

**ADDENDUM 2
TO THE CONTRACT PROVISIONS AND CONTRACT PLANS**

FOR

**CITY OF EDGEWOOD
COMMUNITY PARK**



ISSUED THIS DATE: TUESDAY, AUGUST 4, 2020

**BID OPENING: 11:00 A.M. (LOCAL TIME) ON
FRIDAY, AUGUST 14, 2020
CITY OF EDGEWOOD
2224 104TH AVENUE EAST
EDGEWOOD, WASHINGTON 98372**

Bidder shall acknowledge receipt of this Addendum on Page P-7 of the Proposal.

TO PROSPECTIVE BIDDERS:

The attention of all prospective bidders on the above project is directed to the following additions and modifications to the Contract Provisions and Contract Plans.

I. ADDITIONS, MODIFICATIONS, AND/OR DELETIONS TO THE PROPOSAL

ITEM 1:

Page P-4, Proposal

DELETE the ADDITIVE ITEM 1 schedule in its entirety.

ITEM 2:

Page P-5, Proposal, Bid Summary

DELETE "3. TOTAL CONSTRUCTION COST (ADDITIVE 1 forwarded from page P-4):" in its entirety.

II. ADDITIONS, MODIFICATIONS, AND/OR DELETIONS TO THE AGREEMENT AND BONDS

ITEM 1:

REPLACE all pages of the Agreement with the attached including pages A-1 through A-3.

ITEM 2:

ADD Certification of Compliance with Wage Payment Statutes. See attached.

ITEM 3:

ADD Affidavit of Title VI Compliance. See attached.

III. ADDITIONS, MODIFICATIONS, AND/OR DELETIONS TO THE TECHNICAL SPECIFICATIONS

ITEM 1:

Page 1 of 2, Technical Specifications Schedule B, MERIDIAN SEWER EXTENSION (SCHEDULE B)

ADD the following at the top of this page:

“These conditions and provisions apply to both Schedules A and B.”

ITEM 2:

Page 2 of 3, Technical Specifications Section 323300 Site Furnishings

DELETE the following:

G. Drinking Fountain

ITEM 3:

Page 1 of 9, Technical Specifications Section 133400 Pre-fabricated Engineered Structures

MODIFY the following:

1.1.A. This specification covers the construction and placing of the Denali flush precast concrete flush toilet building as produced by CXT Incorporated.

TO:

1.1.A. This specification covers the construction and placing of the Cortez precast concrete flush toilet building as produced by CXT Incorporated.

1.5.F.2 Revise 7/12 roof pitch to 3/12 roof pitch.

2.1.B Restroom shall include:

1. Wall Options (Board and Batten – upper wall portion only)
2. Two-Tone Color Scheme
3. Stainless Steel Fixtures
4. Electric Hand Dryers
5. Eemax 4 Gallon Water Heater
6. Exterior Mounted ADA Drinking Fountain
7. Haws SK1 Drinking Ftn. Cane Skirt
8. Exterior Frostproof Hose Bib with Box
9. Paper Towel Dispenser – Quantity: 2 (two)
10. Toilet Seat Cover Dispenser – Quantity: 4 (four)
11. Sanitary Napkin Disposal – Quantity: 2 (two)
12. CXT Wastebasket – Quantity: 2 (two)
13. Optional Additional 2 Stall Restroom Section

2.2.F Exterior Veneer

1. Manufacturer: Corondao Stone Products, 209-334-1380
2. Product: River rock manufactured stone veneer
3. Color: To be selected from manufacturer standard colors.

IV. ADDITIONS, MODIFICATIONS, AND/OR DELETIONS TO THE APPENDICES

ITEM 1:

APPENDIX C, PERMITS

ADD the following at the end of this appendix:

“The City of Edgewood has obtained a Department of Ecology Construction Stormwater General Permit for this project. The Contractor shall adhere to the requirements and conditions of the permit. A Transfer of Coverage form shall be completed by the Contractor and submitted to the Department of Ecology to transfer coverage to the Contractor. Once Physical Completion has been given, the Contractor shall prepare a Notice of Termination (Ecology form ECY 020-87) and submit electronically to the City a minimum of 7 calendar days prior to submitting to Ecology.”

