Pierce County

PIERCE COUNTY PUBLIC WORKS

INVITATION TO BID NO. 2026-MPW-241

PROJECT TITLE: Orangegate Park Phase 1 Site Improvements

PROJECT NO.: P-111031

All Bids are to be returned via OpenGov Procurement Portal:

https://procurement.opengov.com/

PROCUREMENT CONTACT:

Aaron Bible, Pierce County Procurement & Contract Services
Phone: 253-798-7456
Email: PCPurchasing@piercecountywa.gov
Address: 1501 Market Street, Suite 420, Tacoma, WA 98402

Public Works BID Procurement Dates:

BID Issue Date:	10-07-2026	
Pre-Bid Date / Time	10-13-2026	10:00am
Questions Cut-off Date/Time:	10-21-2026	4:00pm
Bid Due Date/Time:	**11-04-2026**	**1:00pm**

PROCUREMENT AND CONTRACTING REQUIREMENTS

1.01 DIVISION 00 -- PROCUREMENT AND CONTRACTING REQUIREMENTS

00 01 01 - Project Title Page

00 01 10 - Table of Contents

00 11 13 – Advertisement for Bids

00 20 00 - Instructions to Bidders

00 41 00 – Bid Form

00 43 13 – Bid Bond

00 43 36 – Subcontractor List Form

00 50 00 – Sample Public Works Contract Form

00 61 13 – Contract Bond (Sample Form)

00 61 23 – Retainage Bond (Sample Form)

00 72 00 - General Conditions

00 73 16 – Insurance Requirements

00 73 44 – Apprenticeship Utilization Requirements

00 73 49 – Prevailing Wage Compliance

ATTACHMENTS:

2026_0820_Orangegate_BID_SET_Appendices.pdf

2026_0820_Orangegate_BID_SET_Drawings.pdf

2026_0820_Orangegate_BID_SET_Specifications.pdf

SPECIFICATIONS

2.01 DIVISION 01 -- GENERAL REQUIREMENTS

2.02 DIVISION 02 -- EXISTING CONDITIONS

2.03 DIVISION 03 -- CONCRETE

2.04 DIVISION 04 -- MASONRY

2.05 DIVISION 05 -- METALS

2.06 DIVISION 06 -- WOOD, PLASTICS, AND COMPOSITES

2.07 DIVISION 07 -- THERMAL AND MOISTURE PROTECTION

2.08 DIVISION 08 -- OPENINGS

2.09 DIVISION 09 -- FINISHES

2.10 DIVISION 10 -- SPECIALTIES

2.11 DIVISION 11 -- EQUIPMENT

2.12 DIVISION 12 -- FURNISHINGS

2.13 DIVISION 13 -- SPECIAL CONSTRUCTION

2.14 DIVISION 14 -- CONVEYING EQUIPMENT

2.15 DIVISION 21 -- FIRE SUPPRESSION

2.16 DIVISION 22 -- PLUMBING

2.17 DIVISION 23 -- HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)

2.18 DIVISION 25 -- INTEGRATED AUTOMATION

2.19 DIVISION 26 -- ELECTRICAL

2.20 DIVISION 27 -- COMMUNICATIONS

2.21 DIVISION 28 -- ELECTRONIC SAFETY AND SECURITY

2.22 DIVISION 31 -- EARTHWORK

2.23 DIVISION 32 -- EXTERIOR IMPROVEMENTS

2.24 DIVISION 33 -- UTILITIES

2.25 DIVISION 34 -- TRANSPORTATION

2.26 DIVISION 40 -- PROCESS INTEGRATION

2.27 DIVISION 46 -- WATER AND WASTEWATER EQUIPMENT

END OF SECTION

ADVERTISEMENT

Orangegate Park Phase 1 Improvements

2026-MPW-241

SCOPE OF WORK: New park development consisting of parking lot, restrooms, covered shelters, playground, trails, and all other accompanying utilities, infrastructure, and elements as shown on the Contract Drawings and Specifications.

* *Pierce County will pay fees for the General Building Permit and Plan Review for this project. The Contractor is responsible for any specialty or other permits required for this project and shall include such fees in their bid.*

PROJECT ESTIMATE: $6,000,000 - 6,700,000 not including WA State Sales Tax

APPRENTICESHIP UTILIZATION: In accordance with RCW 39.04.320, for all public works estimated to cost two million dollars or more, the State of Washington requires no less than fifteen percent (15%) of the labor hours be performed by apprentices. Please refer to the bid documents for further information under section 00 73 44.

PRE-BID WALKTHROUGH AND SITE EXAMINATION: Optional, pre-bid walk-through will be held at Orangegate Park on Tuesday **10/13/16 at 10:00AM PST**. Please meet at 4526 84th St E, Tacoma, WA 98446 (Pipeline Trailhead parking lot).

HOLDER'S LIST: BIDDERS WHO REGISTER AND DOWNLOAD BID DOCUMENTS will be automatically added to the bidder's list in the OPENGOV Bidding Software. Notifications for bid updates, addendum and other bid information will be sent to all bidders who register with Pierce County OPENGOV and are a 'Bidder' under this bid number. Instructions to register as a bidder are available at https://procurement.opengov.com/login.

PRE-BID QUESTIONS: All questions must be submitted within the Pierce County OPENGOV software, under the Questions and Answer Tab not later than **10/21/2026, 4:00PM PST**. Bidders must be registered in the OPENGOV software to submit questions. *Oral explanations, interpretations, or instructions given by anyone before award of a contract will not be binding on the County***.**

COMPLETION TIME: The successful bidder will be required to substantially complete all basic bid work within **310 CALENDAR DAYS OF NOTICE TO PROCEED**. The Contractor will have an additional **30 CALENDAR DAYS** to reach Final Completion and Acceptance for a total of **340 CALENDAR DAYS.**

BID DUE DATE/TIME: Bids must be submitted via the Pierce County OpenGov Procurement Portal at https://procurement.opengov.com/ and will be received until **1:00PM PST, Wednesday, 11/4/2026**. Bid opening will be performed via a Zoom meeting 30 minutes after Bid Due Time/Date (link: Zoom Bid Opening.)

BID SECURITY: A 5% bid bond must accompany all bids, and a 100% payment and performance bond will be required from the successful bidder.

PREVAILING WAGES: Minimum wage rates for labor to be used under this contract have been determined by the Washington State Department of Labor and Industries. See the Contract Compliance Procedures for Public Works Projects included in the specifications.

PART 1 - GENERAL BIDDING CONSIDERATIONS

1.01 DEFINITIONS

ALL DEFINITIONS SET FORTH IN THE AGREEMENT, THE GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION AND IN OTHER CONTRACT DOCUMENTS ARE APPLICABLE TO THE BIDDING DOCUMENTS.

A. “Addenda” are written or graphic instruments issued prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. The contents of an Addendum are issued in no particular order and therefore should be carefully and completely reviewed.

B. An “Additive Bid” (or “Additive”) is an amount stated in the Bid to add specified features of the work.

C. An “Alternate Bid” (or “Alternate”) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

D. "Apprenticeship" is defined as, "a combination of on-the-job training (OJT) and related classroom instruction under the supervision of a journey-level craft person or trade professional in which workers learn the practical and theoretical aspects of a highly skilled occupation.

E. “Award” means the formal decision by the County notifying a Responsible Bidder with the lowest responsive Bid of the County’s acceptance of the Bid and intent to enter into a Contract with the Bidder.

F. The “Award Requirements” include the statutory requirements as a condition precedent to Award.

G. The “Base Bid” is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base to which work may be added or from which work may be deleted for sums stated in Alternate Bids.

H. A “Bid” is a complete and properly signed proposal to do the Work, submitted in accordance with the Bidding Documents, for the sums therein stipulated and supported by any data called for by the Bidding Documents.

I. The “Bid Date” is the day and hour specified in the Bidding Documents, as may be changed through an Addendum, by which Bidders are required to submit Bids to the County.

J. The “Bid Form” is the form(s) included with the Bidding Documents, with Specification Section 00 40 00, through which a Bidder submits a Bid.

K. A “Bidder” is a person or entity who submits a Bid.

L. The “Bidding Documents” include the Advertisement or Invitation to Bid, Instructions to Bidders, the Bid Form, any other sample bidding and contract forms, the Bid Bond, and the proposed Contract Documents, including any Addenda issued prior to the Bid Date.

M. The “Contract Documents” proposed for the Work consist of the Agreement, the General Conditions of the Contract (as well as any Supplemental, Special or other Conditions included in the project manual), the Drawings, the Specifications, and all Addenda issued prior to, and all modifications issued after, execution of the Contract.

N. A “Sub-Bidder” is a person or entity of any tier who submits a bid or proposal to or through the Bidder for materials, equipment or labor for a portion of the Work.

1.02 EXAMINATION OF CONTRACT DOCUMENTS AND REGULATIONS

A. Each Bidder shall thoroughly examine and be familiar with the Contract Documents including the terms and conditions, specifications, qualification requirements, any other requirements, and if included, drawings or addenda contained within this solicitation package.

B. Each Bidder has an obligation to notify Pierce County (herein after also referred to as “County”), in writing, via the E-Procurement Portal, and prior to the bid opening, of any ambiguity or inconsistency in or between the Contract Documents or overly stringent qualifications. Failure to notify the the County, prior to the bid opening of any such ambiguity or inconsistency the Bidder discovered or should have discovered shall result in the waiver of any and all rights of the Bidder to claim additional time or compensation, if the County executes the Contract (i.e., the County signs the Agreement, 00 50 00), relating to or arising from the ambiguity or inconsistency. If Bidder is questioning qualifications, bidders shall submit in writing their objections to the E-Procurement Portal within seven calendar days of the bid due date/time.

C. The submittal of a bid shall constitute an acknowledgment upon which the County may rely that the Bidder has obtained, thoroughly examined, and is familiar with the Contract Documents and has reviewed and inspected all applicable federal, state and local statutes, ordinances and regulations relating to the work and all permits which have been applied for and/or issued pertaining to the work.

D. The failure or neglect of a Bidder to obtain, receive, or examine any of the Contract Documents, statutes, ordinances, regulations and permits shall in no way relieve the Bidder from any obligations with respect to its bid or to the Contract. No claim for additional compensation or time will be allowed based upon a lack of knowledge or misunderstanding of any of the Contract Documents, statutes, ordinances, regulations, permit requirements, or other materials referenced or incorporated herein.

1.03 ADDENDA & CLARIFICATION OF CONTRACT DOCUMENTS

A. No oral clarification or interpretations will be made to any Bidder as to the meaning of the Contract Documents. Requests for clarification shall be made in within the Pierce County Procurement Portal (opengov.com) software, under the Question & Answer Tab by the date listed in 00 10 00. The County may not respond to requests for clarification that are received outside of this timeframe.

B. Addenda will be posted on the E-Procurement Solicitation page and upon issuance are part of the Contract Documents.

C. Clarifications are for information purposes only, do not affect any changes to the Contract Documents, and are not part of the Contract Documents. Clarifications will be messaged to all bidders registered through the E-Procurement system.

D. Bidders shall not rely upon any oral statements or conversations, whether at the pre-bid conference or otherwise, they may have with County employees, agents, or representatives regarding the Contract Documents.

E. To receive email notifications of addenda, clarifications, or other important information concerning this solicitation, you must register for the solicitation to indicate your interest and receive notifications. Only firms that have indicated interest or created a response will be notified that an addendum has been issued.

1.04 INSPECTION OF WORK SITE

A. Bidders shall carefully inspect and compare the work site and Contract Documents to satisfy themselves, by personal examination, physical testing or by such other means as they may prefer, of the location of the work, the actual physical conditions of the site, surface and subsurface conditions, and conditions ordinarily encountered and generally recognized as inherent in the work. Bidders shall obtain written permission from property owner prior to entering the site and prior to conducting physical testing. If, during the course or as a result of such inspection, examination and testing, a Bidder finds facts or conditions which appear to conflict with the letter or spirit of the Contract Documents, or with any other data or material made available to the Bidder relating to the work, the Bidder shall promptly notify the County for additional information and clarification before submitting a bid by submitting questions through the E-Procurement Portal prior to the question submittal deadline.

B. The submittal of a bid shall constitute the Bidder's acknowledgment, based on the Bidder’s own knowledge, examination, inspection and testing as well as review of the Contract Documents, that the Bidder has satisfied itself as to the following: (1) the quality, character and quantity of subsurface conditions materials or obstacles to be encountered insofar as this information is reasonably ascertainable from the inspection of the site and Contract Documents; (2) access to the site; (3) environmental factors and mitigation requirements; (4) all other data, matters and conditions requisite to the fulfillment of the work; (5) conditions ordinarily expected to be encountered or generally recognized as inherent in the work; (6) requirements imposed by easements and permits; and, (7) existing and available services and utilities at and in the vicinity of the site of the work and not on any representation or warranty of the County. No claim for additional compensation will be allowed which is based upon a misunderstanding or lack of knowledge, examination, inspection and/or testing of any of the above items by the Bidder.

1.05 WAGES

A. This Contract is subject to Chapters 39.12 and 49.28 RCW, amendments thereto and regulations issued thereunder, relating to prevailing wages, benefits and other requirements. Bidders shall examine and be familiar with such requirements. No claim for additional compensation will be allowed which is based upon a lack of knowledge or a misunderstanding of any such requirements by the Contractor or a failure to include in the Bidder's bid price adequate increases in such wages during the performance of this Contract.

1.06 PROGRESS AND COMPLETION

A. Time is of the essence for this Contract. Progress and completion of the work shall comply with all requirements herein, and intermediate and final completion dates as may be set forth in the specifications. The submittal of a bid constitutes the Bidder's acknowledgment that such intermediate and final completion requirements have been taken into account in formulating its bid for this Work.

1.07 PREVENTION OF ENVIRONMENTAL POLLUTION AND PRESERVATION OF PUBLIC NATURAL RESOURCES

A. If a Contract is executed by the County, the Contractor shall fully comply with all such environmental protection laws, ordinances and regulations dealing with prevention of environmental pollution and the preservation of public natural resources that may be applicable to this Project. The cost of such compliance shall be included in the bid prices.

1.08 NON-DISCRIMINATION IN CONTRACTING

A. It is the policy of the County to provide equal employment opportunities and an equal opportunity for all businesses to participate in providing goods and services to the County.

1.09 RECYCLED PRODUCTS POLICY

A. The Contractor shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract. If the cost of recycled paper is more than fifteen percent higher than the cost of non-recycled paper, the Contractor shall notify the County, who may waive the recycled paper requirement.

B. The Contractor agrees to use both sides of paper sheets for copying and printing, and to use recycled/recyclable products wherever practical.

1.10 “OR EQUAL” REQUESTS

A. Except as provided in sub-paragraph C below, when product, material or equipment is specified by one or more patents, brand names, or catalog numbers proprietary name or name of manufacturer or any combination thereof, it shall be understood that this is for the purpose of defining the performance process, article desired or other salient requirements, and shall be deemed to be followed by the words "or equal," whether or not such words appear. Other products, materials or equipment, of equal or better capacities, quality and function, may be considered by the Project Representative upon the Contractor's request for “or equal” determination.

B. Bidders (no subcontractors, suppliers, or materialmen) may submit written requests for approval of an “or equal” determination during the bidding period. Requests must be submitted, via email to the Procurement Specialist, not later than ten (10) days prior to the bid opening. Proposed “or equal” products, materials, or equipment not added to the technical specifications by addenda five (5) days prior to the bid opening are due shall be considered having been rejected as not equal.

C. Under no circumstances will a substitution or a proposed “or equal” product be considered for an item which is identified as no equal, sole source, no substitutions and/or pre-qualified.

D. Bidders must provide sufficient documentation (information similar to that which is required for a substitution request (CSI form 13.1A)), to enable the County to review the product documentation and determine if the products, materials, or equipment are “equal”. Bidder shall provide any additional documentation requested by the County in a prompt and timely manner.

1.11 CONFLICT OF INTEREST—FORMER COUNTY EMPLOYEES

A. To avoid any actual or potential conflict of interest or unethical conduct, for one (1) year after leaving County employment, a former County employee may not:

1. Have a financial or beneficial interest in a contract that was planned, authorized or funded by a county action in which the former County employee participated during County employment. “County action” includes, but is not limited to, determining the Work to be done under the Contract.

2. Assist a person, whether or not for compensation, in any County action in which the former County employee participated during County employment. For purposes of this section, “assist” includes, but is not limited to preparing or consulting in preparation of the bid or performance of Work if the Bidder is awarded the Contract.

B. As a matter of responsibility, the Bidder shall identify within the Responsibility Detail Form any employees who, for one (1) year after leaving County employment, were involved in the preparation of its bid. Failure to identify the employees involved may result in rejection of the bid.

C. After Contract Execution, the Contractor is responsible for notifying the Project Representative of any employees who, for one (1) year after leaving County employment, may become involved in the Contract at any time during performance of the Work. Failure to identify the employees may result in termination of the Contract.

1.12 APPRENTICESHIP UTILIZATION REQUIREMENT

A. This bid requires the 15% apprenticeship utilization of total labor hours. Reference Section 00 73 44.

PART 2 - PREPARATION AND SUBMITTAL OF BIDS

2.01 GENERAL

A. Bids shall be made on the forms in 00 41 00 and include the bid guaranty. All blanks on the bid forms shall be filled in by ink or typed. Alterations, erasures, or interlineations within the blanks, if any, shall be in ink and initialed by the signer of the bid. The completed forms constituting the bid shall be in a PDF file format and submitted directly to the E-Procurement solicitation system. All bids must be received before the Close Date/Time listed in the E-Procurement solicitation system.

B. Do not submit the remainder of the Contract Documents. Bidders are warned against making alterations of any kind to the Form of Bid or, if applicable, the Bid Guaranty Bond. Bids which contain omissions, erasures or irregularities of any kind may be rejected. **Any qualification, addition, limitation or provision attached to or contained in a bid may render the bid non-responsive**. No oral, facsimile, telegraphic or telephonic bids or modifications will be considered.

C. All bids shall be signed by the Bidder, or the Bidder’s authorized representative. If the bid is made:

1. By an individual, the Bidder's name, signature, and address must be shown;
2. By a partnership or joint venture, it shall contain the names of each partner, the mailing address of the partnership or joint venture and shall be signed in the firm name, followed by the signature of the person signing, indicating that person's position in the partnership or joint venture; or
3. By a corporation, the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the title of the person who signs on behalf of the corporation must be shown.

D. The County is not responsible for any cost incurred in response to this Invitation to Bid.

E. Upon request of the County, the Bidder shall provide copies of the articles of incorporation, bylaws, resolutions of board of directors, partnership papers, joint venture agreements, and any other documents evidencing the legal status of the Bidder and the authority of the Bidder’s officer or representative who signed the bid on behalf of the Bidder.

2.02 TAXES - RETAIL SALES

A. The Work to be performed under this Contract constitutes a “retail sale” as such term is defined in RCW 82.04.050, and the Contract Price is subject to the State of Washington and local agency retail sales taxes. However, Bidders shall not include such retail sales tax on the Contract Price in their bids. Such retail sales tax will be calculated on the total Contract Price and The County will add retail sales tax (state and local) on each progress payment and final payment to the Contractor for transmittal by the Contractor to the Washington State Department of Revenue or to the applicable local government.

B. Other than state or local retail sales tax on the Contract Price as specified above and except as provided in subparagraph C of this paragraph 2.02, the Bidder shall include in the Bidder's proposed price(s) all applicable taxes which the Contractor will be required to pay for the Work under this Contract. For example, the County will not add sales tax the Contractor pays on the purchase of tools, machinery, equipment or consumables not integrated into the Work. No adjustment will be made in the amount to be paid by the County under this Contract because of any misunderstanding by or lack of knowledge of the Bidder/Contractor as to liability for, or the amount of, any taxes for which the Bidder/Contractor is liable or responsible by or under this Contract or because of any increases in tax rates imposed by any federal, state or local governments.

C. Retail sales/use taxes, if any, payable on equipment, materials and other items provided hereunder to the Contractor by the County shall not be included in the Bidder's proposed prices. If taxes on such items are required to be paid, the County shall make such payment, either through the Contractor or directly to the Washington State Department of Revenue.

2.03 BID GUARANTY

A. The bid shall be accompanied by a PDF file of an original bid guaranty in the amount equal to at least 5% of the Total Bid Price. Upon request by the County, bidder(s) shall provide the original bid guaranty which accompanied their electronic bid. The bid guaranty shall be in one of the following formats and made payable to PIERCE COUNTY: (1) a bid guaranty bond, using either the form provided in 00 40 00; or (2) a postal money order, a certified check, or cashier's check drawn upon a banking institution with a branch office in the state of Washington. If Contractor elects to use (2) from above, then the document must be delivered to Pierce County Finance, 1501 Market Street., Suite 420, Tacoma, WA 98402 within two hours of bid closing. The surety signing the bid guaranty bond shall be registered with the Washington State Insurance Commissioner, and the surety's name shall appear in the current Authorized Insurance Company List in the State of Washington published by the Office of the Insurance Commissioner. Failure to submit the PDF file of the original bid guaranty, or upon request by the County, provide the original bid guaranty, shall render the bid non-responsive and be rejected.

B. The amount payable to the County under the bid guaranty bond, or the certified or cashier's check or postal money order and the amount thereof, as the case may be, shall be forfeited to the County in case of a failure or neglect of the Bidder to furnish, execute and deliver to the County all the forms required by these contract documents within the number of days specified therein, following the issuance of the Intent to Award. Forfeiture of the bid guarantee shall not limit the County's right to recover damages from the Bidder caused by the Bidder's failure to execute the Contract.

2.04 ACKNOWLEDGMENT OF ADDENDA

A. Each bidder shall acknowledge all addenda issued during the solicitation in the E-Procurement system.

PART 3 - BID EVALUATION AND REJECTION

3.01 OPENING AND POSTPONEMENT OF OPENING

A. At the time and place set forth in the Invitation to Bid for the opening and reading of bids, each and every bid (except those which may have been properly withdrawn) received prior to the scheduled closing time for receipt of bids will be publicly opened and read aloud by a member of the Pierce County Procurement staff. The public bid opening is limited to publicly reading the submitted bids. It is not to determine the adequacy or accuracy of the submitted bid package. The time and place set forth in the Invitation to Bid for opening and reading the bids may only be changed by addendum.

B. The County reserves the right to postpone the date and time for opening of bids at any time prior to the opening of bids.

C. The official time stamp clock for bid submittal will be the internal clock displayed within the County's E-Procurement system. Late bids will not be accepted.

D. Immediately following the bid opening, firms who have submitted a bid can access the bid submittal results via the E-Procurement Portal.

E. Within 24 hours after the bid opening, or until time has passed for submittal of all required bid form attachments, copies of bid submittals will be available to the public via the County's E-Procurement system.

F. Any document submitted to Pierce County pursuant to this ITB prior to Contract Execution shall be considered a public record under chapter 42.56 RCW (the "Act") and shall be available for public inspection and copying, unless exempt under the Act.

3.02 MODIFICATION AND WITHDRAWAL OF BIDS

A. Bidders are allowed to revise their submitted bid prior to the Close Date/Time. Bidders will not be allowed to revise their bid after the Close Date/Time.

B. Bidders may be allowed to withdraw their bid for justifiable reasons after the Close Date/Time prior to Contract Execution, only as approved by the County.

3.03 BID VALIDITY

A. All Bids submitted shall be valid and binding on the bidder for a period of sixty days following the Bid submittal deadline and for any extension of time granted by the bidder.

3.04 BID ERRORS, INFORMALITIES AND IMMATERIAL IRREGULARITIES

A. Prices set forth in the bid will be reviewed by the County for mathematical accuracy.

B. The County, in its sole discretion, reserves the right to waive minor bid errors, informalities, and immaterial irregularities when it is in the County's best interest.

C. The County reserves the right to correct arithmetical errors and discrepancies between unit prices(s) and extended amount(s) and/or written words or numbers if the existence of the discrepancy is ascertainable from the face of the bid.

D. The unit price will always prevail if there is a discrepancy between the extended price and the unit price.

E. Where the bid is readily susceptible of being interpreted as offering either one of two prices shown on the face of the bid, one of which is low and the other is not, the bid must be rejected. If the evidence of the arithmetical error or discrepancy is clear and convincing the Bidder may be permitted to withdraw its bid.

F. In the event a Bidder believes it made an error on its bid, the Bidder shall provide written notice of such claim. The Bidder shall provide to the County supporting evidence for such claim including cost breakdown sheets. The County reserves the right to require the submittal of other bid records or information as the County may deem necessary to evaluate the Bidder's claim of error, or any error as may be identified by the County during its review of the bid.

G. Any review by the County of a bid and/or any review of such a claim of bid error (including supporting evidence) creates no duty or liability on the County to discover any other bid error or mistake, and the sole liability for any bid error or mistake rests with the Bidder or Contractor.

3.05 BID EVALUATION AND RESULTS

A. Following the Bid Close Date and Time, bids will be evaluated by County to determine which bid is the lowest, responsive bid submitted by a bidder.

B. The County will request the information, as specified in Section 00 45 13 Qualifications Information, to determine the low responsive bidders' responsibility.

C. Reciprocal Preference for Resident Contractors

1. In accordance with RCW 39.04.380, the County is enforcing a Reciprocal Preference for Resident Contractors. Any public works bid received from a Nonresident Contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that Nonresident Contractor.

2. A "Nonresident Contractor" is a contractor that:

   a. is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

   b. at the time of bidding on a public works project, does not have a physical office located in Washington.

3. The state of residence for a Nonresident Contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

4. All Nonresident Contractors will be evaluated by the County for an out of state percentage bidding preference. If the state of the Nonresident Contractor provides a contractor percentage bidding preference, a Comparable Percentage Disadvantage ("CPD") will be applied, by the County, to the Nonresident Contractor's Total Bid Price during bid evaluation. The CPD is the percentage bidding preference advantage, provided by the Nonresident Contractor's home state.

