on account of any third party claim, suit or legal action made or brought against the City for the death of or injury to persons (including Design-Builder's or subcontractor's employees) or damage to property involving Design-Builder, or subcontractor(s) and their employees or agents, arising out of and in connection with or incident to Design-Builder's negligence in connection with the Contract including if the City is found to have a nondelegable duty to see that work is performed with requisite care. In the case of concurrent negligence, Design-Builder shall only be liable to the extent of the negligence of Design-Builder and the parties for which it is responsible.

3. For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

4. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then Design-Builder's duty to indemnify shall not apply to liability for damages arising out of Design-Builder's services or out of bodily injury to persons or damage to property that are (a) caused by or resulting from the sole negligence of Indemnitee or (b) caused by or resulting from the concurrent negligence of (i) Indemnitee, its agents or employees and (ii) Design-Builder, its agents or employees, with such liability limited only to the extent of the negligence of Design-Builder, it's agents or employees.

5. If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any

immunity that may be granted it under the worker's compensation laws under the Washington State Industrial Insurance Act, Title 51 RCW; provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts.

6. THE PARTIES ACKNOWLEDGE THAT THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT AND THE WAIVER OF IMMUNITY UNDER RCW TITLE 51 WERE MUTUALLY NEGOTIATED.
OWNER'S INITIALS _____
DESIGN-BUILDER'S INITIALS _____

7. No Effect on Other Rights. The obligations described in this Section 1.14.C shall not be construed to limit rights and obligations provided by law or equity which would otherwise exist in favor of a Person indemnified hereunder.

8. Notification of Third Party Claim. Owner and Design-Builder shall each provide timely notification to the other party of the receipt of any third party claim relating to the Contract.

D. **Lower Tier Contractors Indemnification Obligations**

1. Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and this Exhibit C and shall include Owner as an Indemnitee for all such indemnification provisions.

E. **Survival**

1. The Indemnification obligations in this Article shall survive the expiration or termination of this Agreement.

1.15 ELECTRONIC DATA

The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

A. **Transmission of Electronic Data**

1. Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

2. Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

3. By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

B. **Electronic Data Protocol**

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1. The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 1.15.B.

2. Electronic Data will be transmitted in the format agreed upon in Section 1.15.A.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

3. The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

4. The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

PART 2 PHASE 1 SCOPE OF SERVICES

2.01 SUMMARY OF WORK

1. This Section sets forth the Scope of Work, the Deliverables, and the execution activities for Phase 1.

2. Design Builder shall review, analyze, and validate the Owner Provided Information, the Owner's Project Criteria, the Owner's Budget, and the Schedule.

3. Design Builder shall conduct such site investigations, environmental assessments, review of regulatory and legal authority and restrictions, and all other actions and review and assess other information as reasonably necessary to verify and validate the Owner Provided Information.

4. Design Builder shall review, analyze and validate the concepts for the scope as shown in the Owner's Project Criteria. In addition, Design Builder shall work collaboratively with the Owner and the Stakeholders to examine whether new concepts will better maximize the Owner's Project Goals, and if approved by the Owner, further develop such new concepts and incorporate them into the Project.

5. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to obtain input regarding the Project design and functionality, as well as other major elements of the Project Scope and to develop the Basis of Design Documents.

6. Design Builder shall provide the Submittals as set forth in the Contract Documents. All Submittals shall be provided in a format acceptable to the Owner.

7. Design-Builder shall review all requirements in any grant, loan, or other funding

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source for the Project and comply with all requirements set forth in the grant, loan, or other funding source.

2.02 VALIDATION PERIOD.

A. **Owner Provided Information**

1. Within the time period set forth in the schedule, Design Builder shall perform such assessments, reviews and investigations of the Owner Provided Information, as determined by Design Builder to be reasonably necessary to validate the Owner Provided Information, the Commercial Terms, and the Owner's Project Criteria.

2. Additional reviews, assessments and investigations of Owner Provided Information shall include, if reasonably necessary, the following:

   a. Verification that any drawings or specifications provided by Owner, including but not limited to the As-Built drawings and other architectural and engineering drawings, plans and specifications are accurate for the purposes of the supporting the Design-Builder's design,

   b. Constructability, including but not limited to proposed methods of construction, of the proposed improvements in the Owner's Project Criteria,

   c. Verification of the engineering and other assumptions and calculations in any Owner Provided Information,

   d. Examination and verification of actual site conditions as set forth below,

   e. Review and assessment of all applicable Legal Requirements on the Project,

   f. Verification and validation of assumptions regarding the establishment of the Commercial Terms, including but not limited to the Owner's Budget, the Schedule, and the Owner's Project Criteria.

B. **Site and Other Investigations**

1. Design Builder shall perform site investigations as necessary for Design Builder to verify the Owner Provided Information and to validate the Commercial Terms and the Owner Project Criteria. Design Builder shall visit the Site and examine thoroughly and understand the nature and extent of the Work, site, locality, actual conditions, underground facilities, all physical conditions at or contiguous to the Site, and all local conditions and federal, state, and local laws and regulations that in any manner may affect cost, time, progress, performance or furnishing of the Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design Builder and safety precautions and programs incident thereto.

2. Such additional investigations shall be conducted to sufficiently identify or characterize utility locations, site conditions, contaminated materials, and observable or concealed conditions in the existing facilities, including but not limited to the following:

   a. Undertake surveys, investigations and analysis to provide necessary data and information for project design including sufficient information to evaluate design alternatives.

      PART 1 Perform soils sampling, testing, and analysis to provide necessary data and information for Project design, including at a minimum one boring at the Project site, and provide a final Geotechnical Report. Test for contamination during this process.

   b. Complete a comprehensive archaeological site survey and conduct a literature and data search to determine potentially archaeologically significant sites and conditions as required by State and local jurisdictional requirements and the requirements set forth in the Public Works Board Loan Section 1.11.

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3. Design-Builder shall develop a list of all permits anticipated to be required for the Project and prepare a Permitting Strategy Plan as outlined in Section 3.09.

4. Design-Builder shall develop a conceptual/schematic design of the reservoir and pump station facility (i.e., conceptual layout figures and exhibits, preliminary calculations) to confirm that the Project is feasible as envisioned, and to support Project cost estimating and Phase 1 budgeting.

5. Design-Builder shall coordinate with the Owner to develop a shared understanding of the division of responsibility between the Design-Builder and the Owner for surge mitigation modeling and surge mitigation feature design.

6. Design-Builder shall develop a preliminary Sequencing and Operations Plan identifying how they anticipate proceeding with the design and construction work, including anticipated timing and coordination needs with Owner operations staff and potential impacts on Owner utility systems.

7. Design-Builder shall develop a preliminary high-level cost estimate for construction of the Project to validate the Owner's Project budget.

8. Design-Builder shall develop a preliminary Project Risk Register identifying project risks, probability of occurrence, and estimated cost, schedule, and/or other impacts.

9. Provide input to the Owner on the benefits and drawbacks of using a BIM model for this Project. Owner will make a decision on use of BIM or not, which can inform Phase 1 design effort pricing.

10. To the extent that the Owner provides any reports or other information regarding the site conditions, including but not limited to a Geotechnical Report, Design-Builder may rely on the data provided by Owner but may not rely on any analysis in the report or other information.

11. All reports or analyses generated by Design Builder's testing, inspections, and investigations, including but not limited to geotechnical evaluations and hazardous materials studies, shall be provided to the Owner promptly, within seven (7) business days, after such reports are analyzed and generated.

12. Design Builder shall be responsible for ensuring that its design documents and construction work accurately conforms to, and interfaces with, the existing conditions and shall not request a change or claim for unforeseen or concealed conditions except as provided under the provisions of the contract.

13. Design-Builder shall work collaboratively with the Owner to establish the Initial Project Scope, the Target Budget, and the Target Scope, as set forth below.

C. **Validation Period Report.**

1. At the time set forth in the Validation Period Schedule, the Design-Builder will provide to Owner a Validation Period Report with the deliverables set forth in Section 3.01.C herein, and the parties shall negotiate and collaboratively establish a Target Price, Target Budget and Initial Project Scope.

2. With the Validation Period Report, Design-Builder will be deemed to have reviewed and verified all Owner Provided Information and Commercial Terms for the Project; therefore, Design-Builder cannot rely on any Owner Provided Information or the Owner's Project Criteria for the purposes of performing the Work, unless specifically noted in writing by the Owner.

2.03 DESIGN DEVELOPMENT PERIOD

Provided the Owner accepts the Validation Period Report, the Design-Builder shall proceed with the project through the Design Development Period to develop a GMP Proposal pursuant to the requirements below.

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A. **Development of the Basis of Design Documents**

1. Design Builder shall manage the design and estimating process on an Open Book Basis and in a transparent collaborative, efficient, and coordinated manner and conduct design workshops as required by the Contract Documents. The Basis of Design Documents will establish the scope of the Work and provide the basis for the GMP. The Basis of Design Documents must be consistent with the Owner's Project Criteria as modified by the Initial Project Scope, unless the Owner has consented to modify its requirements in writing through a Change Order, Field Directive, or other written means allowed by the Contract Documents.

2. Design Builder shall provide for an orderly and timely approval process by the Owner and third parties, document review comments from the Owner and third parties, and take appropriate action.

3. The Owner will review and comment on the Design Submissions in a timely fashion.

4. Design Builder shall submit a written response to the Owner's design review comments, describing the action taken for each comment. Design Builder shall, in a timely fashion, bring to the attention of the Owner areas where new technologies or newfound information may require modifications to these requirements.

5. By submitting Design Submissions, Design Builder represents to the Owner that the Design Submissions may be designed and constructed for the then current Commercial Terms. Notwithstanding the above, Design Builder may propose Designs, Plans or other Submissions that may alter a Commercial Term; however, with any such Design Submissions, Design Builder must provide notice pursuant to Section 2.18 of the General Conditions.

B. **Development of Project Cost and GMP**

1. The forecasting and development of accurate project cost estimates throughout each phase of the Project is vital to the Owner's financial management strategy. The Owner relies on the Design Builder to provide and validate current and detailed cost estimates and forecasts that will be incorporated into the overall cost controls for the Owner.

2. Throughout the Project, Design Builder will update estimates and forecasts and provide data to the Owner to reflect real time information. Design Builder will provide all pricing, estimates and other data used to develop the Commercial Terms on an Open Book and transparent basis.

   The project controls system used by the Design Builder shall be acceptable to the Owner and will be capable of being broken down and reported in a number of different work breakdown structures, including but not limited to organizing the financial data by cost element codes, subcontracts, vendors, Construction Document packages, etc.

3. The Design Builder will coordinate the development of the project cost and GMP with the development of the Basis of Design Documents as well as the Schedule so that the Owner may obtain an accurate GMP within the Target Budget and Schedule.

C. **Development of Project Schedule**

1. The forecasting and development of the Schedule, including but not limited to the project phasing and Schedule of Values, is a vital element of the Design Builder's ability to deliver this Project in a timely fashion. The Owner will rely on the Design Builder's scheduling information to coordinate with its Stakeholders, schedule activities in and around the Project, and manage its campus.

2. Design Builder shall provide the Owner with frequent updates to the Schedule in a format acceptable to the Owner.

D. **Submission of GMP Proposal**

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1. Design Builder shall engage and work collaboratively with the Owner and the Project Stakeholders to progress the design to a sufficient state to develop the Basis of Design Documents, the Guaranteed Maximum Price, and the Schedule.

2. The timing of the GMP Proposal and the percentage complete of the designs and specifications will be jointly determined by the Owner and the Design-Builder and shall be set forth in the Validation Period Report. Owner anticipates that the GMP Proposal will be provided at approximately 60% design.

3. At the time set forth in the Validation Period Report, Design Builder shall prepare a GMP Proposal, including Phase 2 Submittals as set forth in Section 3.01.E herein.

4. If the Design-Builder discovers or should have discovered with reasonable diligence Changed Conditions from the actual conditions at the Site or the Owner Provided Information, Design-Builder shall, upon discovery but no later than at the conclusion of Phase 1, provide Owner with written notice of any such Changed Conditions. Design-Builder shall not be entitled to a Change Order for any Changed Condition during Phase 2 if the Changed Condition could have been discovered, with reasonable diligence, during Phase 1 and was not disclosed in the Changed Conditions Report.

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Attachment G

Draft General Terms and Conditions

GENERAL TERMS AND CONDITIONS

SECTION 1 DEFINITIONS

1.01 DEFINITIONS

A. **"Agreement"** means the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price* (2022 Edition, as revised).

B. **"Applicable Law"** means (1) any federal, State or local law, code or regulation, including the City's rules and regulations; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate regulatory Governmental Body if such interpretation is documented by such regulatory body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or similar agreement between the City and any Governmental Body, in each case having the force of law and applicable from time to time, over the Project, the Design-Build Work or any other transaction contemplated hereby.

C. **"Changed Condition"** means any act, event or condition that (1) is beyond the reasonable control of the affected party, (2) could not reasonably have been assumed, anticipated or provided for in the Design- Builder's Proposal, and (3) materially expands the scope, interferes with, delays, or increases the cost of performing the Design-Build Work under the Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Contract on the part of the party claiming the occurrence of a Changed Condition. Notwithstanding the above, if the Parties enter into the GMP Amendment, a condition shall not be considered a "Changed Condition" if the condition was or could have been discovered with reasonable diligence during Phase 1 of the Project.

D. **"City"** or **"City of Tacoma"** means City of Tacoma, inclusive of Tacoma Public Utilities, Water Division dba Tacoma Water.

E. **"Contract"** means the City of Tacoma's Contract Documents as listed in Section 2.1 of the Agreement.

F. **"Days**" means calendar days.

G. **"Design-Builder"** The firm or joint venture awarded the Design-Build Contract.

H. **"Design-Build Team"** The prime contractor, designer, and major and specialty subs and suppliers including, but not limited to, those parties performing the following: design, supply and/or manufacturing of major components and commissioning and testing.

I. **"Design-Build Work"** or **"Work**" means everything required to be furnished and done for and relating to the design and construction required by the Contract both during the term of the Contract and relating to the Warranty Obligations set forth in the Contract Documents. Design-Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Design-Builder's design, engineering, procurement, manufacturing, construction, quality assurance and quality control, acceptance and performance testing, and related obligations with respect to the design and construction required by the Contract, including all completed structures, assemblies, fabrications, acquisitions and installations, all testing, and all of the Design-Builder's administrative, accounting, recordkeeping, notification and similar responsibilities of every kind

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whatsoever under this Contract pertaining to such obligations. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless the context otherwise requires and shall include all Design-Build Work authorized by change order or other Contract amendment or modification.

J. **"Event(s) of Default**" means those events permitting termination of the Contract and which are set forth in Sections 2.13 and 2.14.

K. **"Force Majeure Event**" means an event which (1) is not the result of a party's action or failure to act, and (2) is not foreseeable, (3) is otherwise beyond a party's reasonable control, and (4) prevents a party from performing its obligations under the Contract. Examples of possible Force Majeure Events include but are not limited to an act of nature, act of civil or military authority, fire, flood, windstorm, earthquake, terrorism, or war.

L. **"General Requirements"** means the general requirements for the Design-Build Work set forth in the General Requirements.

M. **"Good Engineering and Construction Practice"** means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the electrical utility industry as followed in the northwestern region of the United States.

N. **"Governmental Approval"** means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Design-Build Work.

O. **"Governmental Body"** means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction other than the City.

P. **"Hazardous Substances"** means any waste, substance, object or material designated as, or containing any component designated as, hazardous, toxic or harmful under Applicable Law including, without limitation, "hazardous substances" as defined under the Compressive Environmental Response, Compensation, and Liability Act (CERCLA) and "hazardous waste" as defined under the Resource Conservation and Recovery Act (RCRA).

Q. **"Project"** means the Design-Build Work required by the Contract.

R. **"Performance Guarantees"** means the performance requirements set forth in the General and Technical Requirements.

S. **"Performance Test"** means the tests set forth in the General and Technical Requirements to determine whether the applicable item met the Performance Guarantees.

T. **"Project Site"** or **"Site"** means the project site as more fully set forth in the General and Technical Requirements.

U. **"Punch List"** shall be a list of incomplete aspects of the Design-Build Work which need to be completed as a condition of Project Completion. It shall also include resolution of aforementioned items.

V. **"Regulated Site Condition"** means, and is limited to, the presence of Regulated Substances in environmental media anywhere in, on or under the Project Site, whether or not disclosed to the Design- Builder.

W. **"Regulated Substance"** means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic

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pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Substances.

X. **"Subcontractor"** means every other person or entity (other than employees of the Design-Builder) employed or engaged by the Design-Builder or any person directly or indirectly in privity with the Design- Builder (including but not limited to all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Design-Build Work, whether for the furnishing of design, services, labor, materials, equipment, supplies, services, or otherwise.

Y. **"Technical Requirements"** means the technical requirements for the Design-Build Work set forth in the Technical Requirements and as developed through the process set forth in Exhibit C to the Agreement. The Technical Requirements are also referred to as the Owner's Project Criteria.

SECTION 2 CONTRACT REQUIREMENTS

2.01 DESIGN-BUILDER'S RESPONSIBILITY

A. Contract Documents

The Respondent to whom the Contract is awarded, hereinafter called the Design-Builder, shall enter into a Contract with the City within 10 days after receipt from the City of a properly prepared Contract subsequent to the successful completion of negotiations. The Contract Documents will consist of the documents set forth in Section 2.1 of the Agreement.

B. Surety Bonds

Upon execution of the Contract, Design-Builder shall provide performance and payment bonds pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the applicable Validation NTE, including power of attorney. Upon execution of each Contract Amendment increasing the amount of a Not to Exceed Amount or the GMP, Design-Builder shall provide a performance and payment bond pursuant to RCW Chapter 39.08 equal to one hundred percent (100%) of the increase of the Not to Exceed Amount or the GMP, as applicable. The payment bond and performance bond, including power of attorney are provided to insure complete performance of the Contract including any guarantee. In addition, a warranty/ maintenance bond for 25% of the amount of their Guaranteed Maximum Price shall also be provided if the parties enter into the GMP Amendment. The bonds must utilize City forms and be executed by a surety company licensed to do business in the State of Washington.

C. Independent Contractor

Design-Builder is an independent contractor; no personnel furnished by the Design-Builder shall be deemed under any circumstances to be the agent or servant of the City. Design-Builder shall be fully responsible for all acts or omissions of Subcontractors and its and their suppliers, and of persons employed by them, and shall be specifically responsible for sufficient and competent supervision and inspection to assure compliance in every respect with the Contract. There shall be no contractual relationship between any Subcontractors or supplier and the City arising out of or by virtue of this agreement. No provision of the Contract is intended or is to be construed to be for the benefit of any third party.

D. Assistance

The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and

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not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

E. Good Engineering and Construction Practice

The Design-Builder shall utilize Good Engineering and Construction Practice in carrying out the Design- Build Work and to supplement and in no event displace or lessen the stringency of, the requirements under this Contract. In the event that, over the course of the performance of this Contract, Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Design-Builder, the Design-Builder shall be relieved of its obligation to comply with such evolved construction practice (but not Good Engineering and Construction Practice as of the Contract Date) unless the City agrees to adjust the Contract Price, as appropriate, to account for such additional costs. Except to the extent that the

Design-Builder is relieved of its obligation to comply with such evolved Good Engineering and Construction Practice, as provided above, in no event shall any evolution of Good Engineering and Construction Practice, or any City election to pay or not pay any such additional costs, relieve the Design-Builder of its obligations under the Contract.

F. Key Personnel

The Design-Builder has identified, and the City has approved, the Key Personnel who are assigned to the Project as part of their Proposal. Prior to award of Contract, the Design-Builder shall submit a table, which sets forth the key Project staff, their Project assignments, and the expected amounts of their available time that will be spent on the Project.

Percentage of time estimates shall be based on 100% of the hours available over the entire phase, assuming 40 hours per week (for non-construction personnel only), minus time for vacations, sick leave, training, professional societies, and conferences as a basis.

G. City Rights With Respect to Key Personnel

The Design-Builder acknowledges that the identity of the Key Personnel proposed by the Design- Builder and its Subcontractors in its responses to the RFQ and RFP was a material factor in the selection of the Design-Builder. The Design-Builder shall utilize the Key Personnel to perform the tasks at the level of effort identified in the Design-Builder submitted table. If any Key Personnel must be changed or are added during the Project, the Design-Builder shall provide the City with thirty (30) days written Notice of the proposed change with such additional information as the City may reasonably require. For the duration of the Project, Design-Builder may not, without written consent of the City, substitute or change any of Key Personnel. To qualify for the City's approval, the written request must document that the proposed change will be equal to or more qualified than the Key Personnel identified in the RFQ and RFP.

H. Character of Design-Builder's Employees

The Design-Builder shall employ only competent, skillful, faithful and orderly persons fluent in spoken and written English to do the work, and whenever the City staff administering the Contract shall notify the Design-Builder in writing that any person on the work is, in City staff's opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory, the Design-Builder shall forthwith discharge such persons from the work and shall not again employ him or her on this Contract.

2.02 INSPECTION

A. Observation and Design Review Program

During the progress of the Design-Build Work through Project completion, the Design-Builder shall at all times during normal working hours afford the City every reasonable

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opportunity for observation and shall comply with any Design-Build Work review procedures set forth in the Contract. The Design-Builder shall use its best efforts to provide City employees with safe access to the Design-Build Work. During any such observation, all representatives of the City shall comply with the Design-Builder's site- specific health and safety plan applicable to areas visited and shall in no material way interfere with the Design-Builder's performance of any Design-Build Work.

B. Design-Builder Tests

The Design-Builder shall conduct all tests or inspections of the Design-Build Work as required by the Contract or per Good Engineering and Construction Practice. The Design-Builder shall give the City reasonable advance notice (unless otherwise noted in the Contract, at least twenty-one (21) days) of tests or inspections prior to the conduct thereof. Unless the City provides express written direction to the contrary, Design-Builder shall not conduct any test or inspection required pursuant to the Contract unless the City is present to observe the test or inspection. If required by the Contract, the Design-Builder shall engage an engineer licensed in the State at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction and shall be subject to the approval of the City, which approval shall not be unreasonably withheld.

C. City Tests, Observations and Inspections

The City, its employees, agents, representatives and contractors (which may be selected in the City's sole discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site or off-site observations and inspections, and such civil, structural, mechanical, electrical or other tests as the City deems necessary or desirable to ascertain whether the Design-Build Work complies with this Contract. Off-site locations include, but are not limited to, any Design-Builder or Subcontractor fabrication sites. The costs of such test, observation or inspection shall be borne by the City unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Contract or Applicable Law, in which event the Design-Builder shall bear all reasonable costs and expenses of such observation, inspection or test. In the event that any requested test, observation or inspection causes a material delay in the progress schedule, the progress schedule shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

D. Certificates and Reports

The Design-Builder shall secure and deliver to the City promptly, at the Design-Builder's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as and when required by the Contract. The Design-Builder shall provide to the City, immediately after the receipt thereof, copies of any notice of default, breach or non- compliance received by the Design-Builder from or in connection with any Governmental Body, Subcontract, or Payment and Performance Bond.

E. Notice of Covering Design-Build Work

The Design-Builder shall give the City notice in the monthly progress report of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period (at least fourteen (14) days) before such covering and completion. The City shall give the Design-Builder reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the City a reasonable opportunity to conduct a full inspection of such Design-Build Work. At the City's written request, the Design-Builder shall take apart or

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uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that the City's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the City as to whether the disputed Design-Build Work complies with the requirements of this Contract. The cost of uncovering, taking apart, or replacing such Design-Build. Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

(1) by the Design-Builder, if such Design-Build Work was covered prior to any observation or test required by the Contract or if such Design-Build Work was covered prior to any observation or test for which the City was not provided reasonable advance notice hereunder, and, therefore, did not observe the test; and

(2) in all other cases, as follows:

a. by the Design-Builder, if such observation or test reveals that the Design-Build Work does not comply with this Contract; or

b. by the City, if such observation or test reveals that the Design-Build Work complies with this Contract.

In the event such Design-Build Work does comply with this Contract, the delay caused by such observation or test shall be treated as having been caused by a Changed Condition and any costs incurred with respect to such observation or test shall be borne by the City (through and only through a written modification to the Contract).