PUBLIC WORKS CONTRACT

1. **Contract and Parties.** This Public Works Contract (“Contract”) is between the CITY OF EDGEWOOD, Pierce County, Washington (“City”), a Washington municipal corporation and _____ (“Contractor”), a corporation organized under the laws of the State of Washington. The City and Contractor are each a “Party” and together the “Parties” to the Contract. The Parties agree as follows.

2. **Project.** The Parties enter into this Contract for purposes of Contractor providing the City with equipment, materials and performing work for the City (“the Project”), generally described as:

EDGEWOOD COMMUNITY PARK, to include furnishing all labor, materials and equipment necessary for the construction of Edgewood Community Park at 10301 36th Street East including but not limited to, clearing, grading, picnic shelter, restroom building, play area, parking lot, storm drainage, sanitary sewer, illumination, irrigation, landscaping and wetland enhancement, as further described in the Bid Documents.

3. **Effective date.** This Contract becomes effective and binding upon the Parties, including each Party’s heirs, successors, and assigns, immediately upon execution of this contract by both parties.

4. **Notices to Parties.** Contractor agrees to accept notices under this Contract via email. It is the responsibility of Contractor to notify the City in writing if any of the contact information appearing below should change. Any notices required under this Contract shall be in writing and delivered to the following addresses. If notice by email, a hard copy shall be delivered or mailed the same date as email.

CITY:

CITY OF EDGEWOOD
2224 104th Ave E
Edgewood, WA 98372-1513
Contact: Jeremy Metzler
Phone: (253) 952-3299 x114
Email: jeremy@cityofedgewood.org

CONTRACTOR:

Address: _____

Contact: _____
Phone: _____
Email: _____
Tax ID #: _____

5. **Notice to Proceed / Completion Time.** Contractor will commence the work set forth herein immediately after receiving written notice from the City to proceed, and further agrees to carry on such work regularly and uninterruptedly thereafter with such force as to secure its completion within 150 working days, after such notice to begin work. The time of beginning, rate of progress and time of completion are essential conditions of this Contract.

6. **Obligations of Contractor.** The following terms and conditions apply to this Contract:

A. *In general.*

- (1) Responsible for all labor and work. Contractor shall be solely responsible for furnishing all labor and performance of all work necessary to complete the Project as required.
- (2) Responsible for furnishing all materials and equipment. Contractor shall furnish all materials and equipment necessary to complete the Project, except for any materials expressly agreed in writing to be provided by the City.
- (3) Documents incorporated by reference. All terms and specifications contained in any Request for Bids that was issued by the City as part of determining the awarding of this Contract are hereby incorporated by reference and must be complied with by Contractor, unless one or more of such terms and specifications are expressly amended or waived in writing by the City. The Contractor agrees to perform all work in accordance with this Contract and the following documents, incorporated herein:
 - This Contract
 - Scope of Work
 - Plans and Contract Drawings
 - Special Provisions
 - General Provisions
 - Bid Documents
 - Contractor's Proposal
 - Addenda (if any)
 - Performance and Bid Bond
 - All provisions required by law to be inserted into this Contract, whether actually attached hereto or not

In the event of a conflict between the provisions of any of the contract documents listed above, the provisions of the document first listed shall prevail.

- (4) Laws and regulations to be followed. Contractor, its employees, agents, and subcontractors, shall at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.