5. For the purpose of determining the low bidder, the County shall multiply the Nonresident Contractor's Total Bid Price by the CPD. The CPD shall be added to the Nonresident Contractor's Total Bid Price which equates to the Nonresident Contractor's Disadvantage Total Bid. This Nonresident Contractor's Disadvantage Total Bid shall be compared to the other bidder(s) Total Bid Price(s) for the solicitation and the bidder with the lowest total bid shall be the low bidder for this solicitation.

3.06 QUALIFICATIONS OF BIDDER

A. In accordance with RCW 39.04.350 the low responsive bidder shall demonstrate, to the satisfaction of the County, that the Bidder and/or its project team are responsible and qualified to perform the Work under this Contract. The Bidder shall complete and submit any required information electronically, if requested by the County, via email to the Procurement Specialist identified in 00 10 00, within the time specified. In the event a Bidder fails to provide qualification information as required, or other information requested by the County, the Bidder may be rejected as not responsible.

3.07 BID EVALUATION CONFERENCE

A. Prior to Intent to Award, if requested by the County, the low responsive Bidder shall attend bid evaluation conference(s). The County will hold a bid evaluation conference only if the County deems it is necessary. The Bidder shall bring to the conference any documents or information required by the County as necessary for review.

B. By conducting a bid evaluation conference, the County does not waive its right to make determinations regarding responsiveness and responsibility of the Bidder.

3.08 SINGLE BID RECEIVED

A. If the County receives a single responsive, responsible bid, the County shall have the right, at its sole discretion, to extend the bid acceptance period for an additional 45 days and to conduct a price or cost analysis on such bid. The Bidder shall promptly provide all cost or pricing data, documentation, and explanation requested by the County to assist in cost and price analysis. By conducting such analysis, the County shall not be obligated to accept the single bid; the County reserves the right to reject such bid or any portion thereof.

B. By way of explanation but not as limitation, the terms "price analysis" and "cost analysis" are generally described as follows: (1) price analysis" means the process of examining and evaluating a bid price without evaluating its separate cost elements and proposed profit; and (2) "cost analysis" means the review and evaluation of the separate cost elements and proposed profit of (a) the Bidder's cost or pricing data, and (b) the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency.

3.09 TIE BIDS

A. In the event of a tie bid the following shall apply:

1. A standard U.S. coin of any type will be used that has two distinguishable faces and is agreed upon by the bidders.

2. The bidder with the earliest timestamp bid submission will call heads or tails prior to the coin flip.
3. The contract specialist or designated back-up of a similar position within Pierce County will flip the coin.
4. The coin must be flipped with a reasonable amount of effort to ensure enough rotations to be considered fair by rational standards.
5. The coin flip will be performed at 1501 Market Street in the main lobby in Tacoma, Washington 98402.
6. The contractor shall send a representative to attend the coin flip.
7. The coin flip shall be witnessed by at least one additional Pierce County employee.
8. A sign-in sheet will be maintained to ensure recorded observation of the coin flip.
9. The coin flip shall occur within two business days of the bid due date/time.

3.10 CANCELLATION OF ITB OR REJECTION OF BIDS

A. Bidders are advised that the County reserves the right to:
   1. Cancel the procurement at any time prior to Contract Execution, or
   2. Reject any and all bids for good cause, including, but not limited to:
      a. any bid which contains any omission, erasure or irregularity;
      b. any bid which has any qualification, addition, limitation, or provision attached to or contained in the bid;
      c. any bid in which prices are unbalanced in the opinion of the County;
      d. any bid accompanied by insufficient or irregular bid guaranty;
      e. any bid found non-responsive by the County;
      f. any Bidder found by the County to be not responsible;
      g. any bid for which a Bidder fails or neglects to complete and submit any qualifications information within the time specified by the County and as may be otherwise required herein.

B. In submitting a bid, a Bidder acknowledges and agrees that it is not entitled to any compensation, costs, or damages relating to bid preparation or resulting from the County’s decision to cancel a bid or procurement or refusal to execute a contract.

C. All costs incurred in the preparation of a Bid and participation in this procurement shall be borne by the bidders.

3.11 COLLUSION

A. If the County determines that collusion has occurred among the Bidders, none of the bids of the participants in such collusion will be considered. The County's determination of collusion shall be conclusive.

PART 4 -AWARD AND EXECUTION OF CONTRACT

4.01 GENERAL

A. Within the number of days stated on the Form of Bid, after the bid Close Date and Time, the County will accept a bid and issue an Intent to Award, reject all bids, or take such other action as may be in its best interest. The County reserves the right to request extensions of the bid acceptance period.

B. Within ten (10) days the Bidder is to execute and deliver to the County all the forms listed in 00 50 00 following the issuance of the Intent to Award.

C. If the Bidder experiences circumstances beyond their control that prevents return of the Contract documents within ten (10) days after receiving the Intent to Award, the County may grant up to a maximum of ten (10) additional days for return of the forms listed in 00 50 00, provided the County deems the circumstances warrant it. Under no circumstances will the Bidder have more than ten (10) days to return the properly executed Agreement and Performance and Payment Bond.

D. The County will presume that any person signing or modifying the bid prior to its submittal, or signing the contract on behalf of the Bidder is authorized to bind the Bidder.

E. After Contract Execution, the Contractor will be sent a fully executed electronic copy of the executed Contract Document(s).

4.02 PERFORMANCE AND PAYMENT BOND

A. The Bidder to whom the County issues the Intent to Award for this Contract shall furnish a Performance and Payment Bond, in accordance with 00 50 00, only on the form provided in 00 50 00 in the amount of 100% of the Contract Price, including any and all adjustments to the Contract Price, as security for the faithful performance and completion of the work. Such bond must be executed, dated and sealed by a duly licensed surety(ies) which is registered with the Washington State Insurance Commissioner, and the surety's(ies') name shall appear in the current Authorized Insurance Company List in the state of Washington published by the Office of the Insurance Commissioner. The surety should be bound by an attorney-in-fact, preferably a resident of this County, but certainly of the State of Washington. The scope of the Performance and Payment Bond or the form herein prescribed shall in no way affect or alter the liabilities of the Contractor to the County under the terms of the Contract Documents. The County may require the surety(ies) to appear and qualify themselves upon the bond. If at any time the County determines, in its sole judgment, that the surety(ies) are insufficient, the County may require the Contractor to furnish additional surety in form and arrangement satisfactory to the County and in an amount not exceeding that originally required. Payments will not be made on the Contract until sufficient surety as required is furnished.

B. The person signing the Performance and Payment Bond, as Principal, shall also sign the Contract. See 00 20 00 2.01C for the signature requirements.

C. Bidder(s) shall submit a PDF file of the original fully executed Performance and Payment Bond. Upon request by the County, Bidder(s) shall mail the original fully executed Performance and Payment Bond.

4.03 INSURANCE

A. The County has established certain insurance requirements set forth in 00 73 16. The Bidder to whom the County issues the Intent to Award shall file with the County evidences of and certificates of insurance from insurer(s), as well as additional insured endorsements, certifying to the coverage of all insurance required herein. Any Bidder having questions about the insurance requirements should immediately contact the Procurement Specialist identified. The County will not execute the Contract without approved Insurance documents. Failure to provide Insurance Documents will result in the rejection of the Bidder.

4.04 RETURN OF BID GUARANTIES

A. Any original hard copy bid guaranties requested and received will be held until the Contract has been fully executed. Thereafter, all original hard copy bid guarantees requested and received, and all PDF copies of bid guarantees in the form of a postal money order, a certified check, or cashier's check will be returned to the respective Bidders. PDF copies of bid guarantees in the form of a bond shall be returned upon request. If the County upholds a Bidder's claim of error, the Bidder's bid guaranty will be returned with the County's final determination on the claim of error. The County will also return Bid Guaranties if all bids are rejected.

BID FORM

BIDDER REGISTERED NAME: _____

BID DATE: _____

Having carefully examined all drawings & specifications prepared by Pierce County, as well as the premises and conditions affecting the work, the Undersigned proposes to furnish all labor, equipment, and materials and perform all work for this project in accordance with the drawings, specifications, and addenda (if any), for the consideration of the following amounts. Please note: all items on the bid form need to completed to be considered responsive.

#	Description	UOM	Extended Price
BASIC BID ITEMS:			
1	BASIC BID (Orangegate Park Phase 1 Site Improvements)	1 LS	$
	***BASIC BID SUBTOTAL**		**$**
SUBSTITUTIVE ALTERNATES: PER SECTION 01 23 00			
A1	Substitutive Alternate 01: Picnic Shelter 1	1 LS	$
ADDITIVE ALTERNATES: PER SECTION 01 23 00			
A2	Additive Alternate 02: OLA (Off Leash Area) Loop Trail	1 LS	$
A3	Additive Alternate 03: OLA Clearing	1 LS	$
A4	Additive Alternate 04: Split Rail Fence Along 84th St E	1 LS	$
A5	Additive Alternate 05: Contractor Furnish, Owner Install Trail Directional Signs	1 LS	$
A6	Additive Alternate 06: Contractor Furnish, Owner Install Trail Entry-Large Signage in Greater Orangegate Park Land	1 LS	$
	***ALTERNATE BID SUBTOTAL (*Bid Items A1-A6*)**		**$**
	***TOTAL BID PRICE (*Basic Bid Subtotal + Alternate Bid Subtotal*)**		**$**

**Sales tax will be paid on taxable amounts based on the rate of the location of service - NOT TO BE INCLUDED in bid pricing.*

EVALUATION OF BIDS: In accordance with the provisions of these Contract Documents, Bids will be evaluated to determine the lowest Base Bid Subtotal offered by a responsible Bidder submitting a responsive bid.

AWARD: For the purposes of awarding the contract and determining responsible, responsive bid, bids are evaluated on the base bid and any combination of alternates and additives that the Owner chooses to exercise. Pierce County reserves the right to award base bid and all or none of the alternates or additives. It is anticipated that any alternate bids for additional or related work will be accepted at the time contract award

is made.

LIQUIDATED DAMAGES: The Undersigned acknowledges and agrees to abide by all provisions of the Liquidated Damages of $3,529.00 as it pertains to the Contractor for all work under this Contract. The Undersigned further agrees to pay to the Owner as liquidated damages the sum calculated for each consecutive calendar day that is in default after the time for completion specified herein as per section 007200-10.07 of Pierce County General Conditions.

APPRENTICE UTILIZATION REQUIREMENTS: As of July 1, 2026, all public works contracts with an Engineer's Estimate of $1,500,000.00 or more are required to have an apprenticeship utilization plan submitted by the winning contractor per RCW 39.04.320, where fifteen (15) percent of the labor hours must be performed by apprentices. A monetary incentive and monetary penalty will be applied to the contractor failing to meet the utilization requirement and failing to demonstrate a Good Faith Effort (GFE) per the Apprenticeship Utilization Requirement Section. The contractor's Base Bid shall include a lump sum amount, excluding Washington State Sales Tax for this cost. If contractor is submitting a GFE for this bid, the bidder should enter "not applicable" in the blank below and check the "yes" box indicating they intend on submitting a GFE.

Apprenticeship Utilization Requirement (**dollar total in written figures only**): _____

Has the bidder been found out of compliance with the Washington State apprenticeship and training council for working apprentices out of ratio, without appropriated supervision, or outside their approved work processes as outline in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation: _____ (Yes/No)?

TRENCH EXCAVATION SAFETY PROVISIONS: If the contract contains any work which requires trenching exceeding a depth of four feet, all costs for adequate trench safety systems shall be identified as a separate bid item in compliance with Chapter 39.04.180 RCW. The purpose of this provision is to ensure that the bidder agrees to comply with all the relevant trench safety requirements of Chapter 49.17 RCW. This bid amount shall be considered as part of the total base bid set forth above. If trench excavation safety provisions do not pertain to this project, put N.A. for the below.

Trench Excavation Safety Provisions Only (**dollar total in written figures on**ly): _____

TIME OF COMPLETION: The Contractor shall be required to Substantially Complete all Base Bid and Alternate Bid work within 310 **Calendar Days of Notice To Proceed**. The Contractor will have an **additional 30 CALENDAR DAYS** for a **total of 340 CALENDAR DAYS** to reach Final Completion and Acceptance.

ADDENDA: Bidder acknowledges review of all Addenda through No._____

CONTACT INFORMATION:

FIRM: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

NAME OF MAIN CONTACT FOR THIS BID: _____

PHONE: _____

EMAIL: _____

SIGNATURE OF AUTHORIZED PERSON*: _____

PRINT NAME & TITLE: _____

DATE:_____

**to determine 'authorized' person reference Division 00 'Instructions to Bidders'*

Complete the tax status information for one of the following business entity types. **Individual or Corporate name must match exactly as registered with either Social Security Administration or Internal Revenue Service.**

Identification of Contractor as a sole proprietor, a partnership, a joint venture, a corporation, or another described form of legal entity: _____

Federal Tax ID# (EIN or SSN – as applicable): _____

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

THE FOLLOWING DOCUMENTS ARE TO BE SUBMITTED WITH THIS BID FORM:

- Bidder Responsibility Information Form
- Bid Bond Form
- Subcontractors List Form

BIDDER RESPONSIBILITY INFORMATION FORM (TO BE SUBMITTED WITH BID):

State of Washington Contractor's License No:

_____

Unified Business Identifier (UBI) No:

_____

Employment Security Department No:

_____

DEBARMENT: Bidder has not been disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065? ☐ **YES** ☐ **NO**

PREVAILING WAGES TRAINING: Bidder has received training on the requirements related to public works and prevailing wage under chapter 39.04 and chapter 39.12 RCW or are exempt from the training per RCW 39.04.350: ☐ **YES** ☐ **NO**

TITLE VI COMPLIANCE

Pierce County, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

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

I declare under penalty of perjury under the laws of the State of Washington that the statement regarding Certification of Compliance with Wage Payment Statutes is true and correct.

***SIGNATURE OF AUTHORIZED PERSON:** _____

PRINT NAME & TITLE: _____

DATE: _____

**to determine 'authorized' person reference RCW 39.04.350(1)(g) / RCW 5.50*

Pierce County

BID PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, That we _____

_____ of _____

_____ as principal, and the _____

_____ a corporation duly organized under the laws of the State of _____

_____ and authorized to do

business in the State of Washington, as surety, are held and firmly bound unto Pierce County, State of Washington, in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, pursuant to and in compliance with the provisions of RCW 36.32.235, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The conditions of this bond are such, that whereas the principal herein is hereby submitting his/her or its sealed proposal for the following public works construction, to wit:

_____

_____

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, if said proposal bid by said principal be accepted, and the contract be awarded to said principal, said principal shall duly make and enter into and execute said contract and shall furnish bond as required by RCW 36.32.235 within 10 days after notice of the award, exclusive of the day of notice, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, the principal and the surety have caused these presents to be .signed and sealed this _____ day of _____, 20

Principal

Surety

(Attach Copy of Power of Attorney
for any signatures by Attorney in Fact)

SUBCONTRACTORS LIST FORM

SUBMIT THIS FORM WITH BID

BIDDER: _____

1.1 SUBCONTRACTORS:

In compliance with RCW 39.30.060 for all projects estimated to cost $1 million or more, all Bidders must complete and submit this Subcontractors List form. Effective July 27, 2025, proof of license(s) for all listed subcontractors must be included with the bid submittal.

A. Submission Deadline: Submit with Bid.

B. List Subcontractors: The Bidder shall Indicate on the Subcontractors List the names of the subcontractors with whom the Bidder, if awarded the contract, will subcontract for performance of the work of heating, ventilation and air conditioning, plumbing as described in chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW. Additionally, within 48 hours after the published bid due date/time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of structural steel installation and rebar installation.

C. List Bidder if Bidder Performing Work: If the Bidder will perform the work in any of the three areas required, the Bidder shall name itself for the work on the Subcontractors List.

D. Name Only One Firm for Each Category of Work: The Bidder shall not list more than one firm (subcontractor or Bidder) for each category of work identified, unless subcontractors vary with bid Alternates or Additives, in which case the Bidder must indicate which firm will be used for which Alternate or Additive.

E. Substitution of Subcontractors: Substitution of any listed subcontractor may only be according to the procedure and parameters set forth in RCW 39.30.060.

F. Factors Relating to Non-Responsiveness: Failure of the Bidder to submit the names of such subcontractors, or to name itself to perform such work, or the naming of two or more firms (subcontractors or Bidder) to perform the same work shall render the Bidder's bid nonresponsive and, therefore, void.

G. Errors identified by the contracting agency in the proof of license information must be corrected by the bidder within 48 hours of submission.

H. Applicable to Direct Subcontractors: The requirement of this section to name the Bidders' proposed heating, ventilation and air conditioning, plumbing and electrical subcontractors applies only to proposed heating, ventilation and air conditioning, plumbing, and electrical subcontractors who will contract directly with the Bidder.

Trade	**Bidder must check one box for each Trade. If subcontracting the work, Bidder must name the subcontractor.**
Heating, Ventilation & Air Conditioning (HVAC)	☐ Name of Subcontractor: _____ ☐ Subcontractor License Number: _____ ☐ Bidder will self-perform this work

	☐ N/A (this project does not include this work)
Plumbing	☐ Name of Subcontractor: _____ ☐ Subcontractor License Number: _____ ☐ Bidder will self-perform this work ☐ N/A (this project does not include this work)
Electrical	☐ Name of Subcontractor: _____ ☐ Subcontractor License Number: _____ ☐ Bidder will self-perform this work ☐ N/A (this project does not include this work)
Rebar	☐ Name of Subcontractor: _____ ☐ Subcontractor License Number: _____ ☐ Bidder will self-perform this work ☐ N/A (this project does not include this work)
Structural Steel	☐ Name of Subcontractor: _____ ☐ Subcontractor License Number: _____ ☐ Bidder will self-perform this work ☐ N/A (this project does not include this work)

Pierce County

PIERCE COUNTY PUBLIC WORKS CONTRACT

AGREEMENT BETWEEN

PIERCE COUNTY AND CONTRACTOR

THIS **AGREEMENT** is made and entered into between **PIERCE COUNTY**, a State of Washington municipal corporation, hereinafter designated as the "**County**," and:

The "**Contractor**":_____**(Legal Name)**
_____(Address)
_____(Address 2)
_____(Phone No.)

The "**Project**" is: _____**(Title)**
_____(Contract No)
_____(Project Address)
_____(Project Address 2)

The "**Project Representative**" is: _____**(Representative)**
_____(Title)
_____(Email)
_____(Phone No.)

The "**Contractor's Representative**" is: _____**(Representative)**
_____(Title)
_____(Email)
_____(Phone No.)

CONTRACT DOCUMENTS AND BINDING REPRESENTATIONS:

The County has caused Contract Documents, including (without limitation) those listed in the definition of "Contract Documents" in the General Conditions and any bond(s), to be prepared for the performance of Work on the Project. All such Contract Documents are incorporated herein to this Contract by reference. Contractor has previously reviewed and agreed to all Contract Documents other than this Contract and agrees that the Owner maintains the official copy of the complete Contract Documents.

The County publicly solicited bids on the Contract Documents. The Contractor submitted a bid to the County on the _____ day of _____, 20___ offering to perform the Work on the terms specified in the Contract Documents.

SAMPLE

The Contractor represents that it has the personnel, experience, qualifications, capabilities, and means to accomplish the Work in strict accordance with the Contract Documents, within the Contract Time and for the Contract Price, and that it and its Subcontractors satisfy the responsibility criteria set forth in the Contract Documents, including any supplemental responsibility criteria.

The Contractor further represents that it has carefully examined and is fully familiar with all provisions of the Contract Documents, including any Addenda, that it has fully satisfied itself as to the nature, location, difficulty, character, quality, and quantity of the Work required by the Contract Documents and the conditions and other matters that may be encountered at or near the Project site(s), or that may affect performance of the Work or the cost or difficulty thereof including all applicable safety and site responsibilities, and that it understands and can satisfy all scheduling and coordination requirements and interim milestones.

AGREEMENT:

The County and the Contractor agree to and incorporate the preceding paragraphs and further agree as follows:

1.0 CONTRACTOR TO FULLY PERFORM THE WORK

The Contractor shall fully execute and complete the entire Work described in the Contract Documents, except to the extent specifically indicated in the Agreement, the General Conditions of the Contract (as well as any Supplemental, Special or other Conditions included in the project manual), the Drawings, the Specifications, and all Addenda issued prior to, and all modifications issued after, execution of the Contract.

2.0 DATE OF COMMENCEMENT

The date of commencement of the Work, which is the date from which the Contract Time is measured, shall be fixed as the date the Notice to Proceed is issued.

3.0 CONTRACT TIME AND LIQUIDATED DAMAGES

The Contractor shall achieve all interim milestones as set forth in the Contract Documents and Substantial Completion of the entire Work no later than **XXX calendar days** from Notice to Proceed, subject to adjustments of this Contract Time as provided in the Contract Documents. The Contractor shall achieve Final Completion of the Work within **XXX calendar days** of the date on which Substantial Completion is achieved.

Provisions for liquidated damages as a reasonable estimate of future loss, as of the date of this Agreement, are included in the Contract Documents. The parties agree that the stated liquidated damages are not penalties individually or cumulatively.

The liquidated damages for failure to achieve Substantial Completion by the prescribed date shall be **$XXX per calendar day**. After the prescribed Final Completion date, the liquidated damages for failure to achieve Final Completion shall be **$XXX per calendar day**.

Liquidated damages assessed by the County will be deducted from monies due to the Contractor, or from monies that will become due to the Contractor. The liquidated damages, as specified and calculated herein, shall be levied for each and every calendar day that Substantial Completion and/or Final Completion of the

SAMPLE

work is delayed beyond the prescribed completion dates, or the completion dates modified by the County for extensions of the contract time.

4.0 CONTRACT PRICE

In accordance with the Contractor's bid dated [], and in exchange for Contractor's timely and satisfactory completion of the Work, the County shall pay the Contractor in current funds for the Contract Price of _ dollars ($), subject to additions and deductions as provided in the Contract Documents. State and local sales tax is not included in the Contract Price but will be due and paid by the County with each progress payment.

5.0 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in the Contract Documents.

This Agreement is entered into as of the day and year last written below:

This Agreement, including all documents incorporated by reference, contains all the terms and conditions agreed upon by the parties. No other understandings and representations, verbal or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the parties. The parties signing below warrant that they have read and understand this Contract and have authority to enter this Agreement.			
Contractor Signature	**Printed Name and Title**		**Date**
Approved As to Form Only by Deputy Prosecuting Attorney	**Date**	**Julie Demuth, Finance Director**	**Date**
Department Director	**Date**	**Ryan Mello, County Executive *(over $250k)***	**Date**

SAMPLE

Pierce County

CONTRACT BOND FORM

PUBLIC WORKS CONTRACT BOND PIERCE COUNTY

Bond No:_____

KNOW ALL BY THESE PRESENTS, That we,_____
as Principal, and the _____, a corporation, organized and existing under and by virtue of the laws of the State of _____ _____, as surety, are held and firmly bound and obligated unto PIERCE COUNTY, 1501 Market Street, Ste 420, Tacoma, Washington 98402 in the full and just sum of (or "up to" if On-Call) spell out contract amount ($XXX,XXX.XX), plus Washington State Sales Tax, lawful money of the United States, for the payment of which sum well and truly to be made, we do bind ourselves, our and each of our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

This bond is executed in pursuance of Chapter 39.08, Revised Code of Washington. THAT CONDITIONS OF THIS OBLIGATION ARE SUCH, that WHEREAS, the Principal entered into a certain contract with PIERCE COUNTY

dated the _____day of _____, 20__ for

Contract Number SC-###### – Orangegate Park Phase 1 Site Improvements

NOW, THEREFORE, if the Principal shall faithfully perform all the provisions of such contract and pay all laborers, mechanics and subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, then this obligation is void; otherwise to remain in full force and effect.

Provided, however, that the conditions of this obligation shall not apply to any money loaned or advanced to the Principal or to any subcontractor or other person in the performance of any such work.

IMPORTANT: Surety companies executing bonds must have an A.M. Best Rating of B+ FSC of (6) or higher, have an underwriting limitation of not less than the Contract Sum, and be authorized to transact business in the State of Washington.

Signed and Sealed the_____ day of _____, 20___.

SURETY	**CONTRACTOR**
_____	_____
Signature	Signature
_____	_____
Printed Name and Title	Printed Name and Title

SAMPLE

Power of Attorney attached.

SAMPLE

RETAINAGE BOND

Purchase Order No. / Contract No. _____

Bond No. _____

KNOW ALL BY THESE PRESENTS: That _____, a corporation existing under and by virtue of the laws of the State of _____ and authorized to do business in the State of Washington, as Principal, and _____, a corporation organized and existing under the laws of the State of

_____ and authorized to transact the business of surety in the State of Washington, as Surety, are jointly and severally held and bound unto Pierce County (County) and the State of Washington (State), and are similarly held and bound unto the beneficiaries of the trust fund created by Chapter 60.28 Revised Code of Washington (RCW), and their heirs, executors, administrators, successors and assigns in the penal sum of

_____ Dollars ($_____), plus 5% of any increases in the contract amount that have occurred or may occur, due to change orders, increases in the quantities or the addition of any new item of work.

WHEREAS, the Principal has executed a Contract for _____ with the County; and WHEREAS, said Contract and Chapter 60.28 RCW require the County to withhold from the Principal the sum of five percent (5%) from monies earned by the Principal on estimates during the progress of the work, hereinafter referred to as earned retained funds; and

WHEREAS, the Principal/Surety has requested that the County accept a bond in lieu of earned retained funds as allowed under Chapter 60.28 RCW.