2.03 REPORTS, RIGHT TO AUDIT

A. Reports

Design-Builder shall, at such times and in such form as the City may reasonably require, furnish the City with periodic status reports pertaining to the services undertaken or goods provided pursuant to the Contract.

B. Right to Audit

Upon City's request, Design-Builder shall make available to City all accounts, records and documents related to the scope of work for City's inspection, auditing, or evaluation during normal business hours as reasonably needed by City to assess performance, compliance and/or quality assurance under the Contract or in satisfaction of City's public disclosure obligations as applicable.

2.04 INDEMNIFICATION

A. Indemnification Not Used. See Section 1.14 of Exhibit C

2.05 ASSIGNMENT AND SUBCONTRACTING OF CONTRACT

A. Assignment

The Contract shall not be assigned except with the consent of the City.

Requests for assignment of this Contract must be in writing with the written consent of the surety, and the request must show the proposed person or organization to which the contract is assigned is capable, experienced and equipped to perform such work. The proposed substitute person or organization may be required to submit to the City information as to their experience, financial ability and give statements covering tools, equipment, organization, plans and methods to fulfill any portion of the Contract prior to

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approval of assignment. City's acceptance of any assignment shall be documented in writing using the City's Assignment of Agreement template.

B. Subcontracting

The Contract shall not be subcontracted except with the written consent of the City.

Requests for subcontracting of this Contract must be in writing with the written consent of the Surety, and the request must show the proposed person or organization to which the Contract is subcontract is capable, experienced and equipped to perform such work. The proposed substitute person or organization may be required to submit to the City information as to his experience, financial ability and give statements covering tools, equipment, organization, plans and methods to fulfill any portion of the Contract prior to approval of subcontracting.

The written consent approving the subcontracting of the Contract shall not be construed to relieve the Design-Builder of their responsibility for the fulfillment of the Contract. The Subcontractor shall be considered to be the agent of the Design-Builder and the Design-Builder agrees to be responsible for all the materials, work and indebtedness incurred by the agent.

Subcontractor shall not subcontract any portion of a subcontract for work with the City without the written consent of the City.

2.06 EXTENSION

The Contract may be mutually extended in writing by the parties, subject to the same prices, terms and conditions.

2.07 DELAY

A. Extension of Time

With the written approval of the City, the Design-Builder may be granted additional time for completion of the work required under this Contract, if, in the City's opinion the additional time requested arises from unavoidable delay.

B. Unavoidable Delay

Unavoidable delays in the prosecution of the work shall include only delays from causes beyond the control of the Design-Builder and which they could not have avoided by the exercise of due care, prudence, foresight and diligence. Delay caused by persons other than the Design-Builder, Subcontractors or their employees will be considered unavoidable delays insofar as they necessarily interfere with the Design-Builder's completion of the work, and such delays are not part of this Contract.

Unavoidable delay will not include delays caused by ordinary weather conditions, surveys, measurements, inspections and submitting plans to the Engineer of the particular Division involved in administering this Contract.

2.08 FORCE MAJEURE; CHANGED CONDITIONS

A. Relief from Obligations

Except as expressly provided under the terms of this Contract, neither party to this Contract shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from a Force Majeure Event; however if a Force Majeure Event would otherwise operate to relieve Design-Builder from an obligation under the Contract, the City may elect to treat the Force Majeure Event as a Changed Condition. The occurrence of a Force Majeure Event shall not excuse or delay the performance of a

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party's obligation to pay monies previously accrued and owing under this Contract, or to perform any obligation hereunder not affected by the occurrence of the Force Majeure Event.

B. Changed Condition - Notice and Mitigation

If Design-Builder encounters or experiences any Changed Condition for which the Design-Builder does or should reasonably anticipate may result in a request for an adjustment to the Contract Time or Price, the City shall be entitled to prompt notice and information in order to allow the City to anticipate and mitigate any costs. The party that asserts the occurrence of a Changed Condition shall notify the other party in writing within 72 hours of the date and time the party experiencing such Changed Condition first knew of the occurrence, followed within 15 days by a written description of: (1) the Changed Condition and the cause (to the extent known); and (2) the date the Changed Condition began, its estimated duration, the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected, and the impact, if any, on the Substantial Completion Date. As soon as practicable after the occurrence of a Changed Condition, but within 30 days of the occurrence, the affected party shall also provide the other party with a description of: (i) the amount, if any, by which the Contract Price is proposed to be adjusted as a result of such Changed Condition; (ii) any areas where costs might be reduced and the approximate amount of such cost reductions; and (iii) its estimated impact on the other obligations of such party under this Contract. The affected party shall also provide prompt written notice of the cessation of such Changed Condition.

Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably practicable, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Contract, except that with respect to the discovery of possible Regulated Substances the parties shall follow the process described in Section 2.38. While the Changed Condition continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by a Changed Conditions shall bear the burden of proof and shall furnish promptly any additional documents or other information relating to the Changed Condition reasonably requested by the other party.

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C. Conditions to Performance, Schedule and Contract Price Relief

If and to the extent that any Changed Condition materially expands the scope of the Design-Builder's obligations hereunder, materially interferes with, materially delays or materially increases the cost of the Design-Builder's performing its obligations hereunder, the Design-Builder shall be entitled to relief from the performance of its obligations hereunder, an extension of schedule or an increase in the Contract Price, or any combination thereof, which properly reflects the interference with performance, the time lost or the amount of the increased cost, in each case as a result thereof, but only to the minimum extent reasonably forced on the Design-Builder by the event, and the Design-Builder shall perform all other Design-Build Work without delay in time or increase in cost. The proceeds of any Required Insurance available to meet any such increased cost, and the payment by the Design-Builder of any deductible, shall be applied to such purpose prior to any determination of cost increase payable by the City under this Section. Any cost reduction achieved through the mitigating measures undertaken by the Design-Builder pursuant to subsection (B) of this Section upon the occurrence of a Changed Condition shall be reflected in a reduction of the amount by which the Contract Price would have otherwise been increased or shall serve to reduce the Contract Price to reflect such mitigation measures, as applicable. In the event that the Design-Builder believes it is entitled to any relief on account of an Changed Condition, it shall furnish the City written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection (B) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed within such 30-day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Design-Builder the City shall issue a written determination as to the extent, if any, it concurs with the Design-Builder claim for performance, price or schedule relief, and the reasons therefor. The Design-Builder acknowledges that its failure to give timely notice pertaining to a Changed Condition as required under this Section may adversely affect the City. To the extent the City asserts that any such adverse effect has occurred and that the relief to the Design-Builder or the additional cost to be borne by the City under this subsection should be reduced to account for such adverse effect, the Design-Builder shall have the affirmative burden of refuting the City's assertion. Absent such refutation, the reduction in relief to the Design-Builder and the reduction in additional cost to the City asserted by the City in such circumstances shall be effective. The agreement of the parties as to the specific relief to be given the Design-Builder hereunder on account of a Changed Condition shall be evidenced by a Change Order.

D. Exclusions

It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute a Changed Condition for purposes of any adjustment to the Contract:

(1) any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;

(2) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates or other general economic conditions, except as addressed in the Contract;

(3) changes in the financial condition of the City, the Design-Builder or their affiliates or Subcontractors affecting the ability to perform their respective obligations;

(4) the consequences of error, neglect or omissions by the Design-Builder, any Subcontractor, any of their Affiliates or any other person in the performance of the Design-Build Work;

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(5) union or labor work rules, requirements or demands (other than City changes to its union or labor work rules, requirements or demands) which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost to the Design-Builder of performing the Design-Build Work;

(6) weather conditions normal for the area surrounding the Project Site;

(7) any and all surface, subsurface and other conditions affecting the Project Site that are discovered after Phase 1, which may increase costs of performing or cause delay in the performance of the Design-Build Work, except those constituting Regulated Site Conditions or unfavorable Changed Conditions;

(8) mechanical failure of equipment;

(9) power outages caused by the Design-Builder or its Subcontractors;

(10) failure of the Design-Builder to secure any patent or other intellectual property right which is or may be necessary for the performance of the Design-Build Work;

(11) a Change in Law pertaining to Taxes (except an increase or decrease in the rate of the local Tax currently imposed on building materials used in the construction of the Project); or

(12) local labor disputes or strikes involving employees of the Design-Builder, its Affiliates, or Subcontractors which affect the performance of the Design-Build Work.

E. Acceptance of Relief Constitutes Release

Either party's acceptance of any performance, price or schedule relief under this Section shall be construed as a release of the other party for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed.

2.09 WARRANTY

A. Design-Builder's Warranty

Design-Builder warrants to Owner that (i) the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship, (ii) the Project shall be fit for use for the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from this Contract, and (iii) the Work shall meet all of the requirements of the Contract Documents. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

B. Warranty for Construction, Labor or Services Contract

Neither the final certificate of payment or any provision in the Contract Documents, nor partial or entire occupancy of the premises by the City, shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Design-Builder of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Design-Builder shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear or could have been

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reasonably discovered within the warranty period. The City will give notice of observed defects with reasonable promptness.

If it has been discovered, before payment is required under the terms of the Contract, that there is a failure to comply with any of the terms and provisions of this Contract, the City has the right and may withhold payment.

In case of a failure of any part of the work, materials, labor and equipment furnished by the Contract or to fully meet all of the requirements of the Contract, the Design-Builder shall make such changes as may be necessary to fully meet all of the specifications and requirements of this Contract. Such changes shall be made at the Design-Builder's sole cost and expense without delay and with the least practicable inconvenience to the City. Rejected material and equipment shall be removed from the City's property by and at the expense of the Design-Builder.

B. Warranty

Unless a longer period is specified, the Design-Builder and/or manufacturer of the supplies, materials and/or equipment furnished and all Work pursuant to this Contract agrees to correct any Nonconforming Work, defect or failure of the supplies, materials, equipment and/or Work which occurs within five (5) years from the date of Substantial Completion. All of the costs (including shipping, dismantling and reinstallation) of repairs and/or corrections of substandard, defective or failed equipment, supplies material and/or Nonconforming Work is the responsibility of the Design-Builder and/or manufacturer.

When the Design-Builder is not the manufacturer of the item of equipment, Design-Builder agrees to be responsible for this warranty and Design-Builder is not relieved by a manufacturer's warranty.

C. Warranty Period Extension

The Contract warranty period shall be suspended from the time a significant defect is first documented by the City until the work or equipment is repaired or replaced by Design-Builder and accepted by the City. In addition, 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 the work or equipment is repaired or replaced and accepted by the City.

2.10 DEDUCTIONS FOR UNCORRECTED WORK

If the City deems it expedient to correct work not done in accordance with the terms of this Contract, an equitable deduction from the Contract price shall be made.

2.11 CITY'S RIGHT TO TERMINATE CONTRACT

A. City Termination for Cause

The City shall have the right during the term of the Contract to terminate the Contract for cause and to pursue all remedies available pursuant to this Section, without cost or liability to the City, if the Design- Builder should be adjudged as bankrupt, or makes a general assignment for the benefit of creditors, or a receiver should be appointed on account of their insolvency, or if they or any of their subcontractors should violate any of the provisions of the Contract, or if the work is not being properly and diligently performed, or in the case of and other Event of Default by the Design-Builder.

The City may serve written notice upon the Design-Builder and Surety executing the Payment and Performance Bond of City's intention to terminate the Contract; such notice will contain the reasons for termination of the Contract, and unless within 10 days after the serving of such notice, such violation shall cease and an arrangement satisfactory to the City for correction thereof shall be made, the Contract shall, upon the expiration of said 10

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days, cease and terminate and all rights of the Design- Builder hereunder shall be forfeited. In the event the Contract is terminated for cause, Design-Builder shall not be entitled to any lost profits resulting therefrom.

In the event of any such termination, the City shall immediately send (by regular mail or other method) written notice thereof to the Surety and the Design-Builder. Upon such termination the Surety shall have the right to take over and perform the Contract, provided however, the Surety must provide written notice to the City of its intent to complete the work within 15 calendar days of its receipt of the original written notice (from the City) of the intent to terminate. If the Surety fails to so confirm its intent to perform, or having done so fails to perform accordingly, the City may take over the Work and prosecute the same to completion by any method it may deem advisable, for the account of and at the expense of the Design-Builder, and the Design-Builder and the Surety shall be liable to the City for all reasonable excess cost occasioned to the City thereby. The City may without liability for doing so, take possession of and utilize in completing the work, such materials, equipment, plant and other property belonging to the Design-Builder as may be on the Site of the Work and necessary therefore.

B. City Convenience Termination Option

(1) Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement or any portion thereof. In such event, Owner shall pay Design-Builder for the following:

1. All Work executed and for proven loss, cost or expense in connection with the Work allowable pursuant to the Agreement;

2. The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

3. The Design-Builder's Fee Percentage on the costs set forth above.

(2) Notwithstanding anything to the contrary contained herein, if a termination occurs prior to execution of the applicable GMP Amendment, the amount payable to Design-Builder, inclusive of all payments previously made to Design-Builder and costs of demobilization, shall in no event exceed the applicable Not To Exceed Amount.

(3) The total amount to be paid to Design-Builder under this Section 2.11.B shall not exceed the total GMP. Under no circumstances is Design-Builder entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 2.11.B. The payment to Design-Builder determined in accordance with this Section 2.11.B constitutes Design-Builder's sole and exclusive remedy for a termination under this Section 2.11.B.

(4) If Owner terminates this Agreement pursuant to Section 2.11.B above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

2.12 REMEDIES FOR BREACH

(1) The parties agree that, except as otherwise provided in the Contract with respect to termination rights, in the event that either party breaches this Contract, the other party may exercise any legal rights it may have under this Contract, under the Payment and

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Performance Bond and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Contract except upon the occurrence of an Event of Default or as otherwise provided herein; provided that upon any such termination, the terminating party shall have all of the rights and remedies provided for herein.

(2) Consequential Damages. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 2.12(3) BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

(3) The limitations of liability for consequential damages under Section 2.12(2) above shall not apply to or limit any right of recovery a party may have respecting the following:

1. Losses (including defense costs) to the extent (i) the loss is covered by the proceeds of insurance required to be carried hereunder or for which Design-Builder was required to provide insurance coverage, or (ii) Design-Builder is deemed to have self-insured the loss pursuant to the Contracts;

2. Losses in connection with any illegal activities, fraud, recklessness, criminal conduct, intentional misconduct, bad faith, or gross negligence;

3. Design-Builder's indemnities under this Contract;

4. Design-Builder obligation to pay liquidated damages under this Contract; and

5. Losses arising out of Design-Builder's Release of Hazardous Materials.

2.13 EVENTS OF DEFAULT BY THE DESIGN-BUILDER OR DESIGN-BUILD TEAM

A. Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination

Each of the following shall constitute an Event of Default by the Design-Builder or a major subcontractor or team member of the Design-Builder upon which the City, by notice to the Design-Builder, may terminate this Contract without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Insolvency. The insolvency of the Design-Builder as determined under the Bankruptcy Code;

(2) Voluntary Bankruptcy. The filing by the Design-Builder of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Design-Builder to the filing of any bankruptcy or reorganization petition against the Design-Builder under the Bankruptcy Code; or the filing by the Design-Builder of a petition to reorganize the Design-Builder pursuant to the Bankruptcy Code; or

(3) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Design-Builder or of a major part of the Design- Builder's property, respectively, or the filing against the Design-Builder of a petition to reorganize the Design-Builder pursuant to the Bankruptcy Code,

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which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively.

B. Events of Default Requiring Previous Notice and Cure Opportunity for Termination

It shall be an Event of Default by the Design-Builder upon which the City may terminate this Contract, by notice to the Design-Builder, if:

(1) any representation or warranty of the Design-Builder hereunder was false or inaccurate in any material respect when made, and the legality of this Contract or the ability of the Design-Builder to carry out its obligations hereunder is thereby materially and adversely affected; or

(2) T h e Design-Builder fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the City under this Contract within sixty (60) days following the due date for such payment, or (b) to perform any other material obligation under this Contract (unless such default is excused by an Changed Conditions as and to the extent provided herein), except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the City the right to terminate this Contract for cause under this subsection unless:

a. The City has given prior written notice to the Design-Builder stating that a specified default has occurred which gives the City a right to terminate this Contract for cause under this Section, and describing the default in reasonable detail; and

b. The Design-Builder has neither challenged in an appropriate forum the City's conclusion that such a default has occurred or constitutes a material breach of this Contract nor corrected or diligently taken steps to correct such default within a reasonable time but not more than 30 days from the date of the notice given pursuant to item (1) above (but if the Design-Builder shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for so long as the Design-Builder is continuing to take such steps to correct such default).

2.14 EVENTS OF DEFAULT BY THE CITY

A. Events of Default Permitting Termination

Each of the following shall constitute an Event of Default by the City upon which the Design-Builder, by notice to the City, may terminate this Contract:

(1) Failure to Pay or Perform. The failure, refusal or other default by the City in its duty to perform any material obligation under this Contract (unless such default is excused by a Changed Conditions as and to the extent provided herein); or

(2) Bankruptcy. The authorized filing by the City of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for the City shall not in and of itself constitute an Event of Default hereunder.

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B. Notice and Cure Opportunity

No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Design-Builder the right to terminate this Contract for cause under this subsection unless:

(1) The Design-Builder has given prior written notice to the City stating that a specified default has occurred which gives the Design-Builder a right to terminate this Contract for cause under this Section, and describing the default in reasonable detail; and

(2) The City has neither challenged in an appropriate forum the Design-Builder's conclusion that such default has occurred or constitutes a material breach of this Contract nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than 30 days from the date of the notice given pursuant to item (1) above (but if the City shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the City is continuing to take such steps to correct such default).

2.15 OBLIGATIONS OF THE DESIGN-BUILDER UPON TERMINATION

A. Design-Builder Obligations

Upon a termination of the Design-Builder's right to perform this Contract or upon expiration of this Contract, the Design-Builder shall, as applicable:

(1) stop the Design-Build Work on the date and to the extent specified by the City;

(2) promptly deliver to the City all design documents and "as-built" construction record drawings prepared by the Design-Builder in carrying out the Design-Build Work which have been paid for but have not previously been delivered to the City;

(3) promptly take all action as necessary to protect and preserve all materials, equipment, tools, and other property;

(4) promptly remove from the Project all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Design-Builder (including, but not limited to sheds, trailers, and workshops), and repair any damage caused by such removal;

(5) clean the Project and the Project Site and leave them in a neat and orderly condition;

(6) promptly remove all employees of the Design-Builder and any Subcontractors and vacate the Project Site;

(7) promptly deliver to the City a list of all supplies, materials, equipment, property and special order items previously delivered or fabricated by the Design-Builder or any Subcontractor but not yet incorporated in the Project;

(8) provide the City with any spare parts and additional materials required by the Contract Documents; (9) deliver to the City the Operation and Maintenance Manual used at the Project in the performance of the Design-Build Work, including all revisions and updates thereto;

(10) deliver to the City a copy of all books and records in its possession relating to the performance of the Design-Build Work;

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(11) advise the City promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(12) promptly deliver to the City copies of all Subcontracts, together with a statement of:

a. the items ordered and not yet delivered pursuant to each agreement;

b. the expected delivery date of all such items;

c. the total cost of each agreement and the terms of payment; and

d. the estimated cost of canceling each agreement;

(13) assign to the City any Subcontract that the City elects in writing, at its sole election and without obligation, to have assigned to it. The City shall assume, and the Design-Builder shall be relieved of its obligations under, any Subcontract so assigned;

(14) unless the City directs otherwise, terminate all Subcontracts related to this Project;

(15) provide the City with a list of all Project equipment subject to patents, licenses, franchises, trademarks or copyrights and the associated royalties and license fees associated therewith which the City will be responsible for paying on or after the Termination Date;

(16) as directed by the City, transfer to the City by appropriate instruments of title, and deliver to the Project (or such other place as the City may specify), all special order items pursuant to this Contract for which the City has made or is obligated to make payments;

(17) notify the City promptly in writing of any Legal Proceedings against the Design-Builder by any Subcontractor or other third parties relating to the termination of the Design-Build Work (or any Subcontracts);

(18) give written notice of termination, effective as of date of termination of this Contract, promptly under each policy of Required Insurance (with a copy of each such notice to the City), but permit the City to continue such policies thereafter at its own expense, if possible; and

(19) take such other actions and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the City's costs and take no action which shall increase any amount payable by the City under this Contract.

B. Design-Builder Payment of Certain Costs

If termination is pursuant to cause, the Design-Builder shall be obligated to pay the costs and expenses of undertaking its obligations under subsection A. of this Section. If the Design-Builder fails to comply with any obligation under this Section, the City may perform such obligation and the Design-Builder shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

D. City Payment of Certain Costs

If termination is due to a City Event of Default or termination for the City's convenience, the City shall pay to the Design-Builder within 60 days of the date of the Design-Builder's invoice supported by Cost Substantiation all reasonable cost and expenses incurred by the Design-Builder in satisfying its obligations under the Contract.

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E. Delivery of Design-Build Work to the City

Concurrently with payment by the City to the Design-Builder of the amount due upon any termination of this Contract under this Section, the Design-Builder shall deliver to the City all materials including Deliverables-in-progress produced for this Contract during the period to the Termination Date hereunder, which Deliverables and Deliverables-in-progress immediately shall become the property of the City. The City's use of any such Deliverables and Deliverables-in-progress for any purpose other than the continuation of the Design-Build Work shall be at its own risk and the Design-Builder shall have no liability therefor.

2.16 SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION

All representations and warranties of the parties hereto contained in this Contract, the Design-Builder's indemnity obligations in this Contract with respect to events that occurred prior to the Termination Date, , and all other provisions of this Contract that so provide shall survive the termination of this Contract. No termination of this Contract shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the performance of this Contract.

2.17 LIENS

In the event that there are any liens on file against the City, the City shall be entitled to withhold final or progress payments to the extent deemed necessary by the City to properly protect the outstanding lien claimants until proper releases have been filed with the City Clerk.

2.18 LEGAL DISPUTES

A. General

Washington law shall govern the interpretation of the Contract. The state or federal courts located in Pierce County Washington shall be the sole venue of any mediation, arbitration, or litigation arising out of the Contract. The Design-Builder and the City each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

B. Attorney Fees

If the Contract becomes the subject of litigation or arbitration, the substantially prevailing party may be entitled to reasonable attorney fees, as provided in RCW 39.04.240. Provided, however, the attorney fee hourly rate for the City's Deputy City Attorneys is agreed to be $250 per hour or the same as the hourly rate for Design-Builder's legal counsel, whichever is greater.

C. Dispute Resolution Process

All claims, disputes and other matters in question between the City and the Design-Builder arising out of, or relating to, this Contract, shall be resolved in accordance with the following procedures: (1) dispute, (2) claims, (3) mediation, and (4) judicial resolution.

D. Claims

(1) The City and the Design-Builder acknowledge the benefits of resolving, and attempting to resolve, all disputes by discussion between themselves, without proposing to any third parties, and agree therefore to negotiate in good faith as set forth in Subsection E below to resolve all disputes before invoking any other method of dispute resolution as provided for in this Contract; provided, however, that the period of time for good faith negotiations shall not exceed 30 days, unless a longer period is mutually agreed. If

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either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide an initial written notice to the other party of the basis for its claim for relief. The initial written notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, the initial written notice shall be given within a reasonable time, in any case not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder unless the parties specifically agree to allow the Design Log or Trend Log to operate as such written notice of claims.

The initial written notice shall include a description of the claim for relief requested, a description of the occurrence giving rise to the claim for relief, and a preliminary analysis of the cost and schedule impact of the claim for relief.

(2) The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the following:

1. The circumstances giving rise to the claim for relief,
2. The specific contractual adjustment or relief requested;
3. The basis of the entitlement to the claim for relief;
4. The cost of the claim for relief, including an itemized description of the Cost of the Work associated with the claim for relief;
5. The impact of the claim for relief on the Project Schedule, including a proposed revised Project Schedule;
6. Proposed efforts to mitigate the impacts on the cost and schedule.

(3) The failure to provide timely written notice of any claim for relief shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

E. Dispute Avoidance

(1) The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

(2) Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (30) days of the written notice provided for in Subsection D above unless Owner and Design-Builder mutually agree otherwise.