- (5) Work Hours. Contractor shall not work on weekends. On Mondays through Fridays, Contractor shall not start work before 7:00 AM, and shall not work after 6:00 PM.
- (6) Conditions of Work. By submitting a bid, Contractor represents and warrants to the City that Contractor has fully informed itself of all conditions relating to the work involved for completing the Project. In prosecuting the work, Contractor shall employ such methods or means as will not interfere with or interrupt the work of the City or its agents, employees or contractors.
- (7) Contractor's Responsibility. Contractor will prosecute the work in accordance with instructions, descriptions and/or plans and specifications provided by the City. Contractor shall carry on the work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the work and/or materials so injured, damaged or destroyed, at his/her own expense and to the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by Contractor, Contractor shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by Contractor. Contractor shall procure all permits (unless permits are secured or waived by the City) and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor shall be responsible for preparing working drawings, if applicable, and shall submit them to the City for approval prior to commencement of work. For purposes of this Contract, working drawings shall mean, shop drawings, shop plans, erection plans, false-work plans, framework plans, cofferdam, cribbing and shoring plans, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which Contractor will rely on for purposes of conducting the work for the Project.
- (8) Contractor Clean-Up. Prior to physical completion, all debris resulting from Contractor's work, delivery or installation of equipment shall be disposed of entirely by Contractor in an efficient and expeditious manner as required and directed by the City.
- (9) Safety. Contractor and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of the work. Contractor agrees to furnish Material Safety Data Sheets (Form OSHA-20) applicable for hazardous or potentially hazardous products. Contractor agrees to comply with the conditions of the Washington Industrial Safety and Health Act of 1970, and standards and regulations issued thereunder, and certify that all items furnished and purchased will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless the City from damages assessed against the City because of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

B. Work Performance.

- (10) Prevailing wages. Contractor shall pay the then current prevailing wages, as that term is defined under the laws of the State of Washington, for all work performed on this Project by Contractor and by Contractor's employees, agents and subcontractors. Contractor is fully responsible for prevailing wage compliance. Upon execution of this Contract, Contractor, and any subcontractors, shall file a "Statement of Intent to Pay Prevailing Wages" with L&I and file a copy of the Statement of Intent to Pay Prevailing Wages with the City. The City shall not make any payments or reimbursements under the Agreement prior to receipt of all required Intent to Pay Prevailing Wages forms.

For reference only, and without relieving any Contractor responsibility, the City notes the State of Washington prevailing wage rates for public works projects located in Pierce County may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Upon request, the City will mail a hard copy of the applicable prevailing wages for this Project. Contractor is advised that this is a multi-year contract and that prevailing wage rates are updated annually.

- (11) Notice to City. Minimum two (2) working days' prior notice shall be given to the City's Department of Public Works prior to commencement of work under this Contract.
- (12) Approved Plans & Specifications to be followed. All work is to be performed to the City's satisfaction and in compliance with the Contract Documents listed in section 6.A(3) above, unless such requirements or specifications are expressly amended in writing by the City.
- (13) Schedule of Work to be followed. All Work shall be performed by the date for completion provided in this Contract. Contractor shall diligently proceed with the work and shall assure that it, and its subcontractors, have adequate staffing at all times in order for Contractor to comply with any Schedule of Work agreed to by the Parties, and shall make all reasonable efforts to complete the work in a timely manner.
- (14) Duty to Correct. Contractor shall promptly correct work rejected by the City as failing to conform to the requirements of the Contract. The Contractor shall bear the cost of correcting such rejected work. If the Contractor fails to correct nonconforming work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.
- (15) Project Administration. The Public Works Director, or his or her designee, shall administer this Contract and shall have all authority provided for the City under this Contract including all project approvals, including change orders. All work performed under this Contract will be monitored and inspected by the Public Works Director or his or her designee, and accepted by same.

c. Non-Discrimination.

- (16) Contractor, Contractor's officers and employees, and its subcontractors and agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.
- (17) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by the City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

7. Compensation and Payment

- A. The City shall pay the Contractor for the work performed under this contract as follows (select one):
- Time and materials; not to exceed _____ plus all applicable taxes.
 - Lump sum price set forth on the Contractor's proposal; not to exceed _____ plus all applicable taxes.
 - Unit prices set forth in the Contractor's proposal; not to exceed _____ plus all applicable taxes.
- B. Contractor shall request approval and acceptance of each category of work from the City. Contractor may not bill for the completed work until the City has accepted the completed work.
- C. All invoices shall be submitted for work after it has been performed, and paid by City warrant within thirty (30) days of receipt of a proper invoice, except those required to be withheld by law or agreed to in special contract provisions.
- D. Failure to perform any of the obligations under the Contract by Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed.
- E. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

- 8. Performance Bond.** If applicable, the Contractor shall provide a performance and payment bond to the City prior to commencement of work for 100% of the bid amount guaranteeing the full and faithful performance by Contractor of the terms and conditions of this Contract

and the payment of all labor, mechanics, subcontractors, and materialmen and all persons who supply them with provisions and supplies for carrying out the work under this contract. This bond shall be in force until completion of the contract and also upon such period thereafter during which the law allows liens to be filed and sued upon. This performance bond shall be furnished by a corporate surety company authorized to do business in the State of Washington, in a company acceptable to the City and on the form attached hereto.