NOW, THEREFORE, this obligation is such that the Surety, its successors and assigns, are held and bound unto County, State and unto all beneficiaries of the trust fund created by Chapter 60.28 RCW in the aforesaid sum. This bond, including any proceeds therefrom, is subject to all claims and liens and in the same manner and priority as set forth for retained percentages in Chapter 60.28 RCW. The condition of this obligation is such that if the Principal shall satisfy all payment obligations to persons who may lawfully claim under the trust fund created pursuant to Chapter 60.28 RCW, to the State of Washington, and to the County, and indemnify and hold the County harmless from any and all loss, costs, and damages that the County may sustain by release of said retainage to Principal/Surety, then this obligation shall be null and void provided the Surety is notified by County that the requirements of Chapter 60.28 RCW have been satisfied and the obligation is duly released by County; otherwise it shall remain in full force and effect.

IT IS HEREBY DECLARED AND AGREED that the Surety shall be liable under this obligation as Principal. The Surety will not be discharged or released from liability for any act, omission, or defense of any kind or nature that would not also discharge the Principal. The Surety waives the application or legal protection of any contrary law, equitable rule, or other principle relating to the liability of sureties.

SAMPLE

IT IS HEREBY FURTHER DECLARED AND AGREED that this obligation shall be binding upon and inure to the benefit of the Principal, the Surety, the County, State and, the beneficiaries of the trust fund created by Chapter 60.28, Revised Code of Washington (RCW) and their respective heirs, executors, administrators, successors and assigns.

SIGNED AND SEALED this ____ day of _____, 2026.

Principal: _____ Surety: _____

_____ Address: _____ City/Zip: _____

City/Zip: _____ By: _____

_____ Title: _____

By: _____ Title: _____

Address: _____

Tel: _____ Tel: _____

Witness: _____ Witness: _____

Note: A power of attorney must be provided which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal and deliver this bond.

Retainage Bond, Rev. 1/2020

SAMPLE

PART 1 - GENERAL PROVISIONS

1.01 DEFINITIONS

A. “Addendum” is a written alteration or clarification of the plans or specifications provided to bidders by the County prior to bid time, which becomes part of the Contract Documents when the Contract is executed.

B. “Application for Payment” means a written request for payment of Work completed in accordance with the Contract submitted by Contractor to the County.

C. “Change Order” means an executed written instrument that alters one or more terms of the Contract. A Change Order may be bilateral (executed by both Parties) or unilateral (executed by the County only).

D. “Change Proposal” means a document prepared by the Contractor at the request of the County in response to a Request for Change Proposal initiated by the County, which proposes a change to one or more terms of the Contract. The County initiates all Requests for Change Proposals.

E. “Claim” means a written demand by the Contractor seeking relief not granted in the County’s response to the Contractor’s prior Request for Change Order or in response to a unilateral Change Order.

F. “Completion/Final Acceptance” means that the Contractor has completed all the requirements of the Contract, and the County has given written notice of acceptance of the Project.

G. The “Contract” or “Contract Documents” constitute the entire integrated agreement between Pierce County and the Contractor for the performance of the Work. The Contract Documents are the following:

1. Signed Pierce County Agreement between County and Contractor (the “Agreement, Section 00 50 00”);
2. Affidavits, Certifications and Bonds as specified in the Contract;
3. General Terms and Conditions (Section 00 72 00);
4. Supplemental Terms and Conditions, including addenda (Section 00 73 00);
5. Drawings and Detail Drawings;
6. The General Provisions (Division 1)
7. Technical Specifications, Divisions 2 through 49;
8. Change Order(s); and,
9. Invitation to Bid Documents, which includes all sections in Division 0, not previously listed.

H. “Contract Execution” occurs when the County Executive or its designee signs the Contract, which shall occur after the Contractor signs the Contract. Contract Execution will be performed through an electronic signature process.

I. “Contract Price” means the total amount payable by the County to the Contractor for performance of the Work in accordance with Section 00 50 00, as may be adjusted by Change Orders.

J. “Contract Time” means the number of Days, or the specific date set forth in the Contract for the Contractor to achieve Substantial Completion of the Work.

K. “Contractor” means the individual or business entity contracting with Pierce County to perform the Contract Work.

L. “Contractor’s Representative” is the individual designated by the Contractor in the Agreement, Section 00 50 00, responsible for administering the Contract, and who has the authority to bind and obligate the Contractor in the performance of the Work.

M. “Critical Path” is the longest, continuous sequence of interrelated activities that begins at the start of the Project (Notice to Proceed) and extends to Substantial Completion of the Project. A delay to an activity on the Critical Path will delay project completion.

N. “Day” or “Days” means calendar day, unless otherwise specified.

O. “Differing Site Conditions” are defined as: Type I Subsurface or latent physical conditions at the site which differ materially from those described or shown in the Contract Documents and not reasonably foreseeable based on the information available to the Contractor at the time of bid or Type II Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the construction activities of the character provided for in the Contract and not reasonably foreseeable based on the information available to the Contractor at the time of bid.

P. “Direction” is a general term that refers to communications from the County Project Representative to the Contractor about the Work. Direction includes, but is not limited to, Field Directives, directives to accelerate or suspend Work, and response to Requests for Information and Submittals.

Q. “Field Directive” is a document, titled Field Directive, issued by the Project Representative, directing the Contractor to proceed promptly with specific work and shall not, in and of itself, constitute entitlement to an adjustment in Contract Time and/or Contract Price.

R. “Final Payment” means the County’s payment on the Contractor’s final Application for Payment, (See Part 7, Payment and Completion).

S. “Float” shall be defined as the period of time measured by the number of days each non-critical path activity may be delayed before it and its succeeding activities become part of the Critical Path in the Project Schedule. Contractor and the County may both utilize Float to offset delays to the Project Work

T. “Force Majeure” means an event that is unforeseeable at the time of Contract Execution and that is beyond the reasonable control of the Contractor and County and is limited to:

1. A natural disaster declared by the Governor of Washington or President of the United States, or declared an emergency by the Pierce County Executive including, but not limited to, earthquakes;

2. Acts or omissions of any government entity acting within its governmental capacity;

3. Fire and/or flood for which the Contractor or its Subcontractors is not responsible;
4. Quarantine, epidemic, or pandemic; and
5. Strike or defensive lockout.

U. “Hand and Other Small Tools” means any tool, piece of communication equipment, or piece of equipment with a wholesale value of less than $500.

V. “Hazardous Material” means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any and all federal, state, county, or municipal statutes or laws and regulations promulgated thereunder, now or at any time hereafter in effect, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U. S. C. §§ 9601, et seq.), the Hazardous Materials Transportation Act (49 U. S. C. §§ 1801, et seq.), the Resource Conservation and Recovery Act (42 U. S. C. §§ 6901, et seq.), the Federal Water Pollution Control Act (33 U. S. C. §§ 1251, et seq.), the Clean Air Act (42 U. S. C. §§ 7401, et seq.), the Toxic Substances Control Act, as amended (15 U. S. C. §§ 2601, et seq.), the Occupational Safety and Health Act (29 U. S. C. §§ 651, et seq., and the Model Toxics Control Act (RCW 70.105), or similar state or local statute or code), as the laws have been amended and supplemented.

W. “Pierce County” or “County” refers to the county of Pierce, a political subdivision and home rule charter county of the state of Washington.

X. “Notice” means a written document issued by one Party of the Contract to the other.

Y. “Notice To Proceed” is a written directive issued by the County authorizing the Contractor to perform some or all of the Work.

Z. “Overhead” means the Site or Field Office Overhead and Home Office Overhead costs that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the physical Contract construction activities.

1. “Site or Field Office Overhead” means those costs that directly support the physical completion of the Work, including but not limited to: salaries and direct payroll costs for superintendents, planners, schedulers, engineers, managers, clerical staff and all vehicles, travel, meal and lodging costs associated with those personnel; field office and utility expenses; expenses associated with all regulatory compliance; Hand and Other Small Tools provided by the Contractor for the use of its forces; all expendable supplies; and all other such items.

2. “Home Office Overhead” means that portion of Contractor business costs necessary to operate the business entity that are not specifically related to the Work but are properly allocable to this Contract. Such costs include, but are not limited to, those associated with office and office personnel salaries and related payroll taxes and benefits; costs of office occupancy and maintenance, all supporting services (such as utilities, office equipment, computers, software, and similar items) related to the home office function; business taxes and licenses; leased or owned vehicles (including vehicle allowances); and all such other costs necessary to operate the business entity.
3. Bonds, Insurance and Taxes. In addition to the above, whether treated as Site or Field Office Overhead or as Home Office Overhead, costs of any and all bonds, insurance(s), and taxes, other than retail sales tax, associated with this Contract are to be considered as Overhead. All items as those identified above are to be treated as Overhead for this purpose regardless of how the Contractor chooses to account for them in its books of account.
4. Unallowed Overhead Items. Under no circumstances shall the County pay the Contractor for direct or allocated costs or charges for officer bonus and profit sharing, project personnel bonuses, charitable contributions, income taxes, or any costs relating to illegal activity.

AA. “Party” or “Parties” refers to the Contractor and Pierce County.

BB. “Project” refers to all activity relative to this Contract including activity of the Contractor, its Subcontractors, and the County.

CC. “Project Representative” refers to the individual designated by the County and identified in the Agreement (Section 00 50 00).

DD. “Project Schedule” means a document, prepared pursuant to all Contract requirements for the Project Schedule, that indicates the time of performance of all activities necessary for completion of the Contract Work within the Contract Time. The Project Schedule and all required updates will be utilized to monitor progress of the Work.

EE. “Punch List” means a list of items to be completed or corrected by the Contractor after Substantial Completion and prior to Completion/Final Acceptance.

FF. “Request for Change Order” (or “RCO”) means a document, designated as a Request For A Change Order, prepared by the Contractor requesting either (1) a change in Contract Price; (2) a change in Contract Time; (3) a change in Contract Work; (4) a payment of money or damages; and/or (5) any other relief arising out of, or relating to, this Contract.

GG. “Request for Change Proposal” (or “RCP”) means a document, designated as a Request For Change Proposal, prepared by Pierce County requesting Contractor’s price for the proposed change to the Work. A Request for Change Proposal is not Direction to proceed with the change to the Work.

HH. “Request for Information” (or “RFI”) is a request from the Contractor to the County seeking an interpretation or a clarification of some requirement of the Contract Documents.

II. “Retainage” is a retained percentage of the Contract Price held by Pierce County or equivalent value in the form of a statutory retainage bond posted by the Contractor, which is released after contract and statutory conditions have been met.

JJ. “Satisfactory Completion" pertains to additional Work under a Change Order and is further defined in provision 6.04, Change Orders.

KK. “Schedule of Values” means a document that allocates portions of the total Contract Price, which includes all Overhead and profit, to each of the activities necessary to complete the Contract Work. The Schedule of Values is used as the basis for calculating Progress Payments.

LL. “Site” or “Project Site” refers to the location at which construction, equipment or services furnished by the Contractor under the Contract will be performed, completed and/or delivered.

MM. “Subcontractor” shall mean an individual or business entity having a contract with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Work.

NN. “Submittals” Submittals include but are not limited to shop drawings, setting and erection drawings, schedule of values, schedules of materials, product data, samples, certificates and other information prepared for the Work by the Contractor, or a Subcontractor as required in the Technical Specifications (“Submittals”).

OO. “Substantial Completion” means that the date in the progress of the Work when:

1. The County has full and unrestricted use and benefit of the Contract Work for the purpose intended;
2. All the systems and parts of the Contract Work are functional;
3. Utilities are connected and operate normally;
4. Only minor incidental work or correction or repair remains to complete all Contract requirements; and,
5. The Contractor has provided all occupancy permits and easement releases.
6. If the Contract specifies, partial Substantial Completion may be granted for a specified phase of the Work or milestone.

PP. “Substitution Request” means the Contractor’s request to supply a product or process that is different from what is specified in the Contract.

QQ. “Supplier(s)” means an individual or business entity that provides materials or manufactured items that are necessary to or incorporated into the Project, but who performs no Work on the Site.

RR. “Work” or “Contract Work” is a general term that refers to all the construction and other activities required by the Contract Documents and includes all labor, materials, equipment, supplies, and all activities necessary to fulfill all of the Contractor’s obligations under the Contract.

1.02 INTENT AND INTERPRETATION OF THE DOCUMENTS

A. The Contract Documents constitute the entire and integrated agreement between the Parties hereto and supersede all prior negotiations, representations, or agreements, either written or oral.

B. The Contract Documents shall not be construed to create a contractual relationship between any parties other than the County and the Contractor. No contract between the County and a third party shall be construed to create any duty on the part of the County or such third party to the Contractor. The Contractor is not an intended or incidental beneficiary of any promises made in the County's contract with a third party, if any.

C. The Contract Documents are intended to be complementary. What is required by one part of the Contract shall be as binding as if required by all. Should any conflict or inconsistency be found in the Contract Documents, the County shall resolve any such conflict or inconsistency in accordance with provision -1.03, Order of Precedence.

D. Where the words "similar" or "typical" (or their equivalents) are used in the Contract, they shall mean nearly corresponding or having a likeness. Such words shall not be construed to mean that all parts of the Work referred to are identical or substantially identical, or that such elements of the Work are connected identically or substantially identically to the rest of the Work. The Contractor has the responsibility to determine all details of the Work in relation to their location and connection to other parts of the Work. Words importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular; and words importing the male gender are to be extended to females also.

E. The organization of the specifications into divisions, sections, and Parts and the organization of the drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.03 ORDER OF PRECEDENCE

A. Any conflict or inconsistency between the terms or conditions of the Contract Documents shall be resolved by the following descending order of precedence (with 1 taking precedence over 2, 2 over 3, and so forth):

1. Change Order(s)
2. The signed Agreement (Section 00 50 00)
3. The Supplemental Terms and Conditions, if included (Section 00 73 00)
4. The General Terms and Conditions (Section 00 72 00)
5. The General Provisions (Division 1)
6. The Technical Specifications ("Specifications"), Divisions 2 - 49
7. Detail drawings
8. Drawings
9. All other sections in Division 0 not specifically identified herein

10. Affidavits, Certifications and bonds

B. In the event there exists a conflict, inconsistency, or ambiguity within the terms and conditions of one of the Contract Document categories set forth above, that is not resolved by application of provision - 1.03.A, the more stringent or costly requirement shall be deemed to have been intended and to have been included in the original Contract Price.

1.04 CLARIFICATION OF DRAWINGS AND DETAIL DRAWINGS

A. Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to other similar portions of the Work. Where ornament or other detail is indicated in one instance only, such detail shall be continued throughout the courses or parts in which it occurs and shall apply to all other similar parts of the Work, unless otherwise indicated.

B. With regard to drawings the following shall apply:

1. Written dimensions shall be followed; drawings may not be to scale.
2. Figure dimensions on drawings shall govern over scale dimensions; and detail drawings shall govern over general drawings.

PART 2 - COUNTY

2.01 AUTHORITY

A. Unless the County, in writing, indicates otherwise, the authority to (1) commit to or bind the County to any Change Orders or change in Contract Work, Contract Price and/or Contract Time; or (2) sign the Contract or Change Orders rests solely in the Pierce County Executive or its designee.

B. The County shall identify the Project Representative in the Agreement, Section 00 50 00 of the Contract.

1. If the Project Representative has the authority to sign Change Orders and/or bind the County to changes in Contract Work, Contract Price, or Contract Time, upon request, the Project Representative shall provide the Contractor with a written notice of delegation of authority.
2. In the event the Project Representative is no longer assigned to the Contract, the County shall notify the Contractor in writing of the change providing the name of the new Project Representative and effective date of the change.

C. The Project Representative shall have the authority to administer the Contract. Administration of the Contract by the Project Representative includes but is not limited to:

1. Receiving all correspondence and information from the Contractor;
2. Issuing Field Directives;
3. Issuing Requests for Change Proposal;
4. Responding to Requests For Information;

5. Reviewing the Schedule of Values, Project Schedules, Submittals, testing and inspection reports, Substitution Requests, and other documentation submitted by the Contractor;
6. Negotiating Change Proposals and Change Orders;
7. Recommending Change Orders for approval by the Pierce County Executive or its designee;
8. Issuing decisions with respect to Requests for Change Orders and Claims;
9. Processing payment requests submitted by the Contractor, and recommending payment;
10. Monitoring the quality of the work, rejecting noncompliant work, and recommending acceptance of the work;
11. Transmitting executed Change Orders, amendments, and other Contract correspondence to the Contractor, and
12. Performing all other contract administrative functions.

D. The Project Representative may designate Technical Representative(s) to perform functions under the Contract, such as review and/or inspection and acceptance of supplies, services, including construction, and other functions of a technical or administrative nature.

1. The Project Representative will provide, upon request, a written Notice of its designation to the Contractor. The designation letter will set forth the authority of the Technical Representative(s) under the Contract.
2. The Project Representative may add to or modify in writing these designations from time to time.

2.02 INFORMATION SUPPLIED BY COUNTY

A. Unless otherwise specifically provided in the Contract, surveys and site information provided by the County are intended to describe the general physical characteristics of the Site. The County does not represent that this information is complete or sufficient for the Contractor's performance of the Work.

B. All drawings, models, and specifications furnished by the County are solely for use on this Contract and are not to be used by the Contractor on any other work or project.

2.03 WORK BY COUNTY OR SEPARATE CONTRACTORS

A. The County reserves the right to perform work not included in the Contract or to let other contracts in connection with this Project.

PART 3 - CONTRACTOR

3.01 CONTRACTOR REPRESENTATIONS

A. The Contractor makes the following representations to the County:

B. Before submission of its bid, the Contractor has:

1. Carefully reviewed the Contract Documents, and visited and examined the Site;

2. Become familiar with the general and local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of Contract Work;
3. Become familiar with, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents;
4. Examined the Site surface and reasonably ascertainable subsurface conditions and other matters that may be encountered at the Site or affect performance of the Contract Work or the cost or difficulty thereof;
5. Become familiar with and satisfied itself as to the conditions involving transportation, disposal, handling, and storage of materials; and
6. Become familiar with and satisfied itself as to the availability of labor, water, electric power, and roads, and the uncertainties of traffic, weather, river stages, tides, or similar physical conditions at the site. Any failure of the Contractor to take the action described in this provision or elsewhere in the Contract Documents will not relieve the Contractor from its responsibility for properly estimating the difficulty and cost of the Work, or for successfully performing the Work without additional expense to the County.

C. The Contract Price is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work as represented by the Contract, site visit, and the general conditions (including but not limited to weather, site, soil) known or reasonably anticipated for the Site.

D. The Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform the Contractor's obligations required by the Contract.

E. The Contractor is able to furnish plant, tools, material, supplies, equipment, and labor required to complete the Work and perform the obligations required by the Contract and has sufficient experience and competence to do so.

F. The Contractor shall perform at the Site, and with its own forces, work equivalent to at least twenty-five percent (25%) of the Contract Price, unless otherwise approved by the County's Representative.

G. The Contractor shall make a good faith effort to cooperate with the County and with all other contractors assigned to perform work on or near the Project.

3.02 GENERAL DUTIES

A. The Contractor shall give sufficient supervision to the Work, using its best skill and attention. The Contractor is hereby given notice that the County will be relying on the accuracy, competence and completeness of the Contractor's work. The Contractor shall supervise and be solely responsible for the proper performance of the Work in accordance with the Contract, including the construction means, methods, techniques, sequences, procedures, and for coordination of all portions of the Work.

B. Unless specified elsewhere in the Contract, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction machinery, utilities, transportation, and other facilities and services (including federal and state tax, industrial insurance, social security liability and all other applicable taxes) necessary for the proper execution and completion of the Work. 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 the Project Representative.

C. The Contractor shall also provide sufficient staffing and supervision to process administrative functions, including but not limited to, Submittals, Requests for Information, Project Schedule updates, responses to Requests for Change Proposal, Change Orders, payment requests, close out documentation, and to perform all other requirements of the Contract and all Work.

D. The Contractor shall lay out its Work from baselines and benchmarks indicated in the Contract and shall be responsible for the accuracy of all field measurements used in the lay out.

E. If professional services requiring licenses in the State of Washington, such as engineering, architecture or other services are required per the technical specifications and/or drawings, it is the Contractor's duty to ensure that those professionals engaged on its behalf are licensed in the State of Washington.

3.03 DUTY TO INSPECT CONTRACT DOCUMENTS

A. The Contractor shall carefully study and compare all Contract Documents and check the conditions, dimensions, and instructions as stated therein.

B. The Contractor shall immediately notify in writing the County of any:

1. Error, inconsistency, or omission in the Contract Documents that Contractor discovers or that a contractor through the exercise of reasonable diligence should have discovered; or

2. Requirement in the Contract Documents that conflicts with any local, state, and federal laws, regulations and/or permits, licenses, and easement conditions that the Contractor discovers or that a contractor through the exercise of reasonable diligence should have discovered.

C. The Contractor should not proceed with the work in question until the Contractor receives written direction from the Project Representative.

D. If the Contractor proceeds with the work in question without written direction from the Project Representative, the Contractor shall be responsible for any costs or damages associated with:

1. Fines or penalties;

2. Demolition, tear out, removal, cleanup, remediation, or fixing the work in question; and

3. Delay, disruption, and loss of productivity.

E. The Contractor's failure to timely discover and immediately report, to the County, such reasonably ascertainable errors, inconsistencies, or omissions and conflicts in regulatory requirements, permits, license or easements shall preclude the Contractor's recovery of costs and time resulting from the Contractor's failure to timely discover and/or immediately notify the County of such errors, inconsistencies, or omissions.

3.04 COMMUNICATIONS

A. Communication with the Contractor shall be through the Contractor's Representative.

B. The Contractor's Representative shall submit all correspondence, questions, and/or documentation to the Project Representative.

3.05 CONTRACTOR'S SUPERVISION AND EMPLOYEES

A. Contractor has an obligation to provide qualified and competent people to administer the Contract and perform the Work.

B. During performance of the Work the Contractor shall have supervisory personnel on the Site and available to administer, manage, and coordinate the Work. The County shall not be responsible for the acts or omissions of the supervisory personnel or their assistants.

C. The Contractor shall at all times enforce good order among all persons furnishing labor or materials on the Site and shall only employ workers skilled in the work assigned. If requested by the Project Representative, Contractor shall provide the Project Representative with copies of licenses, registrations, and certifications.

D. The County shall have the right to require the Contractor to remove personnel from the Site that do not have the appropriate qualifications and experience to meet or uphold the requirements of the Contract.

E. The Contractor and all parties subcontracting under the authority of this Contract shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987.

F. Failure by the County to require removal of any Contractor personnel shall not be deemed an admission that any such personnel are satisfactory, nor shall such failure relieve the Contractor from any contractual responsibility.

3.06 SUBCONTRACTORS AND SUPPLIERS

A. This Contract is between Pierce County and the Contractor.

1. The Contractor's subcontracting shall create no contract between Pierce County and the Subcontractor and Suppliers. Subcontractors and Suppliers are not intended or incidental third-party beneficiaries to the Contract. The Subcontractors and Suppliers shall have no rights against Pierce County by reason of a subcontract with the Contractor.

2. The Contractor will be responsible for performing all Work as required by the Contract. The Contract has not been written with the intent of, and Pierce County shall not be a party to, defining the division of work between the Contractor and its Subcontractors and Suppliers.
3. The Contractor shall be responsible for all Work and material furnished, and no subcontract shall release the Contractor of its obligations or liability under this Contract and the Performance and Payment Bond.

B. Selection of Subcontractors and Suppliers

1. Subcontractors and Suppliers shall be properly licensed, registered or certified, as applicable, in accordance with provision 3.29, Subcontractor Responsibility and capable to perform the assigned work.
2. If requested by the County, the Contractor shall provide documentation that the proposed Subcontractors and Suppliers are experienced and equipped to do the Work.
3. The Contractor shall require each Subcontractor and Supplier to comply with all provisions of this Contract. At the request of Subcontractors or Suppliers, Contractor shall make available for copying all Contract Documents.

C. Responsibility for Work of Subcontractors and Suppliers

1. The Contractor shall be responsible for the acts and omissions of Subcontractors and Suppliers. The Contractor shall also be responsible for the suitability of any materials, components, equipment or supplies furnished by a Subcontractor and/or Supplier irrespective of whether such were designated or approved by the County.

3.07 PROJECT TEAM MEMBERS AND SUBCONTRACTORS

A. The Contractor acknowledges that the qualifications, experience, and skill of the project team members, including Contractor's Project Manager, identified in this Contract as the Contractor's Representative, and its Subcontractors, if identified in Section 00 41 00, were important factors in determining the responsibility of the Contractor and issuance of the Intent to Award, and continue to be important factors for successful and timely completion of the Project.

B. No reassignment or substitution of Project Team Members. Project team members and Subcontractors, if identified in Section 00 41 00, including the Contractor's Representative shall be permanently assigned to the Project or the relevant subcontract scope of Contract Work; and the Contractor agrees that such project team members shall not be removed from the proposed scope of Work on the Project without written, prior approval from the County pursuant to the provisions below:

1. Provide the County with a written request, fifteen (15) Days in advance of the proposed removal and substitution of any project team members.
2. Written requests for removal and substitution of a project team member shall identify:
   a. Name of the project team member(s);
   b. An explanation for removal and substitution;

c. Name of the person(s) proposed to replace the project team member(s); and

3. A written request to remove or substitute a Subcontractor shall:

a. Name the Subcontractor;

b. Provide an explanation of removal or substitution;

c. Name the subcontractor proposed to replace the Subcontractor; and

d. Provide the experience and qualifications of the Subcontractor. Such subcontractor must meet the applicable experience and qualifications specified in this contract.

4. If the Contractor removes and substitutes a Section 00 41 00 approved Subcontractor without prior written approval, the Contractor agrees to pay the County Liquidated Damages, if applicable, and not as a penalty, to compensate the County for inefficiencies associated with such substitution, including but not limited to administrative burdens and learning curve. Such Liquidated Damages shall be imposed until the Contractor has obtained written approval of the substitution from the County. This Liquidated Damages provision does not apply to inefficiencies unrelated to the 00 41 00 Subcontractor substitution. Contractor agrees that the sum established as Liquidated Damages is fair and reasonable and that the payment represents a reasonable estimate of fair compensation for the inefficiencies that may be reasonably anticipated from the removal and substitution of Subcontractor identified in Section 00 41 00.