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(3) If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

F. Mediation

(1) If the City and the Design-Builder cannot resolve a dispute through the process set forth in Subsection E above, either party may request mediation. The party requesting mediation shall do so within 30 days of receiving the other parties written notice.

(2) The parties will select and agree upon a mediator. If they are unable to agree, the City and the Design-Builder shall seek the selection of the mediator by Pierce County Superior Court, Tacoma, WA. Mediation will occur within sixty (60) days of the filing of the written notice to mediate unless both parties agree to a later date or unless the mediator's schedule requires a later date. Each part will participate in the mediation process in good faith and may be represented at the mediation by lawyers. The parties shall each bear their respective costs incurred in connection with this procedure, except that they shall share equally the fees and expenses of the mediator and the cost of the facility for the mediation. If mediation does not resolve the disputed matter, the Design-Builder may pursue judicial resolution as provide herein.

G. Judicial Resolution

(1) If mediation does not resolve the disputed matter, the Design-Builder may serve and file a lawsuit in Pierce County Superior Court in Tacoma, WA. Such lawsuit shall be filed within one hundred eighty (180) days of the Project Completion Date or within ninety (90) days of the mediation process under Section C, whichever is later. This requirement cannot be waived except by an explicit waiver signed by the City. The failure to file a lawsuit within the 180 day period shall result in the City's decision rendered in accordance with Section B being final and binding on the Design- Builder and all its Subcontractors.

(2) Actions by the Design-Builder against the City or between the Design-Builder and its Subcontractor arising out of a common set of circumstances shall, upon demand by the City, be submitted in a single forum or the City may consolidate such claims or join any party necessary to the complete adjudication of the matter in the same forum.

2.19 CONTINUANCE OF WORK DURING DISPUTE

At all times during the course of any dispute process, the Design-Builder shall continue with the Design- Build Work as per the Contract, in a diligent manner and without delay or conform to the City's decision or order and shall be governed by the applicable provisions of this Contract. Records of the Design-Build Work performed during such time shall be kept in sufficient detail to enable payment in accordance with the applicable provisions in this Contract, if necessary.

2.20 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 a Contract, either in fact or in appearance. Design-Builder shall comply with all federal, state, and City conflict of interest laws, statutes, and

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regulations. Design-Builder represents that Design-Builder presently has no interest and shall not acquire any interest, direct or indirect, in the program to which the Contract pertains that would conflict in any manner or degree with the performance of Design-Builder's services and obligations hereunder. Design-Builder further covenants that, in performance of a Contract, no person having any such interest shall be employed. Design-Builder 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 Contract subjecting the Contract to termination.

2.21 DESIGN-BUILDER'S DUTY TO EXAMINE

Design-Builder agrees to be responsible for examining the site(s) and to have compared them with the Specifications and Contract Drawings, and to be satisfied as to the facilities and difficulties attending the execution of the proposed Contract (such as uncertainty of weather, floods, nature and condition of materials to be handled and all other conditions, obstacles and contingencies) before the delivery of their Proposal. No allowance will be subsequently made by the City on behalf of the Respondent by reason of any error or neglect on Respondent's part, for such uncertainties as aforesaid.

2.22 PERMITS

Unless otherwise stated in this Contract, the Design-Builder shall procure and pay for all permits and licenses necessary for the completion of this Contract including those permits required by the City. The City will obtain county or state road crossing permits if required. In the event a necessary permit is not obtained, the Design-Builder will not be permitted to work on items subject to said permit and any delays caused thereby will not be subject to extra compensation or extensions.

2.23 NOTIFICATION OF OTHER GOVERNMENTAL AGENCIES AND UTILITIES WHEN UNDERGROUND WORK IS INVOLVED

The Design-Builder shall notify all other affected governmental agencies and utilities whenever underground work is done under the terms of this Contract. The Design-Builder is required to obtain permission of the appropriate public and private utilities and governmental agencies before performing underground work pursuant to the terms of this Contract. The Design-Builder is required to call "one call" at 1-800-424-5555 for all work involving excavation or digging more than 12 inches beneath ground or road surface.

The City may have indicated on the plans and specifications the existence of certain underground facilities that are known to the City division responsible for this Contract. It is the Design-Builder's responsibility to fully comply with the Underground Utility Locate Law, Chapter 19.122 RCW. If the site conditions are "changed or differing" as defined by RCW 19.122.040(l), the Design-Builder may pursue the party responsible for not properly marking or identifying the underground facility. The Design-Builder agrees not to file any claim or legal action against the City for said "changed or differing" conditions unless the City is solely responsible for the delay or damages that the Design-Builder may have incurred.

2.24 INSURANCE

A. During the course and performance of a Contract, Design-Builder will provide proof and maintain the insurance coverage in the amounts and in the manner specified in the City Insurance Requirements as is applicable to the services, products, and deliverables provided under the Contract. The City Insurance Requirements document, if issued, is fully incorporated into the Contract by reference.

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

C. The Design-Builder shall not commence work under this Contract until all required insurance has been obtained and such insurance has been approved by the City, nor shall the Design-Builder allow any subcontractor to commence work on any subcontract until all insurance required herein has been obtained by Subcontractor. It is the Design-Builder's responsibility to ascertain that all Subcontractors have the insurance as required by this Contract at all times such Subcontractors are performing the work. The insurance coverages required herein shall be maintained and effective at all times any work including warranty work is being performed by the Design-Builder or a Subcontractor.

2.25 SAFETY

A. General

The Design-Builder shall, at all times, exercise adequate precautions for the safety of all persons, including its employees and the employees of a Subcontractor, in the performance of this Contract and shall comply with all applicable provisions of federal, state, county and municipal safety laws and regulations. It is the Design-Builder's responsibility to furnish safety equipment or to contractually require Subcontractors to furnish adequate safety equipment relevant to their responsibilities.

The City may advise the Design-Builder of any safety violations. It is the Design-Builder's responsibility to make the necessary corrections. Failure to correct safety violations is a breach of this Contract and, as such, shall be grounds for an order from the City to cease further work and remove from the Site until the condition is corrected. Time and wages lost due to such safety shutdowns shall not relieve the Design-Builder of any provisions of this Contract and shall be at the sole cost of the Design-Builder. The purpose of this authority to stop work is to enforce the contract and not to assume control except to the extent necessary to ensure compliance with the provisions of this contract.

Any of the above actions by employees of the City shall in no way relieve the Design-Builder of their responsibility to provide for the safety of all persons, including their employees.

B. Work Hazard Analysis Report

The Design-Builder will be required to complete a work hazard analysis report. This report shall outline how the Design-Builder proposes to satisfy all safety laws and regulations involved in performing the work. This report shall be completed and submitted to the City before the pre-construction conference. In addition, the report shall be updated at least monthly to account for changing work hazards and submitted to the City within 5 days of update. A copy of the most recent report shall be maintained at the work site (accessible to the supervisor).

2.26 PROTECTION OF WORKERS AND PROPERTY

The Design-Builder shall erect and maintain good and sufficient guards, barricades and signals at all unsafe places at or near the work and shall, in all cases, maintain safe passageways at all road crossings, and crosswalks, and shall do all other things necessary to prevent accident or loss of any kind.

The Design-Builder shall protect from damage all utilities, improvements, and all other property that is likely to become displaced or damaged by the execution of the work under this Contract.

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The Design-Builder is responsible for all roads and property damaged by their operations as shall be determined by the Engineer administering this Contract and for all costs associated with the repairs. The Design-Builder shall be responsible for repairing all damage to roads caused by their operations to the satisfaction of the particular governmental body having jurisdiction over the road. The Design-Builder shall also be responsible for repairing all damage to City-owned property to the City's satisfaction.

2.27 DESIGN-BUILDER'S COMPLIANCE WITH THE LAW

A. Hours of Labor

The Design-Builder and Subcontractors shall be bound by the provisions of RCW Chapter 49.28 (as amended) relating to hours of labor.

In the event that the work is not performed in accordance with this provision and in accordance with the laws of the State of Washington, then this Contract may be terminated by the City for the reason that the same is not performed in accordance with the public policy of the State of Washington as defined in said statutes.

B. Prevailing Wages

The Design-Builder and any Subcontractors shall be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits. No worker, laborer, or mechanic employed in the performance of any part of this Contract shall be paid less than the "prevailing rate of wage" as determined by the industrial Statistician of the Department of Labor and industries. The schedule of the prevailing wage rates for the locality or localities where this Contract will be performed is by reference made a part of this Contract as though fully set forth herein. Current prevailing wage data will be furnished by the Industrial Statistician upon request. The Design-Builder shall immediately upon award of the Contract, contact the Department of Labor and Industries, ESAC Division, General Administration Building, Olympia, Washington 98504, to obtain full information, forms and procedures relating to these matters.

Before payment is made by or on behalf of the City, of any sum or sums due on account of a Public Works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the Design-Builder and each and every Subcontractor from the Design-Builder or a Subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages." Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the Department of Labor and Industries before it is submitted to said officer. Unless otherwise authorized by the Department of Labor and Industries each voucher claim submitted by a Design-Builder for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency.

Following the final acceptance of a Public Works project, it shall be the duty of the officer charged with the disbursement of public funds to require the Design-Builder and each and every Subcontractor from the Design-Builder or a Subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW 60.28.010 are released to the Design-Builder. Each affidavit of wages paid must be certified by the industrial statistician of the Department of Labor and Industries before it is submitted to said officer.

In the event any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such 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 State of Washington, Department of Labor and industries whose decision shall be final, conclusive and binding on all parties involved in the dispute.

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2.28 TAXES

A. Applicable federal, state, City, and local taxes shall be included in the Contract price. As used herein, the term "taxes" shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.

(1) Federal Excise Tax. The City is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required.

(2) State and Local Sales Tax. The City is subject to Washington state sales tax. It is Design-Builder's obligation to state the correct sales tax percentage and include the applicable Washington state, city and local sales tax as a separate line item(s) in the prices submitted.

(3) City of Tacoma Business and Occupation Tax. It is Design-Builder's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal. Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City may be subject to the City's Business and Occupation Tax.

B. Any or All Other Taxes. Any or all other taxes are the responsibility of Design-Builder unless otherwise required by law. Except for state sales tax, Design-Builder acknowledges that it is responsible for the payment of all taxes applicable to the Contract and Design-Builder 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.

C. If the City is assessed, made liable, or responsible in any manner for taxes contrary to the provisions of the Contract, Design-Builder agrees to hold the City harmless from such costs, including attorney's fees. In the event Design-Builder fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, other than those taxes the City is required to pay, then Design-Builder authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from Design-Builder's total compensation.

2.29 LICENSES/PERMITS

A. Design-Builder must register with the City of Tacoma's Tax and License Division, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, 253-591-5252, https://www.cityoftacoma.org/government/city_departments/finance/tax_and_license/.

B. During the term of the Contract, Design-Builder, at its expense, shall obtain and keep in force any and all necessary licenses and permits including a Washington State business license and a business license as is required by Tacoma Municipal Code Subtitle 6C.20.

2.30 COMPENSATION

A. The City shall compensate Design-Builder in accordance with the Contract. Said compensation shall be the total compensation for Design-Builder's performance hereunder including, but not limited to, all work, services, deliverables, materials, supplies, equipment, subcontractor's fees and all reimbursable travel and miscellaneous or incidental expenses to be incurred by Design-Builder. Unless stated otherwise the total stated compensation may not be changed without a written change order or other form of contract amendment.

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B. Payment(s) made in accordance with the Contract shall fully compensate Design-Builder for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Supplier.

2.31 PROGRESS PAYMENT

See Article 7 of the Agreement and Section 1.13 of Exhibit C.

2.32 FINAL PAYMENT

The final payment of five percent (5%) of the Contract price shall be approved on final acceptance of the work under this Contract by the City. Also, before final payment is made, the Design-Builder shall, in addition to the requirements set forth in Section 1.13.F of Exhibit C be required to:

A. Provide a certificate from the Washington State Department of Revenue that all taxes due from the Design-Builder have been paid or are collectible in accordance with the provisions of Chapter 60.28 and Title 82 of the Revised Code of Washington;

B. Provide the General Release to the City on the form set forth in these Contract documents;

C. Provide a release of any outstanding liens that have been otherwise filed against any monies held or retained by the City of Tacoma;

D. File with the City Director of Finance, and with the Director of the Washington State Department of Labor and Industries, on the state form to be provided, an affidavit of wages paid;

E. File with the City Director of Finance, on the state form to be provided, a statement from the State of Washington, Department of Labor and Industries, certifying that the prevailing wage requirements have been satisfied;

F. File with the City Director of Finance, on the state form to be provided, a statement of release from the Public Works Contracts Division of the State of Washington, Department of Labor and Industries, verifying that all industrial insurance and medical aid premiums have been paid;

G. If there is a fee assessed to the City for any certificate, release or other form required by law, the Design- Builder agrees that the fee amount may be passed on to the Design-Builder and deducted from the monies paid to the Design-Builder.

2.33 CHANGES

A. In Plans or Quantities

The City, without invalidating this Contract, or any part of this Contract, may order extra work or make reasonable changes by altering, adding to or deducting from the materials, work and labor and the Contract sum will be adjusted accordingly. All such work and labor shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. When work or bid items are deducted, reduced or eliminated, it is agreed that no payment will be made to Design-Builder for anticipated profit.

B. Extra Work

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Any claim or order for extra materials, work and labor made necessary by alterations or additions to the plans or by other reasons for which no price is provided in this Contract, shall not be valid unless the Design-Builder and City have agreed upon a price prior to commencing extra work, and the agreement has been signed by the Design-Builder and approved by the City, and approved by the payment and performance bond surety.

C. Extra Work – No Agreed Price

If it is impracticable to fix an increase in price definitely in advance, the order may fix a maximum price which shall not under any circumstances, be exceeded, and subject to such limitation, such alteration, modification, or extra shall be paid for at the actual necessary cost as determined by the City, which cost (including an allowance for profit) shall be determined pursuant to Article 6 of the Agreement:

D. Claims for Extra Work

If the Design-Builder claims Design-Build Work involve extra cost under this Contract, they shall give the City written notice thereof within 30 days after receipt of such instruction, and in any event before proceeding to execute the work, except in an emergency endangering life or property, and the procedures governing the same shall be as provided for immediately above in this paragraph. The method in these paragraphs is the only method available to the Design-Builder for payment of claims for extra work performed under the terms of this Contract.

2.34 CLEANING UP

The Design-Builder shall at all times, at their own expense, keep the premises free from accumulation of waste materials or debris caused by any workers or the work, at the completion of the work the Design- Builder shall remove all his waste materials from and about the Site and all their equipment, sanitary facilities and surplus materials. In the case of dispute, the City may remove the debris and charge the cost to the Design-Builder as the City shall determine to be just. All material that is deposited or placed elsewhere than in places designated or approved by the City will not be paid for and the Design-Builder may be required to remove such material and deposit or place it where directed.

2.35 LIST OF SUBCONTRACTORS

Provide a list of subcontractors as required in the RFP.

2.36 ACCESS TO AND SUITABILITY OF THE PROJECT SITE – Not Used

2.37 PROJECT PHASES AND VALIDATION PERIODS – Not Used

2.38 REGULATED SITE CONDITIONS

A. Design-Builder Obligations

In performing the Design-Build Work, the Design-Builder shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition or otherwise address and manage such Regulated Site Conditions in accordance with Good Engineering and Construction Practice after the location and existence of such Regulated Site Condition has been disclosed to the Design-Builder, or becomes actually known by the Design-Builder through physical observation (including any such observation made during any demolition). The Design-Builder shall also comply with all requirements concerning Regulated Site Conditions. The Design-Builder shall be liable for any loss and expense incurred by the City arising out of or resulting from: (1) the Design-Builder's, or its agents' or Subcontractors', failure to exercise due care with respect to such disclosed or known Regulated Site Condition; (2) the Design-Builder's, or its agents' or Subcontractors',

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failure to comply with any requirements in the Schedules concerning Regulated Site Conditions; and (3) any new release of Regulated Substances caused by the Design-Builder or its agents or Subcontractors, such as a spill.

The Design-Builder shall not otherwise be responsible for any Regulated Site Condition, including any loss and expense relating to any Regulated Site Condition.

B. Asbestos Discovery – Notification Obligations

(1) The City has provided notice of existing asbestos in the Project Site. In the event that the presence of any additional asbestos is discovered in the vicinity of the Work that existed prior to the Design-Builder's entry ("pre-existing asbestos"), the Design-Builder shall promptly suspend all work and notify the City. The Design-Builder shall be responsible for the removal, abatement, and disposal of any pre-existing asbestos in accordance with the Contract.

(2) To the extent that the Design-Builder fails to promptly suspend all work and notify the City of the discovery of any additional pre-existing asbestos, or to the extent the Design-Builder, its Subcontractors or agents, negligently cause any pre-existing asbestos, the location of which the City has notified the Design-Builder, to become disturbed, the Design-Builder shall remain responsible for such asbestos related claims.

C. City Obligations

If at any time a Regulated Site Condition is determined to exist which (1) reasonably requires a Response Action or other action in order to comply with Applicable Law, (2) interferes with the performance of the Design-Build Work, or (3) increases the cost to the Design-Builder of performing the Design-Build Work, then the Design-Builder shall immediately provide written notice to the City of such Regulated Site Condition. The City shall promptly after written notice from any Governmental Body or the Design-Builder of the presence or existence thereof, commence and diligently prosecute Response Actions or other actions as may be necessary to dispose of, remediate or otherwise correct the Regulated Site Condition or otherwise make the Regulated Site Condition comply with Applicable Law.

2.39 COMMENCEMENT OF DESIGN-BUILD WORK

A. Commencement

The Design-Builder shall proceed, promptly following the Contract Date, to undertake, perform and complete the Design-Build Work in accordance with the Contract Documents. The Design-Builder shall not commence the manufacturing or construction portion of the Design-Build Work until the Design-Builder has satisfied all pre-construction requirements set forth in or such requirements have been waived by the City.

B. Sole Responsibility and Liability

The Design-Builder shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding any term, condition or provision pertaining to the Project set forth in the RFQ or RFP. The Design-Builder acknowledges that, in the proposal and negotiation process leading to the execution of this Contract, the Design-Builder had the unrestricted right and opportunity not to execute this Contract if the Design-Builder had determined that any such term, condition or provision would in any manner or to any degree impair the Design-Builder's ability to perform the Design-Build Work in compliance herewith.

C. City Review and Comment on Design Documents

The City shall have the right to review and comment on the Design-Builder's design documents in order to confirm the compliance and consistency of the design documents

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with the General and Technical Requirements. The Design-Builder shall give due consideration and provide written responses, in the time and manner provided in the Contract Documents, to any comments delivered by the City as to the Design-Builder's design documents. Neither compliance by the Design-Builder with the General and Technical Requirements, nor review and comment by the City of the design documents, nor any failure or delay by the City in commenting on any design documents shall in any way relieve the Design-Builder of full responsibility for the timely design, construction and performance of the Project in accordance with the Contract.

D. Documents at the Project Site

The Design-Builder shall maintain at the Project Site all design and construction documents, including a complete set of record drawings, in accordance with the Contract Documents. These documents shall be available to the City for reference, copying and use. Construction and other record drawings shall be updated at least bi-weekly with redline markups to reflect as-installed or constructed conditions.

2.40 DESIGN-BUILDER DESIGN – GENERAL AND TECHNICAL REQUIREMENTS

A. Conformity of Design-Builder Design Documents with the General and Technical Requirements

The Design-Builder shall prepare all design documents necessary or appropriate to carry out and complete the Project. All working and final design documents shall comply with the General and Technical Requirements and shall ensure that the Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Contract Documents.

B. City Interest in the General and Technical Requirements

The Design-Builder acknowledges the City's material interest in each provision of the General and Technical Requirements and no change to the General and Technical Requirements shall be made except with the consent of the City, which may be withheld or conditioned in its sole discretion. Any such changes shall be evidenced by a Change Order, as applicable.

C. General and Technical Requirement Changes Made At Design-Builder Request

The Design-Builder may request for City consideration changes to the General or Technical requirements that do not negate ,dilute, or supersede any other General or Technical requirement and which also do not negatively impact the quality, integrity, reliability, and service life. The Design- Builder shall provide the City timely written notice of any such request such that the City has at least 30 days to review such request, and if approved, sufficient time develop and execute a Change Order so that the project schedule is not affected The notice shall contain sufficient technical, cost, and schedule information for the City to determine that the General or Technical Requirements change: (1) does not diminish the capacity of the Project to comply with the Contract; (2) does not impair the quality, integrity, durability and reliability of the Project; (3) is reasonably necessary or is advantageous for the Design- Builder to fulfill its obligations under this Contract; and (4) is feasible. The City shall have the absolute right to accept, reject or modify any General or Technical Requirements change proposed by the Design-Builder. Any such General or Technical Requirement change accepted or modified by the City, and any related change in the terms and conditions of this Contract, shall be reflected in a Change Order.

D. General and Technical Requirement Changes Made On Account Of Changed Condition

Upon the Notice of Changed Conditions, the City shall promptly proceed, subject to the terms, conditions and procedures set forth in Section 2.33, to make or cause to be made all General and Technical Requirements changes reasonably necessary to address the Changed Condition(s). The Design-Builder shall consult with the City concerning possible

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means of addressing and mitigating the effect of any Changed Conditions, and both parties shall cooperate in order to minimize any delay, lessen any additional cost and modify the Project so as to permit the Design-Builder to continue performing the Design-Build Work in light of such Changed Conditions. The design and construction costs resulting from any General or Technical Requirement resulting from a Changed Condition shall be borne by the City. Any General or Technical Requirement change made on account of Changed Conditions, and any related change in the terms and conditions of this Contract, shall be reflected in a Change Order.

E. General and Technical Requirement Changes Required By Governmental Bodies

The parties recognize that a Governmental Body may impose conditions in connection with a Governmental Approval, not known at the time of Technical and Price Proposal submittals, that requires a General or Technical Requirement(s) change. In the event of any such additional conditions are set by a Governmental Body, the City shall promptly proceed to accommodate any General or Technical Requirement changes reasonably necessary to comply with such additional conditions by Change Order.

F. General and Technical Requirement Changes Made At City Direction

The City shall have the right to make General and Technical Requirement changes at any time for any reason whatsoever, whether and however the exercise of such rights affects this Contract. The design and construction costs resulting from any such General or Technical Requirement change made at the City's direction under this Section shall be added to the Contract by Change Order. No General or Technical Requirement change shall be made at the direction of the City under this Section that impairs any right, impairs the ability to perform, imposes any additional obligation or liability, or increases the costs of the Design-Builder hereunder, unless the Design-Builder is specifically compensated or specifically provided relief for such impairment, obligation, cost or liability.

2.41 COMMENCEMENT OF CONSTRUCTION

A. Pre-Construction Requirements

The Design-Builder shall not commence construction of the Project or any portion thereof until all of the following pre-construction requirements have been satisfied by the Design-Builder or waived by the City:

(1) Plans and Reports for Design-Build Work. The Design-Builder shall have received approval from the City on all final versions of plans, drawings and reports required for the Design-Build Work in accordance with the requirements set forth in the Contract Documents.

(2) Updated Construction Schedule. The Design-Builder shall have provided the City an updated Construction Schedule in accordance with the Contract Documents.

(3) Materials on Site. The Design-Builder shall have delivered and inspected all materials required to be on Site in accordance with the requirements of the Contract Documents.

(4) Pre-Construction Conference. The Design-Builder has held a pre-construction conference for the construction with the City in accordance with the requirements of the Contract Documents.

2.42 CONSTRUCTION PRACTICE

The Design-Builder shall perform the Design-Build Work in accordance with the Contract and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly

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prosecution and completion of the Design-Build Work as required by this Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Design-Builder to provide the following construction requirements: construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Project Site; construction personnel; temporary parking; vehicle traffic; safety and first aid facilities and equipment; correction of or compensation for defective work or equipment; Subcontractors' insurance; additional storage areas; temporary fire protection; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination and supervision.