Initial: _____(Contractor)

- 9. Retainage.** Pursuant to Chapter 60.28 RCW, a sum of five percent (5%) of the monies earned by Contractor will be retained from each invoice. Such retainage shall be used as a trust fund for the protection and payment: (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the Contract. No final payment or release of any retainage will be made until Contractor and each subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7 or other approved form) that has been certified by the industrial statistician of the Department of Labor and Industries. In addition, the retainage will not be released until the City has received certification that the Department of Revenue has received due payment of applicable taxes. Once the City has received certification from appropriate departments of the state of Washington, 45 days has passed from the date of acceptance of the Project and the City has not received any claims against the Project, then the City will release the retainage.
- 10. Changes.** After execution of the Contract, changes in the scope of the Work set forth in the Work Order may be accomplished by change order. Change orders shall be in writing signed by the Parties.
- 11. Term and Termination of Contract.** This Agreement shall be in full force and effect for a period commencing upon execution and ending _____ unless extended or sooner terminated under the provisions of this Contract. Time is of the essence of this Contract in each and all of its provisions in which performance is required. Further, this Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, Contractor shall not be entitled to receive any further payments under the Contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to Contractor. Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Contract.

12. Responsibility Criteria and Verification by Contractor. Pursuant to Chapter 39.04 RCW, the following requirements are part of this Contract:

A. Responsibility Criteria.

(1) Eligibility to be awarded contract. Contractor hereby certifies that Contractor meets the following responsibility criteria:

- a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
- b. Contractor has a current state unified business identifier number;
- c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
- d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
- e. Contractor is a licensed Electrical Contractor with the State of Washington Department of Labor and Industries; and
- f. Contractor has been in business performing electrical work for at least two years at the time of bid submittal.

B. *Requirement to verify subcontractors.* Contractor verifies the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors and that each subcontractor verify the responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every subcontract of every tier.

13. Insurance.

A. Insurance Term

The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation

The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations for a period of three years following substantial completion of the work for the benefit of the City, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until the City has granted substantial completion of the project. An installation floater may be acceptable in lieu of Builders Risk for renovation projects only if approved in writing by the City.

D. Minimum Amounts of Insurance

The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

E. City Full Availability of Contractor Limits

If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

F. Other Insurance Provision

The Contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

G. Contractor's Insurance for Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers, contractors or subcontractors as well as to any temporary structures, scaffolding and protective fences.

H. Waiver of Subrogation

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

I. Acceptability of Insurers

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

J. Verification of Coverage

The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile

Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.

K. Subcontractors

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

L. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

M. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

14. Claims for damages.

- A. Excluded situations. The City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.
- B. Liability limited to direct costs. Contractor agrees that the City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of applicable standard specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined in the force account provisions of applicable standard specifications.
- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and the City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily

thereto.

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

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

It is further agreed that claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the claimant or defend the claim. The City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City.

It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

15. Assigning or Subcontracting. Contractor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Contract without the express prior written consent of the City.

16. Independent Contractor. Contractor is and shall be at all times during the term of this Contract an independent contractor. Any and all employees of the Contractor, while engaged in the performance of any work or services required by the Contractor under this Contract, shall be considered employees of the Contractor only and not of the City. The Contractor will solely be responsible for its acts and for the acts of its agents, employees, subcontractors, or representatives during the performance of this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Contractor or any employee of the Contractor.

17. Disputes. Any action for claims arising out of or relating to this Contract shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

18. Attorney's Fees. In any suit or action instituted to enforce any right granted in this Contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and

reasonable attorney's fees from the other party.