3.08 CONTRACTOR'S DUTY TO COORDINATE WITH OTHER WORK ON THE SITE

A. The Contractor shall coordinate its Work with the County and other County contractors and, at the County's request, participate in meetings for the purpose of coordinating the Contractor's construction schedule with those of other contractors at no additional cost to the County. To the extent a direct conflict exists with regard to access to the Site, if the contractors cannot work out a resolution that has no impact on Contract Price, Contract Time, and any milestones in the Contract Documents, the Project Representative shall issue written Direction to resolve the conflict.

B. The Contractor shall not cut, excavate, alter, impair, or otherwise engage in work activity that inhibits the work of any other contractors without the prior written consent of the County.

C. If any part of the Contractor's Work depends, for proper execution or results, upon the prior work of the County or any other contractor, the Contractor shall, before performing the affected Work, inspect the field conditions and shall immediately, and before the conditions are disturbed, give written Notice to the County of any apparent discrepancies or defects in the prior work that renders it unsuitable for the reception of Contractor's Work. Contractor's failure to so inspect and to give such immediate Notice shall constitute acceptance of the prior work as fit for reception of its Work, except as to defects not then reasonably discovered.

3.09 MATERIALS AND EQUIPMENT FURNISHED BY COUNTY

A. Unless otherwise specifically provided in the Contract Documents, for materials and equipment furnished by the County, the Project Representative will identify the location at which the Contractor will be responsible for taking possession. The Contractor shall promptly unload, transport, store and/or protect such material and equipment from damage.

1. Upon the County's notice it has furnished the material or equipment, the Contractor shall, within seven (7) Days, inspect such County-furnished material and equipment at the designated location and provide immediate written Notice of rejection of said material and equipment if it is defective or does not meet the requirements of the Contract.
2. The Contractor shall identify the causes for its rejection, including but not limited to the specific defect or nonconformance with the Contract. Failure to provide such written rejection shall result in a presumption that the Contractor accepts the County-furnished material and equipment, except as to defects not then reasonably discoverable.
3. After receipt by the Contractor at the designated location all risk of loss and damage to such materials and equipment shall be borne by the Contractor.

B. If the Contract requires that the Contractor install materials or equipment provided by the County, in the absence of a reasonably apparent defect, such materials and equipment shall be considered compliant with the Contract Documents.

1. If the Contractor discovers defects, not reasonably apparent in the County-furnished material or equipment, the Contractor shall immediately notify the County in writing.
2. After such discovery, the Contractor shall not proceed with Work involving such County materials and equipment unless otherwise authorized in writing by the County.
3. Contractor's failure to provide immediate written Notice of any defects in material or equipment shall constitute acceptance of such materials and equipment as fit for incorporation into the Work.
4. Contractor shall be responsible for any damages or delays resulting from Contractor's failure to provide timely written Notice or Contractor's improper incorporation of such defective materials or equipment into the Work.

3.10 SCHEDULE OF WORKING HOURS

A. Unless otherwise specified in the Contract, the Contractor shall submit a schedule of working hours, including overtime and shift work, to the County for acceptance. This schedule shall comply with RCW 49.28 and all other Contract requirements.

B. The schedule of working hours accepted by the County shall be the only schedule used by the Contractor during performance of Work in the Contract.

C. The Contractor shall provide 48 hours advance written Notice of any intent to work outside of regular working hours as defined in the Contract Documents. Any Work performed outside regular working hours shall be performed without additional expense to the County, except as otherwise provided in the Contract Documents.

3.11 RECORD DOCUMENTS

A. The Contractor shall keep a copy of the Contract Documents on the Site at all times.

B. The Contractor shall keep at the Site an accurate, readable, and orderly set of drawings and specifications, updated as the job progresses to show all approved changes, substitutions, options, alternates, and all actual deviations from the original Contract Documents. This set of drawings and specifications shall be the Record Documents.

1. The Record Documents shall be maintained in hard copy and at the County's option, in electronic format meeting the County's requirements as specified in the Contract technical specifications.

2. In addition to all approved changes, options, alternates, and all actual deviations from the original Contract Documents, the Record Documents shall be marked as follows:

a. Record all materials used where options, alternates and/or Change Orders were indicated, specified and/or authorized;

b. Record accurate measurements referenced to two permanent structures to show the exact location and changes in direction of all underground services and utilities, as well as their approximate depth below finished grade;

c. Update the Record Documents with information about each item of capital equipment or other fixed asset installed, including type of equipment, make, model, serial number, and acquisition cost;

d. Update the Record Documents identifying each item of capital equipment or other fixed asset removed from the Project, including type of equipment or fixed asset, make, model, serial number and description of location from which it was removed; and

e. Record all other requirements as specified in the Technical Specifications.

C. The Record Documents shall be kept up-to-date and be available for review by the County at all times, including but not limited to at each job progress meeting. Failure to have the Record Documents set up to date shall be sufficient reason for the County to withhold payment in accordance with provision 7.03, Payment Withheld, until all such information is recorded.

D. Record Documents may be used to assist the County to verify the appropriate progress payment.

3.12 COST RECORDS

A. The Contractor, Subcontractors, and Suppliers shall maintain Project cost records by cost codes and shall contemporaneously segregate such costs into the activities shown on the Contract Schedule of Values, and record all costs directly associated with each Work activity at the time incurred. The Contractor, Subcontractors, and Suppliers shall maintain a monthly summary of all costs and shall make all underlying cost records and monthly summaries of costs available for review, inspection, and copying by the County upon request.

B. Any work performed for which the Contractor intends to seek an adjustment in Contract Price or Contract Time or damages, directly or indirectly resulting from any event, occurrence, condition or Direction, shall be recorded on the same day the work is performed and kept separate so as to distinguish it from Contract Work. The Contractor, and any Subcontractors or Suppliers, whose costs the Contractor intends to request, shall:

1. Record all costs claimed to result from any such event, occurrence, condition, or Direction including, but not limited to, delay and impact costs, acceleration costs, loss of productivity or efficiency, and increased or extended Overhead at the time incurred;
2. Record all such costs at the time incurred in a manner that:
    a. Segregates such costs into Work activities;
    b. Separates such costs from the costs of Contract Work; and
    c. Fairly and reasonably allocates such costs to the event, occurrence, condition, or Direction.

C. In addition to the requirements set forth in Part 5, Changes to the Contract, and Part 6, Time and Price Adjustments, the Contractor shall be entitled to extra compensation for an event, occurrence, condition or Direction and/or the recovery of damages only to the extent that the Project cost records are kept in full compliance with all Contract requirements, including the requirement to segregate costs at the time incurred in accordance with this provision 3.12, Cost Records, and if and to the extent the cost allocations support entitlement to such compensation.

3.13 MAINTENANCE AND INSPECTION OF DOCUMENTS

A. All Contractor, Subcontractor, and Supplier documents relating to the Contract shall be open to inspection, audit, and/or copying by the County or its designee:

1. During the Contract Time; and
2. For a period of not less than six (6) years after the date of Final Acceptance of the Contract (“Preservation Period”); or if any Claim, audit or litigation arising out of, in connection with, or related to this Contract is initiated, all documents shall be retained until such Claim, audit or litigation involving the documents is resolved or completed, whichever occurs later.

B. The Contractor shall also guarantee that all Subcontractor and Supplier documents shall be retained and open to similar inspection, audit and/or copying during the Contract Time and also the Preservation Period. The Contractor, Subcontractor, and Supplier shall use its best efforts to cooperate with the inspection, auditing, and/or copying.

C. Inspection, audit, and/or copying of all documents described herein, may be performed by the County or its designee at any time with not less than seven (7) Days’ Notice. Provided however, if an audit or inspection is to be commenced more than thirty (30) Days after the Final Acceptance date of the Contract, the Contractor will be given ten (10) Days’ Notice of the time when the audit or inspection is to begin.

D. The Contractor, Subcontractors, and Suppliers shall provide adequate facilities, acceptable to the County, for inspection, auditing, and/or copying during normal business hours.

E. If the Contractor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it shall immediately notify the County and preserve such documents, at its expense, as directed by the County.

F. The Contractor, Subcontractor, and Supplier shall be subject to audit at any time with respect to this Contract. Failure to maintain and retain sufficient records in full compliance with all Contract requirements and to allow the County to verify all costs or damages or failure to permit the County access to the books and records shall constitute a waiver of the rights of the Contractor to Claim or be compensated for any damages, additional time or money under this Contract.

G. At a minimum, the following documents, including the machine-readable electronic versions, shall be available for inspection, audits, and/or copying:

1. Daily time sheets and all daily reports, supervisor's reports, and inspection reports;
2. Collective bargaining agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. All tax forms, including payroll taxes;
7. Material invoices and requisitions;
8. Material cost distribution worksheet;
9. Equipment records (list of Contractor's, Subcontractors', and Suppliers' equipment, rates, etc.);
10. Contracts, purchase orders, and agreements between the Contractor and each Subcontractor and Supplier;
11. Subcontractors' and Suppliers' payment certificates;
12. Correspondence, including email, among Contractor, Subcontractors, Suppliers and their consultants;
13. All meeting notes by and between Contractor, Subcontractors, Suppliers and/or any third parties related to the Project;
14. Canceled checks (payroll and vendors);
15. Job cost reports, including monthly totals;
16. Job payroll ledger;
17. Certified payrolls;
18. General ledger;
19. Cash disbursements journal;
20. Escrow bid documents, take off sheets, and calculations used to prepare the bid and/or quotes;

21. All cost and schedule records related to a request for an adjustment in Contract Price, Contract Time or damages, including but not limited to, take off sheets, calculations, quotes, other financial data to support Change Proposals, Requests for Change Order and Claims;
22. Financial statements for all years during the Contract Time. In addition, the County may require, if it deems appropriate, additional financial statements for three (3) years preceding execution of the Contract and six (6) years following Final Acceptance of the Contract;
23. Depreciation records on all Contractor's, Subcontractor's, and Supplier's equipment, whether these records are maintained by the Contractor, Subcontractors, and Suppliers involved, its accountant, or others;
24. All source documents, if a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment;
25. All documents which relate to each and every Claim together with all documents which support the amount of damages as to each Claim;
26. Worksheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, Suppliers, all documents which establish time periods, individuals involved, the hours for the individuals, and the rates for the individuals;
27. Worksheets, software, and all other documents used (a) by the Contractor to prepare its bid and schedule(s) and/or (b) to prepare quotes and bids to the Contractor;
28. All schedule documents, including electronic versions, planned resource codes, or schedules and summaries, including but not limited to those that support with specificity any Contractor request for a change in the Contract Time in any Request for Change Order;
29. All Submittals; and,
30. All other documents, including email, related to the Project, Claims, or Change Orders.

H. After Contract Execution the Contractor shall mark any document, it considers proprietary or confidential accordingly. Such document will be treated as such by Pierce County; however, the County cannot ensure that this document will not be subject to release pursuant to a public records request. In the event the County receives a request for such document, the County will advise the Contractor and will not release the requested document for a period of not less than ten (10) Days in order to give the Contractor an opportunity to obtain a court order prohibiting the release of the document in response to the public records request.

3.14 MAINTENANCE AND SITE CLEANUP

A. The Contractor shall at all times keep the Site, access points, and public rights-of-way free from accumulation of dirt, mud, waste materials or rubbish caused by the Contractor or Subcontractors. At the completion of the Contract Work, the Contractor shall remove and lawfully dispose of all its dirt, mud, waste materials, rubbish, tools, scaffolding and surplus or partly used materials from the Site and shall leave the Site broom clean unless some stricter standard is specified in the Contract.

B. The Contractor shall obey all applicable laws and regulations relating to the storage, use, and disposal of Hazardous Materials. The Contractor shall promptly notify the County of all Contractor or Subcontractor caused spills or releases of Hazardous Materials and pay the cost to promptly clean up all such spills or releases and any associated fines or penalties. The Contractor shall maintain documentation of the clean-up and disposal all Contractor or Subcontractor caused spills or releases of Hazardous Materials.

C. In case of a dispute over clean-up, the County may, after written Notice to the Contractor, sweep surfaces or remove the dirt, mud, waste materials, rubbish, or Hazardous Materials and charge all reasonable costs of such work to the Contractor. The County may charge the Contractor or deduct such costs from payments otherwise due the Contractor pending a resolution of the dispute or exercise its rights under the Performance and Payment Bond. In the event there are insufficient funds remaining, excluding retention, the Contractor shall pay the County for the costs associated with maintenance and site cleaning.

3.15 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

A. Contractor shall protect from damage all existing structures, curbs, gutters, sidewalks, equipment, utilities, trees, vegetation and all other improvements, at or near the Site, not shown in the Contract Documents to be removed or modified. Contractor shall repair, at no cost to the County, any such damage resulting from failure to comply with the requirements of the Contract or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, the County may have the necessary work performed and deduct or charge the cost to Contractor or exercise its rights under the Performance and Payment Bond. In the event there are insufficient funds remaining, excluding retention, the Contractor shall pay the County for the costs associated with protection of such property and repairing the damages.

3.16 PERMITS, EASEMENTS, LAWS AND REGULATIONS

A. Except those permits, variances, easements, and licenses specified in the Contract as having been previously obtained by the County, all permits, variances, easements, and licenses necessary for the execution of the Work shall be secured and paid for by the Contractor. The Contractor shall identify and apply for such permits, variances, easements, and licenses at the earliest possible time so as to avoid any delay to the Contract Work. No actions taken by the County to aid the Contractor in securing any permits, variances, easements, and licenses shall relieve the Contractor of its obligations to secure any such permits, variances, easements, and licenses.

B. The Contractor shall maintain all stamped permit sets of Record Documents at the Site during construction, in good condition and as required by local ordinances.

C. The Contractor shall perform all Work in full compliance with local, state and federal laws, ordinances, resolutions and regulations, and with all permit, variance, easement, and license conditions pertaining to the conduct of the Work. The Contractor shall provide written Notice to the Project Representative of the dates of commencement and completion of work on each easement or license provided by Pierce County. If the Contractor fails to diligently prosecute and complete the work in accordance with each such easement or license or if Pierce County becomes obligated to pay additional amounts for the use of such easement or license, the Contractor shall be charged such additional costs which shall be set off against any amounts owning to the Contractor or entitle the County to a reimbursement from the Contractor. Upon completion of use of each right of way, easement or license the Contractor shall provide the Project Representative with a written release signed by the landowner, or authorized agent therefor, stating that the landowner has no claims whatsoever against Pierce County on account of the Contractor's use of such right of way. Such release shall be on the form set forth in the Specifications or as provided by Pierce County upon request.

D. The Contractor shall defend, indemnify, and hold the County harmless from any assessment of fines, penalties, or damages arising from violations of the same by the Contractor or Subcontractors. The Contractor shall pay and provide proof of payment for any assessments of fines, penalties or damages. The Contractor shall cooperate with all governmental entities regarding inspection of the Work and compliance with such requirements.

E. Taxes. The Contractor is required to pay all applicable taxes other than state or local sales tax on the Contract Price. No adjustment will be made in the amount to be paid by the County under the Contract because of any change in law or regulations covering any applicable taxes, or because of any misunderstanding by the Contractor as to its liability for or the amount of any taxes.

3.17 PATENTS AND ROYALTIES

A. The Contractor shall pay all costs or fees relating to royalties or claims for any patented invention, Part, process or method that the Contractor or its Subcontractors or Suppliers may use upon or in any manner connected with the Work under this Contract or with the use of completed Work by the County. The Contractor and its sureties shall protect and hold Pierce County, and its officers, agents and employees, harmless against any and all demands made for such fees or claims brought or made by or on behalf of the holder of any invention or patent. Before final payment is made on this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

3.18 CONTRACTOR’S CERTIFICATION

A. Conflict of Interest

1. The Contractor certifies (and shall require each Subcontractor to certify) that it has no direct or indirect financial or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives acquires such a conflict of interest, the Contractor shall immediately disclose such interest to Pierce County and take action immediately to eliminate the conflict or to withdraw from this Contract, as Pierce County may require.

B. Gifts and Gratuities

1. The Contractor, by entering into this Contract with the County to perform or provide work, services or materials, has thereby certified:

2. That no gratuities, in the form of entertainment, gifts or otherwise, have been or will be offered or given by the Contractor or any of its agents, employees or representatives, to any official member or employee of Pierce County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending thereof, or the making of any determination with respect to the performance of this Contract. The Contractor certifies that it has not made any contributions to any person or entity as a condition of doing business with the County and it has disclosed to the County all attempts by any person to solicit such payments.

3.19 DEVIATION FROM CONTRACT

A. The Contractor shall not make an alteration, variation, addition, deviation, or omission from the requirements of the Contract without the written consent of the Project Representative.

B. The County shall have the right to treat any alteration, variation, addition, deviation, or omission from the requirements of the Contract as a contract breach if prior written consent is not obtained from the Project Representative, which may be justification for the County to withhold payment, stop work, or terminate the Contract for default.

C. Alteration, variation, addition, deviation or omission from the Contract without prior written consent shall not be excused by any alleged defect or error in the Contract Documents.

D. Contractor shall be solely and completely responsible for any damages or loss that may occur arising from or related to any alteration, variation, addition, deviation or omission from the requirements of the Contract, if prior written consent is not obtained from the Project Representative.

E. Unless the County acknowledges any such alteration, variation, addition, deviation or omission in a Change Order, any such alteration, variation, addition, deviation or omission by the Contractor shall not result in any extra compensation or extension of time.

3.20 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS

A. Operating Area

1. Contractor shall confine all operations, including storage of materials on the Site, to County-approved areas.

B. Temporary Buildings and Utilities

1. Unless otherwise specified, temporary buildings (including storage sheds, shops, and offices) and utilities may be erected by Contractor on the Site only with the written consent of the County and without expense to the County. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by the Contractor at its expense upon completion of the Work.

C. Use of Roadways

1. The Contractor shall use only established roadways or temporary roadways authorized by the County. When materials are transported during prosecution of the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.

D. Disposal/Removal of Materials

1. The Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal of all such materials and components. The Contractor shall provide the County with a copy of all manifests and receipts evidencing proper disposal when required by the County or applicable law.

E. Protection and Care of Contractor's Materials and Equipment

1. The Contractor shall be responsible for the proper care and protection of all materials and equipment delivered to the Site. Materials and equipment may be stored on the Site at the Contractor’s own risk and with prior written approval from the County. When the Contractor uses any portion of the Site as a shop, the Contractor shall be responsible for any repairs, patching, or cleaning arising from such use and for obtaining any necessary permits to establish such shop or temporary storage facilities.

3.21 CONTRACTOR’S OVERALL RESPONSIBILITY FOR PROTECTION OF WORK, PROPERTY, AND PERSONS

A. The Contractor shall be responsible for conditions of the Site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Site and perform the Work in a manner which meets all statutory and common law requirements or other specific contractual requirements for the provision of a safe place to work and which adequately protects the safety of all persons and property on or near the Site. This obligation shall apply continuously and shall not be limited to normal working hours. The County’s inspection of the Work or presence at the Site does not and shall not be construed to include review of the adequacy of the Contractor’s safety measures in, on or near the site of the Work.

B. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including adequate safety training, in connection with the Work. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

C. Pierce County is committed to a safe, healthy, drug-free, and alcohol-free work environment on all County property and worksites. Employees of Contractor, Subcontractors, Suppliers, or third parties authorized or allowed on the Site by the Contractor are prohibited from reporting to, or performing Work on, County property or worksites with the odor of alcohol present on their person. If a County employee or any personnel of the above entities observes a person on Site consuming alcohol, marijuana or any controlled substance and/or appearing to be under the influence of or impaired by alcohol, marijuana or any controlled substance, they must immediately notify the Project Representative. Any person observing such behavior will use specific, contemporaneous and articulable observations about the person's appearance, speech, behavior, and odor when notifying the Project Representative. The Project Representative will notify the Contractor of the observations. The Contractor shall instruct the employee that they are prohibited from continuing to perform Work and will safely remove the employee from the County property or worksite.

D. Unless otherwise required in the Contract Documents the Contractor shall protect and be responsible for any damage or loss to the Work or to the materials and equipment associated with the Work until the date of Substantial Completion. The Contractor remains responsible for any damage or loss caused directly or indirectly by the acts or omissions of the Contractor, Subcontractors, Suppliers, or third parties authorized or allowed on the Site by the Contractor until Final Acceptance.

E. The Contractor shall also be solely and completely responsible for damages arising from the Work that affect property adjacent to the Site.

F. The Contractor shall repair or replace without cost to the County any damage or loss that may occur, except damages or loss caused solely by the acts or omissions of the County.

G. The Contractor shall erect and maintain adequate signs, fencing, barricades, lights or security measures and persons to protect the Work until the Project Representative authorizes in writing the removal of signs, fencing, barricades, lights or security measures.

3.22 PROTECTION OF PERSONS

A. The Contractor shall take all reasonable precautions for the safety of all employees working on this Contract and all other persons who may be affected by such Work. The Contractor shall designate a responsible member of its organization at the Site whose duty shall be to manage and coordinate the safety programs and to prevent accidents by the Contractor and Subcontractors.

B. If the Contractor encounters materials at the Site reasonably believed by the Contractor to be Hazardous Material including, but not limited to, asbestos, lead, or polychlorinated biphenyl (PCB), Contractor shall immediately stop work in the area affected and give Notice of the condition to the County. Work in the affected area shall not be resumed without written direction by the County.

C. The Contractor shall maintain in a reasonable number of conspicuous and accessible places at the Site all materials necessary for giving first aid to the injured. The Contractor shall establish, publish and make known to all employees procedures for initiating 911 emergency response and ensuring immediate removal to a hospital or a doctor's care for person(s) who may have been injured on the Site. Employees shall not be permitted to work on the Site before the Contractor has: (1) provided all materials necessary for giving first aid at the Site; and (2) established and made known procedures for removal of injured person(s) to a hospital or doctor's care. The Contractor shall ensure at all times that at least one of its employees on Site has adequate training in first aid.

D. In order to protect the lives and health of persons performing work under this Contract, the Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply, without limitation, to all excavation, tunneling, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply. There is no acceptable deviation from these safety requirements, regardless of practice in the construction industry. Any violation of OSHA, WISHA or other safety requirements applicable to the work may, at the sole discretion of Pierce County, be considered a material breach of this Contract.

3.23 SAFETY PROGRAM

A. The Contractor shall prepare and provide to the County a written site specific "Safety Program" demonstrating the methods by which all applicable safety requirements of this Contract will be met. The Contractor shall ensure its Subcontractors and Suppliers have a written "Safety Program" or formally adopt the Contractor's site specific "Safety Program." The Contractor shall designate a Safety Officer who shall be responsible for proper implementation of the "Safety Program." The Contractor shall submit a copy of its "Safety Program" and the Subcontractor's "Safety Program" to the County within fourteen (14) Days after the Contractor signs the Contract. The County's review of such programs shall not be deemed to constitute approval or acceptance thereof and shall not relieve or diminish the Contractor's sole responsibility for Site safety.

B. The Contractor shall conduct a weekly safety meeting with all Subcontractors and others on the Site performing Work hereunder to discuss general and specific safety matters. The Contractor shall provide upon request, notice of each meeting to the County. At the County's request the Contractor shall provide the County with a record of each meeting, including a sheet on which each attendee signed in and a list of the matters discussed.

3.24 STORAGE OF CONTRACTOR'S PROPERTY

A. The Contractor’s tools and equipment and building materials to be incorporated into the Project may be stored on the Site at Contractor’s sole risk, and all such storage shall be subject to the requirements of the Contract. Any repairs, patching or cleaning of the Site that may be necessary to restore the Site to its previous condition due to storage of the Contractor’s materials, tools or equipment, or other aspects of the Contractor’s Work, shall be the responsibility of the Contractor.

3.25 ARCHAEOLOGICAL AND HISTORICAL PRESERVATION

A. The Contractor shall comply fully with the requirements set forth in Chapter 27.53 RCW, now and as hereinafter amended, entitled Archaeological Sites and Resources. The Contractor shall immediately notify the Project Representative if any artifacts, skeletal remains or other archaeological resources (as defined under RCW 27.53.040 now and as hereinafter amended) are unearthed during excavation or otherwise discovered on the site of the work. If directed by the Project Representative, the Contractor shall immediately suspend any construction activity, which, in the opinion of the Project Representative, would be in violation of Chapter 27.53 RCW. The suspension of Work shall remain in effect until permission to proceed has been obtained by the Project Representative from the State Historic Preservation Officer or private landowner, as applicable.

3.26 WATER POLLUTION CONTROL REQUIREMENTS

A. The Contractor shall comply with and be liable for all penalties, damages and violations under Chapter 90.48 RCW, now and as hereinafter amended, in the performance of the Work. By submitting a bid for and entering into this Contract, the Contractor has thereby assured Pierce County that the Contractor has knowledge of, understands, and will comply with the provisions and requirements of Chapter 90.48 RCW, including any regulations issued pursuant thereto. The Contractor shall also perform the Work in compliance with water pollution control requirements as may be set forth in this Contract and as may be a part of any permit or other authorization issued or obtained for this Contract.

3.27 RIGHTS OF WAY

A. All rights of way or street use permits to be provided by Pierce County for use by the Contractor for the Work shall be set forth in the Specifications and may be shown on the Drawings. The Contractor's construction activities shall be confined within the identified rights of way, unless the Contractor makes arrangements for use of additional public and/or private property and complies with the requirements of this provision. The Contractor shall comply with all requirements set forth in such rights of way documents and in the Contract applicable to the performance of Work hereunder. The Contractor shall provide written Notice to the Project Representative of the dates of commencement and completion of work on each right of way provided by Pierce County. If the Contractor fails to diligently prosecute and complete the work on each such right of way and, as a result of such failure, Pierce County becomes obligated to pay additional amounts for the use of such right of way, the Contractor shall be charged such additional costs which shall be set off against any amounts owning to the Contractor or entitle the County to a reimbursement from the Contractor. Upon completion of use of each right of way, the Contractor shall provide the Project Representative with a written release signed by the landowner, or authorized agent therefor, stating that the landowner has no claims whatsoever against Pierce County on account of the Contractor's use of such right of way. Such release shall be on the form set forth in the Specifications or as provided by Pierce County upon request.