2.43 ENGAGEMENT OF CITY

The Design-Builder shall fully cooperate with the City's Contract Representative of this Contract and the performance of its duties for the City. In the performance of such services, the Design-Builder agrees that the City may, without limiting other possible services to the City: review and monitor construction progress, payments and procedures; determine the completion of specified portions of the Design-Build Work; review proposed changes to the General and Technical Requirements; review plans, drawings and specifications of the Project for compliance with the General and Technical Requirements; review the validity of any Design- Builder written notice that an Changed Conditions has occurred (including the discovery of Regulated Site Conditions); and provide certificates and perform such other duties as may be specifically conferred on the City hereunder. It is understood that while the services intended to be provided by the City shall be of an observational and review nature, the City may, if appropriate, have the authority to interfere with, halt or delay, in any way it deems necessary, the construction of the Project or require or approve changes to the General and Technical Requirements or the Design-Builder's design documents prepared in connection therewith.

2.44 PROGRESS SCHEDULE AND REPORTS

A. General

The Design-Builder shall submit to the City design submittals, monthly progress schedules and reports in accordance with the requirements of the Contract Documents. The Design-Builder agrees that the Design-Builder's submission of the monthly progress schedule and report (or any revised progress schedule and report) is for the City's information only, and the City's acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the City in any manner. Thus, the City's acceptance of the monthly progress schedule and report (or any revised monthly progress schedule and report) shall not imply City approval or consent to any of the matters set forth therein.

B. Design and Construction Schedule

The Design-Builder shall perform the Design-Build Work according to the accepted Project Schedule.

2.45 SUBSTANTIAL COMPLETION – Not Used

A. Substantial Completion Process

See Section 1.13 D of Exhibit C.

B. Substantial Completion Date Conditions – Not Used

C. Concurrence Or Disagreement With Substantial Completion Date Conditions – Not Used

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2.46 FINAL COMPLETION

A. Requirements

"Final Completion" shall be deemed to have occurred when all of the conditions in Section 1.13 E of Exhibit C have been satisfied.

2.47 LIQUIDATED DAMAGES

A. General

This Contract provides for the assessment of Liquidated Damages against the Design-Builder for delay or failure of the Project to achieve Performance Guarantees that are set forth in the GMP Amendment. Each party agrees that the City's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that could occur as a result of such non-performance, breach or default of the Design-Builder), and that the Liquidated Damages provided for herein with respect to each such circumstance are a fair and reasonable determination of such damages and are intended to place the City in the same economic position as it would have been in had the circumstance not occurred. Liquidated Damages shall constitute the only damages that will be assessed against the Design-Builder for delay or failure to achieve Performance Guarantees, and are the exclusive remedy of the City; provided that such Liquidated Damages shall not preclude, limit or alter any other remedies available at law or equity for default or breach for which Liquidated Damages are not specifically provided for in this Contract. The parties acknowledge and agree that such additional remedies are intended to address harms and damages which are separate and distinct from those which the Liquidated Damages are meant to remedy. The City's assessment of Liquidated Damages shall not be construed as a penalty.

B. Liquidated Damages for Delay

(1) The parties have agreed that Liquidated Damages resulting from failure to achieve specific progress schedule milestones. The Design-Builder authorizes the City to deduct the Liquidated Damages pursuant to the schedule set forth below from any money due or become due the Design-Builder. Liquidated Damages will not be assessed for any Day for which an extension of time is granted. No deduction or payment of such damages for delay will release the Design-Builder, in any degree, from further obligations and liability to complete the Contract.

(2) Liquidated Damages for Failure to Achieve Substantial Completion. In the event that the Design- Builder fails to achieve Substantial Completion and other applicable specified requirements by the Scheduled Substantial Completion Date

1 to 30 Days	$1,000.00
Beyond 30 Days	$2,000.00

2.48 COST RECORDS AND REPORTING

For the Term of this Contract, the Design-Builder shall prepare and maintain proper, accurate and complete books and records of the cost and description of the Design-Build Work that the Design-Builder has performed since the Contract Date, the cost of which would be the responsibility of the City if the City were to elect to terminate this Contract pursuant to this Section. All financial records of the Design-Builder and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards. The Design-Builder shall submit a reasonably detailed summary thereof acceptable to the City, together with a summary statement of monthly and aggregate reimbursable expenses incurred, to the City at any time after the Contract Date at its request. Specific requests by the Design-Builder for the payment of reimbursable expenses shall be supported by Cost Substantiation. In the event that the City terminates

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the Contract, the Design-Builder shall make available to the City a copy of all books and records of the Design-Build Work.

2.49 NO WAIVERS

No action of the City or Design-Builder pursuant to this Contract (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Contract. No course of dealing or delay by the City or Design- Builder in exercising any right, power or remedy under this Contract shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Design-Builder under this Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

2.50 NOTICES

Unless otherwise specified, except for routine operational communications, which may be delivered personally or transmitted by electronic mail, all notices required by the Contract shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to Design-Builder's registered agent and to the applicable City representative.

2.51 NONDISCRIMINATION

Design-Builder agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. Design-Builder shall not discriminate in any employment action because 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 handicap. In the event of non-compliance by Design-Builder with any of the non-discrimination provisions of the Contract, the City shall be deemed to have cause to terminate the Contract, in whole or in part.

2.52 FEDERAL, STATE, AND MUNICIPAL LAWS AND REGULATIONS

Design-Builder shall comply with all federal, state, municipal, and/or local laws and regulations in the performance of all terms and conditions of the Contract. Design-Builder shall be solely responsible for all violations of the law from any cause in connection with its performance of work under the Contract.

2.53 FEDERAL, STATE AND MUNICIPAL REGULATIONS

All federal, state, municipal and/or local regulations shall be satisfied in the performance of all portions of the Contract. The Design-Builder shall be solely responsible for all violations of the law from any cause in connection with work performed under this Contract.

2.54 PUBLIC DISCLOSURE: PROPRIETARY OR CONFIDENTIAL INFORMATION

A. Design-Builder submittals, all documents and records comprising the Contract, and all other documents and records provided to the City by Design-Builder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, City may be required, upon request, to disclose the Contract and documents or records 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

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Design-Builder has complied with the requirements to mark records considered confidential or proprietary as such requirements are stated below, City agrees to provide Design-Builder 10 days written notice of impending release. Should legal action thereafter be initiated by Design-Builder to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Design-Builder, 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 Design-Builder took no action to oppose the release of information.

B. If Design-Builder provides City with records or information that Design-Builder considers confidential or proprietary, Design-Builder must mark all applicable pages or sections of said record(s) as "Confidential" or "Proprietary." Further, in the case of records or information submitted in response to a Request for Proposals, an index must be provided indicating the affected pages or sections and locations of all such material identified Confidential or Proprietary. Information not included in the required index will not be reviewed for confidentiality or as proprietary before release. If Design-Builder fails to so mark or index Submittals and related records, then the City, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and Design-Builder expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said record(s).

C. Submission of materials in response to City's Solicitation shall constitute assent by Design-Builder to the foregoing procedure and Design-Builder shall have no claim against the City on account of actions taken pursuant to such procedure.

2.55 WAIVER

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

2.56 SEVERABILITY AND SURVIVAL

If any term, condition or provision herein or incorporated by reference 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 the Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of the Contract, shall survive termination of the Contract.

2.57 NO CITY LIABILITY

Neither the City, its officials, staff, agents, employees, representatives, or consultants will be liable for any claims or damages resulting from any aspect of this procurement process.

2.58 SIGNATURES

A signed copy of Submittals, Contract Documents, including but not limited to contract amendments, contract exhibits, task orders, statements of work and other such Contract related documents, delivered by email or other means of electronic transmission including by using a third party service, which service is provided primarily for the electronic execution of electronic records, shall be deemed to have the same legal effect as delivery of an original signed copy.

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Attachment H

Reference Documents

Tehaleh Pressure Zone Study Summary

Tehaleh is a large master planned community located in East Pierce County that is a rapidly growing community in the Tacoma Water system. Tacoma Water is planning for system expansion and additional supply and storage facilities to serve the area. The Tehaleh Pressure Zone Study updates planning to account for changes in demands, requirements, land use and densities of homes. Additionally, the study plans for the large future Plateau 465 master planned development adjacent to Tehaleh. The study analysis resulted in recommendations for two new reservoirs, two new pump stations, and improvements to the distribution system. The following study summary is organized by the study's five key questions.

1. What systems and facilities currently serve the study area?

The Study area serves unincorporated Pierce County, including the Tehaleh development, from Pipeline 1 (P1) as shown in Exhibit 1 – System Overview. Supply is pumped from P1 via the 198th Pump Station (PS) and 214th PS into the 810-Prairie Ridge Pressure Zone (810 PZ). The Prairie Ridge Reservoir supports the 810 PZ and higher elevation customers. The Prairie Ridge Pump Station supplies higher elevation customers in the 950-Bonney Lake PZ (950 PZ), 1010-Bonney Lake PZ, and 860-Bonney Lake Pressure Zones. The Pinnacle Ridge Standpipe (950 PZ) and Pump Station (1010-Bonney Lake PZ) are under construction and will increase the reliability of service to those pressure zones.

The Fennel Creek Pump Station separately supplies the 705-Fennel Creek PZ (705 PZ) from P1. As Tehaleh expands, the 705 PZ may connect to the 810 PZ via a Pressure Reducing Valve (PRV) Station.

2. What levels of service will be provided to the customers?

The East Connection System provides a high level of service to our customers. The Tehaleh Pressure Zone Analysis study considered:

- Water System Plan criteria for storage and supply facilities needed to meet regulatory requirements;
- The Tacoma Water Pressure Level of Service as it applies to the system expansion and new facilities; and
- Goals for redundancy of supply and storage facilities and flexibility in the distribution system.

The Tehaleh Study focused on providing supply and storage, during normal operating conditions. The Study did not consider Fire Flow Availability in detail, which is analyzed on a case by case basis for new main extensions and customers.

3. What future demands need to be considered for these customers?

Local service area population is anticipated to dramatically increase with the development of future Tehaleh expansions and the adjacent future Plateau 465 Master Planned Development. Demands are projected to more than double in the area, as shown in Table 1, before beginning to stabilize due to slower growth and anticipated water conservation gains at the end of the study period. Additional areas of the 810 PZ have the potential for growth through infill and development of remaining large parcels. Existing infrastructure is inadequate to meet this demand increase. To meet projected demands, Tacoma Water will need to increase the capacity of existing facilities, build new facilities, and upgrade the mains serving facilities.

Tehaleh Pressure Zone Study Summary

TABLE 1 – PROJECTED DEMAND IN STUDY AREA

Demand Scenario	2020	2025	2035	2040
Average Day Demand (MGD)	1.52	2.33	3.15	3.62
Maximum Day Demand (MGD)	4.56	6.90	10.34	11.65
Peak Hour Demand (MGD)	8.51	14.33	22.95	26.16

The study projected the future demands in Tehaleh using the best available information; however, they are highly uncertain. Uncertainty is described below for several major factors: density of future growth, use of reclaimed water, and changes in irrigation use.

Future Density

The study used the Tehaleh developers existing planning for phases. This planning has changed over time and timing is currently shifting due to a current downturn in new home sales. For example, a shift from single family residential to more duplex / multifamily that could increase future demands.

Plateau 465 does not have detailed planning. For planning purposes, the study assumed similar densities to Tehaleh. However, its zoning does allow higher densities than Tehaleh; creating some uncertainty in future demands.

Existing areas of the 810 PZ (not part of Tehaleh or Plateau 465) were projected to increase by about 1,000 customers (~0.85% per year) in the 20 year study period based on the PSRC Vision 2040 estimates. This is the best available information at the time of the study, but is subject to change based on overall growth trends and potentially future rezoning to higher density uses.

Reclaimed Water

The Tehaleh community irrigation on common areas and parks is substantial. Reclaimed Water will be used for this irrigation in the future; however, Pierce County does not have a firm date for bringing the new reclaimed water system online. Tacoma Water's infrastructure was sized to meet these potential future irrigation demand in face of this uncertainty, which may result in oversized facilities once the reclaimed water is used.

Irrigation Use

Tehaleh has very high irrigation use relative to other parts of Tacoma Water's service area. The developer indicates installation of automatic irrigation systems is standard, resulting in a relatively large percentage of customers regularly irrigating. Irrigation in the area is from four sources:

- The Tehaleh community irrigation on common areas and parks.
- Individual residential customers whose irrigation is controlled by their neighborhood association (such as 55+ communities)
- Individual residential customers with full control of their automatic irrigation systems.
- Schools and to a lesser extent commercial customers.

The high early morning irrigation peak caused a low pressure event in the summer of 2022. In response to that event, the developer assisted in adjusting the timing of community and neighborhood association controlled irrigation systems outside of the early morning peak period.

This mitigation could be lost over time as irrigation controllers are re-programing by customers and irrigation contractor as they are maintained. While the Pinnacle Ridge Reservoir provides greater peak period capacity, increased peak demands will cause operational challenges (discussed in Question 5). An education campaign of both residents and irrigation contractors that serve Tehaleh on the timing of irrigation (peak shaving) could help mitigate the risk.

Regular irrigation likely will continue at relatively high rates in the future due to community expectations and rules. Irrigation frequency and duration may decline somewhat as lawns and landscaping mature. If reductions occur, they likely will reduce maximum day demands and to a lesser extent potentially peak hour demands.

4. What options does Tacoma Water have to meet the future levels of service/requirements for the customers in this area?

Additional infrastructure is needed by 2030 to meet regulatory requirements and Tacoma Water's Pressure Level of Service, as well as provide greater redundancy. These projects are shown in Table 2. The location of each project is shown in Exhibit 2 along with a detailed schematic of each project where applicable. The below table describes purpose of each project is briefly described, and additional information is available in project charters where applicable (e.g. 2023-00##). The listed timing is based on the Table 1 Demand Projection, where a change in demand growth could impact timing.

TABLE 2 – PROPOSED INFRASTRUCTURE PROJECTS IN STUDY AREA

Project	Exhibit 2 Schematic ID	Purpose	Timing [1]	Estimated Budget (2023 $)
Pinnacle Ridge Standpipe and PS (Under Construction)	1	1. Provide storage for 950 PZ. 2. Supply the 1010 PZ.	2024	Funded
134th St E & Canyon View Blvd E Temporary Pumping Improvements (2023-0068)	2.3	1. Connection for portable backup pumping to 950 PZ in case of planned or unplanned maintenance	2025	$0.1M
New Fennel Creek Pump Station (2021-0120) [2]	2.5	1. Supply the 810 PZ during normal operations 2. Supply area from McMillin Reservoir when P1 is offline upstream.	2028	$5.0M
198th PS Buildout.	2.4	1. Supply Study Area from P1 during normal operations.	2035	$0.2M [3]
Cascadia Blvd Reservoir and 950 PZ PS (2023-0067) [3]	2.2	1. Secondary supply to the 950 PZ. 2. Storage for the 810 PZ. *Requires New Fennel Creek PS	2029*	$13.3M
New 2nd Prairie Ridge Reservoir (2023-0032)	2.1	1. Storage for the 810 PZ 2. Redundancy for maintenance of 1st reservoir and reliability in 950 PZ	2031	$10.0M
Distribution Main Improvements	5.1 – 5.5	1. Assist in maintain distribution pressures as demands increase.	When possible	$2.7M [3]

Notes:	
1. Timing based on study demand projects. A change in demand growth will change the timing. 2. The New Fennel Creek Pump Station is part of the P1 Pressurization Program. The scope and the timing of the project is directed by that Program. 3. Cost based on engineering judgement noted on exhibits.	$31.3M

With the additional facilities, the distribution system can generally meet regulatory and Tacoma Water Level of Service requirements with the projected demands. Pressures and available fire flow in the distribution system are anticipated to decrease as demands increase, as well as require more pumping power. Several larger diameter main improvements help mitigation these increases. Distribution system improvements should be implemented, when possible, typically in conjunction to road projects.

Review of existing fire flow availability indicates that older portions of the 810 PZ may not support redevelopment if higher fire flows are required. Developers are typically responsible for upgrading mains in where a higher fire flow is needed. Therefore, the study did not analyze these improvements.

5. What are the recommended options from System Planning?

The Study area has several major challenges from a long-term planning perspective that are discussed below: uncertainty in future demands (discussed in Question 3), reliance on Pipeline 1 for supply, and Tehaleh complex operations.

Reliance on Pipeline 1 for supply

The supply to the area is completely reliant on Pipeline 1 (P1). Existing storage would be exhausted in a few hours during an unplanned P1 outage, leaving little time to bring on emergency supply. Existing emergency supplies (Prairie Ridge Springs and Fennel Creek PS via P1) are insufficient to supply the area.

The area also lacks redundancy for planned P1 outages, which will be required for future maintenance and the planned P1 pressurization project. An alternative means of supplying the area (discussed below) is recommended to facilitate this future required work while maintaining service to customers.

New Fennel Creek PS Supply from McMillin Reservoir

McMillin Reservoir can be used to supply the existing Fennel Creek PS from the west, by reversing the normal flow direction in P1. This could provide a means to supply the study area when P1 is offline further east (toward the GRFF). P1 Program's planned new Fennel Creek PS (Exhibit 2 Callout 2.5) is being designed to provide sufficient capacity to supply the area from McMillin Reservoir to mitigate future P1 outages. The New Fennel Creek PS is anticipated to supply the area's MDD, where it will pump into P1 to supply the 198th Ave and 214th Ave PS. This will require changes to P1 to isolate the PSs from the upstream pipe and maintain acceptable pressures.

The developer-funded Falling Waters Blvd Main extension allows direct supply of the New Fennel Creek PS to Tehaleh (810 Prairie Ridge PZ). Pumping directly to the higher 810 PZ, rather than P1, reduces the flows from the New Fennel Creek PS, where it should be able to supply ~4,200 gpm.

Tehaleh Pressure Zone Study Summary

There is limited distribution system capacity to convey flow from the New Fennel Creek PS to the broader 810 PZ. Therefore, the New Fennel Creek PS supply will typically used entirely by the Tehaleh development. This new supply addresses projected future pressure sags in the localized 810 PZ and also provides an opportunity to address the need for redundant supply to the 950 PZ The recommended Cascadia Blvd Reservoir and PS is ideally located for both of these purposes (discussed in detail below).

For planned P1 outages, the New Fennel Creek PS supply should provide the entire area's winter demand. This will require most 810 PZ supply to be pumped up to the 950 PZ via the new Cascadia Blvd Reservoir and Pump Station and then conveyed to the 810 PZ at the Prairie Ridge Reservoir site. This will require in-person changes to facility operations and PRV setpoints that are anticipated to take at least a day to implement. During an unplanned P1 outage, the New Fennel Creek PS supply will help slow draws on storage until large supply mitigations can be implemented.

Reduced 214th PS Use

With the recommended New Fennel Creek PS supplying the 810 PZ, the 214th PS will not be needed during normal conditions. The PS will continue to be needed during extended maintenance at other PS or prolonged P1 shutdowns. The PS should be replaced once P1 is pressurized (outside the study period), as it will substantially change the operating conditions. In the meantime, asset condition should direct any work at the PS.

P1 Pressurization

The P1 pressurization will increase pressures in P1 by 2050 (outside the study period); however, the pressures will be lower than the 810 PZ and the existing pump stations will still be needed. Therefore, P1 Pressurization is not anticipated to fundamentally change the operations of the area.

Tehaleh Complex Operation

Tehaleh will require relatively complex operation in the future. Two major considerations are the need for pumping to the 950 PZ during high demand periods and the recommended Cascadia Blvd Reservoir operation.

Pumping Needed in High Demand Periods with Pinnacle Ridge Reservoir

The Pinnacle Ridge Reservoir (Exhibit 2 Callout 1) provides some equalizing for supplies, where storage is used to reduce the amount of pumping needed during daily peak demand periods. However, Pinnacle Ridge Reservoir will not eliminate the need for pumping during seasonal high-demand peak demand periods, based on future demand projections. The hydraulic model indicates that Prairie Ridge Pump Station will need to supply up to 3,000 gpm in the future to maintain pressures at high elevations customers during these periods, largely due to head losses in 198th Ave main. The Prairie Ridge PS and recommended Cascadia Blvd PS will require pressure-based controls to supply these flows regardless of Pinnacle Ridge Reservoir level.

Future pumping can be limited by adding capacity to the 198th Ave E main, especially the 16" portion. This capacity can be provided by upsizing the main to 24" or adding a parallel main. Additionally, the 1010 PZ should be extended to the customers on Outlook Dr E (It appears this was the intent during the design, but the main north of Cascadia Blvd E was not constructed in subsequent phases).

Tehaleh Pressure Zone Study Summary

Cascadia Blvd Reservoir

The Cascadia Blvd (Fire Station) Reservoir site (Exhibit 2 Callout 2.2) has been long planned as a secondary site to supplement Prairie Ridge, providing additional 810 PZ storage and 950 PZ pumping. Unfortunately, there is insufficient existing distribution capacity to effectively use the site from the broader 810 PZ via the sole 198th Ave connection (12" mains between Tehaleh Blvd and 198th Ave). Using the New Fennel Creek PS to directly supply the PZ addresses this issue by providing substantial new supply from the west.

The Cascadia Blvd Reservoir will have complex interactions with the existing Prairie Ridge Reservoir that will vary depending on the flow in the distribution system (customer demands, 198th Ave / 214th Ave PS use, new 950 PZ PS use, hydrant use, etc.). To simplify operations, a remotely controlled mechanical operated valve on the 16" main near 198th Ave is recommended to limit hydraulic interactions during normal operations.

The Cascadia Blvd Reservoir site is relatively small – 1.2 acres. Additional investigation is recommended to confirm the site is large enough for a large reservoir and geotechnically suitable.

Less Preferred New Facilities Considered in the Study

2nd 950 PZ Pump Station location to be determined in the vicinity of 131st and 198th Ave (Exhibit 2 Callout 3). A 950 PZ pump station in the vicinity of 131st and 198th Ave PS could have access to substantial new supply. This would require a new site for the pump station and main be extended on 198th Ave. The Pump Station would supply from the large 24" distribution main in the 810 PZ to the 950 PZ and Pinnacle Ridge Reservoir. However, the location uses the same 198th Ave mains as Prairie Ridge / Pinnacle Ridge facilities; therefore, it would compound the capacity issues discussed above. Additionally, it is susceptible to similar supply and distribution system failure risks as the existing facilities. Therefore, the site was less preferred to the Cascadia Blvd Reservoir PS that provide new supply in the western portion of Tehaleh.

Berkley Parkway Reservoir and Pump Station (Exhibit 2 Callout 4). The Tehaleh Developer has proposed a reservoir site off a future Berkely Parkway extension. To assist with resiliency, the site should have at least 2.5 MG of active storage. Similar to the Cascadia Blvd Reservoir and PS (described above), the site would be supplied by New Fennel Creek PS via the Falling Water's Blvd extension. A 705 PZ Reservoir could be constructed on the site - an approximately 90' standpipe with a pump station to provide both storage and supply. The 705 PZ has small demands (less than 200,000 gallons per day on average) that is too small to utilize a large reservoir. However, the proximity to Tehaleh facilitates would allow pumping to the 950 PZ to make use of the reservoir (810 PZ distribution system discussed above also apply to this reservoir site). Discharge from 950 PZ will likely be at high pressure (greater than 150 psi). This site would therefore be reliant on pumping to provide normal operations and during emergencies. Therefore, the site was considered less preferred to the Cascadia Blvd site.

If the site is used, a life cycle analysis is recommended to evaluate storage options. The proposed standpipe is expensive to build and maintain, especially when pumping is still required for normal operations. An at-grade reservoir (20 to 30 tall instead of 90 feet) may ultimately be less expensive than a standpipe, where savings on construction and tank recoating offset the additional pumping costs.