19. Extent of Contract/Modification. This Contract, together with attachments or addenda, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended, modified or added to only by written instrument properly signed by both parties. Should any language in any of the Exhibits or Contract Documents conflict with language contained in this Contract, the provisions of this Contract shall prevail.

20. Use and Ownership of Logos and Documents. The Contractor will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent. On payment to the Contractor by the City of all compensation due under this Contract, all finished or unfinished documents and material prepared by the Contractor with funds paid by the City under this Contract shall become the property of the City and shall be forwarded to the City upon its request. Any records, reports, information, data or other documents or materials given to or prepared or assembled by the Contractor under this Contract will be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the City or by court order.

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

22. Severability. Any provision or part of the Contract held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City and the Contractor, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as reasonably possible to expressing the intention of the stricken provision.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREES TO BE BOUND BY THEM.

CITY OF EDGEWOOD

CONTRACTOR

By: _____

By: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

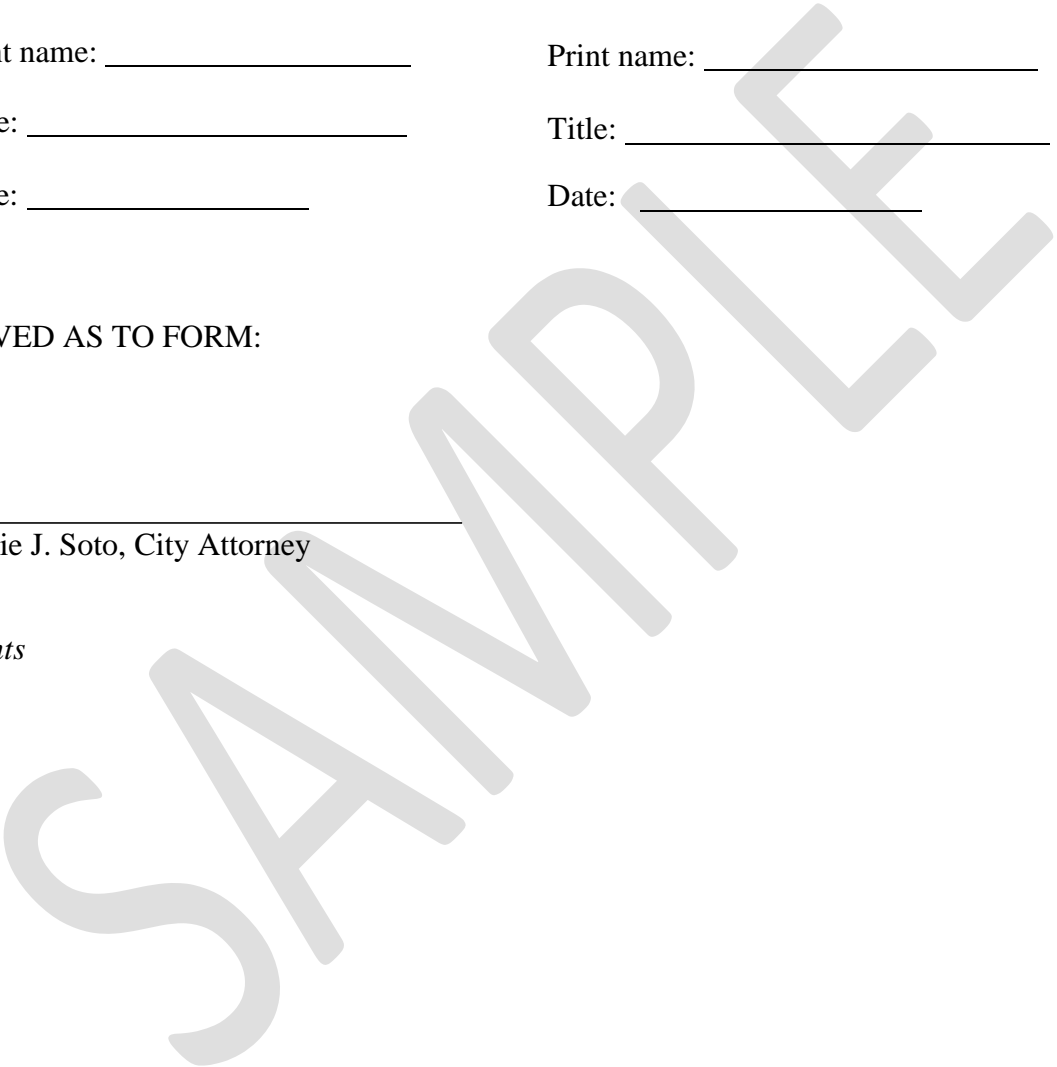
Date: _____

Date: _____

APPROVED AS TO FORM:

Ann Marie J. Soto, City Attorney

Attachments



CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____ (*Corporate Officer (Not Contract Signer)*) certify that I am the _____ (*Corporate Title*) of the corporation named as Contractor in the Contract attached hereto; that _____, (*Contract Signer*) who signed said Contract on behalf of Contractor, was then _____ (*Corporate Title*) of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate Officer Signature (*not Contract Signer*)

Print Name

Title

State of _____

County of _____

_____, (*Corporate Officer (not Contract Signer)*) being duly sworn, deposes and says that he/she is _____ (*Corporate Title*) of _____ (*Name of Corporation*).

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public (Signature)

Notary Public (Print)

My commission expires _____

CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation 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 certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Bidder’s Business Name

Signature of Authorized Official*

Printed Name

Title

Date

City

State

Check One:

Sole Proprietorship Partnership Joint Venture Corporation

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

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

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

Address:

Telephone:

Email:

Washington State Contractor License #:
Required prior to bid pursuant to RCW 18.27

City of Edgewood License #:

Affidavit of Title VI Compliance

TITLE VI - NON-DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS:

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

PART 1 – TITLE VI PROCEDURAL INFORMATION

1. **APPLICATIONS:** The following materials pertain to the regulations relative to nondiscrimination of Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, part 21, and as may be requested by the City. All contractors, subcontractors, consultants, suppliers and manufacturers who contract with the City must Comply with these requirements.
2. **AFFIDAVIT:** Before being considered for a contract, all contractors, etc. will be required to submit the Affidavit of Title VI Compliance as part of their proposal or upon request of the Procurement Services Manager.
3. **COMPLIANCE:** The City of Edgewood reserves the right to randomly select contractors, subcontractors, consultants, vendors or suppliers to be audited for compliance of the requirements listed. During this audit, the contractors, etc. will be asked for a specific demonstration of compliance with the requirements.
4. **NON-COMPLIANCE:** A finding of non-compliance may be considered a breach of contract and suspension or termination of a contract may follow.
5. **CITY CONTACT:** The City's Compliance Officer is the City Clerk, and specific questions pertaining to this section may be directed to the City Clerk at (253) 952-3299.

PART 2 – ASSURANCES FOR CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, SUPPLIERS AND MANUFACTURERS

1. **COMPLIANCE WITH REGULATIONS:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as Regulations), which are herein incorporated by reference and made part of this contract.
2. **NONDISCRIMINATION:** The contractor, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program, set forth in Appendix B of the Regulations.
3. **SOLICITATION FOR SUBCONTRACTORS, INCLUDING PROCUREMENT OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiations made by the contractor for the work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor's obligations under this contract and the Regulations relative to the nondiscrimination on the ground of race, color, sex, or national origin.
4. **INFORMATION AND REPORTS:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Edgewood or the Washington State Department of Transportation to be pertinent to ascertain

compliance with such Regulations, orders and instructions. Where any information required of a contractor is an exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the City of Edgewood or the Washington State Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **SANCTIONS FOR NONCOMPLIANCES:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the City of Edgewood and the Washington State Department of Transportation shall impose such contract sanctions as it, or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until contractor complies, and/or;
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **INCORPORATION OF PROVISIONS:** The contractor shall include in provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the City of Edgewood or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the City of Edgewood enter into such litigation to protect the interests of the City and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contractor hereby certifies that during the performance of this contract it agrees to comply with these assurances.

By: _____
Authorized Signature

Title:

Date:

END, AFFIDAVIT OF TITLE VI COMPLIANCE