B. If the Contractor makes arrangements for use of such additional public and/or private property, the Contractor, prior to using such property, shall provide the Project Representative with written permission of the landowner, or duly authorized agent of such landowner, for such use. Upon completion of use of such property, the Contractor shall provide the Project Representative with a written release signed by such landowner or authorized agent therefor stating that the owner has no claims whatsoever against Pierce County on account of the Contractor's use of such property. Such release shall be on the form set forth in the Specifications or as provided by Pierce County upon request.

C. The Contractor shall save Pierce County harmless from all suits and legal proceedings of every kind and description that might result from use of or damage to rights of way and public and/or private property by the Contractor. The Contractor shall comply with all laws, rules, regulations, ordinances, resolutions or directives relating to its use of public rights of way, streets or highways; and its use of same shall not disturb the rights and property of adjacent landowners.

3.28 ENVIRONMENTAL MITIGATION PLAN

A. If required elsewhere in the Contract Documents, the Contractor shall prepare and submit to the Project Representative a plan by which the Contractor and its Subcontractors and Suppliers shall ensure all environmental mitigation requirements shall be complied with during performance of the Work under this Contract. The plan shall specifically address each such requirement. Failure to submit a complete environmental mitigation plan may result in suspension of Work; delays, if any, resulting therefrom shall be considered caused by the acts of the Contractor, and any time delays or additional costs resulting therefrom shall be borne by the Contractor. Preparation of such a plan and compliance with all environmental mitigation requirements shall be deemed incidental to the Work under this Contract and all costs therefor shall be included in the Contract Price.

3.29 SUBCONTRACTOR RESPONSIBILITY

A. Prior to subcontract execution, the Contractor shall verify that each of its first-tier subcontractors meets the following responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable, have:
    a. Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
    b. A Washington Employment Security Department number, as required in Title 50 RCW;
    c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
    d. An electrical contractor license, if required by Chapter 19.28 RCW; and
    e. An elevator contractor license, if required by Chapter 70.87 RCW; and
    f. A plumbing contractor license, if required by Chapter 18.106 RCW.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3). The Contractor shall require its first tier Subcontractors to verify the responsibility criteria for lower tier Subcontractors it hires and to require those Subcontractors to verify the responsibility criteria for lower tier Subcontractors.

B. The Contractor shall require its first tier Subcontractors to provide the scope and amount of insurance coverage and evidence of such coverage, including any requirements to list and/or name Pierce County or Contractor, or others as additional insured, in accordance with the requirements of the Contract, and shall require those Subcontractors to verify required insurance coverage for lower tier Subcontractors.

PART 4 - ADMINISTRATION OF THE CONTRACT

4.01 TIME OF ESSENCE

A. All time requirements set forth in the Contract Documents are of the essence.

4.02 WORK PROGRESS

A. The Contractor shall:

1. Prosecute the Work diligently with adequate forces;
2. Plan, coordinate, and layout the Work in advance so as to avoid delay;
3. Achieve all Milestones and Substantial Completion, in accordance with the requirements of the Contract; and
4. Complete all Contract close out requirements in accordance with the Contract within the time period for Completion/Final Acceptance established by the County in the Notice of Substantial Completion.

4.03 SCHEDULE OF VALUES

A. Unless otherwise specified, within fourteen (14) Days after the date of Notice to Proceed, the Contractor shall submit to the County a detailed Schedule of Values that identifies the various activities of the Contract Work and their values and quantities, including the Overhead and profit for each activity. The Contractor warrants that the values identified in its Schedule of Values accurately reflect the value of each work activity. The Schedule of Values shall be used as a basis for calculating all payments. Payment for Contract Work shall be made only for, and in accordance with, those activities identified in the Schedule of Values.

B. The Contractor shall not be entitled to, nor shall the County be required to make, payment for any Contract Work until the Schedule of Values has been accepted by the County. Such acceptance shall not be unreasonably withheld.

C. The County shall review and accept the Schedule of Values or provide the Contractor with a written explanation of why the Schedule of Values is not acceptable. The County shall use reasonable efforts to review the Schedule of Values within thirty (30) Days of the County's receipt of the Contractor's submittal of its Schedule of Values. The County's acceptance of the Schedule of Values shall not relieve the Contractor from its sole responsibility for the accuracy of the Schedule of Values and its compliance with all Contract requirements. The Contractor shall revise the Schedule of Values as necessary to accurately reflect Change Orders.

D. Each Application for Payment shall include a current status of the Schedule of Values. No Application for Payment will be considered until the current status of the Schedule of Values has been submitted and accepted.

E. The activities, which the Contractor identifies within its Schedule of Values, shall be specifically referenced within, and conform and be consistent with, the activities set forth within the Project Schedule.

4.04 PROJECT SCHEDULE

A. Unless otherwise specified, within fourteen (14) days after the date of Notice to Proceed, the Contractor shall submit to the County a Project Schedule. The Project Schedule shall show the sequence in which the Contractor proposes to perform the Work, indicate the Critical Path, identify the dates on which the Contractor proposes to start and finish the scheduled activities of the Contract Work, indicate Substantial Completion within the Contract Time, indicate a date for Completion/Final Acceptance, and meet all the requirements as may be set forth more particularly in the Technical Specifications on Project Schedule. Any schedule having an early completion date (less than the Contract Time) shall show the time between the early completion date and the Contract Time/Date as Float.

B. The Project Schedule shall be prepared in the schedule format specified in the Technical Specifications and provided in electronic form and hard copy.

C. Within thirty (30) Days of the County's receipt of the Contractor's submittal of its Project Schedule or unless stated elsewhere in the Contract, the County shall review the Project Schedule and provide the Contractor with written comments. The County will review the Project Schedule only to determine whether the Project Schedule meets the requirements in the Technical Specifications on Project Schedule. To the extent the Project Schedule does not meet such Technical Specifications, the Contractor shall revise the Project Schedule to make it compliant.

D. By reviewing the Project Schedule and providing written comments, the County is not approving or adopting the Contractor's plan, schedule, means, methods, techniques, sequences, or procedures required to perform the Work. Review and comment by the County of the Project Schedule shall not relieve the Contractor from the sole responsibility for the accuracy of a Project Schedule, and its compliance with all Contract requirements, and its responsibility to meet all required Contract completion dates. Failure by the County to indicate items on the Project Schedule that do not conform with the Contract requirements shall not alter or waive the Contract requirements or relieve the Contractor from complying with all Contract requirements.

E. The Contractor shall not be entitled to, nor shall the County be required to make payment for any Contract Work until the Project Schedule complies with all Contract requirements.

F. The Contractor shall schedule the Contract Work so that the Contract Work is completed within the Contract Time. Float in the Project Schedule shall be defined as the period of time measured by the number of days each non-critical path activity may be delayed before it and its succeeding activities become part of the Critical Path. Contractor and the County may both utilize Float to offset delays to the Project Work.

G. The Contractor shall regularly enter the actual progress of the Work on the Project Schedule and any changes to the Contract Time approved by the County by Change Order. Updated Project Schedules shall reflect actual progress and shall be provided to the County with each Application for Payment. Applications for Payments will not be processed by the County unless submitted in the format required by the Contract and the Contractor shall not be paid until the Contractor complies with these requirements.

H. If, in the opinion of the County, the Contractor falls behind in its progress of the Work due to acts or omissions of the Contractor, Subcontractors or Suppliers, the Contractor, upon Direction from the County, shall take all necessary steps to improve its progress and bring its progress back in-line with the baseline Project Schedule as amended by Change Orders, if any, without additional cost to the County. In this circumstance the Contractor shall, as necessary, increase the number of shifts, overtime operations, and/or days of work, both on and off the Site; and must submit a supplementary schedule or schedules to demonstrate how an acceptable rate of progress will be regained. If the Contractor disagrees with the County's Direction, it must submit a Request for Change Order in accordance with Part 5, Changes to the Contract. Failure of the Contractor to comply with the requirements under these provisions shall be grounds for a determination by the County that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the County may pursue any right it has under the law or the Contract, including but not limited to termination for default.

4.05 SUBMITTALS

A. The Contractor shall perform no portion of the Work requiring Submittals until the Submittals have been reviewed and returned by the County with one of the following annotations: (1) no exceptions taken or (2) note markings.

B. Prior to furnishing any Submittal to the County, the Contractor shall: (1) coordinate all Submittals for all Contract Work by other trades and review for correlation with field measurements and (2) review and approve in writing all Contractor and Subcontractor Submittals for accuracy, completeness, and compliance with the Contract. Where required by law or by the Contract, Submittals shall be stamped by an appropriate licensed professional. Submittals lacking required stamps or evidence of Contractor review and approval will be returned without review by the County for resubmission. Submittals shall be sequentially numbered.

C. Submittals required to be stamped by an appropriate licensed professional by law or by the Contract, shall include proof of Professional Liability insurance as specified in Section 00 73 16 prior to Work being performed. The Contractor shall include this Professional Liability insurance on the Submittals schedule required in this Part, Administration of the Contract. If the Contract requires a Master Submittal List, the Professional Liability insurance shall be listed with the Policy Limits and insureds identified, and all contractually required dates, such as when the work will be performed and the date the insurance is effective.

D. The Contractor shall not perform work that alters, varies, adds, deviates, or omits Work without prior specific written acceptance by the County. If the Contractor proposes a deviation or substitution, the Contractor shall identify and state reasons for any alteration, variation, addition, deviation, or omission from the Contract. The Contractor warrants that any alteration, variation, addition, deviation, or omission shall meet or exceed all requirements of the Contract, and it assumes all risk therefor.

E. The Contractor shall provide Submittals with reasonable promptness and in such sequence as to facilitate the timely completion of the Contract. The Contractor shall prepare and keep current, for review by the County, a Submittals schedule, which is coordinated with the Contractor's Project Schedule and allows the County reasonable time for review.

F. The County shall review the Contractor's Submittals and respond in writing with reasonable promptness so as not to unreasonably delay the progress of the Work. Unless otherwise agreed, no delay to the Contractor's Work shall be attributable to the failure by the County to respond to a Submittal until thirty (30) Days after the Submittal is received by the County, and then only if failure by the County to respond is unreasonable and affects the Contract completion date.

G. If the Contractor is required to resubmit a Submittal, any revisions on resubmittals shall be specifically identified in writing and the resubmitted Submittal shall be sequentially alpha denoted and revisions noted in numerical order. The cost of the review of the initial Submittal and the first revised submittal shall be borne by the County. The costs of all additional revised Submittals shall be charged to the Contractor. The cost of review shall include, without limitation, administrative, design, and engineering activities directly related to review of Submittals. The County may deduct these costs from any amounts due the Contractor.

H. The County shall review Submittals only for conformance with the design of the Work and compliance with the Contract. Review of the Submittals is not conducted to verify the accuracy of dimensions, quantities, or calculations, the performance of materials, systems, or equipment, or construction means, methods, techniques, sequences, or procedures, all of which remain the Contractor's responsibility. Failure by the County to take exception to a Submittal, or note any errors or omissions in a Submittal, shall not relieve the Contractor from any duty, including its responsibility for errors or omissions in Submittals, its duty to make Submittals and duty to perform the Work according to the requirements of the Contract. The County's review of a Submittal shall not alter or waive the requirements of the Contract unless the County has issued prior written acceptance of such change or alteration of the Contract requirements.

I. The Contractor's failure to identify any error, deviation, or omission; and the County's subsequent notation of (1) "no exception taken" or (2) "note markings" on the Submittal shall not relieve the Contractor from complying with the Contract requirements.

4.06 REQUESTS FOR INFORMATION

A. If the Contractor determines that some portion of the drawings, specifications or other Contract Documents require clarification or interpretation by the County because of an apparent error, inconsistency, omission, or lack of clarity in the Contract, the Contractor shall promptly submit a Request for Information ("RFI") and, unless otherwise directed, shall not proceed with the affected Work until the County has responded to the RFI. The Contractor shall plan its work in an efficient manner so as to allow for timely responses to RFIs.

B. RFIs shall only be submitted by the Contractor on a RFI form provided by the County or in a form acceptable to the County. The Contractor shall clearly and concisely set forth the issue for which clarification or interpretation is sought and why a response is needed by the County. In the RFI the Contractor shall set forth its own interpretation or understanding of the requirement along with reasons why it reached such an understanding.

C. The County will review RFIs to determine whether they meet the requirements identified above in provision 4.05 B to qualify as an RFI. If the County determines that the document is not an RFI it will be returned to the Contractor unreviewed as to content. When appropriate the Contractor may resubmit the RFI on the proper form, with all required information and in the proper manner.

D. The County shall respond in writing with reasonable promptness to Contractor's RFI.

1. At the request of the Project Representative, the Contractor shall prioritize its RFIs, identify a date by which the Contractor prefers the RFI be answered, and reasons for such priority.

2. If the Contractor submits a RFI on an activity less than thirty (30) Days prior to the commencement of that activity, the Contractor shall not be entitled to any time extension or adjustment in Contract Price due to the time it takes the County to respond to the RFI provided that the County responds within thirty (30) Days. No delay to the Contractor's work or damages to the Contractor shall be attributable to the failure by the County to respond to the RFI until thirty (30) Days after the County's receipt of the RFI, and then only if the failure by the County to respond is unreasonable and affects the Contract completion date or Work on the Critical Path.

E. The County's response to an RFI shall not be considered a change to the Contract requirements. To the extent the Contractor believes that the County's response to the RFI constitutes changed work impacting Contract Price or Contract Time, the Contractor shall submit a Contractor's Request for Change Order to the County in accordance with Parts 5, Changes to the Contract.

4.07 TESTS, INSPECTIONS, AND ACCESS TO THE WORK

A. The Contractor shall document and maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract. The Contractor shall maintain all documentation related to testing and inspection and make such documentation available to the County at its request. Contractor shall be responsible for inspection and quality assurance of all its Work and all Work performed by any Subcontractor. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the County, or with the appropriate public authority. If any governmental, regulatory, or permitting authority requires any portion of the Work to be inspected, tested, or approved, the Contractor shall make all arrangements for and cooperate with such inspections, tests, and approvals so as not to delay completion of the Contract Work. The Contractor shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the County at least three (3) Days (excluding weekends and County holidays) Notice of: (1) when the work is ready to be tested and inspected and (2) when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to the County upon request.

B. The Contractor shall cooperate with the County in the performance of any tests and inspections of the Work. The Contractor has the duty to coordinate all tests and inspections in a manner that does not negatively impact Contractor’s compliance with the Contract.

C. If any Work required to be inspected, tested, or approved is physically covered without such inspection, testing or approval being obtained, it must, if requested by the County, be uncovered for observation, and such uncovering shall be at Contractor’s expense.

D. Upon request by the County, any Work not otherwise required to be inspected or tested shall be uncovered by the Contractor. If the Work is found to comply with the Contract or if any non-compliance was not caused by the Contractor, Subcontractor, or Supplier, the County will (1) pay the costs of testing and inspection; (2) pay the costs associated with the uncovering and recovering of the Work; and, (3) adjust the Contract Time to the extent the inspection and repair impacted the Project Schedule and delayed completion of the Work on the Critical Path. If any non-compliance is caused by the Contractor, Subcontractor, or Supplier, the Contractor shall bear such costs as well as all costs of correction and the Contractor shall not be entitled to an adjustment in Contract Time.

E. The County may, at any reasonable time and at its own cost, conduct inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract. The County shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract. The County inspections and tests are for the sole benefit of the County and do not:

   1. Constitute or imply acceptance;
   2. Relieve Contractor of responsibility for providing adequate quality control measures;

3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
4. Relieve Contractor of its responsibility to comply with the requirements of the Contract; or,
5. Impair the County's right to reject defective or nonconforming items or to avail itself of any other remedy to which it may be entitled.

F. Neither observations by an inspector retained by the County, the presence or absence of such inspector on the Site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract. Inspectors are not authorized to change any term or condition of the Contract.

G. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by the County. The County may charge Contractor any additional cost of inspection or testing when Work is not ready for inspection or testing at the time stated by Contractor, or when prior rejection makes re-inspection or retest necessary. The County shall perform its inspections and tests in a manner that will cause no undue delay in the Work.

4.08 CORRECTION OF WORK OR DAMAGED PROPERTY

A. The County shall have the right to reject Work as defective or non-conforming by giving Notice to the Contractor that material, equipment or workmanship provided or incorporated into the Work does not meet the Contract requirements or fails to perform satisfactorily.

1. The County, at its option, shall require the Contractor, within a designated time period as set forth by the County, to either:
    a. Promptly repair, replace or correct all Work not performed in accordance with the Contract at no cost to the County; or
2. Provide a suitable corrective action plan at no cost to the County.
3. Once the corrective action plan is reviewed and returned by the County with the annotation "no exception taken" or "note markings" by the County, the Contractor shall implement the corrective action plan.
4. Reviewing and providing comments on the corrective action plan is not an acknowledgement by the County that such plan is adequate to remedy the defective or non-conforming Work.
5. If the corrective action plan does not remedy the defective or non-conforming Work, the Contractor shall remain responsible for remedying of the defective or non-conforming Work to the County's satisfaction.
6. The Contractor shall also be responsible for all repairs to any property and work damaged by the Contractor.

7. Under no circumstances shall the Contractor be entitled to additional time or money for the correction of defective or non-conforming work or for the repair of damaged property. The County shall not be responsible for any costs to prepare corrective action plans, correct work or repair damaged property.
8. If the Contractor disagrees with the County's Notice of defective or non-conforming Work or disagrees with the County's Direction (i) to repair, replace, or correct the Work, or (ii) to provide a corrective action plan, the Contractor must submit a Request for Change Order in accordance with Part 5, Changes to the Contract.

B. If the Contractor does not repair, replace or correct and/or remove defective or non-conforming Work or repair damaged property as required by the County, the County or County's designee may repair, replace or correct and/or remove it and deduct the cost of such effort from any payment due the Contractor.
   1. Under this provision, the County reserves the right to make use of the Contractor's plant and equipment for this repair, replacement, correction or removed Work. If the remaining payments due the Contractor are not sufficient to cover the County's cost of remedying the defective or non-conforming Work, the Contractor shall pay the difference to the County.

C. The County may elect to retain defective or non-conforming Work if the County determines that removal of such work is impractical or will create conditions that are dangerous or undesirable.
   1. Just and reasonable value for such defective or non-conforming Work will be determined by the County and appropriate deductions will be made in the payments due or to become due to the Contractor.
   2. The County's exercise of the rights under this provision shall be without prejudice to any other remedy the County may have and shall not constitute a termination of the Contract.

D. The Contractor shall be liable for all damages and costs incurred by the County caused by the Contractor's or its Subcontractors' and Suppliers' defective or non-conforming Work or workmanship, including but not limited to all special, incidental, or consequential damages incurred by the County. The Contractor agrees to indemnify and hold the County harmless from any personal injury or property damage caused by the Contractor's or its Subcontractors' defective or non-conforming Work or workmanship.

4.09 SUBSTITUTION OF PRODUCTS & PROCESSES

A. Substitutions requested by the Contractor will be subject to the County's prior written acceptance and at the County's sole discretion.

B. A request for substitution must specifically identify:
   1. Material, equipment, and labor costs included in the Contractor's bid associated with the original item to be substituted;
   2. All costs for material, equipment, labor associated with the proposed substitution, including any impact costs;

3. Proposed change to the Contract Price and/or Contract Time; and,

C. Compatibility with, or modification to, other systems, parts, equipment or components of the Project and Contract Work.

D. Contractor shall provide all documentation supporting its request for substitution as requested by the County.

E. All costs of any redesign or modification to other systems, parts, equipment or components of the Project or Contract Work, which result from the substitution, shall be borne by the Contractor.

F. When the County accepts a substitution proposed by the Contractor, the Contractor shall guarantee the substituted Part or materials to be equal to, or better than, those originally specified and shall be compatible with all other systems, parts, equipment or components of the Project and Contract Work. The County has the right to order that an unaccepted, substituted Part be removed and replaced without additional cost to the County.

G. The County has a right to a deductive Change Order if the substituted product or process is less costly than the contractually required product or process.

H. If the County does not accept the substitution requested by the Contractor, the Contractor shall proceed, without delay or cost to the County, with the Contract Work as originally specified.

PART 5 - CHANGES TO THE CONTRACT

5.01 GENERAL

A. All changes to the Contract must be made in writing and signed by the Pierce County Executive or its designees in the form of a bilateral Change Order or unilateral Change Order as set forth in Part 6, Time and Price Adjustments. No oral statement by any person shall change or modify the Contract. All changes to the Contract shall be made in accordance with the provisions of this Part.

B. All Change Order work shall be performed in accordance with the original Contract requirements unless modified in writing by the County.

C. No Direction provided by the County shall, in and of itself, entitle the Contractor to an adjustment in Contract Price or Contract Time.

D. The Contractor shall not be entitled to any change in the Contract Price, Contract Time or any other relief based on conditions or events, including but not limited to those that were:

1. Foreseeable at the time the Contractor submitted its bid;

2. Caused by the acts of the Contractor, Subcontractor and/or Supplier, including but not limited to the choice of means, methods, techniques, sequences, or procedures for the Work, failure to provide labor, materials or equipment in a timely manner, failure to follow the Contract Documents, or failure to take reasonable steps to mitigate delays, disruptions, or conditions encountered.

E. The Contract requirements for time and price impacts related to Change Orders are set forth in Part 6, Time and Price Adjustments.

5.02 COUNTY REQUEST FOR CHANGE PROPOSAL

A. County's Request for Change Proposal. The County may request a written Change Proposal from the Contractor for a change in the Contract Work.

B. Contractor's Proposal. A Change Proposal is the Contractor's offer to perform the requested work and the pricing. The Change Proposal will be deemed to include all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, stand-by, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any work either covered or affected by the change in the Work, or related in any way, whether direct or indirect, to the events giving rise to the change. All such items are waived unless submitted with the Contractor's Change Proposal and fully supported by verifiable Project documents and shown on the Project Schedule and updates.

C. Contractor shall submit its written Change Proposal within the time specified in the County's Request for Change Proposal.

D. County's Acceptance of Contractor Proposal.

1. If the County accepts the Change Proposal as submitted by the Contractor or as negotiated by the Parties, the County shall notify the Contractor in writing of its acceptance of the Proposal and direct that the change in the Work be performed.
2. Contractor shall not perform the work identified in the Change Proposal until receipt of written authorization from the Project Representative.
3. Both Parties shall acknowledge acceptance of the terms of a negotiated Change Proposal in writing.
4. Once the County and Contractor have agreed on the terms of a negotiated Change Proposal, the negotiated Change Proposal shall be deemed to include full and complete compensation and shall be the final settlement for all (1) time; (2) direct, indirect, and overhead costs; (3) profit; and (4) costs or damages associated with delay, stand-by, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of Work related to any work either covered or affected by the Change Proposal, or related to the events giving rise to the Request for Change Proposal.

E. Execution of a Bilateral Change Order. After acceptance of the Change Proposal or acceptance of the negotiated Change Proposal, the County shall direct the Contractor to perform the Work in accordance with the agreed upon terms; thereafter, the Parties shall execute a bilateral Change Order in accordance with the terms of the Change Proposal or negotiated Change Proposal.

F. Execution of Unilateral Change Order. If the County does not accept the Change Proposal or the Parties cannot agree upon the appropriate price or terms for the Change Proposal, the County may issue a unilateral Change Order.

G. Issuance of Change Order. Any bilateral Change or unilateral Change Order shall be issued in accordance with provision 6.3.C. Issuance of Change Order.

5.03 CONTRACTOR'S REQUEST FOR CHANGE ORDER

A. To the extent the Contractor believes it is entitled to any adjustment in the Contract Price or Contract Time or other relief for any reason, including but not limited to, the circumstances listed below the Contractor shall submit a Request for Change Order to the County as described in provision 5.2.C:

1. Written Field Directive;
2. Response to a Request for Information;
3. Comments on a Submittal;
4. Differing Site Condition;
5. Acceleration or constructive acceleration;
6. Suspension of the Work;
7. Delay, inconvenience, disruption of schedule, loss of efficiency or productivity;
8. County caused stand-by;
9. Force Majeure;
10. Conflicts, ambiguities, inconsistencies, and/or problems arising from the Contract Documents;
11. Contractor's disagreement with the County's written statement that the Contractor has fallen behind in progress of the Work and/or Direction to improve progress to bring it into conformance with the Project Schedule, pursuant to provision 00 72 00-4.3 H;
12. Contractor's disagreement with County's Notice of defective or non-conforming Work;
13. Contractor's disagreement with any withholding, nullifying, back charge, or deduction from any payment by the County;
14. Any other directive or Direction, written or oral, from the County; and
15. Any other reason for which the Contractor believes it is entitled to additional money, time, or other relief, including impacts of any of the above on the Contractor's Subcontractors and Suppliers.

B. Notice of intent to submit a Request for Change Order

1. The Contractor shall provide the Project Representative with written Notice that the Contractor intends to submit a Request for Change Order no later than seven (7) Days, after the occurrence of any event or discovery of conditions or Direction that the Contractor alleges to have an impact on Contract Time, Price or that requires other relief, except as specified below for Differing Site Conditions.
2. The Contractor shall include the following information in the Notice of intent to Request a Change Order:
    a. The date and description of the event or condition that Contractor believes justifies a Change Order.

b. Reasonable order of magnitude estimate of the requested change to the Contract Price, if any;

c. Reasonable order of magnitude estimate of the requested change to the Contract Time, if any; and

d. Contractual provisions and substantive basis to support the Request.