Tehaleh Pressure Zone Study Summary

Conclusions

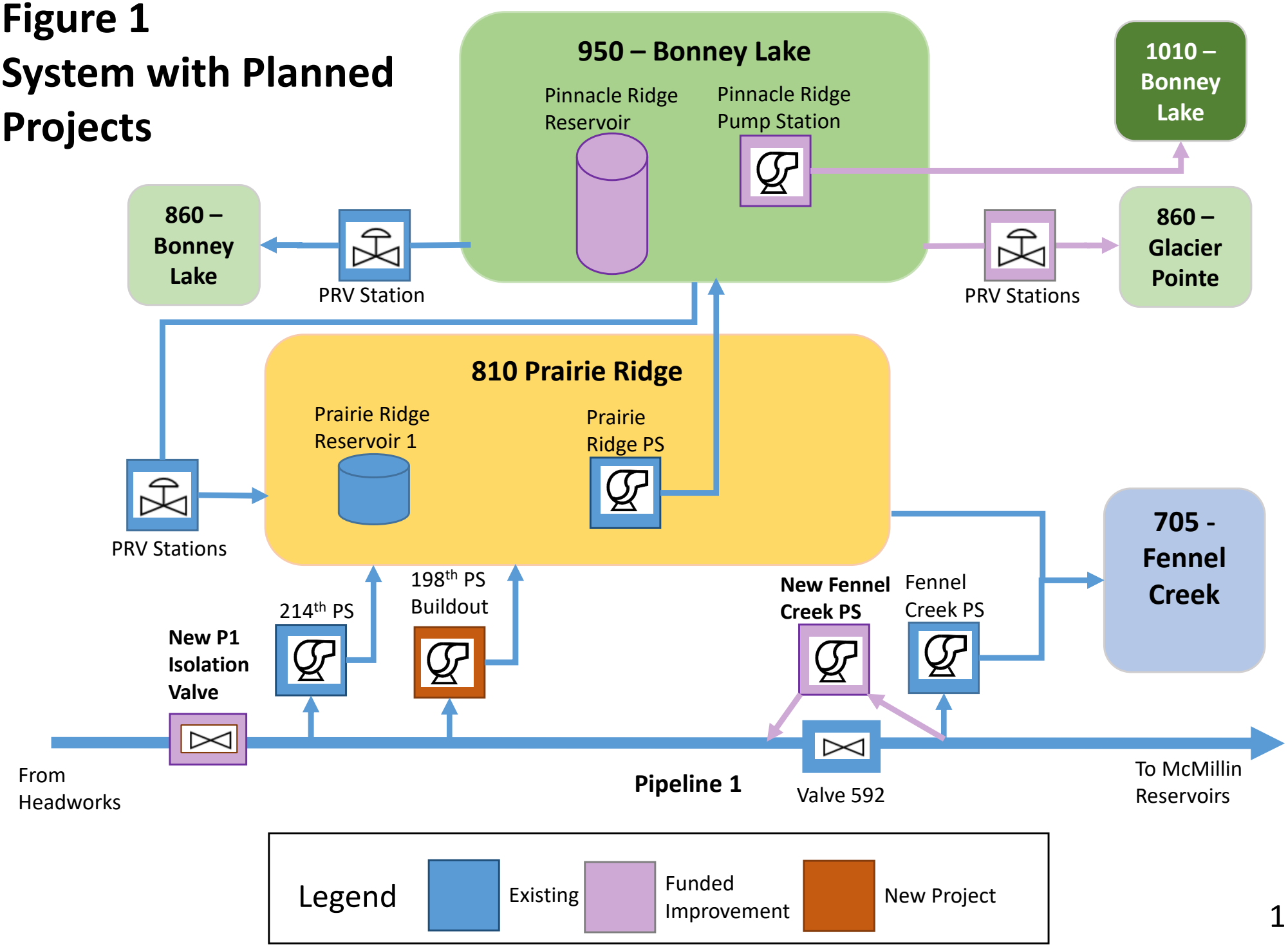
Tehaleh is a large master planned community located in East Pierce County that is a rapidly growing community in the Tacoma Water system. Tacoma Water is planning for substantial system expansion and additional customers. The Study area has several major challenges from a long-term planning perspective requiring new infrastructure. These include two new reservoirs, two new pump stations, and improvements to the distribution system. These projects have been entered into the P&E Project Intake to be included in the Capital Improvement Plan.

Exhibits

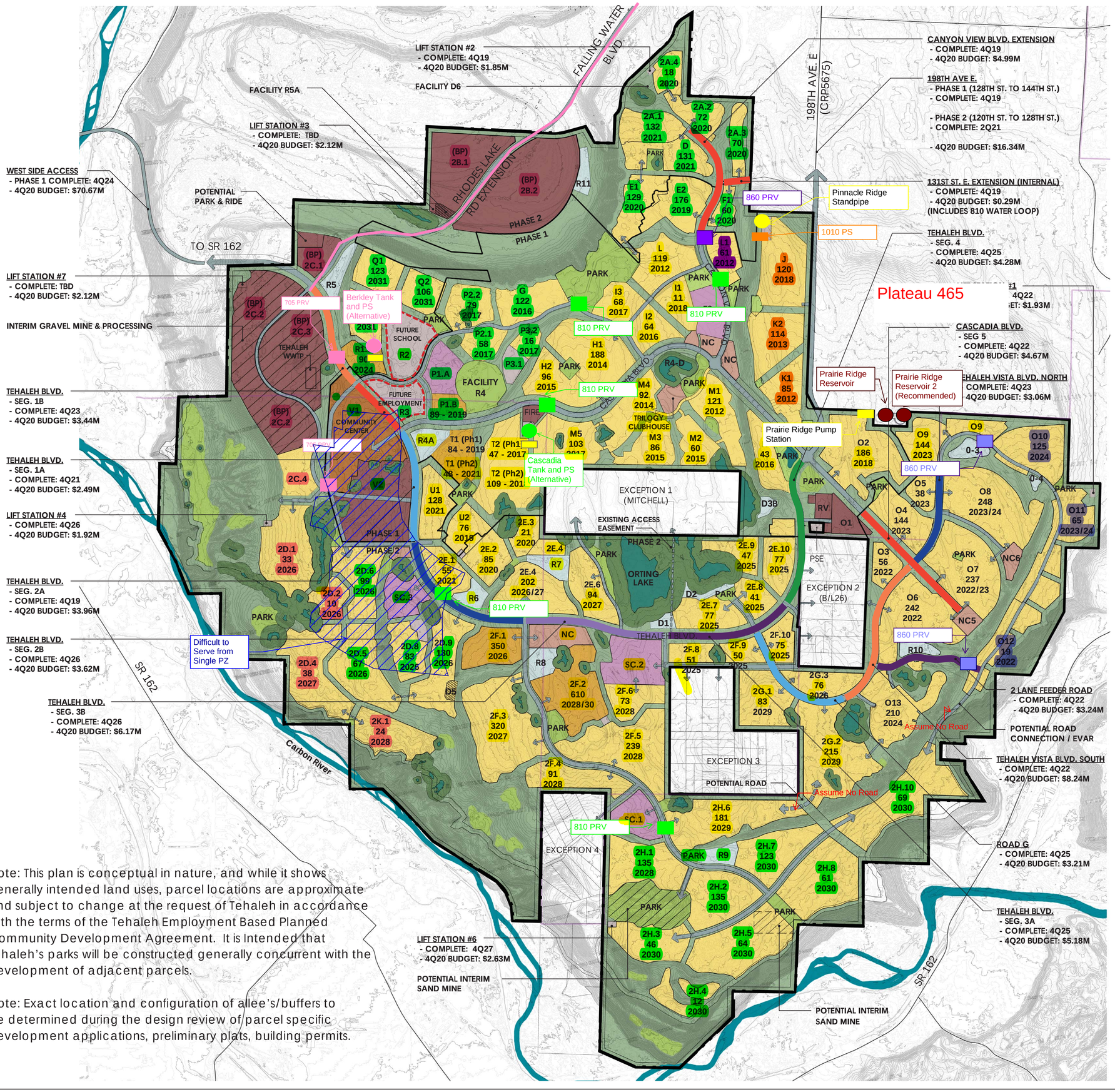
The following are exhibits that summarize the study efforts and findings.

- Exhibit 1 System Overview
- Exhibit 2 Recommended System Improvements

Figure 1
System with Planned Projects



Tehaleh Delivery Schedule



Note: This plan is conceptual in nature, and while it shows generally intended land uses, parcel locations are approximate and subject to change at the request of Tehaleh in accordance with the terms of the Tehaleh Employment Based Planned Community Development Agreement. It is Intended that Tehaleh's parks will be constructed generally concurrent with the development of adjacent parcels.

Note: Exact location and configuration of allee's/buffers to be determined during the design review of parcel specific development applications, preliminary plats, building permits.

Legend

- Cascadia EBPC Boundary
- Phase Boundaries
- School District Boundary

Residential

- Residential (Detached)
- Residential (Potential Multi-famiily)

Parcel Label

XX.XX Parcel #
XX # of Units
20XX Year of Delivery

* Lots to be Developed by Others

Employment

Note: Commercial parcels assumed as raw land sales

- Misc. Employment
- BP - Business Park
- CC - Community Center
- NC - Neighborhood Center
- Schools

Public Facilities

- Master Stormwater Drainage Facilities
- Public Facilities

Open Space

- Wetlands
- Buffers / Allees
- Natural Open Space
- Community Parks

- Future Employment Parcels

These parcels may be designated as Business Park or School if the applicant proposes these parcels for employment use & Pierce County approves this use in the future.

0' 500' 1000' 2000' 4000'

NORTH

PLATEAU 465
PLANNED UNIT DEVELOPMENT
LAND USE and DENSITY SITE PLAN

PIERCE COUNTY PLANNING & LAND SERVICES

APR 22 2014





SITE DATA

PARCEL # 0519151011
ACREAGE: 465 ACRES
PROPOSED RESIDENTIAL UNITS: 2968 UNITS
MIXED USE ACREAGE: 22 ACRES
EXISTING COMPREHENSIVE PLAN DESIGNATION: MODERATE DENSITY SINGLE FAMILY (MSF)
PROPOSED COMPREHENSIVE PLAN DESIGNATION: MASTER PLANNED COMMUNITY (MPC)
EXISTING ZONING: MODERATE DENSITY SINGLE FAMILY (MSF)
PROPOSED ZONING: PLANNED UNIT DEVELOPMENT (PUD)

UTILITIES

WATER: CITY OF TACOMA
SEWER: CITY OF BONNEY LAKE
GAS: PUGET SOUND ENERGY
TELEPHONE: QWEST
CABLE: COMCAST
POWER: PUGET SOUND ENERGY
GARBAGE: MURREY'S DISPOSAL

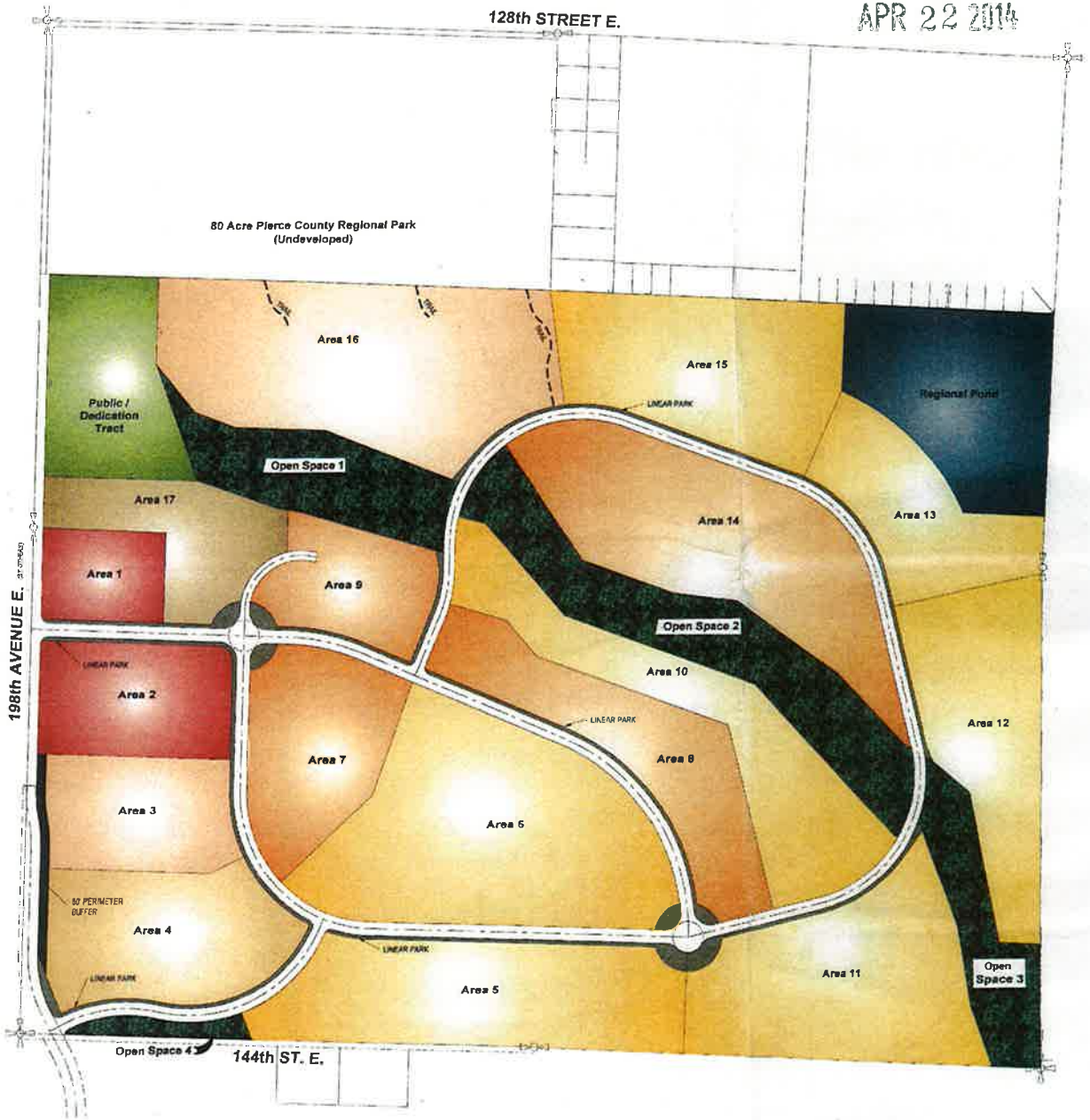
LAND USE and DENSITY TABLE

AREA	LAND USE	HOUSING MIX (MINIMUM PERCENTAGES)						IMPLEMENTING ZONES/THICKNESS FOR NONRESIDENTIAL COMPONENTS	TOTAL UNITS	TOTAL ACRES
		Attached Units		Detached Units						
		Multi-Family Rental Apts.	Townhouse/ Condo Units	<40 Acres Pod/Condo	40 to 64 Acres Platted Lots	65 to 80 Acres Platted Lots	>80 Acres Platted Lots			
1	Commercial/Mixed Use	0	0-10	0	0	0	0	MUD	150	7.4
2	Commercial/Mixed Use	0	0-10	0	0	0	0	MUD	1900	14.9
3	Residential	0	20	0-10	0	0	0	MSF/HDR	1110	54.3
4	Residential	20	40	0-10	0	0	0	MSF/HDR	984	21.1
5	Residential	0	0	0-10	20	20	10	MSF/MDF	1440	37.9
6	Residential	0	0	20	40	0	0-10	MSF/MDF	834	19.9
7	Residential	0	0-10	20	0	0	0	MSF/MDF	241	17
8	Residential	0	0-10	20	0	0	0	MSF/HDR	1200	21.4
9	Residential	0	0-10	20	0	0	0	MSF/HDR	1000	11
10	Residential	0	0	0-10	0-10	10	10	MDF	1400	23.4
11	Residential	0	0	0	0	40	60	MDF	1420	25.5
12	Residential	0	0	0	0	60	40	MSF/MDF	1311	21.8
13	Residential	0	0	0-10	20	20	0	MSF/MDF	1012	18.4
14	Residential	0	0	20	0-10	0	0	MSF	282	10.4
15	Residential	0	0	10	20	0	0	MSF/MDF	1782	23.4
16	Residential	0	0	0-10	0	0	0	MSF	1000	19.4
17	Residential	100	0	0	0	0	0	HDR	1200	10.6
OS-1	Open Space									19.4
OS-2	Open Space									23.3
OS-3	Open Space									21.2
OS-4	Open Space									2.1
OS-5	Public Trail (to be dedicated)									10.4
	Regional Pond									20.6
	Circulation									55.1
	TOTAL								2968	465.4

percentages may not add to 100% in each row. If total minimum % for all, remainder of units will consist of one or more of the identified types.
housing types defined as 0-10% units on any parcel that the housing type is permitted within the area and may be provided in the future based up on market demand. In the event that market demand does not support the housing type in the future, an alternate housing type will be provided.
Please see MPC Zoning Standards and Design Requirements for more information regarding standards to be applied for each area.
Area 1 and 2 are presently developed for commercial uses. A future amount of housing may be provided in these areas based upon market demand.
Units planned in Areas 1 and 2 will not commence until after completion of 2500.

DEVELOPMENT STANDARDS

SEE DRAFT COMPREHENSIVE DEVELOPMENT & DESIGN STANDARDS FOR PLATEAU 465 MASTER PLANNED COMMUNITY



REVISION DESCRIPTION	DATE	BY

DATE SEALED

TITLE: PLATEAU 465
PLANNED UNIT DEVELOPMENT
LAND USE and DENSITY SITE PLAN

CLIENT: PLATEAU 465 L.L.C.
c/o INVESTCO
1302 PUYALLUP ST., SUMNER, WA 98390
ATTN: SEAN MARTIN PHONE(253) 826-2278

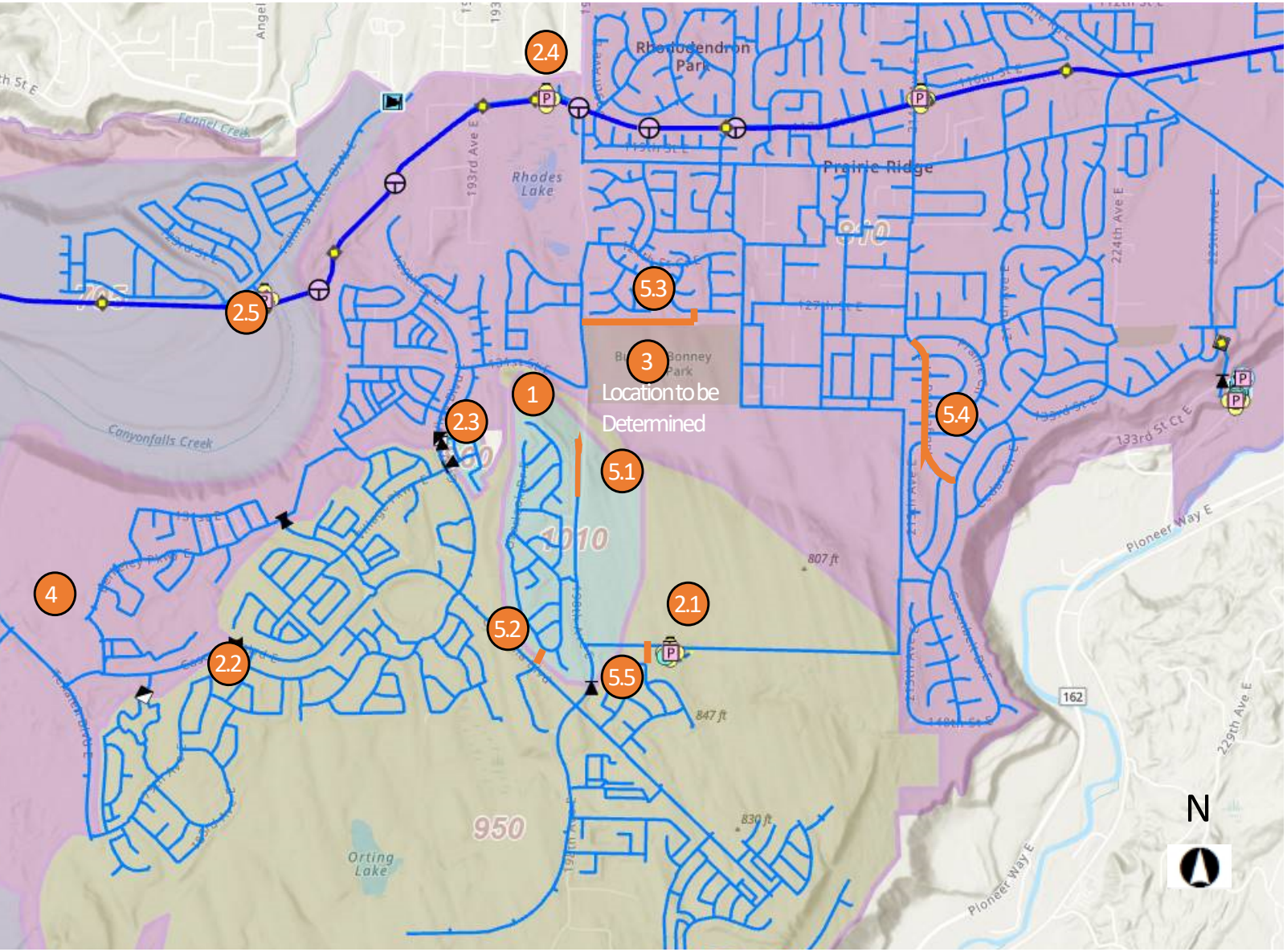
FIGURE 1

Apex Engineering

SHEET 1 OF 1

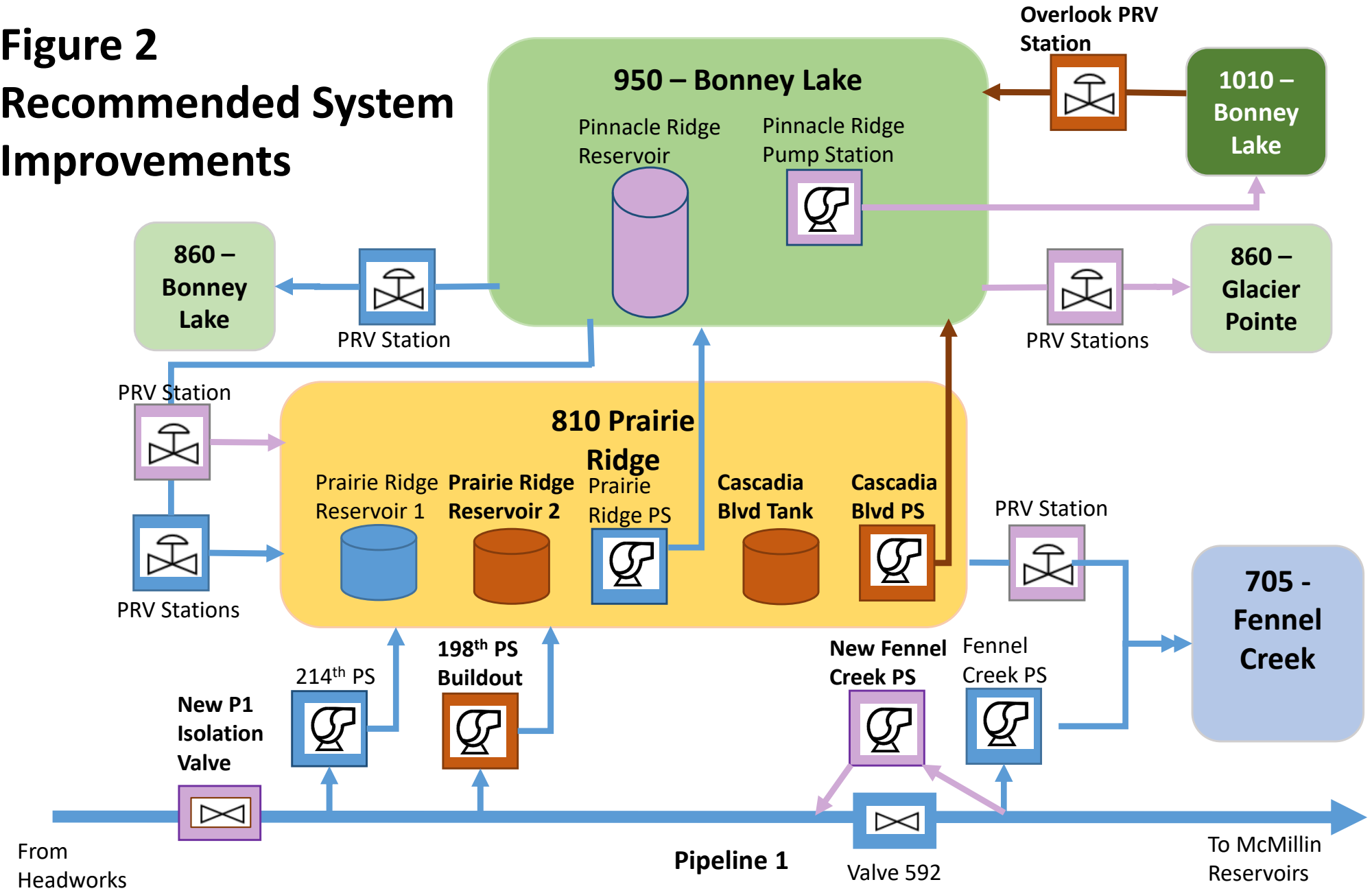
FILE NO. 30016

Tehaleh PZ Analysis Study Potential Improvement Map



No.	Improvement
1	Pinnacle Ridge Reservoir and Pump Station
2.1	2nd Prairie Ridge Tank
2.2	Cascadia Blvd Tank and Pump Station Alternative
2.3	134th St E & Canyon View Blvd E Temporary Pumping
2.4	198th Ave E Pump Station Upgrades
2.5	New Fennel Creek Pump Station
3	2nd 950 PZ Pump Station (Location to be Determined)
4	Berkley Parkway Standpipe and Pump Station Alternative
5.1	198th Ave E 24” Main Upsize
5.2	Overlook Dr PRV Station
5.3	128th St E 12” Main
5.4	Ridgewood Ave 12“ Main Upsize
5.5	145th St Main