C. Request for Change Order.

1. The Contractor shall provide, in writing, a detailed Request for Change Order to the Project Representative no later than fifteen (15) Days (within fifteen (15) Days after the Notice of Intent, given 7 days after the occurrence) after the occurrence of any event or Direction or discovery of conditions that the Contractor alleges to have an impact on Contract Time and/or Price.

2. The Contractor may request an extension of time for filing its Request for Change Order within ten (10) Days after the occurrence of any event or Direction or discovery of conditions. The Contractor shall state the reasons for the request and identify a date certain when the Contractor shall provide all documentation required in its Request for Change Order.

3. The Request for a Change Order shall include:

a. A substantive explanation of why Contractor is entitled to a change in the Contract Price or Contract Time due to the event or condition that is the subject of the Request.

b. All documentation supporting the Request for a Change Order, including but not limited to all cost records, schedule analysis, and the documents identified in provision 3.13, Maintenance and Inspection of Documents, that are in any way relevant to the Contractor's Request for Change Order.

c. Either a specific dollar amount covering all requested costs, calculated in accordance with Part 6, Time and Price Adjustments, or if costs are ongoing, a specific description of cost records that are being maintained according to the requirements of provision 3.12, Cost Records above, to track the costs to be requested; or

d. Either a specific request for time extension (number of days), calculated in accordance with Part 6, Time and Price Adjustments or, if a delay is ongoing, a specific description of how the event or condition has caused a delay to Work on the Critical Path and steps the Contractor has taken to minimize such delay.

D. County's Response to Contractor's Request for Change Order.

1. The County will make a written determination with respect to the Contractor's Request For Change Order within fifteen (15) Days of receipt of said Request, unless one of the following occurs:

a. The County requests additional information and specifies a time period for receipt of the information. The Contractor must comply with the County's request for additional information, within the specified time period; or

b. The County informs the Contractor that additional time is needed to review the Contractor's Request for Change Order and identifies a date certain when the County's determination will be issued.

2. If the County requests additional information, the County will make a written determination within fifteen (15) Days of receipt of Contractor's additional information.

3. If the County does not make a determination within the applicable time period, as set forth in this section, the Contractor should know that the Request For Change Order is deemed denied.

E. Approval of Request for Change Order and Execution of Change Order.

1. If the County determines that a Change Order is necessary, the Parties may negotiate acceptable terms and conditions and execute a bilateral Change Order, or the County may issue a unilateral Change Order. In the event the County enters into negotiations over the terms and conditions related to a Request for Change Order, these negotiations shall not be construed as a waiver by the County of any of its legal or contractual rights.

F. Contractor Procedure upon Denial or Deemed Denial of a Request for Change Order.

1. If the Contractor disagrees with the written denial or a deemed denial, the Contractor's sole remedy shall be to file a fully documented Claim within fifteen (15) Days in accordance with Part 9, Claims and Litigation.

G. Contractor's Obligation to Continue to Work.

1. Pending resolution of the Contractor's Request for a Change Order, the Contractor shall maintain its progress with the Work. The Contractor shall continue to perform all Work including that work associated with the pending Request for Change Order.

H. Waiver.

1. Failure to submit a timely Notice of intent to Request a Change Order or to submit a timely Request for Change Order according to the provisions set forth herein shall constitute a waiver of the Contractor's right to receive any additional time, money, damages or any other relief as a result of any alleged event, occurrence, Direction, or condition.

5.04 DIFFERING SITE CONDITIONS

A. Immediate Written Notice to the County.

1. If the Contractor encounters a Differing Site Condition, as defined in provision 1.01, Definitions, the Contractor shall immediately, and before the conditions are disturbed, give to the County Notice of Differing Site Condition. At a minimum the Notice must include the following:

a. A physical description of the Differing Site Condition; and

b. A description of the impact of the Differing Site Condition on the Work activity.

B. County's Investigation and Response to Notice of the Differing Site Condition.

1. The County shall investigate the alleged Differing Site Conditions and respond to the Notice of Differing Site Condition. The Contractor shall not disturb the Site at the location of the alleged Differing Site Condition until the Project Representative has observed the condition and directs the Contractor to resume the Work at the location of the alleged Differing Site Condition.

C. Contractor's Obligation to Continue to Work.

1. The Contractor shall continue with performance of all other Work and must take reasonable steps to mitigate delay to the Work due to the alleged Differing Site Condition.

D. Request for Change Order on a Differing Site Condition.

1. If the Contractor believes the Differing Site Condition causes a change in the Contract, the Contractor shall, unless otherwise agreed upon in writing by the Project Representative, provide a Request for Change Order to the Project Representative within twenty (20) Days of the date the Contractor encountered the Differing Site Condition that includes all elements required for such a request set forth in provision 5.03, Contractor's Request for Change Order, in addition to:

a. A detailed physical description of the Differing Site Condition;

b. Substantive and technical basis and documentation supporting the existence of the Differing Site Condition and its alleged impacts; and

c. Identification of the Contract Specification or Drawing that the Contractor asserts is different from the condition encountered.

E. County's Response to Differing Site Condition Request for Change Order.

1. The County will respond to Differing Site Condition Request for Change Order in accordance with the Request for Change Order procedures set forth in provision 5.03, Contractor's Request for Change Order.

F. Waiver.

1. If the Contractor's actions disturb the Site such that the County or County's designee cannot adequately and fully investigate the alleged differing site condition, the Contractor waives its right to receive any additional time, money damages, or any other relief as a result of the Differing Site Condition.

2. Failure by the Contractor to provide both (a) immediate Notice and (b) a Request for Change Order, as specified herein, shall constitute a waiver of the Contractor's right to receive any additional time, money, damages, or other relief as a result of the Differing Site Condition.

3. The Contractor shall be responsible for any and all costs or damages incurred by the County resulting from the Contractor's failure to provide the required Notice and Request for Change Order.

5.05 SUSPENSION OF WORK

A. County Issues Directive Suspending Work

1. The County may order the Contractor, in writing, to suspend all or any part of the Work of this Contract for the period of time that the County determines appropriate for the convenience of the County. The Contractor shall not suspend the Work unless it has received written Direction from the County specifically authorizing the suspension of Work.
2. The Contractor shall immediately comply with all requirements in the written Direction and take all reasonable steps to minimize costs attributable to such suspension of Work. Within a period up to sixty (60) Days after the suspension Direction is received by the Contractor, or within any extension of that period which the County requires, the County shall either:
    a. Cancel the written Direction suspending the Work; or
    b. Terminate the Work for either default or convenience.
3. If a written Direction suspending the Work is canceled or the period of the suspension or any extension thereof expires, the Contractor shall resume Work as required by the County.
4. No adjustments to Contract Price and/or Contract Time shall be allowed unless the Contractor can demonstrate that the period of suspension caused by the County impacted Work on the Critical Path. If the performance of Work on the Critical Path is suspended by the written Direction of the County, the Contractor may be entitled to an adjustment in the Contract Time, or Contract Price, or both, for increases in the time or cost of performance directly attributable to the suspension, provided that the Contractor sufficiently documents all costs and time impacts attributable to the suspension, in accordance with provision 3.12, Cost Records.

B. Constructive Suspension of Work

1. In the event that the Contractor believes that some action or omission on the part of the County constitutes constructive suspension of Work, the Contractor shall immediately give Notice to the County in writing that the Contractor considers the actions or omission a constructive suspension of Work. The Notice shall detail the circumstances of the constructive suspension of Work.
2. No adjustment in the Contract Time or Contract Price shall be made under this provision for any suspension to the extent that Contractor’s performance would have been suspended, delayed, or interrupted as a result of actions, omissions, fault or negligence caused, in whole or in part, by the Contractor or any of its Subcontractors or Suppliers.
3. No adjustment to Contract Price or Contract Time shall be allowed unless the Contractor can demonstrate that the constructive suspension impacted the Work on the Critical Path.

C. If the Contractor believes it is entitled to any additional money or time as a result of the County-directed suspension of Work or a constructive suspension, Contractor shall submit a Request for Change Order to the County as more fully described in provision 5.03, Contractor's Request for Change Order. The Contractor shall keep cost and other project records related to the constructive suspension separately from normal project costs in accordance with provision 3.12, Cost Records. Failure to comply with these requirements shall constitute a waiver of Contractor rights to any adjustment in Contract Time, Contract Price, damages, or any other relief from suspension or constructive suspension of the Work. On both a County-directed suspension and a constructive suspension, the Contractor is compensated for Overhead, including unabsorbed home office overhead, on the Request for Change Order through the Overhead and Profit markups described in provision 6.2, Methods to Calculate Adjustments to Contract Price.

D. On a County-directed suspension or constructive suspension, the Contractor may be entitled to additional compensation for actual Site or Field Office Overhead and unabsorbed Home Office Overhead properly allocable to this Contract for the period of suspension, if in the Request for Change Order the Contractor demonstrates, through verifiable project records, that all the conditions below exist and that there are no direct costs related to the suspension on which to apply the Part 6, Time and Price Adjustments markups:

1. The Work was suspended solely by actions for which the County is entirely responsible;
2. The Contractor's ability to obtain payment pursuant to the Schedule of Values has been or will be substantially adversely impacted as a direct and sole result of such suspension;
3. The suspension impacted the Work on the Critical Path;
4. The County required the Contractor to remain on standby during the suspension period;
5. The Contractor was unable to re-sequence or reorganize the Work in order to continue working and maintain the Contractor's ability to obtain payment pursuant to the Schedule of Values;
6. The Contractor was ready, capable, and willing to perform Contract Work during the suspension; and
7. The Contractor was unable to take on other work as a direct result of the suspension and the only reason the Contractor was unable to take on other work was because of the suspension.

5.06 FORCE MAJEURE

A. If the Contractor believes it is entitled to any additional time as a result of Force Majeure, Contractor shall submit a Request For Change Order to the County as more fully described in provision 5.09, Contractor's Request for Change Order.

B. Contractor shall not be entitled to a change in Contract Price resulting from an act of Force Majeure.

C. Contractor is not entitled to an adjustment in Contract Time if the act of Force Majeure did not impact progress of the Work on the Critical Path.

D. When a Contractor experiences concurrent delay caused by either the County or Contractor and an act of Force Majeure, the Contractor shall only be entitled to a change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.

PART 6 - TIME AND PRICE ADJUSTMENTS

6.01 CHANGE IN THE CONTRACT TIME

A. The Contract Time shall only be changed by Change Order

B. Contractor shall include any request for a change in the Contract Time in each Notice of intent to submit a Request for Change Order, Request for Change Order, Change Proposal, and Claim as specified in Part 9, Claims and Litigation.

C. No change in the Contract Time shall be allowed to the extent the time of performance is changed due to the fault, act, or omission of Contractor or anyone for whose acts or omissions the Contractor is responsible.

D. Contractor is not entitled to a change in Contract Time unless the progress of the Work on the Critical Path is delayed, and completion of the Contract Work within Contract Time is delayed.

E. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

F. When a Contractor experiences concurrent delays which impact the Critical Path and are caused by (1) the County and the Contractor; (2) the County and an act of Force Majeure; or (3) the Contractor and an act of Force Majeure, the Contractor shall only be entitled to a change in Contract Time. No change to the Contract Price shall be allowed as a result of such concurrent delay.

G. A Request for Change Order that includes a request for an adjustment in the Contract Time shall:

1. Be in writing and delivered to the County within the appropriate time period specified in Part 5, Changes to the Contract.
2. Include a clear explanation of how the event, occurrence, condition or Direction specifically impacted the Critical Path and the amount of the adjustment in Contract Time requested for each such event, occurrence, condition and/or Direction.
3. Be limited to the change in the Critical Path attributable to the event or condition that is the subject of the request for adjustment. No extension of time or compensation for damages resulting from delay will be granted unless the delay affects the timely completion of all Work under the Contract or timely completion of a portion of the Work for which time of completion is specific, such as a Contract Interim Milestone.
4. Contractor shall be responsible for showing clearly on the Project Schedule, including all updates, that the event or condition:
    a. Had a specific impact on the Critical Path, which will prevent the Contractor from completing the Project within the current Contract completion date and was the sole cause of such impact; and

b. Could not have been avoided by resequencing of the Work or other reasonable alternatives.

H. Any request for an adjustment to the Contract Time is deemed to include all time associated with delay, stand-by, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of Work related to any work either covered or affected by the change in the Work, or related in any way, whether direct or indirect, to the events giving rise to the change. All such items are waived unless submitted with the Request for Change Order and fully supported by verifiable Project documents and shown on the Project Schedule and updates. If there is entitlement to any costs for such Time adjustment, full, final and complete compensation will be calculated in accordance with this Part.

I. Failure to provide timely written notice and documentation as required by this and any other sections of the Contract to support any request for extension of Contract Time shall constitute a waiver of the Contractor's right to an adjustment in Contract Time.

6.02 CHANGE IN THE CONTRACT PRICE

A. The Contract Price shall only be changed by a Change Order.

B. Contractor shall only request a change in the Contract Price in its:

1. Change Proposal in response to County's Request for Change Proposal;
2. Notice of intent to submit a Request for Change Order;
3. Request for A Change Order; and
4. Claim provided the related Request for Change Order or Change Proposal included a request to adjust the Contract Price.

C. No change in the Contract Price shall be allowed when:

1. Contractor's changed cost of performance is due to the fault, acts, or omissions of Contractor, or anyone for whose acts or omissions Contractor is responsible;
2. The change is concurrently caused by Contractor and County; or
3. The change is caused by an act of Force Majeure.

D. The County shall not be responsible for, and the Contractor shall not be entitled to any compensation for unallowable costs. The following are unallowable costs:

1. Interest or attorney's fees of any type other than those mandated by Washington state statute;
2. Claim preparation or filing costs;
3. The cost of preparing or reviewing Change Proposals or Requests for Change Orders;
4. Lost profits, lost income or earnings;
5. Costs for idle equipment when such equipment is not at the Site, has not been employed in the Work, or is not scheduled to be used at the Site;
6. Lost earnings or interest on unpaid retainage;

7. Claims consulting costs;
8. Expert fees and costs;
9. The costs of corporate officers or staff visiting the Site or participating in meetings with the County;
10. Any compensation due to the fluctuation of foreign currency conversions or exchange rates;
11. Loss of other business; and/or
12. Any other special, consequential, indirect or incidental damages incurred by the Contractor, Subcontractor, or Suppliers.

E. A Request for Change Order that includes a request for an adjustment in Contract Price shall:
   1. Be in writing and delivered to the County within the applicable time period specified in Part 5, Changes to the Contract.
   2. Identify the following information:
      a. The event, occurrence, condition or Direction that caused the Contractor to submit its request for an adjustment in the Contract Price;
      b. The nature of the impacts to Contractor and its Subcontractors, if any; and
      c. The amount of the adjustment in Contract Price requested.
   3. Any requests by Contractor for an adjustment in the Contract Price and in the Contract Time that arise out of the same event or conditions shall be submitted together.

F. Any request for an adjustment to the Contract Price is deemed to include all direct and indirect costs, overhead, profit, and all costs or damages associated with delay, stand-by, inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any work either covered or affected by the change in the Work, or related in any way, whether direct or indirect, to the events giving rise to the change. All such items are waived unless submitted with the Request for Change Order and fully supported by verifiable Project documents and cost records.

6.03 METHOD TO CALCULATE ADJUSTMENTS TO CONTRACT PRICE

A. Unit Price Method
   1. Whenever the County authorizes Contractor to perform Work on a Unit Price basis, the County's authorization shall clearly state the:
      a. Scope of work to be performed;
      b. Applicable Unit Price; and
      c. Not to exceed amount of reimbursement as established by the County.
   2. The applicable unit price shall include reimbursement for all direct and indirect costs of the Work, including Overhead and profit.

3. If the unit price will be applied to materials incorporated in or removed from the Work, the Contractor shall be paid under this method only for the actual quantities and such quantities must be supported by field measurement statements verified by the County.

B. Firm Fixed Price Method

1. The Contractor and County may mutually agree on a fixed amount as the total compensation for the performance of changed work.
2. The Contractor shall provide a detailed cost breakdown supporting the Contractor's requested adjustment to Contract Price and any other financial documentation requested by the Project Representative.
3. Any adjustments to the Contract Price using the Firm Fixed Price Method shall include, when appropriate all reasonable costs for labor, equipment, material, Overhead and profit. Such Overhead and profit shall be calculated in accordance with provision 5.09 Methods to Calculate Adjustments to Contract Price, F. Time and Materials, 4.e. Overhead and Profit Markup.
4. Whenever the County authorizes Contractor to perform changed work on a Firm Fixed Price Method, the County's authorization shall clearly state:
    a. Scope of Work to be performed; and
    b. The total agreed price for performing such work.

C. Time and Materials Method

1. Whenever the County authorizes the Contractor to perform Work on a Time and Material basis, County's authorization shall clearly state:
    a. Scope of Work to be performed; and
    b. A not to exceed amount of reimbursement as established by the County.
2. Contractor shall:
    a. Cooperate with the County and assist in monitoring the Work being performed;
    b. Substantiate the labor hours, materials and equipment charged to work under the time and materials method by detailed timecards or logs completed on a daily basis before the close of business each working day;
    c. Present the timecard and/or log at the close of business each day to the Project Representative or County Inspector so that the County may review and initial each timecard/log;
    d. Perform all Work in accordance with this provision as efficiently as possible;
    e. Not exceed any cost limit(s) without the County's prior written approval; and
    f. Maintain all records of the work, including all records of the relevant Subcontractors and Suppliers, and make such records available for inspection as required in Part 3 provisions,3.11 Record Documents, 3.12 Cost Records, and 3.13 Maintenance and Inspection of Documents.

3. Contractor shall submit costs, and any additional information requested by the County to support Contractor's requested price adjustment.
4. The Contractor shall only be entitled to be paid for reasonable costs actually incurred by the Contractor. The Contractor has a duty to control costs. If the County determines that the Contractor's costs are excessive or unreasonable, the County, at its discretion, shall determine the reasonable amount for payment. Any adjustments to the Contract Price using the Time and Materials method shall be based on the following categories:
    a. Labor. For all labor, including supervision by the foreperson but excluding superintendents, the Contractor shall be reimbursed for labor costs provided herein. The labor cost of an event or condition shall be calculated as the sum of the following:
        1) Labor Rate. The Labor Rate is the actual reasonable wage paid to the individual plus the actual reasonable costs incurred by the Contractor to cover costs associated with Federal Insurance Compensation Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), industrial insurance, fringe benefits, and benefits paid on behalf of labor by the Contractor. The applicable Labor Rates shall be multiplied by the number of hours reasonably expended in each labor classification, because of the event or condition, to arrive at a total cost of labor.
        2) Travel Allowance and/or Subsistence. The labor calculation shall include the actual costs of travel and/or subsistence paid to the Contractor's employees engaged in the Work when said payments are required by a labor agreement.
    b. Materials. The cost of materials resulting from an event or condition shall be calculated in one or more of the following methods, at the County's election:
        1) Invoice Cost. The Contractor may be paid the actual invoice cost of materials including actual freight and express charges and applicable taxes less all available discounts, rebates, and back-charges, notwithstanding the fact that they may not have been taken by the Contractor. This method shall be considered only to the extent the Contractor's invoice costs are reasonable and the Contractor provides copies of vendor invoices, freight and express bills, and other evidence of cost accounting and payment satisfactory to the County. As to materials furnished from the Contractor's stocks for which an invoice is not available, the Contractor shall furnish an affidavit certifying its actual cost of such materials and such other information as the County may reasonably require;
        2) Wholesale Price. The Contractor may be paid the lowest current wholesale price for which the materials are available in the quantities required, including customary costs of delivery and all applicable taxes less all available discounts, rebates, and back-charges; or,

3) County Furnished Material. The County reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no Claim for any costs, Overhead or profit on such materials.

c. Equipment. The additional cost, if any, of machine-power tools and equipment usage shall be calculated in accordance with the following rules:

1) Equipment Rates. The Contractor's own charge rates may be used if verified and approved by the County and based on the Contractor's actual ownership and operating cost experience. Rental rates contained in published rate guides may be used if their cost formulas and rate factors are identifiable, reflect the Contractor's historical acquisition costs, utilization, and useful life, and do not include replacement cost, escalation contingency reserves, general and administrative expense, or profit. Rates shall be based on the Contractor's actual allowable costs incurred or the rates established according to the Rental Rate Blue Book for Construction Equipment, (published by EquipmentWatch), whichever is less. The Rental Rate Blue Book established equipment rate shall be the monthly rental rate for the equipment plus the monthly rental rate for required attachments, divided by 176, multiplied by the appropriate regional adjustment factor, plus the hourly operating cost. The established equipment rate shall apply for actual equipment usage up to eight hours per day. For all hours in excess of eight hours per day or 176 hours per month, the established equipment rate shall be the monthly rental rate plus the monthly rental rate for required attachments, divided by 352, multiplied by the regional adjustment factor, plus the hourly operating cost.

2) Transportation. If the necessary equipment is not already at the Site and it is not anticipated that it would be required for the performance of other work under the terms of the Contract, the calculation shall include a reasonable amount for the costs of the necessary transportation of such equipment.

3) Standby. The Contractor shall be entitled to standby equipment costs only if (a) the equipment is ready, able, and available to do the Work; (b) Contractor is required to have equipment standby because of an event or condition solely caused by the County and (c) the Contractor can demonstrate that it could have and intended to use the equipment on other projects/jobs. If entitled to standby costs, the Contractor shall be compensated at 50% of the monthly rental rate for the equipment, divided by 176, and multiplied by the appropriate regional adjustment factor, as identified in the Rental Rate Blue Book for Construction Equipment, (published by EquipmentWatch). Standby shall not be paid during periods of Contractor-caused delay, concurrent delay, Force Majeure, during any seasonal shutdown, routine maintenance, down-time or broken equipment, late delivery of equipment or supplies, or other anticipated occurrence specified in the Contract Documents. No payment shall be made for standby on any piece of equipment, which has been used on the Project in any 24-hour period. Standby costs shall not be paid for weekends, holidays, and any time the equipment was not intended to be used on the Project as demonstrated by the Project Schedule.

d. Subcontractor and Supplier. Direct costs associated with Subcontractors and Suppliers shall exclude Overhead and profit markups and shall be calculated and itemized in the same manner as prescribed herein for Contractor. Contractor shall provide detailed breakdown of Subcontractor and Supplier invoices.

e. Overhead and Profit Markup.

1) On a change to the Contract Price or any other claim for money by the Contractor, the County will pay Overhead and profit in accordance with this provision, which are agreed to cover all Overhead and profit, regardless of how the Contractor chooses to account for various costs in its books of account. Direct costs shall include Labor, Materials, Equipment, Subcontractor and Supplier costs (as defined in provision 6.2, Method to Calculate Adjustments to Contract Price). Overhead and profit markups shall not be paid on freight, delivery charges, express charges, or sales tax.

2) Overhead and profit markup shall be paid by a markup on direct costs, except as addressed in provision 00 72 00-5.05. D, and shall not exceed the following:

(a) If the Contractor is self-performing work: 18% combined Overhead and profit markup on the Contractor’s direct costs; or

(b) If a Subcontractor or Supplier is performing work: 18% for combined Overhead and profit markup on the Subcontractor’s and Supplier’s direct cost for performing the work and 7% combined Overhead and profit as Contractor markup on the direct costs of the Subcontractors and Suppliers.

(c) If the value of material and equipment is greater than 50% of the total value of the change, the Overhead and profit markup shall be 10% for material and equipment.

3) In no event shall the total combined Overhead and profit markup for the Contractor and all Subcontractors and Suppliers of any tier exceed 25% of the direct cost to perform the Change Order work.

D. Deductive Changes to the Contract Price

1. A deductive change to the Contract Price will be determined by the Project Representative based on the costs of labor, material, equipment, Overhead saved and profit unearned by the Contractor, as a result of the change. These costs shall be calculated, following as closely as possible the provisions of Part 5, Time and Price Adjustments.

2. The Project Representative may also reference the following in making the determination:

   a. The Contractor's Project Schedule of Values or its cost-loaded Project Schedule; and

   b. Costs set forth in the documents used by the Contractor to develop its bid, including the Escrow Bid Documents, if required.

3. Where the County has elected not to correct incomplete or defective Work, a deductive adjustment in the Contract Price shall take into account:

   a. The decreased value to the County resulting from the incomplete or defective Work; and

   b. The additional future costs that the County may incur by reason of the incomplete or defective Work.

6.04 CHANGE ORDERS

A. Bilateral Change Orders

1. If the County and Contractor reach agreement on the terms and conditions of any change in the Work, including any adjustment in the Contract Price and Contract Time, such agreement shall be incorporated into a bilateral Change Order and signed by both Parties.

2. An adjustment to either Contract Time or Contract Price calculated in accordance with the provisions of this Part shall be full, complete and final settlement or compensation of all changes, claims, damages and costs for all (a) time; (b) direct, indirect, and overhead costs; (c) profit; and (d) any and all costs or damages associated with delay, stand-by inconvenience, disruption of schedule, impact, dilution of supervision, inefficiency, ripple effect, loss of efficiency or productivity, acceleration of work, lost profits, and any other costs or damages related to any work either covered or affected by the change in the Work, or related to the events giving rise to the change.

B. Unilateral Change Order

1. County's Right to Issue Unilateral Change Order.

a. The County may unilaterally issue a Change Order in response to a Request for Change order or Change Proposal in its sole discretion without invalidating the Contract and without notice to the sureties, making changes within the general scope of this Contract.

b. If any such unilateral Change Order causes an increase or decrease in the cost of, or time required for, performance of any part of the Contract Work, the County may make an adjustment in the Contract Price, Contract Time, or both, in accordance with Part 5, Changes to the Contract.

c. The County's issuance of a unilateral Change Order shall not be construed as a waiver of any rights afforded to the County, including its right to reject a Request for Change Order due to untimeliness or the Contractor's failure to fully comply with the Contract requirements.

1) Contractor Disagreement with Unilateral Change Order. If the Contractor disagrees with the adjustment to the Contract Price and/or Time as indicated in the unilateral Change Order, the Contractor's only remedy shall be to file a fully documented Claim in accordance with Part 9, Claims and Litigation.

2) Contractor's Obligation to Continue to Work. The Contractor is required to continue with performance of all Work, including work associated with the Unilateral Change Order.

C. Issuance of Change Order

1. The issuance and execution of a bilateral or unilateral Change Order by the County shall not relieve the Contractor of its obligations to comply with the requirements of Part 7, Payment and Completion.

a. Bilateral Change Order. Upon agreement with the Contractor, no later than fifteen (15) Days from the Satisfactory Completion of any additional Work not in dispute, the County shall provide to the Contractor a Change Order in accordance with the agreed upon terms and conditions for such Change Order, including any adjustment in the Contract Price and Contract Time.

b. Unilateral Change Order. If agreement is not reached in response to a Request for Change Order or Change Proposal then no later than fifteen (15) Days after the Satisfactory Completion of any additional Work not in dispute, the County shall execute a unilateral Change Order, including any adjustment in the Contract Price and Contract Time.

c. Determination of Satisfactory Completion of Additional Work. "Satisfactory Completion" means that the Project Representative shall have confirmed in writing that all tasks, of the unilateral or bilateral Change Order, have been completed, to the satisfaction of the County, including submittal by the Contractor of all required time and cost documentation. Satisfactory Completion does not mean Substantial Completion.

PART 7 - PAYMENT AND COMPLETION

7.01 APPLICATIONS FOR PAYMENT

A. On the first business day of each month, unless otherwise designated in writing by the County, the Contractor shall submit to the County an Application for Payment. Each application shall be on a form acceptable to the County and designated as an “Application for Payment.” Each Application for Payment shall include, at a minimum, all of the following:

1. Current status Schedule of Values;
2. Project Schedule and the most current updates;
3. A written statement that prevailing wages have been paid during that pay period in accordance with Contractor’s and Subcontractors’ previously submitted Intents to Pay Prevailing Wage on file with Pierce County;

B. The Contractor is not entitled to payment for any Work under the Application for Payment, unless it includes all documentation required by the Contract, which includes submission of a statement that Prevailing Wages have been paid by the Contractor and all Subcontractors, and electronic verification of Washington State Labor and Industries reporting requirements. The County reserves the right to withhold payment pursuant to this Part under provision 6.03, Payment Withheld, if it is subsequently determined that all required documentation was not provided by the Contractor.

C. The Application for Payment shall correlate the amount requested with the Schedule of Values and with the state of completion of the Work. In addition to Work performed by the Contractor, applications may include (1) the invoiced cost of major materials or equipment (major material or equipment to be identified on the Schedule of Values) suitably stored on the Site, and (2) with the County’s consent, up to 75% of the invoiced cost of major materials or equipment suitably stored off the Site if the County’s interest in those major materials or equipment is protected through insurance and the Contractor provides documentation of such insurance.

7.02 PROGRESS PAYMENTS

A. The County shall review the Application for Payment and pay in accordance with RCW 39.76, as amended. The County will provide Notice to the Contractor of any cause to withhold payment within eight (8) working days. The County may withhold portions or all of the Application for Payment for unsatisfactory performance or failure to comply with Contract requirements, including regulatory requirements that pertain to the Contract Work, any back-charges, off-sets, credits, change orders, or deductions that the Contractor’s Application for Payment fails to recognize. The County shall have the right to revise the Contractor’s Application for Payment and proceed pursuant to the revised Application and the 8-Day notice of withholding.

B. The Contractor shall ensure that Subcontractors and Suppliers are promptly paid as required by RCW 39.04.250, as may be amended.

7.03 PAYMENT WITHHELD

A. In addition to moneys retained pursuant to RCW 60.28 and without waiver of any other available remedies, the County has the right to withhold, nullify, or back-charge, in whole or in part, any payment or payments due or that have been paid to the Contractor as may be necessary to protect the County from loss or damage for reasons, including but not limited to the following:

1. Failure of the Contractor to submit a Contract-compliant Project Schedule;
2. Cost or liability that may occur to the County as the result of the Contractor's or Subcontractor's acts, omissions, fault, or negligence;
3. Deduction in Contract Work;
4. Failure of Contractor to repair damaged materials, equipment, property, or Work;
5. Failure of the Contractor to provide Submittals;
6. Failure to keep Record Documents up to date;
7. Failure to obtain, renew and maintain applicable licenses, permits, insurance, and bonds;
8. Failure to comply with all applicable federal, state, and local laws, statutes, regulations, codes, licenses, easements, and permits;
9. Failure of the Contractor to disclose all material facts or accurate information upon which the County relied when issuing a Bilateral or Unilateral Change Order;
10. Failure to provide Statement of Intent to Pay Prevailing Wage, Statements of Prevailing Wages Paid with pay applications or Affidavits of Wages Paid; and
11. Failure to comply with the Contract safety requirements.

B. The County has the right to withhold or back-charge, in whole or in part, any payment due or nullify previous payments that have been paid to the Contractor without waiver of any other available remedies. The withholding, nullification, or back-charge of any payment(s) by the County shall in no way relieve the Contractor of any of its obligations under this Contract.

C. If the Contractor disagrees with any withholding, nullifying, back charge, or deduction in any payment by the County, the Contractor shall comply with provision 5.03, Contractor's Request for Change Order. The Contractor's failure to comply with provision 5.03, Contractor's Request for Change Order shall constitute a waiver by the Contractor of any right to dispute any such withholding, nullifying, back charge, or deduction.

7.04 TITLE TO WORK AND MATERIALS

A. Title to all Work and materials covered by an accepted and paid Application for Payment shall pass to the County at the time of such payment, free and clear of all liens, claims, security interest, and encumbrances. Passage of title shall not, however, (1) relieve Contractor from any of its duties and responsibilities for the Work or materials; (2) waive any rights of the County to insist on full compliance by Contractor with the Contract requirements; or (3) constitute Substantial Completion, partial Substantial Completion or acceptance of the Work or materials.

7.05 SUBSTANTIAL COMPLETION PROCEDURE

A. Substantial Completion, Partial or Milestone Substantial Completion. The County may grant Substantial Completion, partial Substantial Completion for specific sub-systems, or milestone Substantial Completion for portions of the Work specified as Interim Milestones, following the process outlined below.

1. When the Contractor considers that all Work, or Work associated with any sub-system or Contract milestone is substantially complete, the Contractor shall submit a written request to the County for acknowledgment of Substantial Completion.
2. The County shall promptly inspect the Work and, if the County does not agree that the Work, sub-system or milestone is substantially complete, the County will notify the Contractor of the items to be completed or corrected to achieve Substantial Completion.
3. The County reserves the right to add to, modify, or change the items to be completed for Substantial Completion as circumstances dictate.
4. Failure by the County to include any items does not alter the responsibility of the Contractor to complete or correct the Work in accordance with the Contract.
5. When the County determines that the items necessary to achieve Substantial Completion, Partial Substantial Completion or milestone Substantial Completion have been completed or corrected by the Contractor, the County shall make a determination that the Work, sub-system or Milestone is Substantially Complete. The County will issue the Notice of Substantial Completion, which shall establish the date of Substantial Completion.

B. Punch List After Notice of Substantial Completion. The Notice of Substantial Completion to the Contractor shall identify Punch List items to be completed or corrected by the Contractor prior to Completion/Final Acceptance and will include the date by which the Punch List items are to be completed.

7.06 PUNCH LIST AND FINAL INSPECTION

A. When the Contractor considers that all Punch List items and Contract Work are ready for final inspection, the Contractor shall give written Notice to the County.

B. The County shall promptly perform a final inspection of the Work and shall inform the Contractor of incomplete Punch List Work.

C. The Contractor shall complete or correct the items identified in the Punch List within the time period for Final Acceptance as established in the Notice of Substantial Completion.

7.07 APPLICATION FOR FINAL PAYMENT

A. Prior to the submittal of the Application for Final Payment the Contractor shall have completed or corrected the items identified in the Punch List and all other requirements of the Contract.

B. In addition to any other requirement identified in the Contract Documents, the Application for Final Payment shall include the following documents:

1. Washington State Labor and Industries approved Affidavit of Wages Paid for Contractor and all Subcontractors in accordance with state law;
2. Contractor's release of claims against the County, except for any pending Request for Change Order or Claims properly submitted in accordance with the Contract; and,
3. Right of way, easement and property releases.
4. Copies of the warranties and guarantees required by the Work Order;
5. Permit approvals and Certificates of Occupancy;
6. Operation and maintenance manuals;
7. Record Documents; and
8. Stamped permit set of documents and any other documents called for elsewhere in the Contract.

7.08 COMPLETION/FINAL ACCEPTANCE

A. Completion/Final Acceptance shall be achieved when all the obligations of the Contract have been successfully performed by the Contractor in accordance with the Contract and accepted by the County.

B. Neither Completion/Final Acceptance, nor Final Payment, shall release Contractor or its sureties from any obligations under this Contract, the retainage bond, or the performance and payment bonds, or constitute a waiver of any claims by the County arising from or related to Contractor's performance or failure to perform the Work and all Contractual obligations in accordance with the Contract, including but not limited to:

1. Unsettled liens, security interests or encumbrances;
2. Damaged, non-conforming, or defective Work discovered by the County;
3. Terms of any warranties or guarantees required by the Contract; and
4. Payments made in error.

C. Except for any Requests for Change Order and Claims properly submitted in accordance with the Contract, acceptance of Payment on the Final Application for Payment by the Contractor shall, on behalf of itself and its Subcontractors and Suppliers, forever and unconditionally release and fully discharge, the County, its officers, agents, and employees, from any and all disputes, claims, demands, asserted rights, or causes of actions including, but not limited to, those for damages, fines, interest, taxes, attorney fees, costs, liabilities, or obligations, known or unknown, directly or indirectly arising out of or related to the Contract and/or Project.

7.09 PRIOR OCCUPATION

A. County shall have the right to occupy such part or parts of the Project in or upon which the Work is being done, as it may see fit, and such occupation shall not be construed as acceptance by the County of the Work or constitute Substantial Completion or Completion/Final Acceptance of the Work.

7.10 RETAINAGE

A. Concerning the rights and responsibilities of Contractor and County with regard to retainage, chapter 60.28 RCW and as it may be amended, is made a part of the contract by reference as though fully set forth herein.

B. Pursuant to RCW 60.28.011, claims or “liens” by Subcontractors and Suppliers against the retained fund or the retainage bond must be in writing and submitted to the Project Representative at the address given for notices in this Contract. The Project Representative will maintain a copy of all claims or “liens” against the retainage in the Contract document files.

7.11 WARRANTY AND GUARANTY

A. In addition to any special warranties provided elsewhere in the Contract, Contractor warrants that all Work conforms to the requirements of the Contract and is free from any defect in equipment, material, design, or workmanship performed by Contractor or its Subcontractors and Suppliers.

B. The warranty period shall be for the longer period of: one year from the date of Substantial Completion of the entire Project or the duration of any special extended warranty offered by a Subcontractor or Supplier.

C. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract, Contractor shall:

1. Obtain all warranties that would be given in normal commercial practice from the Supplier and/or manufacturer;
2. Prior to Completion/Final Acceptance, require all warranties be executed, in writing, for the benefit of the County; and
3. Enforce all warranties for the benefit of the County including any warranty of a Subcontractor manufacturer, or Supplier.

D. If, within an applicable warranty period, any part of the Work is found not to conform to the Contract, the Contractor shall correct it promptly after receipt of written Notice from the County to do so. In the event the County determines that Contractor corrective action is not satisfactory and/or timely performed, then the County has the right to remedy the problem. All damages incurred by the County and all costs for the County’s remedy may be withheld or shall be reimbursed by the Contractor.

E. The warranty provided in this provision shall be in addition to any other rights or remedies provided elsewhere in the Contract or by applicable law.

PART 8 - TERMINATION

8.01 COUNTY’S RIGHT TO TERMINATE CONTRACT

A. Termination for Default

1. County may terminate the Work, or any part of it, for cause upon the occurrence of any one or more of the following events, each of which shall be considered a default:

a. Contractor prosecutes the Work or fails to prosecute the Work or any portion thereof so that Substantial Completion of the Work will not be achieved within the Contract Time;

b. Following Substantial Completion, Contractor prosecutes or fails to prosecute the Work or any portion thereof so that Completion/Final Acceptance of the Work will not be achieved within the specified times;

c. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;

d. Contractor fails to repair, replace or correct Work not in conformance with the Contract;

e. Contractor fails to supply skilled workers or proper materials or equipment;

f. Contractor fails to make prompt payment to its employees or Subcontractors;

g. Contractor disregards or fails to comply with laws, ordinances, rules, regulations, permits, easements or orders of any public authority having jurisdiction;

h. Contractor fails to comply with Contract safety requirements; or,

i. Contractor is otherwise in material breach of any provision of the Contract.

2. Any such termination is without prejudice to any other right or remedy of the County.

3. If one of the aforementioned events has occurred, and the County at its option intends to terminate the Contract in whole or in part for default, the County will provide the Contractor with written Notice of its intent to terminate the Contractor for default, specifying in the Notice the ground(s) for such termination. In the Notice, the County, at its option, shall require the Contractor to either: i) promptly correct the deficiencies noted; or ii) provide the County with a corrective action plan as to how such deficiencies will be remedied or cured and indicate the timeframe for completion of the corrective action plan. However, if after receipt of the proposed remedy, the County has a reasonable basis for concluding that the Contractor has (a) failed or is unwilling to repair, replace or correct the deficiencies within the Contract Time, or (b) failed or is unwilling to provide a reasonable and satisfactory corrective action plan, the County shall thereafter have the right to terminate this Contract for default. While sending a Notice of intent to terminate is a necessary condition for the County's right to terminate the Contract, in whole or in part, for a default, it is not a necessary condition as to the County's right to seek damages for Contractor's default or other breach of contract.

4. Upon termination, the County may at its option:

a. Take possession of the Site and possession of or use of all materials, temporary buildings, utilities, equipment, tools, and construction equipment and machinery owned by Contractor for the purpose of completing the work; and/or,

b. Finish the Work by whatever other reasonable method it deems expedient; or

c. Call upon the surety to perform its obligations under the performance and payment bonds.

5. If the County terminates the Contractor for default, the Contractor and its sureties shall be liable for all damages and costs that result or arise from Contractor's breach or default, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; (2) any other costs or damages incurred by the County in completing and/or correcting the Work; and (3) any other special, incidental or consequential damages incurred by the County.
6. In the event of termination for default the County shall pay the Contractor only for Work successfully completed and accepted by the County prior to the date of termination. The County shall not be responsible for any other Contractor costs, expenses, or damages including any consequential, special, or incidental damages or lost profits associated with this Contract. In no event shall the County reimburse the Contractor for any costs directly or indirectly related to the cause of the termination for default.
7. If, after termination for default, it is determined that the Contractor was not in default, the rights and obligations of the Parties will be the same as if the termination had been issued for the convenience of the County.
8. The rights and remedies of the County in this provision are in addition to any other rights and remedies provided by law or under this Contract.

B. Termination for Convenience

1. Upon written Notice the County may terminate the Work, or any part of it, without prejudice to any right or remedy of the County, for the convenience of the County.
2. If the County terminates the Work or any portion thereof for convenience, Contractor may make a request for a final payment which may include:
    a. An amount in accordance with the terms of this Contract for Work performed prior to the effective date of termination and not previously paid for by the County;
    b. Actually, incurred reasonable costs directly caused by the termination for convenience, such as, restocking fees, penalties for early termination of equipment leases, and 'termination of subcontracts', at commercially reasonable rates for such expenditures / a [rate not to exceed 5%] of what the Contractor has been actually paid prior to the date of termination.
3. The Contractor shall not be entitled to any other costs or damages, whatsoever. The total sum payable upon termination shall not exceed the Contract Price reduced by prior payments. Contractor shall be required to make its request for adjustment in accordance with Part 5, Changes to the Contract, and Part 6, Time and Price Adjustments.
4. If it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the County shall not reimburse Contractor any profit for the Work completed and shall reduce the Change Order issued upon termination to reflect the indicated loss.

C. Termination for Nonappropriation

1. The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County.
2. Whenever the contract is terminated in accordance with this section, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

D. Contractor's Obligations During Termination

1. Unless the County directs otherwise, after receipt of a written Notice of termination for default, convenience, or non-appropriation Contractor shall promptly:
   a. Stop performing Work on the date, and as specified, in the Notice of termination;
   b. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work not terminated;
   c. Cancel all orders and subcontracts, upon terms acceptable to the County, to the extent that they relate to the performance of Work terminated;
   d. Assign, as specifically requested by the County, all of the rights, title, and interest of Contractor in all orders and subcontracts;
   e. Take such action as may be necessary or as directed by the County to preserve and protect the Work, Site, and any other property related to this Project in the possession of Contractor in which the County has an interest;
   f. Continue performance of Work only to the extent not terminated; and
   g. Take any other steps required by the County with respect to this Project.

E. Contractor's Obligations for Default Without Termination

1. Even if the County does not terminate the Contractor for default, the Contractor and its sureties shall be liable for all damages and costs which result or arise from Contractor's default, including but not limited to: (1) compensation for architect and engineering services and expenses made necessary thereby; (2) any other costs or damages incurred by the County in completing and/or correcting the Work; and (3) any other special, incidental or consequential damages incurred by the County.

8.02 COUNTY'S RIGHT TO STOP THE WORK FOR CAUSE

A. If Contractor fails or refuses to perform its obligations in accordance with the Contract, the County may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.

B. Contractor shall not be entitled to any adjustment in the Contract Time and/or Contract Price for any increased cost or time of performance attributable to Contractor's failure or refusal to perform its obligations under the Contract.

PART 9 - CLAIMS AND LITIGATION

9.01 CONTRACTOR CLAIMS

A. Condition Precedent to Filing a Claim.

1. The following actions are a condition precedent to filing a Claim:

   a. A Request for Change Order is denied or deemed denied by the County; or

   b. A Unilateral Change Order is issued by the County.

2. If the Contractor disagrees with the denial or deemed denial of a Request for a Change Order or issuance of a Unilateral Change Order, the Contractor's sole remedy shall be to file a fully documented Claim in accordance with the provisions of this Part 9.

B. Timeframe for Filing a Claim.

1. Unless otherwise agreed to in writing by the Project Representative, a fully documented Claim shall be received by the Project Representative within thirty (30) Days after:

   a. Denial or deemed denial of a Request for Change Order; or

   b. Contractor's receipt of an executed unilateral Change Order.

2. At least seven (7) Days prior to the time to file a Claim, the Contractor may request an extension of time for filing its Claim. The Contractor shall state the reasons for the request. The Contractor shall provide a fully documented Claim pursuant to the extension specified by the Project Representative.

3. Failure to comply with the time requirements set for filing a Claim shall constitute acceptance by the Contractor, on behalf of itself and its Subcontractors and Suppliers, of the unilateral Change Order and/or the County's denial or deemed denial of a Request for Change Order. Such acceptance shall be considered complete, full, and final settlement of all costs, damages, and Claims related to or arising from the Request for Change Order and/or unilateral Change Order.

C. Contractor's Obligation to Continue to Work. Pending final decision on a Claim, the Contractor shall proceed diligently with the performance of the Work associated with the Claim and all other Contract Work and maintain the progress of the Work within the Contract Time.

D. Information required in a Fully Documented Claim. Every Claim must be submitted by the Contractor, in writing and clearly designated by the Contractor as a fully documented Claim. At a minimum, a fully documented Claim must contain the following information:

1. A detailed factual statement of the Claim providing the locations and activities or elements of Contract Work impacted by the claimed event or condition, explaining entitlement to a change in Contract Time or Price;

2. The date on which facts arose that gave rise to the Claim;

3. The name of each person employed or associated with the Contractor, Subcontractor, Supplier, and/or the County with knowledge about the event or condition which gave rise to the Claim;

4. Copies of all related documents and a written description of the substance of any oral communications that concern or relate to the Claim;
5. The specific provisions of the Contract Documents on which the Claim is based;
6. If an adjustment in the Contract Price is sought, the exact amount sought, calculated in accordance with the Contract and accompanied by (a) all records supporting the Claim including those records identified in provision, 3.12 Cost Records;
7. If an adjustment in the Contract Time is sought, it shall be based on the Project Schedule and updated Project Schedules as required by provision 4.04, Project Schedule and in accordance with provision 5.0, Change in the Contract Time; and shall include:
    a. the specific number of Days requested;
    b. the specific reason an adjustment in the Contract Time should be granted; and
    c. an analysis of the Project Schedule and all of its applicable updates as required by the Contract Documents, or if none is specified, an analysis of the Project Schedule and its updates, for the purpose of demonstrating the basis for the requested adjustment in Contract Time.
8. A statement certifying that:
    a. the Contractor has exercised reasonable diligence in investigating the Claim, and after its investigation, it has determined that the Claim is made in good faith;
    b. the supporting cost and pricing data are true and accurate;
    c. the Claim is fully supported by the accompanying data; and
    d. the amount requested accurately reflects the adjustment in the Contract Price or Contract Time to which the Contractor believes it is entitled; and
    e. that includes the following:

> *I declare under penalty of perjury, under the laws of the State of Washington that the following claim is true and correct,*
>
> _____
>
> *(Signature of Contractor's Representative)*
>
> *Dated:* _____ *at* _____*, Washington.*
>
> *(City)*

E. The Contractor shall not be allowed to change the alleged basis for a Claim or to increase the amount of money, time or other relief requested after the applicable time period for bringing a Claim, except if the change is based upon data or information that a reasonable and diligent investigation could not have uncovered prior to making the Claim.

F. Contractor's Duty to Cooperate. The Contractor shall cooperate with the County or its designee in the evaluation of its Claim and provide all information and documentation requested by the County or its designee.

G. The County's Evaluation of the Claim.

1. To assist the County in the review of the Contractor's Claim, the County or its designee may visit the Site, request additional information and/or documentation in order to fully evaluate the issues raised in the Claim and/or audit the Claim.
2. After the Contractor has submitted a fully documented Claim that complies with this provision, the County shall respond, in writing, to the Contractor within sixty (60) Days from the date the fully documented Claim is received with either:
    a. a decision regarding the Claim; or
    b. a Notice extending for another thirty (30) Days the County's time to respond to the Claim.
3. The Claim shall be deemed denied:
    a. absent a thirty (30) Day extension, upon the sixty-first (61st) Day following receipt of the Claim by the County.
    b. If the County has extended its response due date by fifteen (15), the Claim shall be deemed denied upon the seventy-sixth (76th) Day following receipt of the Claim by the County.
4. The County will identify the Appeal Officer for each Claim within fifteen (15) Days of the County's receipt of a Claim.
5. The County has the right to deny a Claim even if the reason for denying the Claim is different from the County's stated reason(s) for denying a Request for Change Order or from its stated reason, if any, for issuing a unilateral Change Order.

H. Appeal Process of a Denial or Deemed Denial of the Claim.

1. Contractor shall notify the County of its disagreement with the denial or deemed denial of the Contractor's Claim and file a fully documented Appeal to the Appeal Officer within twenty-one (21) Days after the deemed denial or receipt of the denial.
2. Failure to timely notify the County and file a fully documented Appeal constitutes acceptance of the denial or deemed denial of the Claim, and the Contractor waives any right to any adjustment in Contract Price and/or Contract Time with respect to the Claim.
3. A fully documented Appeal shall contain the following information:
    a. All documentation and information previously provided to the County in support of the Contractor's Claim including but not limited to the documentation identified in provision 8.0, Contractor Claims, paragraph D;
    b. A copy of the County's denial of the Claim;
    c. A detailed explanation why the Contractor believes the County's decision is incorrect and why the Claim should be granted; and
    d. Any technical data or additional documentation supporting the Contractor's position.

4. At the discretion of the Appeal Officer, the Appeal Officer may request additional information or a meeting with the Contractor.
5. After the Contractor has submitted a fully documented Appeal that complies with this provision, the Appeal Officer shall respond, in writing, to the Contractor within sixty (60) Days from the date the Appeal is received. Absent a written response by the Appeal Officer, the Appeal shall be deemed denied upon the sixty-first (61st) Day following receipt of the Appeal by the Appeal Officer.
6. Contractor shall notify the County of its disagreement with the denial or deemed denial of the Contractor's Appeal within twenty-one (21) Days after the deemed denial or receipt of the denial. Failure to notify the County constitutes acceptance of the denial or deemed denial and waiver of the Contractor's right to any adjustment in Contract Price and/or Contract Time with respect to the Appeal.

9.02 CONTRACTOR'S BURDEN OF PROOF ON CLAIM

A. The Contractor shall have the burden of proof to demonstrate entitlement and damages.

B. If the Contractor, on behalf of itself or its Subcontractors and Suppliers seeks an adjustment in the Contract Price or Contract Time not supported by Project cost records meeting the requirements of provision, 3.12 Cost Records, the Claim is waived.

C. Compliance with the record keeping requirements set forth in this Contract is a condition precedent to recovery of any costs, damages, or Claim related to or arising from performance of the Contract Work. If the County determines that the Contractor has failed materially to comply with the record-keeping requirement set forth in Part 3, Cost Records, no adjustment shall be made to the Contract Price and/or Contract Time with respect to that Claim.

D. No Claim submitted to Alternate Dispute Resolution (ADR) or pursued by the Contractor in litigation shall seek damages or a total number of days of delay greater than those set forth in the Contractor's Claim, except for accrual of any interest owing under applicable law. No Claim submitted to ADR or pursued by the Contractor in litigation shall seek specific days or dates of claimed delay different from those days or dates set forth in the Contractor's Claim.