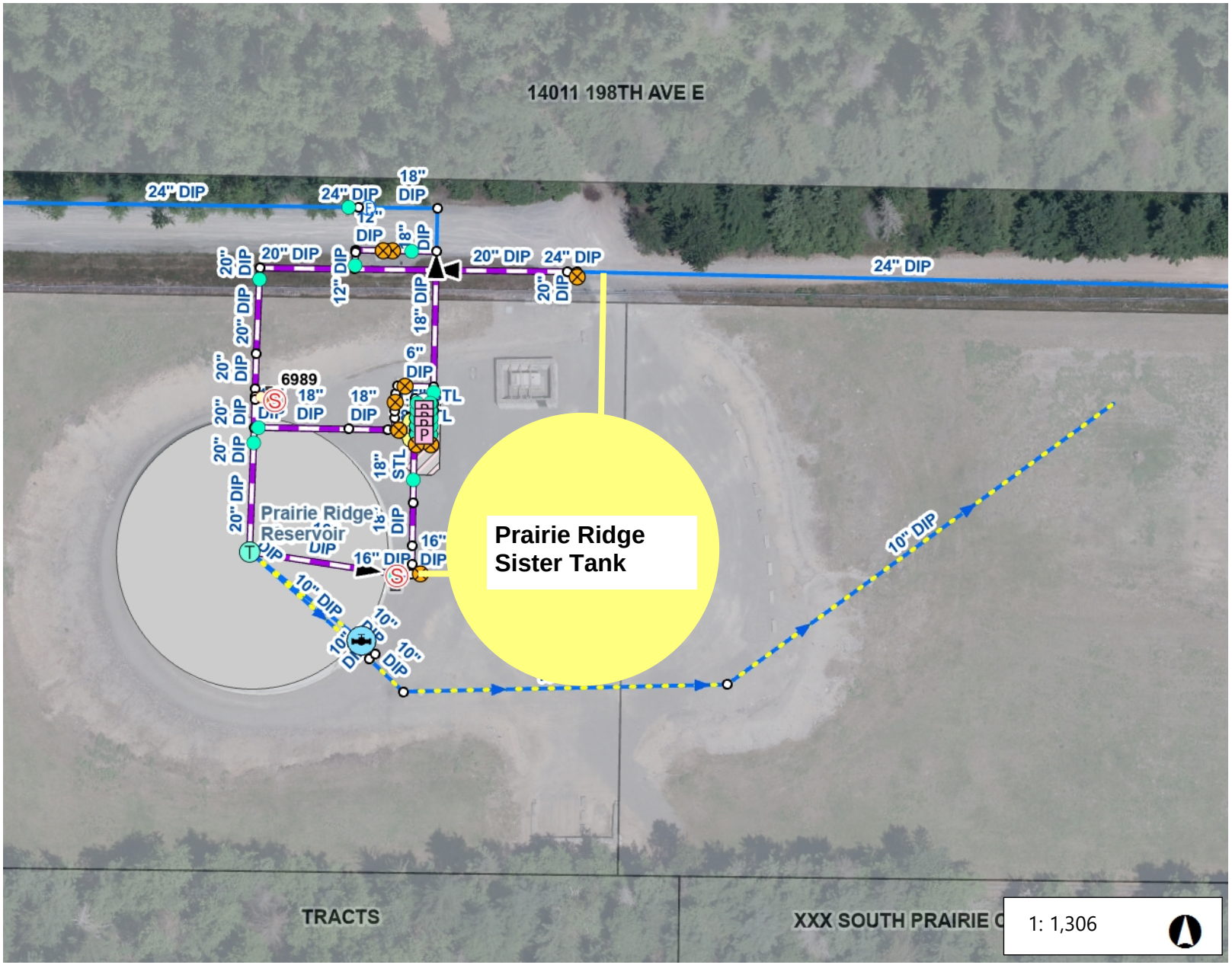
Figure 2
Recommended System Improvements



DRAFT

Figure 2.1 Prairie Ridge Sister Tank

Tacoma Water Maps





Legend

- Cathodic Protection
  - Test Station
  - Rectifier
  - Anode
- Sample Stations
  - Sample Stand
  - Chart Box
  - Sample Stand/Chart Box
- Manways
- Curb Stop Valves
- Pumps
- System Valves
  - Open
  - Closed
  - Unknown
- Control Valves
  - Air Control
  - Check
  - Pressure Reducing
  - Pressure Relief
  - All Other Control Valves
- Hydrant Valves
- Hydrants
  - Blue Hydrants
  - Design (Not Constructed)
  - In-Service

Notes

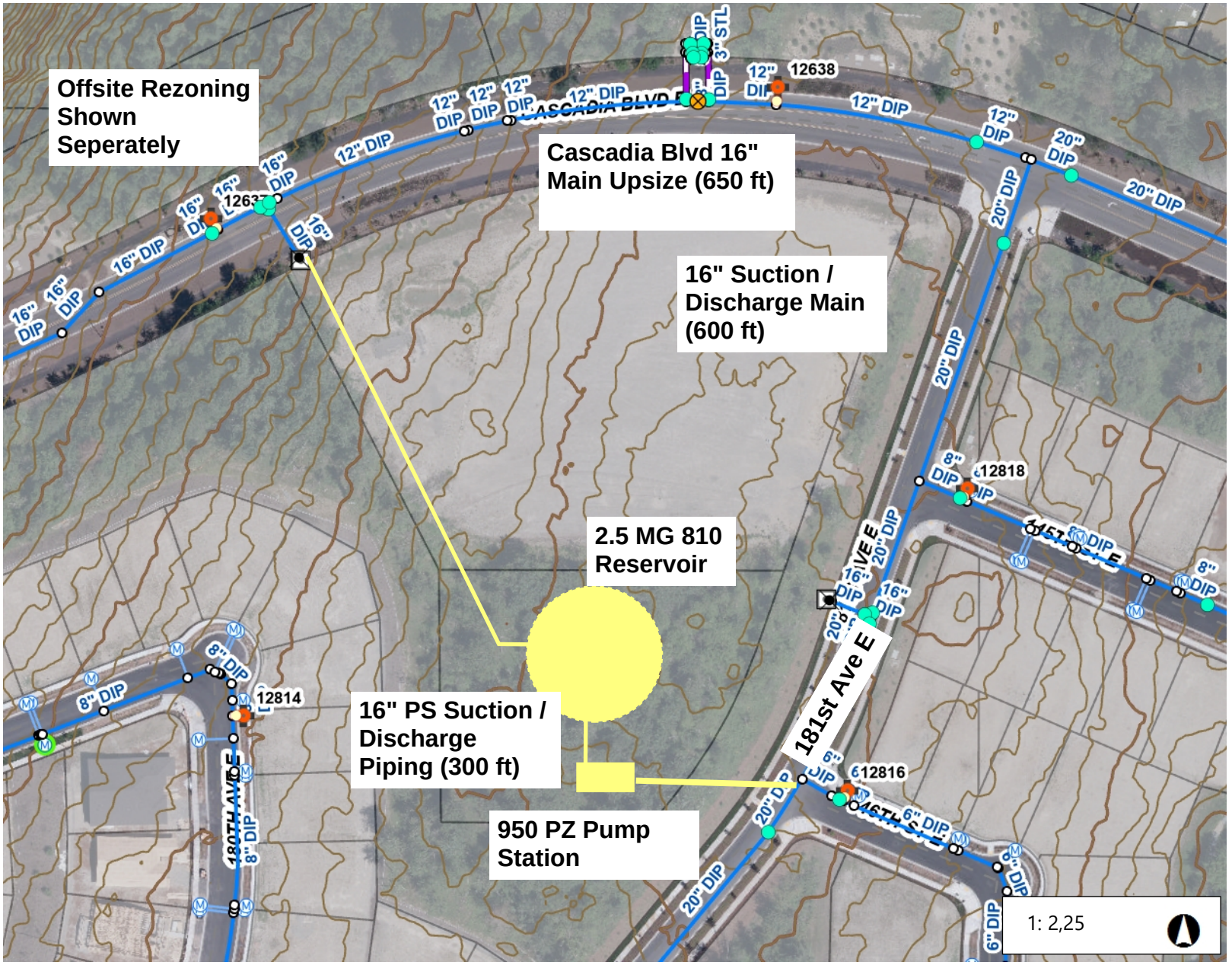
217.6 0 108.80 217.6 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Tacoma Water Maps

Figure 2.2 Cascadia Blvd Tank & Pump Station





Legend

- Cathodic Protection
  - Test Station
  - Rectifier
  - Anode
- Sample Stations
  - Sample Stand
  - Chart Box
  - Sample Stand/Chart Box
- Manways
- Curb Stop Valves
- Pumps
- System Valves
  - Open
  - Closed
  - Unknown
- Control Valves
  - Air Control
  - Check
  - Pressure Reducing
  - Pressure Relief
  - All Other Control Valves
- Hydrant Valves
- Hydrants
  - Blue Hydrants
  - Design (Not Constructed)
  - In-Service

Notes

376.2 0 188.08 376.2 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere

Figure 2.1 Prairie Ridge Sister TankTacoma Water Maps

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Tacoma Water Maps

Figure 3. 2nd 950 PZ Pump Station (Location to be Determined)
131st St E Area





Notes

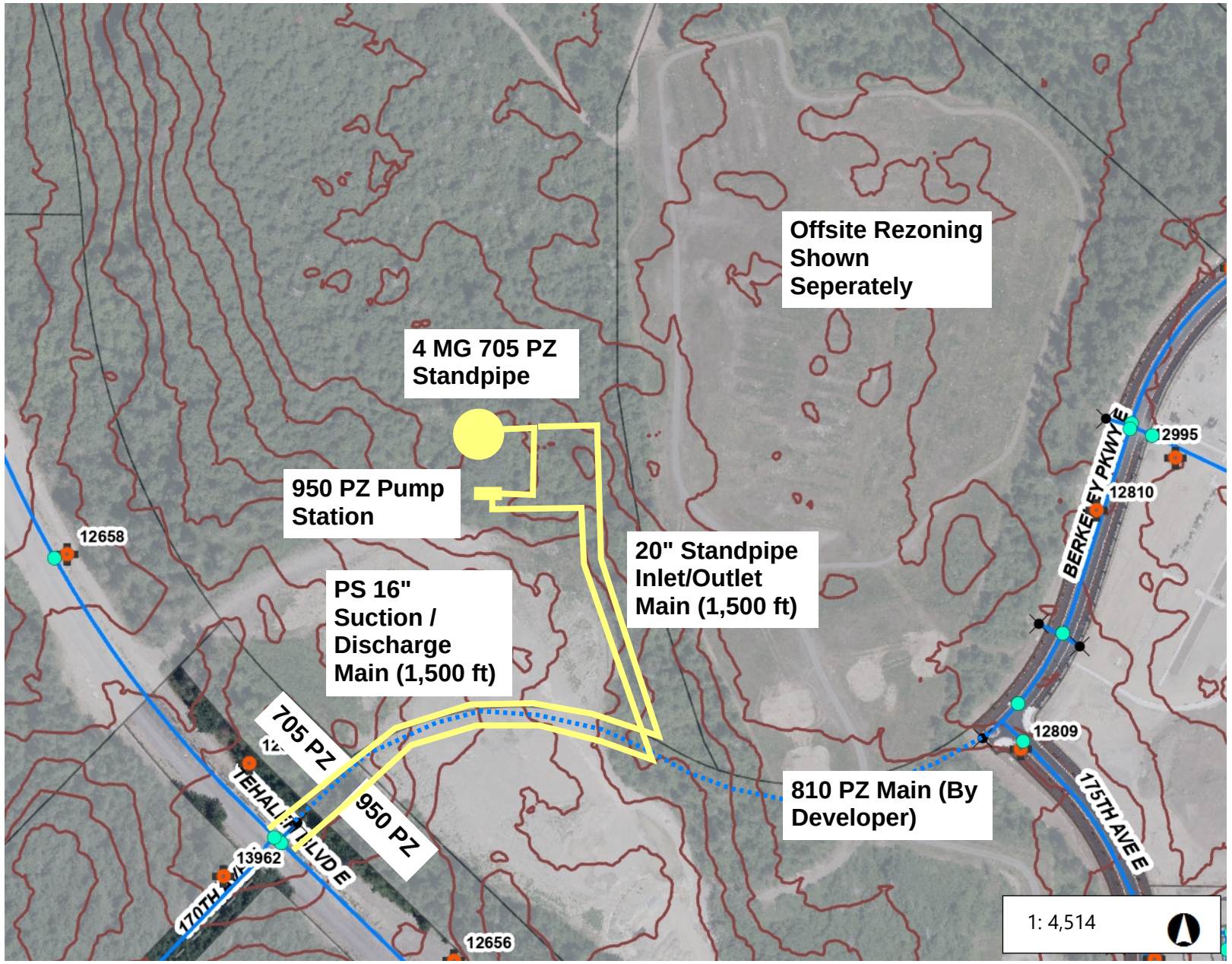
1,740.8 0 870.41 1,740.8 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Tacoma Water Maps

Figure 4.a Berkley Parkway Reservoir and Pump Station





Legend

- Cathodic Protection
  - Test Station
  - Rectifier
  - Anode
- Sample Stations
  - Sample Stand
  - Chart Box
  - Sample Stand/Chart Box
- Manways
- Pumps
- System Valves
  - Open
  - Closed
  - Unknown
- Control Valves
  - Air Control
  - Check
  - Pressure Reducing
  - Pressure Relief
  - All Other Control Valves
- Hydrants
  - Blue Hydrants
  - Design (Not Constructed)
  - In-Service
- Process Valves
  - Blowoff

Notes

752.3 0 376.17 752.3 Feet

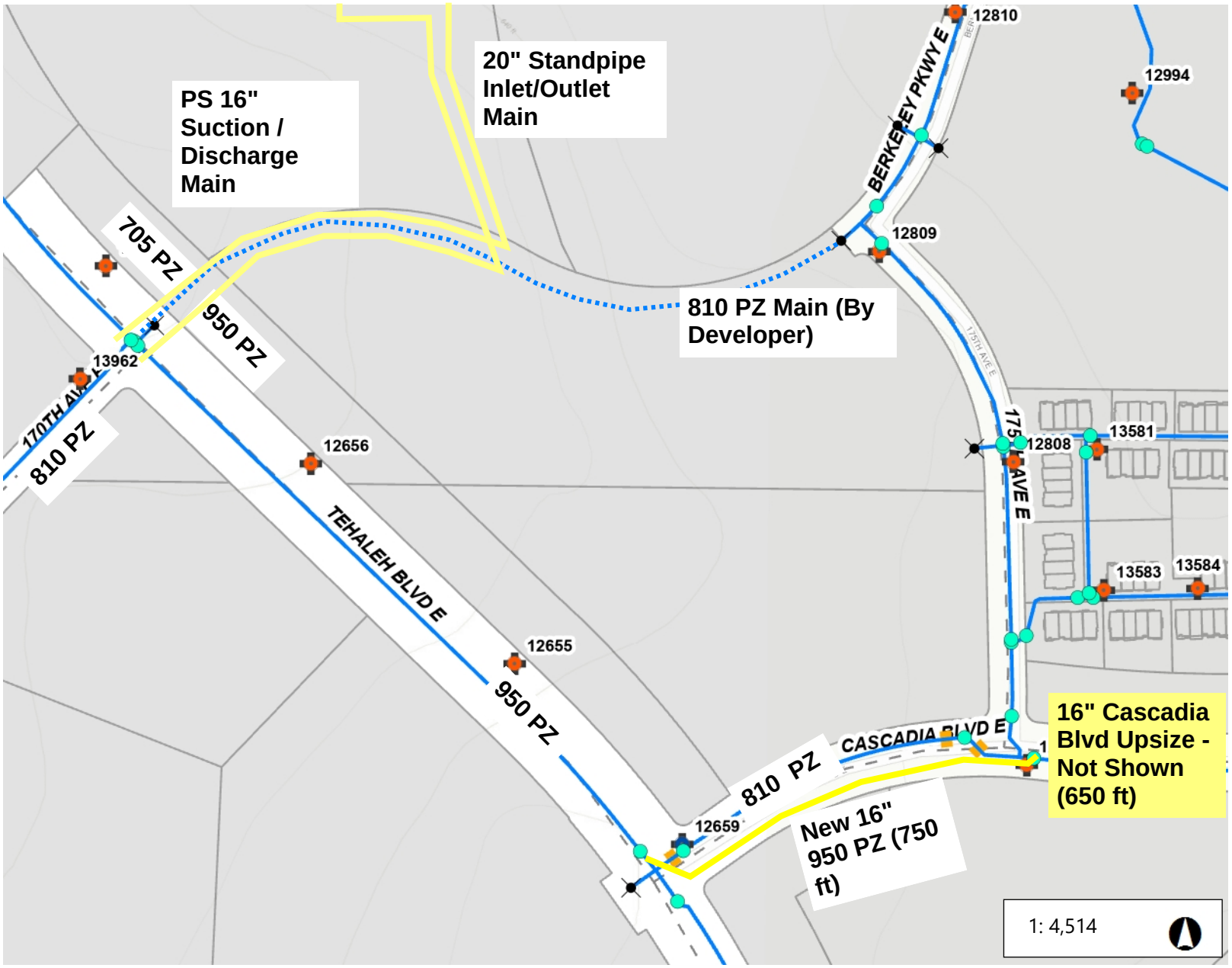
WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Standpipe

Tacoma Water Maps

Figure 4.b Berkley Parkway PS Off Site Discharge Main





Legend

- Cathodic Protection
  - Test Station
  - Rectifier
  - Anode
- Sample Stations
  - Sample Stand
  - Chart Box
  - Sample Stand/Chart Box
- Manways
- Pumps
- System Valves
  - Open
  - Closed
  - Unknown
- Control Valves
  - Air Control
  - Check
  - Pressure Reducing
  - Pressure Relief
  - All Other Control Valves
- Hydrants
  - Blue Hydrants
  - Design (Not Constructed)
  - In-Service
- Process Valves
  - Blowoff

Notes

752.3 0 376.17 752.3 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

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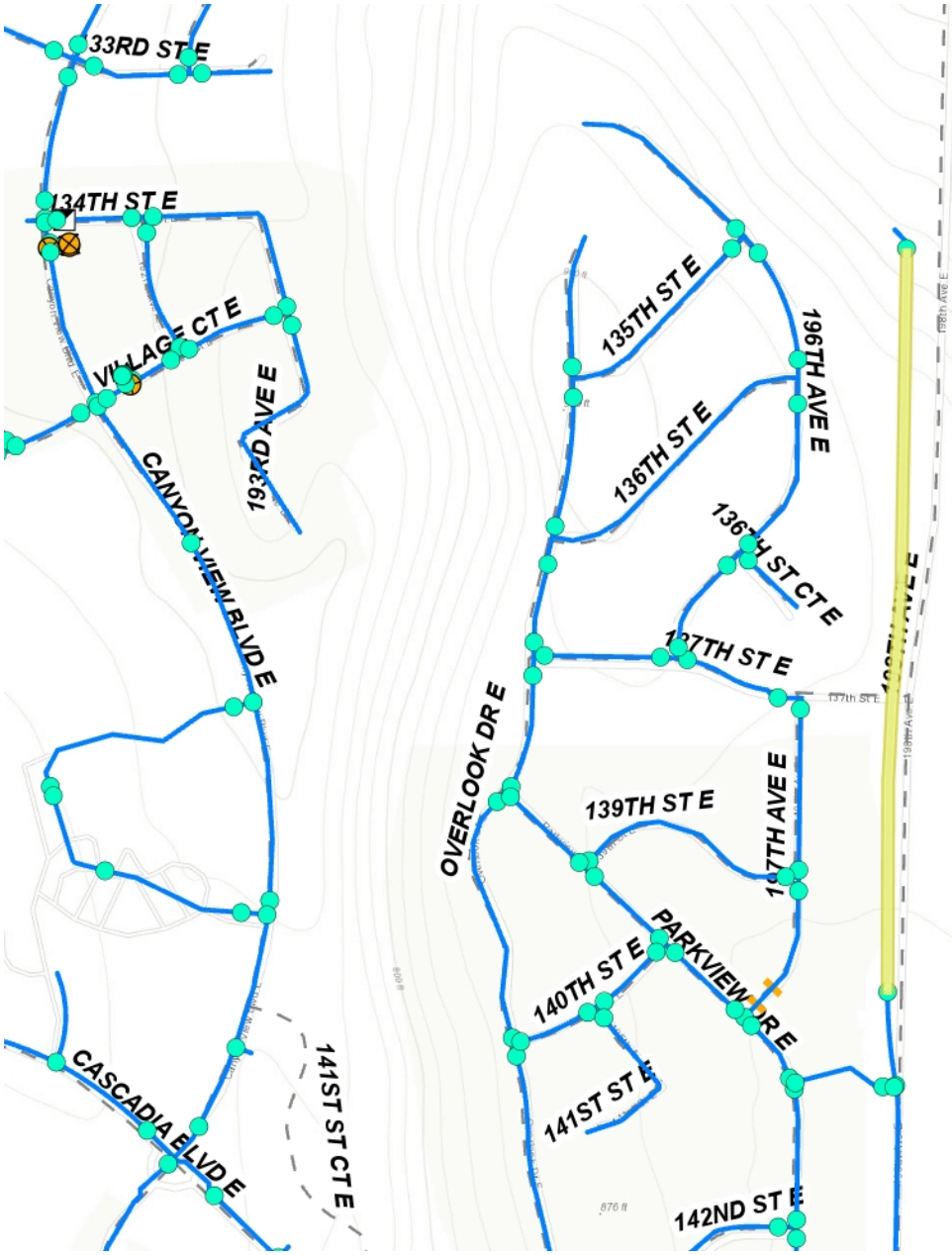
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Tacoma Water Maps

Figure 5.1 198th Ave E Main Upsize





Proposed Budget	
Item	5.1
Name	198th St 24" Man Upsize
Description	Replace 2000 feet of 16" main with 24" DI Pipe
Unit	3400 ft
Unit Cost	$630 / LF
Construction Cost	$ 2,140,000
Design & Const. Mgmt (25%)	$ 540,000
Project Subtotal	$ 2,680,000
Contingency (30%)	$ 810,000
Total Cost	$ 3,490,000

1: 9,028

Notes

1,504.7 0 752.33 1,504.7 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

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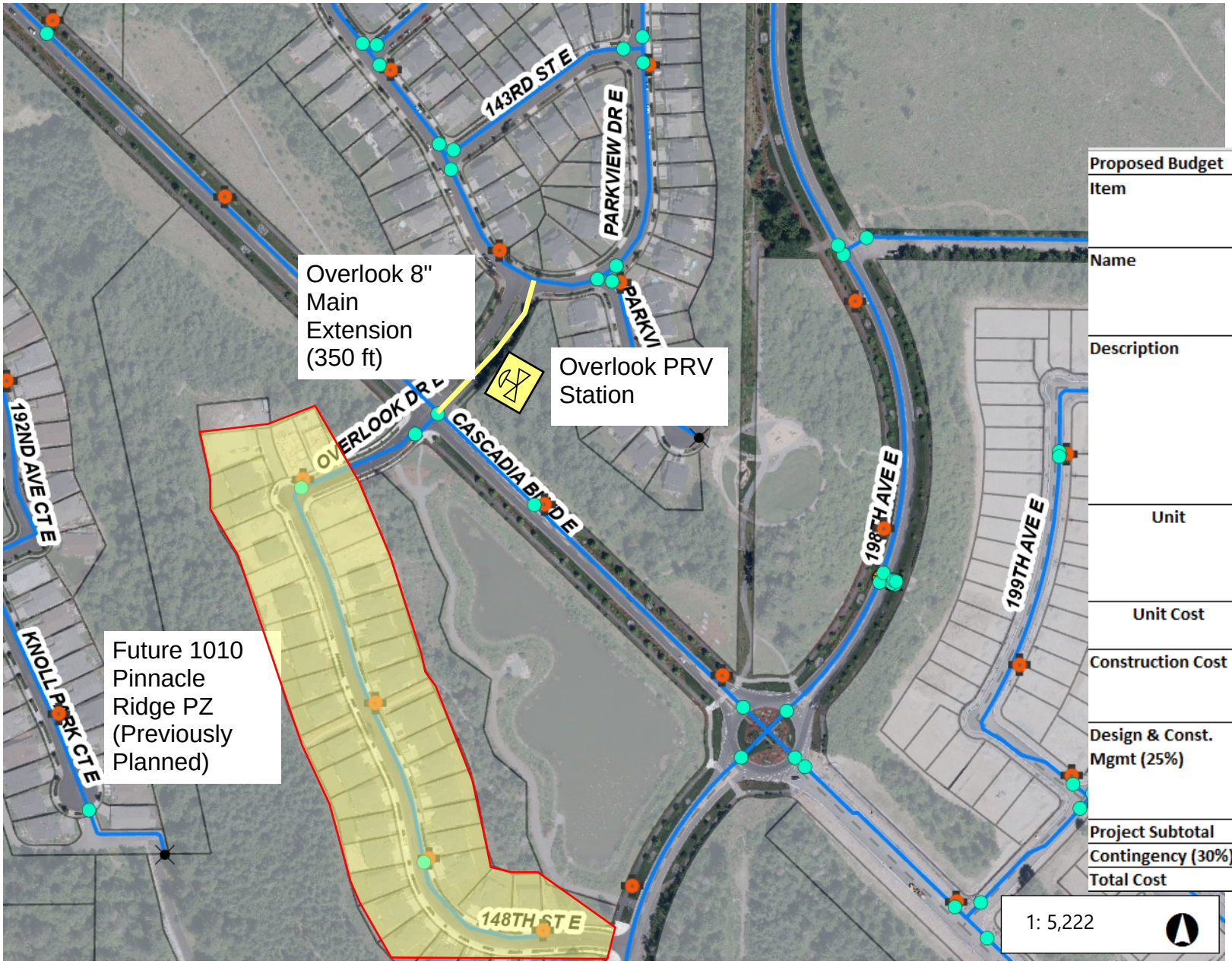
Tacoma Water Maps

Figure 5.2 Overlook Drive PRV Station





Proposed Budget		
Item	5.2a	5.2b
Name	Overlook Drive	Overlook Drive PRV Station
Description	Extend 8" main on Overlook Drive	PRV Station from 1010 PZ to 950 PZ for emergency supply from Pinnacle Ridge PS.
Unit	350 ft	Lump Sum
Unit Cost	$460 / LF	$ 300,000
Construction Cost	$ 160,000	$ 300,000
Design & Const. Mgmt (25%)	$ 40,000	$ 80,000
Project Subtotal	$ 200,000	$ 380,000
Contingency (30%)	$ 60,000	$ 120,000
Total Cost	$ 260,000	$ 500,000

1: 5,222

Notes

870.4 0 435.20 870.4 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

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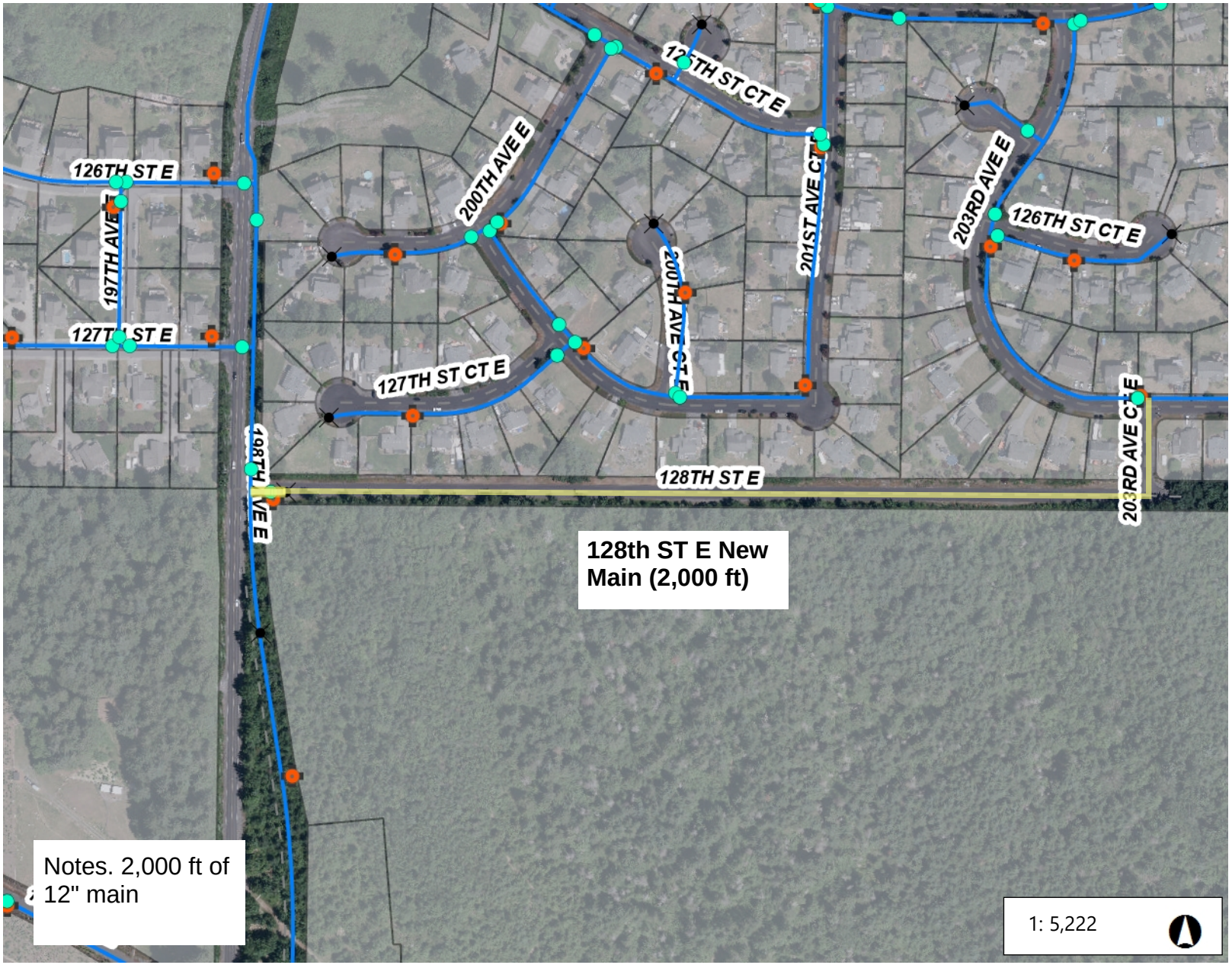
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Tacoma Water Maps

Figure 5.3 128th St E 12" Main





Proposed Budget	
Item	5.3
Name	128th Street E 12" Main
Description	Extend 12" main 2,000 ft from
Unit	2000 LF
Unit Cost	$510 / LF
Construction Cost	$ 1,020,000
Design & Const. Mgmt (25%)	$ 260,000
Project Subtotal	$ 1,280,000
Contingency (30%)	$ 390,000
Total Cost	$ 1,670,000

Notes

870.4 0 435.20 870.4 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

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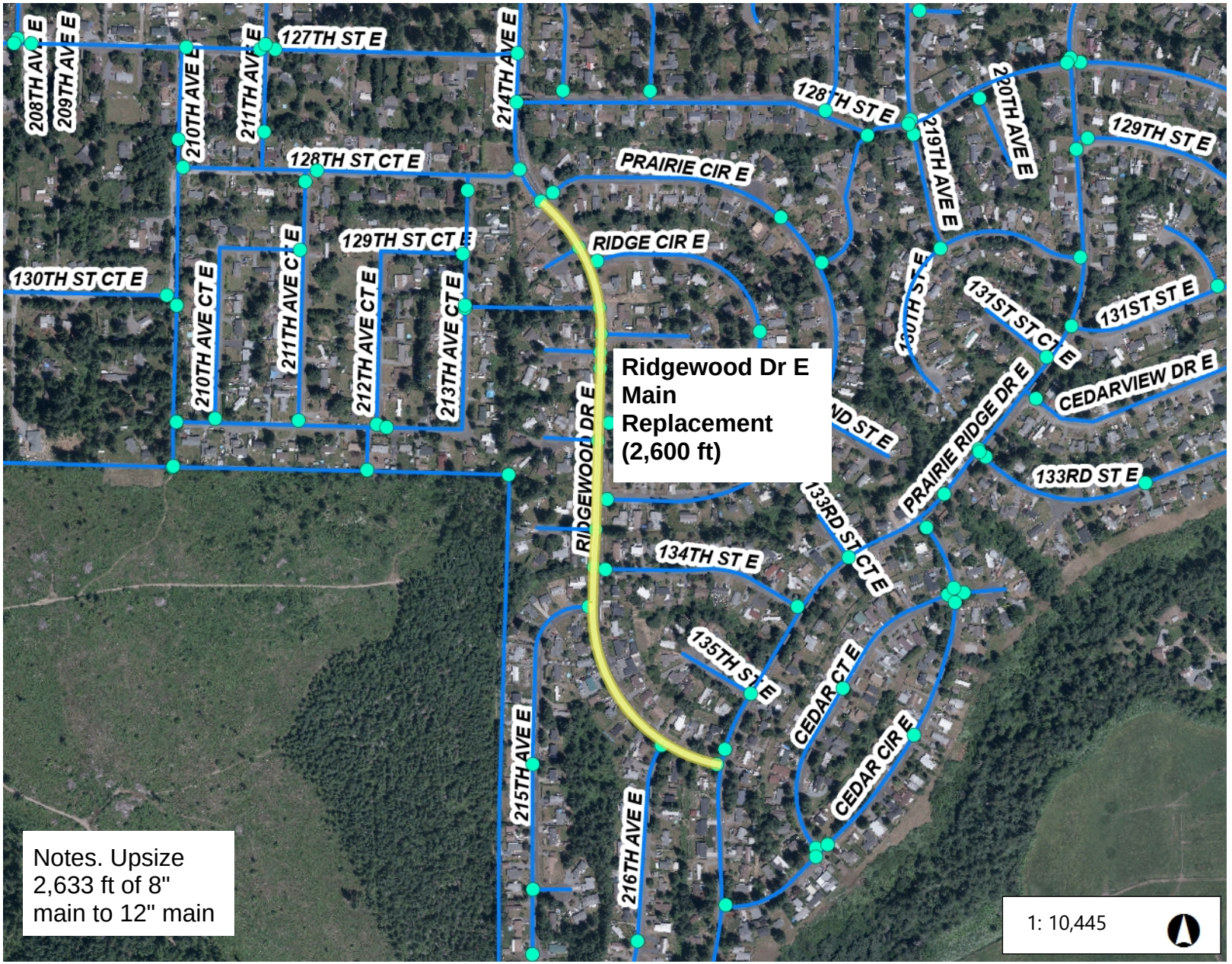
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Tacoma Water Maps

Figure 5.4 Ridegwood Ave 12" Main Upsize





Proposed Budget	
Item	5.4
Name	Ridgewood Ave 12" Main Upsize
Description	Replacement of 2000 ft of 8" AC pipe with 12" DI.
Unit	2600 LF
Unit Cost	$510 / LF
Construction Cost	$ 1,330,000
Design & Const. Mgmt (25%)	$ 340,000
Project Subtotal	$ 1,670,000
Contingency (30%)	$ 510,000
Total Cost	$ 2,180,000

Notes

1,740.8 0 870.41 1,740.8 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

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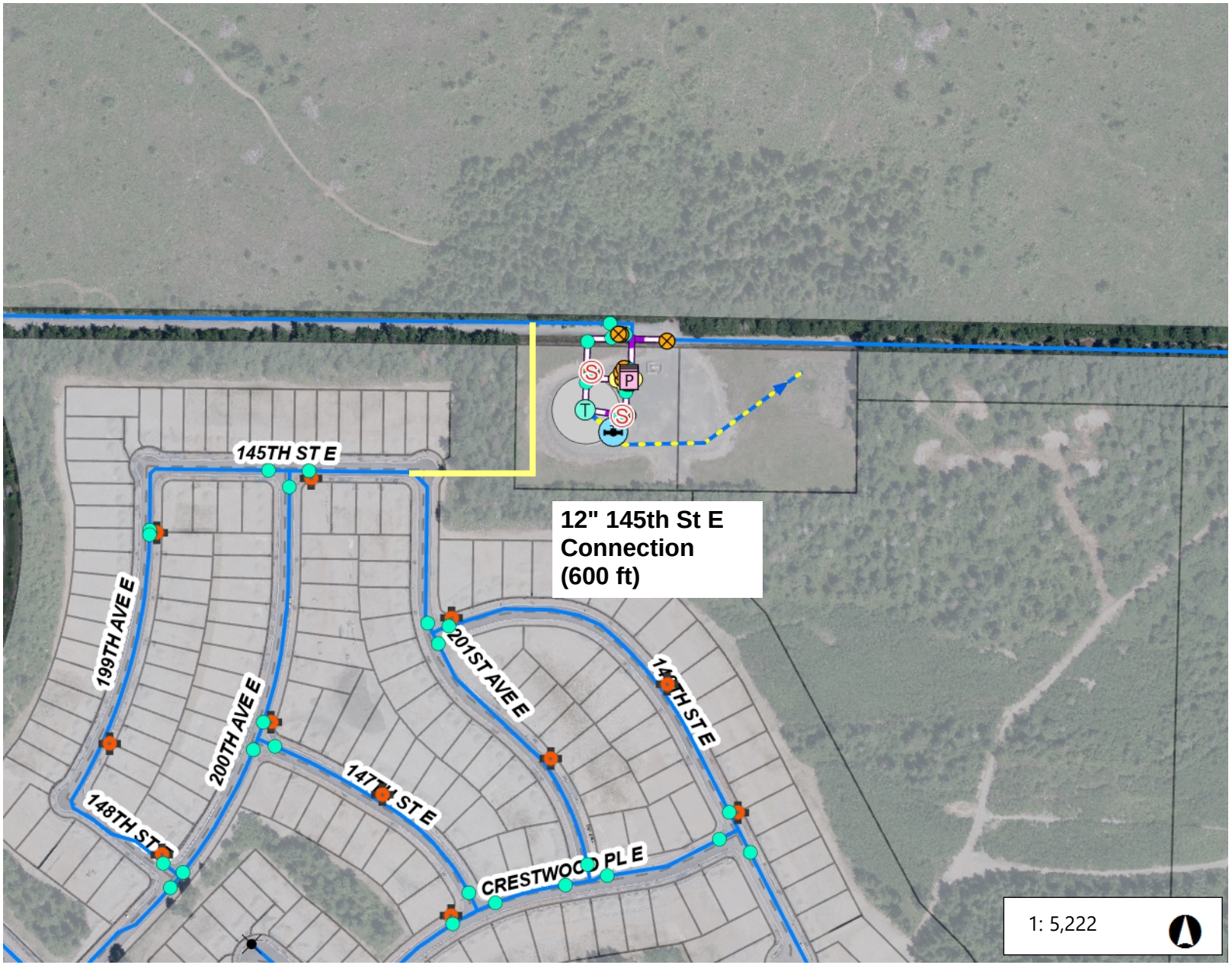
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Tacoma Water Maps

Figure 5.5 145th St E Main





Proposed Budget	
Item	5.5
Name	145th St Main
Description	12" main connecting the Prairie Ridge PS Discharge to 145th St E for redundancy.
Unit	600 LF
Unit Cost	$510 / LF
Construction Cost	$ 310,000
Design & Const. Mgmt (25%)	$ 80,000
Project Subtotal	$ 390,000
Contingency (30%)	$ 120,000
Total Cost	$ 510,000

Notes

870.4 0 435.20 870.4 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere
Tacoma Water Maps

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THIS MAP IS NOT TO BE USED FOR NAVIGATION

TECHNICAL MEMORANDUM

Client: Tacoma Water

Project: Reservoir On-Call

Project File: TAC 0230183.00.0001

Project Manager: Max Freimund, PE

Composed by: Max Freimund, PE

Reviewed by: Tony V. Pardi, PE

Subject: Cascadia Reservoir Site Evaluation

Date: August 1, 2024



Signed: 8/1/2024

Background

Tacoma Water serves as the water purveyor for the growing Tehaleh master planned community south of Bonney Lake. As this area continues to grow, Tacoma Water needs to expand its infrastructure to support the growth. The Cascadia area of Tehaleh currently is under construction, and Tacoma Water will need to site a reservoir and booster pump station (BPS) within this area.

As part of the master planned community, Tehaleh allocated two parcels for potential use by Tacoma Water for future reservoirs to serve the community. The first proposed site is off a future Berkley Parkway extension and is not preferred for an 810 Zone tank due to the site's ground elevation. The site elevation is approximately 610 feet and originally was identified as the potential location for a 705 Zone tank. The 705 Zone has had lower demands relative to what was anticipated, with more development occurring in the higher zones. The lower elevation of this site means one or several solutions would have to be implemented to better serve the desired pressure zone:

- The ground elevation would have to be leveled by adding up to 15 feet of fill from east to west, and a large slope on the western edge of the site would have to be stabilized;
- The tank would have to be taller, at added cost, to serve the desired pressure zone; and/or
- The proposed pump station would need larger pumps to pump from a 705 Zone tank to the 950 Zone where the demand is, using more electricity over the lifespan of the facility to serve the desired pressure zone. The site is also adjacent to reclaimed water surface infiltration basins that likely will create high groundwater levels and may impact the size of the tank foundation.

Tacoma Water tasked RH2 Engineering, Inc., (RH2) with performing a feasibility evaluation of the second and currently preferred site for the reservoir. The subject site is located along the west side of 181st Avenue E in Bonney Lake, Washington (Tax Parcel No. 7002741531). The purpose of this evaluation is to make an initial assessment of whether the site is large enough

to accommodate the proposed improvements. The site was evaluated from two perspectives: how to manage an overflow event if Tacoma Water sites the target reservoir on the site, and if the site has to store the water from a 45-minute overflow event, how large of a reservoir could be accommodated on site. Tacoma Water has not yet completed its evaluation to determine whether the Cascadia area will need 2.5 million gallons (MG) or 3.0 MG of storage; therefore, this siting evaluation reviewed both alternatives when determining how much volume for an overflow event could be accommodated on site. The area is served by Tacoma Water's 810 Zone, and the anticipated flow rate to the reservoir is approximately 4,500 gallons per minute (gpm).

Due to the recent development in this area, typical desktop evaluation methods for elevation and topography were not available. RH2 performed a site visit on November 7, 2023, with a Trimble GPS unit to scout the site and obtain approximate ground elevation information. This data was used in conjunction with a desktop geological evaluation to estimate the size of the reservoir foundation footprint, an 810/950 booster pump station, a potential stormwater detention pond, and associated site improvements.

Tacoma Water utilizes the National Geodetic Vertical Datum of 1929 for its system. As such, all elevations referenced in this technical memorandum are based on that datum.

Evaluation

Reservoir Sizing

The reservoir will be located in Tacoma Water's 810 Zone. It will be a tank similar to Tacoma Water's existing Prairie Ridge 810 Reservoir and is anticipated to be constructed of welded steel. This assumption was used throughout this evaluation. Tacoma Water has conveyed that its target capacity is either 2.5 MG or 3.0 MG. Based on RH2's site visit, the elevation of the existing grade around the reservoir site is approximately 777 feet. The resulting 30-foot water height results in a 2.5 MG reservoir with a diameter of 113 feet or a 3.0 MG reservoir with a diameter of 124 feet.

Reservoir Excavation

A desktop geological evaluation was performed to estimate the soil characteristics of the site and the associated bearing capacity of the soil. The site has similar soil characteristics to the nearby 950 Zone Reservoir (documented in the *Engineering Geology Evaluation Technical Memorandum* by RH2, dated July 17, 2020).

Some assumptions were made for the depth of the reservoir foundation. The reservoir foundation was assumed to be an inverted "T" design, similar to the foundation for the welded steel 950 Zone Reservoir. The stem wall height was calculated by assuming that the reservoir overflow pipe (16-inch-diameter pipe based on the 4,500 gpm flow rate) would have 3 feet of cover, run through the stem wall, and be 6 inches above the top of the reservoir footing. This results in a stem wall height of 5 feet. Similar to the 950 Zone Reservoir, the footing height was assumed to be 3 feet, sitting on top of 12 inches of crushed rock. This gives a total height from the top of the stem wall to the bottom of crushed rock below the footing of 9 feet. Based on a

surface elevation of 777 feet, it is assumed the subgrade elevation will need to be excavated to 768 feet.

To determine the extents of the excavation, it was assumed that the reservoir footing would extend 2 feet beyond the edge of the reservoir, and a contractor would need at least 1-foot beyond that to install the forms for the concrete footing. Assuming a construction slope of 2H:1V, this gives a required excavation diameter of 151 feet for a 2.5 MG reservoir, or 162 feet for a 3.0 MG reservoir.

Booster Pump Station Excavation

A footprint of 40 feet long by 14 feet wide was assumed for the BPS. This is a similar dimension to the existing pump station at the 950 Zone Reservoir site. The BPS excavation was assumed to be 16.5 feet below finished grade. Assuming the same finished grade as the reservoir of 777 feet, this gives a BPS subgrade elevation of 761.5 feet. Assuming a construction slope of 2H:1V, the required BPS excavation is approximately 102 feet by 76 feet.

Site Access

Access to the site will be through the adjacent fire station property to the north of the reservoir site. Within the site, the reservoir is proposed to have a 15-foot-wide access road all the way around the reservoir for maintenance and for utilization as a vehicle turn around within the site. The booster pump station also should have vehicle access to it in order to facilitate maintenance and removal of pumps within the station. Tacoma Water requested parking on site, as well as space for a crane to be set up for maintenance on the roof of the tank.

Pond Siting

An evaluation was performed on the space required on site for a stormwater pond that would be capable of providing detention for a reservoir overflow event. The proposed flow rate to the reservoir site was conveyed by Tacoma Water to be approximately 4,500 gpm; therefore, a worst-case scenario for the reservoir would be an overflow event at this flow rate. The statistical likelihood of an overflow event at this flow rate occurring at the same time as a major storm has been deemed improbable. Therefore, the maximum flow rate evaluated was 4,500 gpm.

The existing storm pipe that has been extended to the reservoir site has an invert of 763.66 feet (per Trilogy West Phase 2 Road and Storm As-Builts). There would need to be some fall from the bottom of the pond to this elevation to allow for gravity flow out of the pond; therefore, the bottom of the pond was assumed to be at an elevation of 764.5 feet.

The top of the water surface in the pond would be limited by the overflow pipe from the reservoir. Assuming a 16-inch overflow pipe with 3 feet of cover, an air gap of twice the pipe diameter, and a ground elevation of 777 feet, the top of water surface would be approximately 769.5 feet. This results in a maximum pond depth of 5 feet.