9.03 LITIGATION

A. As mandatory conditions precedent to the initiation of litigation by the Contractor against the County, Contractor shall:

1. Comply with all Claim requirement provisions set forth in this Contract;
2. Complete all Work required for, and request the County issue a Notice of Substantial Completion of the Work and have received a Notice of achievement of Substantial Completion;
3. Request initiation of an Alternate Dispute Resolution (ADR) process agreeable to both Parties no later than ninety (90) Days after the Contractor submits its final Application for Payment, or, if the dispute arises out of an event that occurs after the final Application for Payment, within ninety (90) Days after such event; and

4. Participate in an effort to complete the ADR process within ninety (90) Days after Contractor requests initiation of the ADR process.

B. Any litigation brought against the County shall be filed and served on the County within 365 Days after Contractor submits its final Application for Payment, or if the dispute arises out of an event that occurs after the final Application for Payment, within 365 Days after such event. The requirement that the Parties participate in ADR does not waive the requirements of this subparagraph.

C. Failure to comply with these mandatory conditions precedent shall constitute a waiver of the Contractor's right to pursue judicial relief for any Claim arising from Work performed under this Contract.

PART 10 - MISCELLANEOUS

10.01 CONTRACTOR'S PERFORMANCE AND PAYMENT BOND

A. The Contractor shall execute and deliver to the County a Performance and Payment Bond, as required in Section 00 50 00, for 100% of the Contract Price, with an approved surety company and in compliance with Chapter 39.08 RCW.

B. Contractor shall notify surety of any changes in the work. The Contractor shall be responsible for additional bond security to protect the County and persons supplying labor or materials required by the Contract if the Contract Price increases beyond the bond amount.

10.02 INDEMNIFICATION/HOLD HARMLESS

A. The Contractor shall protect , defend, indemnify and hold harmless the County, its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever arising out of or in any way resulting from the Contractor's, its officers, employees, agents, or subcontractors of all tiers acts or omissions or performance or failure to perform this Contract to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.

B. The Contractor's obligations under this section shall include, but not be limited to:

1. The duty to promptly accept tender of defense and provide defense to the County at the Contractor's own expense.

2. The duty to defend and indemnify the County from any claims, demands, or suits brought by, or on behalf of, Contractor's employees and agents. To the extent necessary to carry out this obligation, Contractor hereby specifically waives its immunity under Washington's Industrial Insurance Act, RCW Title 51. The Parties acknowledge that this provision was mutually negotiated.

3. To the maximum extent permitted by law, the Contractor shall defend, indemnify and hold harmless the County from, and be liable for, all damages and injury, which shall be caused to owners of property on, or in the vicinity of, the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such injury or damage is caused by negligence of the Contractor or caused by the inherent nature of the work specified.

C. Pierce County may, in its sole discretion, withhold amounts sufficient to pay the amount of any claim for damages or injury arising out of the Contractor's performance of this Contract.

D. Any amount withheld from the Contractor may be held until the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment on such claim.

E. In the event the County incurs any costs, expenses, or fees including attorneys' fees, to enforce the provisions of this subsection, all such costs, expenses, and fees shall be recoverable from the Contractor.

10.03 COMPENSATION, WAGES, BENEFITS AND TAXES

A. The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes owed by the Contractor by reason of this Contract. The Contractor shall indemnify and hold the County, its officers, officials, agents, and employees harmless against all liability and costs resulting from the Contractor's failure to pay any compensation, wages, benefits or taxes.

10.04 ASSIGNMENTS

A. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to it hereunder, without the previous written consent of the County.

10.05 NONWAIVER OF BREACH

A. No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of or acquiescence in any breach hereunder, except as may be specifically stated by the County in writing.

10.06 NOTICE TO THE COUNTY OF LABOR DISPUTES

A. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract, Contractor shall immediately give Notice, including all relevant information, to the County.

B. Contractor agrees to insert a provision in its subcontracts and to require the insertion of the provision in subcontracts and supply contracts of all tiers, that in the event timely performance of any such contract is delayed or threatened by any actual or potential labor dispute, all Subcontractors or lower-tiered Subcontractors or suppliers shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

10.07 LIQUIDATED DAMAGES AGAINST CONTRACTOR

A. Timely performance and completion of the Work is essential to the County and the time limits stated in the Contract are of the essence. The County will incur serious and substantial damages if the time deadlines specified in the Contract are not met.

B. The liquidated damage amounts, if set forth elsewhere in the Contract Documents, may be assessed for Contractor's failure to achieve milestones, Substantial Completion and Completion/Final Acceptance or other deadlines within the Contract specified time frames. These Liquidated Damages are not a penalty but will be assessed against the Contractor for failure to achieve these Contract requirements. These Liquidated Damage amounts are fixed and agreed upon by and between the Contractor and the County because of the impracticability and difficulty of fixing and ascertaining the actual damages the County would sustain in such events. These amounts may be deducted from payments to the Contractor and retained by the County.

C. Assessment of Liquidated Damages shall not release the Contractor from its obligations and duties pursuant to the Contract Work.

D. If the Contractor is in default under Part 7, Termination, whether or not the County elects to terminate for cause, the County may impose actual damages for delay and all other losses, as allowed by law. The County will not be entitled to recover both actual damages and Liquidated Damages for the same delay.

10.08 HEADINGS

A. The headings used in the Contract are for convenience only and shall not be considered a part of or affect the construction or interpretation of any contractual provision therein.

10.09 CHOICE OF LAW

A. This Contract shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

10.10 SEVERABILITY

A. The provisions of this Contract shall be effective in all cases unless otherwise prohibited by Washington law or applicable federal law. The provisions of this Contract are separate and severable. The invalidity of any sentence, paragraph, provision, section, Part, or portion of this Contract shall not affect the validity of the remainder of this Contract.

10.11 NOTICE

A. Notices to Pierce County shall be directed to the Project Representative identified in Section 00 50 00, Agreement and to the Procurement Specialist identified in Section 00 10 00, Advertisement for Bid.

B. Notices to the Contractor shall be directed to the Contractor's Representative identified in Section 00 50 00, Agreement.

C. Either Party may change its address for receipt of Notices by sending a Notice to the other Party.

D. Notices directed pursuant to this provision shall be deemed received as follows:

1. If delivered by email, the Notice shall be effective as of the date and time received by the receiving Party.

2. If the Contract provides for an electronic document sharing system, Notice shall be deemed received upon the electronic date stamp provided by the Contract document sharing system.
3. If delivered using a method that collects a signature or stamp from the receiving party (such as hand delivery or registered mail), the Notice shall be deemed received on the date of the signature or stamp; or;
4. If delivered by first class U.S. Mail, the Notice shall be deemed received on the third day after sending (not counting days on which no mail is delivered).

END OF SECTION

1.01 CONTRACTOR'S INSURANCE

A. Within the time stated in the Intent to Award, the Contractor shall file with Pierce County Procurement and Contract Services, Certificates of Insurance and Endorsements acceptable to the County meeting the requirements of the Contract (specific insurance coverage limits are set forth below). Thereafter, renewal Certificates of Insurance and Endorsements shall only be filed upon request by Pierce County and within five (5) business days, unless otherwise specified. Coverage shall be maintained without interruption from the commencement of the Contractor's Work until Final Acceptance, or for such longer time as required by the Contract. Each policy obtained by Contractor shall be endorsed to provide County with 45 days notice of material changes to or cancellation of such policy.

B. If the scope of Work is significantly expanded, or if the aggregate limits on any of the Contractor's policies are eroded, the County may require Contractor to obtain additional coverage or reinstate eroded coverage. If the need for additional coverage is due to the fault of the Contractor or any of its Subcontractors, the Contractor shall be responsible for the cost of such additional coverage or any of its Subcontractors coverage. The Contractor shall provide proof of additional insurance required because of changed Work (Change Orders).

C. Review of Contractor's insurance by County shall not relieve or decrease the duty of the Contractor to comply with the requirements of the Contract Documents.

D. Nothing contained within these provisions shall affect and/or alter the application of any other provision within this agreement.

1.02 WAIVER OF SUBROGATION

A. The Contractor waives all rights against the County, County's consultants, or any separate contractors, and their agents and employees, for damages caused by fire or other perils to the extent such damage cost is actually paid by property insurance applicable to the Work. The Contractor shall require similar waivers from all Subcontractors. This provision shall be valid and enforceable only to the extent permissible by the applicable property insurance policies.

1.03 EVIDENCE OF INSURANCE.

A. The Contractor shall furnish the County with Certificates of Insurance and endorsements required by this Contract in one (1) compiled PDF. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date of the policy. The Contractor shall, upon request of Pierce County, make available to Pierce County, in Pierce County, certified copies of all such policies of insurance required in this Contract. Failure to provide such policies of insurance within a time acceptable to Pierce County shall entitle Pierce County to suspend or terminate the Contractor's work hereunder. Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligation hereunder.

B. All subcontractors shall be required to include the County and Contractor as additional insureds on all Liability policies except Workers' Compensation and Professional Liability Errors and Omissions.

1.04 MINIMUM SCOPE AND LIMITS OF INSURANCE.

A. The Contractor shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, Pierce County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor, or that of any subcontractor, under this Contract. The Contractor and its subcontractor(s) shall assess their own risks and if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage. Any provision in any Contractor, or subcontractor, insurance policy that restricts scope of coverage or available limits of liability to those specified in a written agreement or contract shall not apply.

B. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Contract. All insurance written on a "claims made" form must have its retroactive date be no later than the effective date of the Contract or when the Work begins. Insurance coverage shall be at least as broad as stated below and with limits no less than:

1. General Liability. $2,000,000.00 combined single limit per occurrence, and for those policies with aggregate limits, a $4,000,000.00 aggregate limit. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01, or its substantive equivalent, covering COMMERCIAL GENERAL LIABILITY. Such insurance shall include coverage for, but not limited to, premises liability, ongoing operations, contractual liability, products and completed operations. Such limits may be satisfied with the use of an umbrella or excess liability policy, which is at least as broad as the underlying policy.

   a. A per project aggregate must apply to the General Liability Policy.

2. Automobile Liability. $1,000,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. Such limits may be satisfied with the use of an umbrella or excess liability policy, which is at least as broad as the underlying policy. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

3. Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

4. Employer's Liability or "Stop Gap". Coverage in the amount of $1,000,000 each occurrence and shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.
5. Builder's Risk/Installation Floater. The Contractor shall procure and maintain during the life of the Contract, or until acceptance of the project by Pierce County, whichever is longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of Pierce County, Contractor and subcontractors of all tiers with Pierce County and sub-contractors listed as a Named Insured. In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the Contract and acceptance of the project by Pierce County, the Contractor shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Contractor or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.
6. Contractor's Pollution Liability. Contractor shall provide Contractor's Pollution Liability coverage in the amount of $1,000,000.00 per occurrence or claim and in the annual aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, cleanup costs and the loss of use of tangible property that has not been physically injured or destroyed. If Asbestos, Lead or PCB's are a potential exposure, such insurance shall not exclude pollution arising out of Asbestos, Lead and/or PCB operations. Evidence of Insurance must specifically state that coverage is included.

1.05 DEDUCTIBLES/SELF-INSURED RETENTIONS.

A. Any deductibles and/or self-insured retentions of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor or its subcontractor(s).

1.06 OTHER INSURANCE PROVISIONS.

A. The insurance policies required in this Contract are to contain and be endorsed to contain the following provisions:
   1. With respect to all Liability Policies except Professional Liability and Workers Compensation:

a. The County, its officers, officials, employees, agents, and representatives are to be covered as additional insureds, for full policy limits, as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Additional Insured status shall include Products-Completed Operations-CG 20 10 11/85 or its substantive equivalent.

b. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents, and representatives. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, agents and representatives shall not contribute with the Contractor's insurance or benefit the Contractor in any way.

c. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

d. Contractor's Protection and Indemnity (to include Jones Act), Marine Employer's Liability, and Marine Pollution Liability Insurance shall waive all rights of subrogation against the County.

1.07 ACCEPTABILITY OF INSURERS.

A. Unless otherwise approved by the County:

1. Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

2. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Best's rating of B+; VII.

B. If at any time the foregoing required policies shall fail to meet the above minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

1.08 SUBCONTRACTORS.

A. The Contractor shall include all subcontractors as insured under its policies, or, alternatively, the Contractor must require each of its subcontractors to procure and maintain appropriate and reasonable insurance coverage and minimum insurance limits to cover each of the subcontractor's liabilities given the scope of work and the services being provided herein. All liability insurance policies (except Professional Liability and Workers' Compensation) provided by the subcontractor(s) must include the County, its officers, officials, agents and employees as additional insured, for full policy limits. Contractor is obligated to require and verify that all subcontractors maintain insurance and ensure that the County is included as additional insured. Upon request, and within five (5) business days, Contractor must provide evidence of subcontractor insurance coverage (including endorsements) to the County.

1.09 JOB SITE SAFETY.

A. The Contractor shall have the "**right to control**" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable federal, state, and local safety regulations governing the job site, employees and subcontractors. The Contractor shall be responsible for subcontractor's compliance with these provisions.

END OF SECTION

PART 1 – APPRENTICESHIP UTILIZATION REQUIREMENTS

1.01 PROGRAM REQUIREMENTS

A. **In accordance with RCW 39.04.320, for all public works estimated to cost two million dollars or more, Pierce County requires no less than 15% of the labor hours be performed by apprentices**, unless otherwise stated in the bid advertisement. A contractor or subcontractor may not be required to exceed the 15% requirement. The project's apprenticeship utilization rate is calculated using the approved affidavits from the L&I portal.

B. **Incentives** - The Contractor who meets or exceeds this utilization requirement on eligible contracts, will be awarded a monetary incentive described in the Apprentice Utilization Requirements as listed below in Minimum Levels of Apprenticeship Participation.

C. **Penalties** - The Contractor who fails to meet the utilization requirement and fails to demonstrate a Good Faith Effort, as outlined below, is subject to penalties described below in Minimum Levels of Apprenticeship Participation.

D. **Cost Value** - The expected cost value associated with meeting the goal is included in the Base Bid as listed below in Section Minimum Levels of Apprenticeship Participation.

E. **Utilization Plan** - The Contractor shall provide an Apprentice Utilization Plan (Plan) demonstrating how and when they intend to achieve the Apprenticeship Utilization Requirement. The Plan shall have enough information to track the Contractor's progress in meeting the utilization requirement. The Contractor shall submit the Plan on the Apprentice Utilization Plan template (on the Pierce County Procurement and Contract Services FORMS website) within 15 business days following notice of award and prior to the County issuing Notice to Proceed, to the Pierce County Compliance Team at PCCompliance@piercecountywa.gov. The Contractor shall provide an updated Plan during the course of construction when there are significant changes to the Plan which may affect their ability to meet the requirement.

   1. 15% utilization shall be calculated based on **final contract labor hours**. Change orders (CO) will likely require an updated Plan.
   2. Pierce County reserves the right to request revisions to the Contractor's Plan and to withhold final approval of the plan until such time as the information contained in the plan meets the requirements of this section.
   3. It is expected that the Contractor will actively seek out opportunities to meet the Apprentice Utilization Requirement during construction even if the Plan indicates a shortfall in meeting the requirement.
   4. If the Plan indicates that the Contractor will not attain the Apprentice Utilization Requirement, then Contractor must submit "Good Faith Effort" (GFE) documentation with their Plan to Pierce County's Compliance team at PCCompliance@piercecountywa.gov.

F. **Good Faith Effort (GFE)**

1. No changes to the required percentage (%) of apprentice participation shall be allowed without written approval by the County. In any request for change, the Contractor shall clearly demonstrate a good faith effort to comply with the requirements for apprenticeship participation.
2. Good Faith Effort (GFE) documentation shall describe in detail why the Contractor is not or was not able to attain the Apprentice Utilization Requirement.
    a. Acceptable reasons for requesting a GFE, may include, but is not limited to:
        1) Demonstrated Lack of Availability of Apprentices. Correspondence from State-approved Apprenticeship Training Program(s), with project specific responses confirming there is a lack of availability of Apprentices for this project.
        2) Demonstrated Disproportionate Ratio of Material/Equipment/Products to Labor Hours. Documentation explaining the bid includes a disproportionate high cost of material/equipment/products to Labor Hours. (i.e., a $2MM estimated contract includes $1MM or more in procurement costs of equipment to be installed).
        3) Demonstrated Lack of Necessary Labor Hours. Correspondence from a State-approved Apprentice Training Programs confirming there is not enough time in the project to meet required journey level to apprentice training ratios.
        4) Demonstrated Lack of Available Approved Programs. Correspondence from State-approved Apprentice Training Programs, confirming there are no programs that train for the scopes included/anticipated on the project. Contractor and state programs to submit training program detail needs and details that could be used for future program creation.
        5) Funding Precedent. Documentation that shows conflicting, more restrictive, or precedent requirements for other training on the Project. Examples include, but are not limited to, Tribal Employment Rights (TERO), Federal Training Hours, or Special Training that affect the ability to use state-registered apprentices.
        6) Warranty Work. Documentation from Original Equipment Manufacturers, or similar, confirming that work performed must only be completed by certified journey-level installers or risk voiding warranty, or similar.
        7) Classroom Training: Apprentices must complete a certain amount of classroom training each year. Depending on the program, training could last up to two months. The training could be one continuous period or spread out. If an apprentice must leave the project to attend classroom training, the Owner may consider a reduction in apprentice utilization hours. The contractor must document the number of hours missed by the apprentice due to classroom training. (This is not the number of classroom training hours, but the number of hours they would have been on the job had they not been in classroom training). Documentation by the instructor or program administrator and its classroom duration/timing is also required.

8) Other Effort. The Contractor may submit other evidence, documentation, or rationale for not being able to achieve the required Apprentice Utilization that are not covered in the other efforts named. Other efforts will still need to be corroborated by an independent, knowledgeable third-party.

b. Contractors may submit GFE documentation at any time during the construction project to PCCompliance@piercecountywa.gov.

c. All GFE documentation must be submitted no later than 30 days before substantial completion.

3. Good Faith Effort (GFE) documentation must be in signed letter format and include:

a. The contract number, title, and the apprentice utilization requirements.

b. The amount of apprentice labor hours the contract can or did attain along with the percentage of labor hours.

c. Contractors may receive a GFE credit for graduated Apprentice hours through the end of the calendar year for all projects worked on as long as the Apprentice remains continuously employed with the same Contractor they were working for when they graduated. If an Apprentice graduates during employment on a project of significant duration, they may be counted towards a GFE credit for up to one year after their graduation or until the end of the project (whichever comes first). Determination of whether or not Contract requirements were met in good faith will be made by subtracting the hours from the journeyman total reported hours for the project and adding them to the apprentice hour total. If the new utilization percentage meets the Contract requirement, the Contractor will be reported as meeting the requirement in good faith.

d. Anticipated or actual shortfall (in apprentice labor hours and percentage) and the reason(s) for not attaining the required apprentice labor hours.

e. Information from one or more of the following areas:

1) Names of any State-Approved Apprentice Training Programs contacted with the name(s) of person(s) contacted and dates of contacts, and a copy of each response from the Training Program(s).

2) Reference Contract Specifications or documents that affected the Contractor’s ability to attain apprentice utilization.

3) Discuss efforts the Contractor has taken to require Subcontractors to solicit and employ apprentices.

f. Backup documentation to the letter consisting of the following:

1) Letters, emails, phone logs including names, dates and outcomes, posters, photos, payrolls, timecards, schedules, copies or references to other contract specifications or documents.

4. Approving Good Faith Efforts

a. The County will review submitted Good Faith Efforts and issue a determination. The County may request additional information, documentation, evidence or similar in order to approve such efforts. A determination by the County is final. If a GFE is approved by the County it will be loaded into L&I's PWIA system by the County.

G. **Additional Resource Information**

1. For questions regarding how to complete the Apprentice Utilization Plan template or Good Faith Effort documentation, please contact the Procurement Specialist listed in the Bid Advertisement.
2. Step-by-step instructions on how to access and navigate the L&I's PWIA system, including uploading required documents can be found on the L&I website.
3. Additional information about apprentice utilization on Public Works Project can be found on the L&I website

1.02 PIERCE COUNTY COMPLIANCE

A. The Contractor shall submit certified payroll, at least once monthly, to L&I through the online prevailing wage intent and affidavit "Portal" system. The Contractor shall require subcontractors of all tiers to submit certified payroll, at least once monthly, to L&I through the online prevailing wage intent and affidavit "Portal" system. Failure to submit payroll may result in withholding of payment as required to ensure compliance with apprenticeship utilization requirements.

1.03 INCENTIVES

A. Contractors who meet or exceed minimum participation requirement are eligible for a monetary incentive of $1,000 and will be paid to the contractor meeting the apprentice utilization requirement.

Final Contract Amount	Incentive Amount
$2,000,000 - 4,999,999	$2,000
$5,000,000 - 9,999,999	$5,000
$10,000,000 - above	$10,000

B. Incentives will be added onto the Contract Final Payment if all affidavits have been filed prior to payment being made. If not all tiers have submitted affidavits to verify participation, the County will send a separate payment once all affidavits have been submitted and participation is verified.

1.04 PENALTIES

A. A monetary penalty will be applied to the Contactor failing to meet the utilization requirement and failing to demonstrate a Good Faith Effort. The penalty will be applied as shown below (as based on final L&I affidavit calculations):.

Final Contract Amount	Penalty Amount, Less than 100% to 75%	Penalty Amount, Less than 75%
$2,000,000 - 2,999,999	$500	$1,000
$3,000,000 - 3,999,999	$1,000	$2,000

Final Contract Amount	Penalty Amount, Less than 100% to 75%	Penalty Amount, Less than 75%
$4,000,000 - 4,999,999	$1,500	$3,000
$5,000,000 - 5,999,999	$2,000	$4,000
$6,000,000 - 6,999,999	$2,500	$5,000
$7,000,000 - 7,999,999	$3,000	$6,000
$8,000,000 - 8,999,999	$3,500	$7,000
$9,000,000 - 9,999,999	$4,000	$8,000
$10,000,000 - 10,999,999	$4,500	$9,000
$11,000,000 - 11,999,999	$5,000	$10,000
ETC	ETC	ETC

B. Contractor will receive an invoice payable to the Owner within 30 days. The Contractor will have 30 days to pay the penalty invoice at the time of receipt before the penalty is considered outstanding. Contractors with outstanding apprenticeship penalties may be considered non-responsive.

END OF SECTION

PART 1 - GENERAL

1.01 PREVAILING AND OTHER REQUIRED WAGES

A. The Contractor shall pay (and shall ensure that all Subcontractors of all tiers pay) all prevailing wages and other wages (such as Davis-Bacon Act wages) applicable to the Work.

B. Pursuant to RCW 39.12, “Prevailing Wages on Public Works,” no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the “prevailing rate of wage” in effect as of the date that bids are due.

C. The State of Washington prevailing wage rates applicable for this public works project, which is located in Pierce County, may be found at the following website address of the Department of Labor and Industries: https://secure.lni.wa.gov/wagelookup/

D. The schedule of the prevailing wage rates is made a part of the Contract Documents by reference as though fully set forth herein; and a copy of the applicable prevailing wage rates are also available for viewing at the County’s Procurement and Contract Services (PCS) office, 1501 Market Street, Suite 420, Tacoma, WA 98402. Upon request to PCS Compliance PCCompliance@piercecountywa.gov, the County will email a copy of the applicable Journey Level prevailing wages for this project.

E. Questions relating to prevailing wage data should be addressed to the Industrial Statistician.

1. Email: PW1@Lni.wa.gov
2. Toll-Free: 1-855-545-8163
3. Fax: 360-902-5300
4. Mailing Address: Washington State Department of Labor & Industries Prevailing Wage Section: PO Box 44540 Olympia, WA 98504-4540

F. Upon execution of this contract, the County Compliance team will set up a project in the LNI Portal for this work. The Contractor and each Subcontractor of any tier shall utilize the project set up by the County to file all intents, certified payroll and affidavits.

1. The County Contact for the Project will be **Aaron Bible, Contract Specialist**. All questions regarding LNI compliance for this project shall be sent to PCCompliance@piercecountywa.gov or submitted in the Portal under this project.

G. Prior to any payment being made by the County under this Contract, the Contractor, and each Subcontractor of any tier, shall file a Statement of Intent to Pay Prevailing Wages under oath certified by the Director of Labor and Industries. The statement shall include the hourly wage rate to be paid to each classification of workers entitled to prevailing wages, which shall not be less than the prevailing rate of wage, and the estimated number of workers in each classification employed on the Project by the Contractor or a Subcontractor of any tier, as well as the Contractor’s contractor registration number and other information required by the Director of Labor and Industries. The statement, and any supplemental statements, shall be filed in accordance with the requirements of the Department of Labor and Industries. No progress payment shall be made until the County receives such certified statement.

1. For multi-year agreements, the awarded contractor shall file a new Intent to Pay Prevailing Wages with Washington State Department of Labor and Industries on the anniversary date of the bid due date on a yearly basis. An affidavit for the prior year needs to be filed upon completion of all work orders for the prior years' Intent. Pierce County contract staff will create the initial contract entry in the L&I reporting system at the time of Notice to Award.

H. No payment request will be approved until an approved copy of the Statement of Intent to Pay Prevailing Wages has been received by Contract Compliance for the contractor and each subcontractor performing work under the contract.

1. All progress payment requests (whether prepared by the contractor or project manager) must be accompanied by a statement from the contractor certifying that the prevailing wages for all work have been paid in accordance with the approved Statement(s) of Intent To Pay Prevailing Wages on file with the public agency (RCW 39.12.040).

I. The Contractor shall post in a location readily visible to workers at the Project site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed.

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

K. Contractors are required to keep accurate payroll records for all work on a public works project for 6 years from the date of acceptance of the project. Contractors and each Subcontractor of any tier must file certified payroll report records with LNI. To be certified, the payroll records must include the affirmation page.

L. The Contractor and each Subcontractor of any tier must file an "Affidavit of Wages Paid" at the completion of work done on the project. The County cannot submit the Notice of Completion to LNI until all Affidavits are filed and approved in the project Portal.

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

PART 2 - PRODUCTS - NOT USED

PART 3 - EXECUTION - NOT USED

END OF SECTION