Due to the location of the site relative to the rest of Tacoma Water's system, it was determined that detaining a minimum of 45 minutes of an overflow event is necessary to give Tacoma Water time to respond to the event. A 45-minute overflow event at 4,500 gpm translates to a

minimum of 202,500 gallons of detention required on site assuming no water will leave the site during the event.

With a vertical difference of 12.5 feet between the bottom of the pond and the surrounding ground elevation, and an allowable permanent slope of 3H:1V, the minimum horizontal footprint of the pond is 75 feet. In order to site the required stormwater detention on site, the amount of room available for the reservoir and BPS is limited. If a round steel reservoir is used, based on the site access requirements, the largest reservoir that could be constructed on site is approximately 1.7 MG, as shown in **Attachment 1**.

The natural flow path for stormwater and overflow water leaving the previously described pond would flow east to 181st Avenue E through the Trilogy West Phase 2 development (Permit No. 824718), and ultimately to Facility D4. This flow path has limited capacity up to the intersection of 147th Street E and 184th Avenue E, which is several blocks from the reservoir site. For overflow water to follow this flow path, water would have to be detained on site and discharged at a controlled rate to not exceed the design capacity.

Discharging the overflow water to an on-site pond and then to 181st Avenue E has an additional challenge of there not being a controlled location for the pond to overflow to in the event of an extended overflow event. The adjacent properties are all at a significantly lower elevation than the reservoir site. The most likely scenario would be to overflow the pond to 181st Avenue E. This amount of flow would surcharge the storm system and then flow down the streets to the southeast until the storm system had capacity for the water. A number of nearby homes and the adjacent fire station are at a lower elevation than the pond and likely would be inundated with water in an overflow event that exceeds the pond's capacity.

Alternatively, water from an overflow event, as well as from storm events, could be tightlined off the reservoir site to the northwest, which would eliminate the need for the space consuming on-site detention. This alternative would convey the water within the utility easement along with the 810 water main piping and then tie into the storm system in Cascadia Boulevard (Permit No. 817049) as shown in **Attachments 4** and **5**. This storm system has more than sufficient capacity to convey the water to the regional Facility R4 (Permit No. 864888). This storm system has the capacity to take the entire overflow event without detaining any of the water on site.

Current Conclusion and Recommendations

Based on what is currently known about the site and the space requirements for the proposed improvements, it is RH2's opinion that the site may not be adequate to construct the proposed reservoir and BPS along with a stormwater detention pond in a manner that meets Tacoma Water's level of service needs. The site is large enough for the reservoir, booster station, and associated access despite the nearly 10-foot elevation difference between the reservoir site and the adjacent fire station site where access onto the reservoir will be located. However, siting an overflow detention pond poses significant challenges to use the site as intended. The site is not large enough for a traditionally graded stormwater pond and a reservoir of the size Tacoma Water wants to locate on the site.

The solution for the site to be considered large enough for Tacoma Water's stated needs is to tightline water (stormwater and water from an overflow event) to the regional facility as outlined in this technical memorandum. Additional coordination with the County is necessary to gain its concurrence to route water from the site directly to the storm system in Cascadia Boulevard.

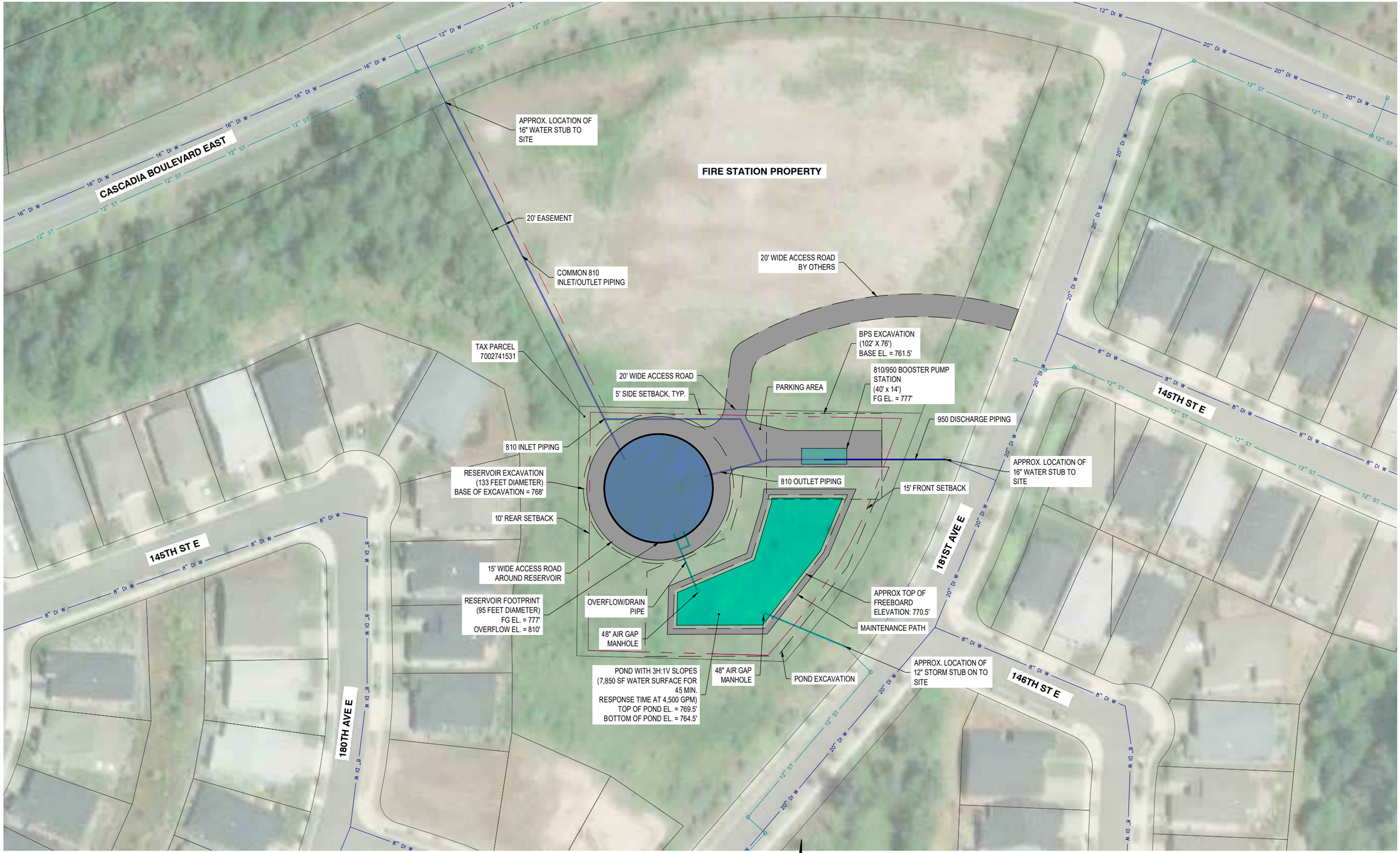
The siting of the pond, reservoir, and booster pump station were all evaluated under the assumption that the tract surrounding the reservoir property would be planted to meet the County's requirements for landscape buffer, similar to the approach used at Tacoma Water's other tank (950 Zone Reservoir) within the Tehaleh development. In the event that the landscape buffer would need to be met within the property set aside for the reservoir, the proposed site is too small for Tacoma Water's needs. Further coordination with County staff and Tehaleh would be required to confirm buffer requirements and site feasibility.

RH2 is available to answer any questions you may have or assist Tacoma Water further.

Attachments

1. 1.6 MG Conceptual Site Plan
2. 2.5 MG Conceptual Site Plan – Open Air Vertical Wall Pond
3. 3.0 MG Conceptual Site Plan – Open Air Vertical Wall Pond
4. 2.5 MG Conceptual Site Plan – Tightline Discharge
5. 3.0 MG Conceptual Site Plan – Tightline Discharge

ATTACHMENT 1

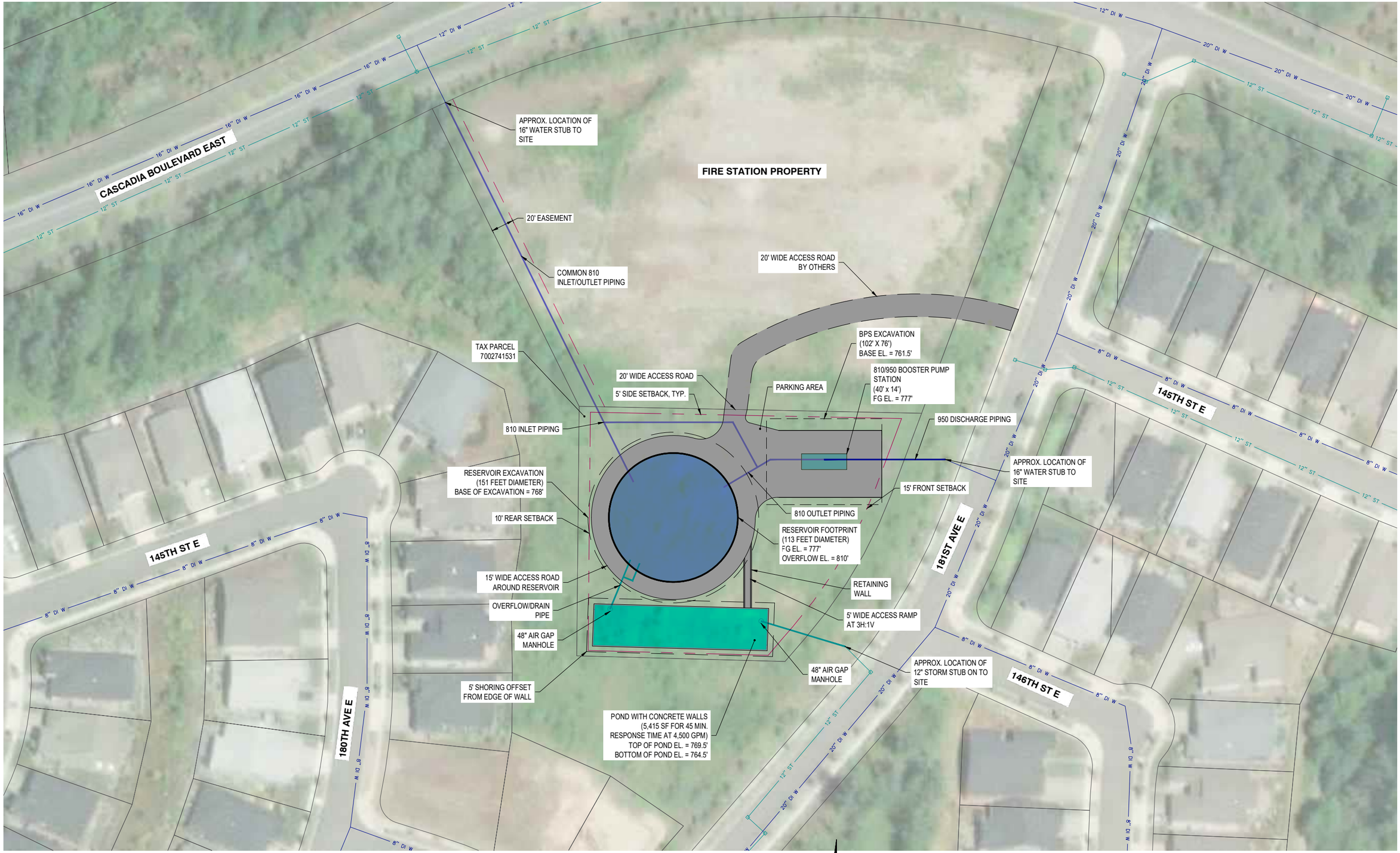


ATTACHMENT 1 - 1.7MG CONCEPTUAL SITE PLAN

1" = 40'

PLOT DATE: 3/27/2024
DWG NAME: LAYOUT SKETCH SMALL RES.DWG

ATTACHMENT 2

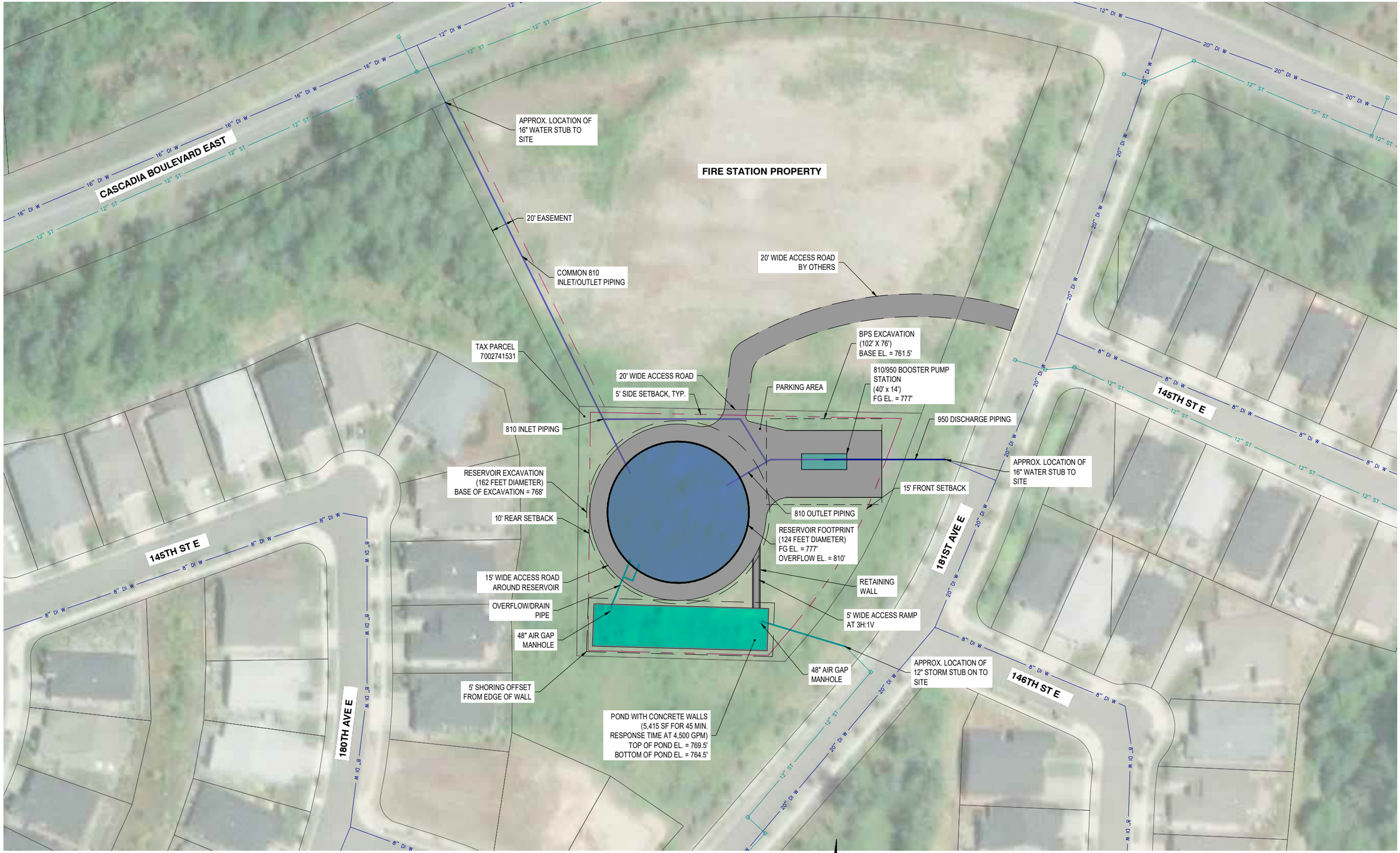


ATTACHMENT 2 - 2.5MG
CONCEPTUAL SITE PLAN - OPEN AIR VERTICAL WALL POND

1" = 40'

PLOT DATE: 3/27/2024
DWG NAME: LAYOUT SKETCH 2.5CIP.DWG

ATTACHMENT 3

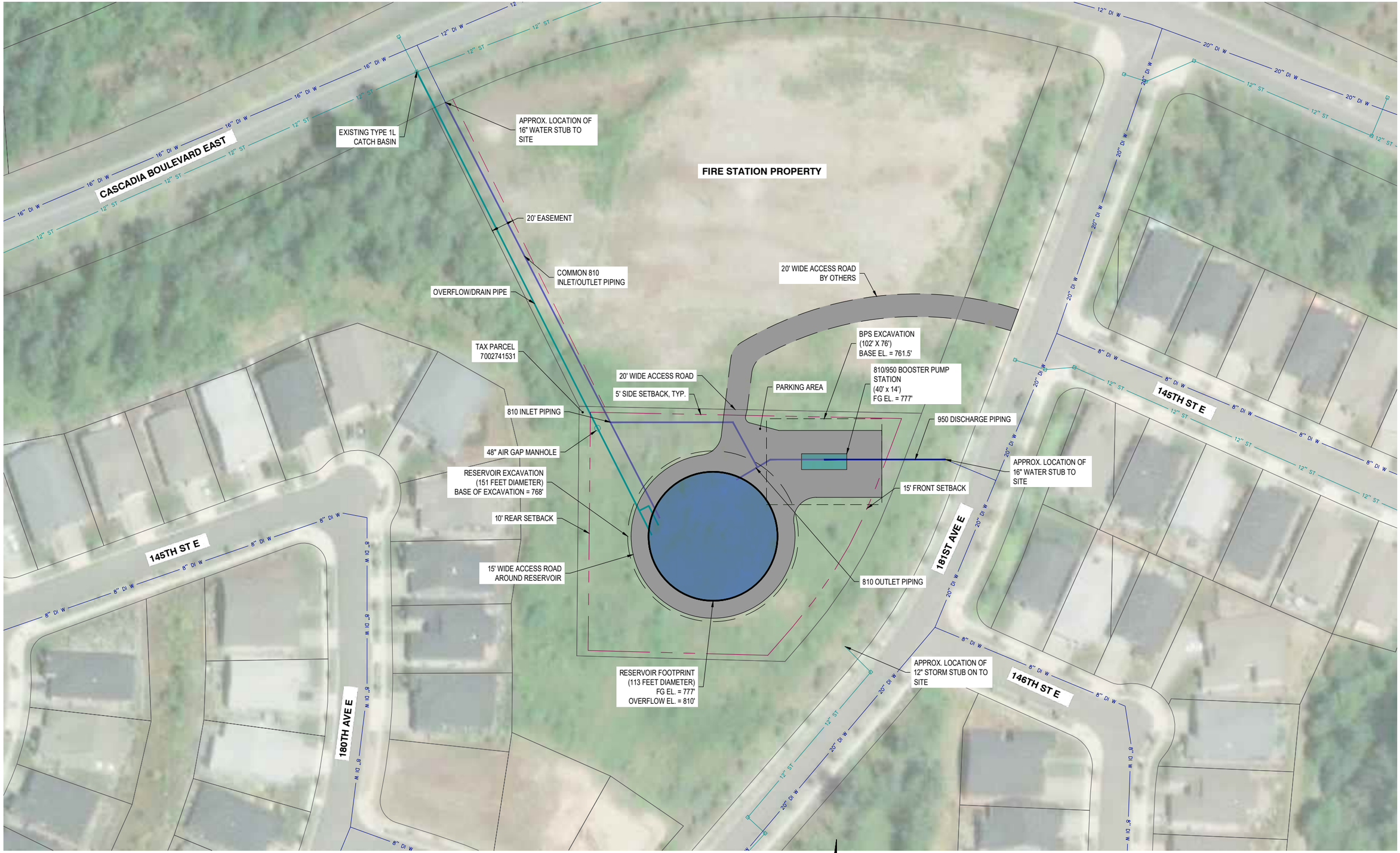


ATTACHMENT 3 - 3.0MG
CONCEPTUAL SITE PLAN - OPEN AIR VERTICAL WALL POND

1" = 40'

PLOT DATE: 3/27/2024
DWG NAME: LAYOUT SKETCH 3.0CIP.DWG

ATTACHMENT 4

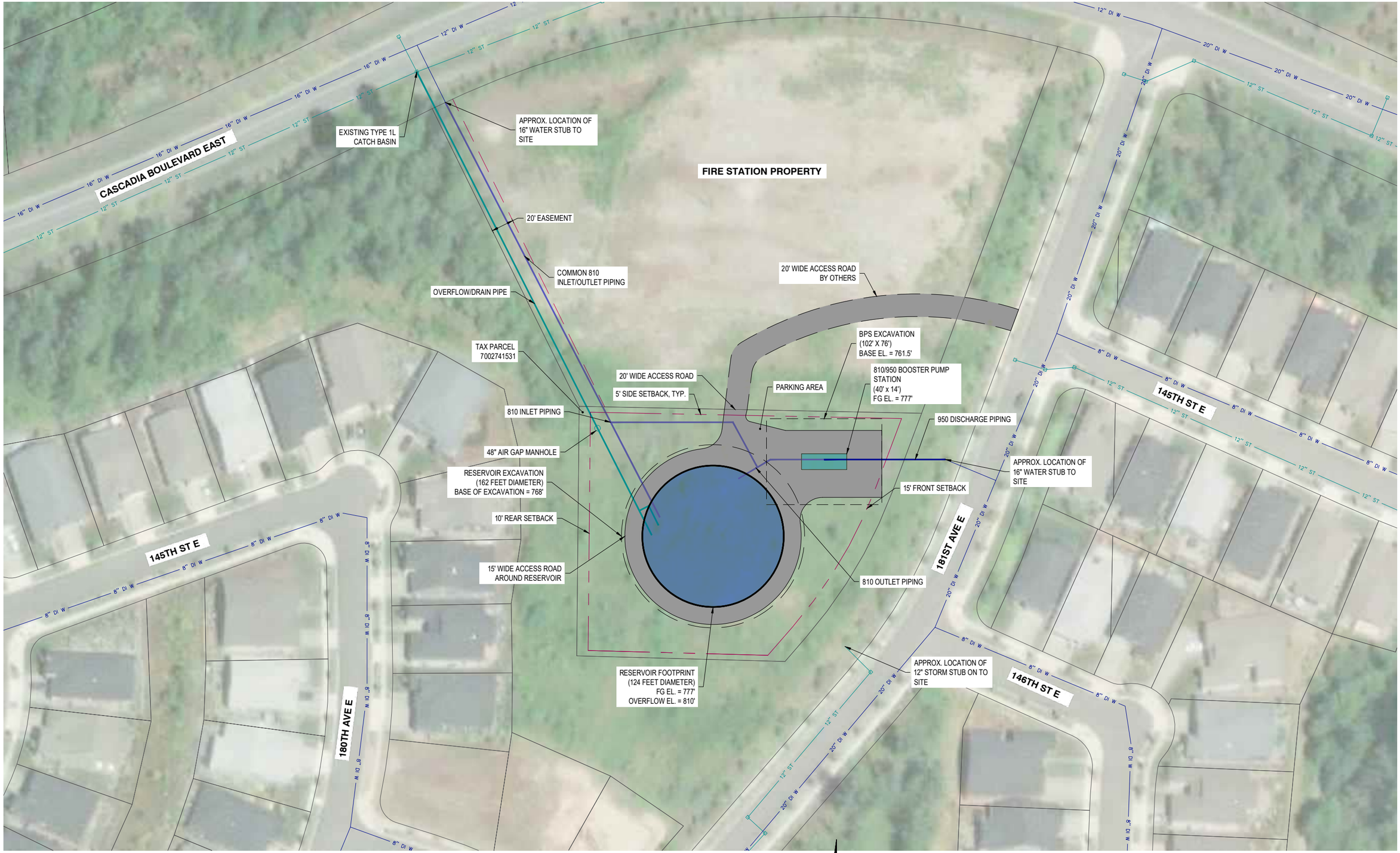


ATTACHMENT 4 - 2.5MG CONCEPTUAL SITE PLAN - TIGHTLINE DISCHARGE

1" = 40'

PLOT DATE: 3/27/2024
DWG NAME: LAYOUT SKETCH 2.5.DWG

ATTACHMENT 5



ATTACHMENT 5 - 3.0MG CONCEPTUAL SITE PLAN - TIGHTLINE DISCHARGE

1" = 40'

PLOT DATE: 3/27/2024
DWG NAME: LAYOUT SKETCH 3.0.DWG